Ohio Legislative Service Commission

Bill Analysis

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Sens. Carey, Gillmor, Goodman, Grendell, Harris, Niehaus, Patton

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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.

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

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

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.

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 1,200 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 Supreme Court, General Assembly, Legislative Service Commission, Secretary of State, Auditor of State, Treasurer of State, or Attorney General unless these employees were subject to the moratoria on the accrual and annual payment of personal leave in effect from December 2009 until December 2011.

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

- Provides that the moratoria on personal leave described above (1) apply to employees of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney General decides to exempt the officer's employees and so notifies the Director of Administrative Services in writing on or before July 1, 2009, and (2) do not apply to employees of the Supreme Court, General Assembly, and Legislative Service Commission unless the Supreme Court, General Assembly, or Legislative Service Commission decides to include those employees in the moratoria and so notifies the Director in writing on or before 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 Supreme Court, General Assembly, Legislative Service Commission, Secretary of State, Auditor of State, Treasurer of State, or Attorney General unless these employees were subject to the moratoria on the accrual and annual payment of personal leave in effect from December 2009 until December 2011 and the Supreme Court, General Assembly, Legislative Service Commission, Secretary of State, Auditor of State, Treasurer of State, or Attorney General decides to participate in the pay supplement.

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

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

- Modifies the occupational injury leave program 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.

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

- 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.

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

- 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 Office of Information Technology (OIT) to select a web site service provider to establish, operate, and maintain, and to fund the operation, establishment, and maintenance of, the State-Sanctioned Public Notice (SSPN) web site, prescribes the qualifications for the service provider, and provides that the state does not have and may not assume liability for the costs of establishing, operating, and maintaining the web site.

- Lists the duties of the service provider in establishing, maintaining, and operating the SSPN web site, requires the service provider to bear the expense of maintaining the web site domain name, and requires the service provider to provide the OIT Director, in the course of a quality review, access to the service provider's hardware and software and technical and informational operations relating to the web site operation and maintenance.

- Permits a notice required to be published by statute or rule to be published in the SSPN web site and requires the service provider to publish on the web site such a notice submitted to the provider and to collect from the responsible party submitting the notice a fee for posting the notice to be set by the provider and not to exceed $10.

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

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

- Removes obsolete pay tables prescribing pay for exempt employees.

- Requires the Director of Administrative Services to prepare and submit a report to the Controlling Board that lists all state-owned real property and building leases throughout Ohio.

- Requires the Deputy Director of the Equal Opportunity Division of the Department of Administrative Services to (1) develop, and make available to state agencies, a scorecard system that will enable state agencies to track their compliance with minority business enterprise and EDGE business enterprise program requirements and (2) make quarterly reports on state agency compliance with these requirements.

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

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

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

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

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

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

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

- Requires the Department of Administrative Services to conduct a two-year pilot project in which a total of 10% of state-owned, gasoline-powered passenger cars,

sport utility vehicles, and light-duty pickup trucks are converted to a propane fuel system, to assess all aspects of the use of propane-powered vehicles during the pilot project, and to submit a final report to the Governor and the General Assembly.

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 Supreme Court, General Assembly, Legislative Service Commission, Secretary of State, Auditor of State, Treasurer of State, or Attorney General unless these employees were subject to the moratoria on the accrual and annual payment of personal leave in effect from December 2009 until December 2011 and the Supreme Court, General Assembly, Legislative Service Commission, Secretary of State, Auditor of State, Treasurer of State, or Attorney General notifies the Director of Administrative Services in writing on or before June 1, 2011, of the decision to participate in the one-time additional sick leave credit. Written notice must be signed by the appointing authority for employees of the Supreme Court, General Assembly, or Legislative Service Commission, as the case may be. (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 (1) apply to employees of the Secretary of State, Auditor of State, Treasurer of State, and Attorney General unless the Secretary of State, Auditor of State, Treasurer of State, or Attorney General decides to exempt the office's employees and so notifies the Director of Administrative Services in writing on or before July 1, 2009. The written notice must be signed by the appointing authority for employees of the Supreme Court, General Assembly, or Legislative Service Commission. (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 Supreme Court, General Assembly, Legislative Service Commission, Secretary of State, Auditor of State, Treasurer of State, or Attorney General unless these employees were subject to the moratoria on the accrual and annual payment of personal leave that was in effect from December 2009 until December 2011 and the Supreme Court, General Assembly, Legislative Service Commission, Secretary of State, Auditor of State, Treasurer of State, or Attorney General notifies the Director of Administrative Services in writing before June 1, 2011, of the decision to participate in the one-time pay supplement. Written notice must be signed by the appointing authority for employees of the Supreme Court, General Assembly, or Legislative Service Commission, as the case may be. (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

[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.

the employee's position. Occupational injury leave is paid at the employee's total rate of pay during the period the employee is disabled as a result of the injury, but cannot exceed 120 work days. Occupational injury leave is in lieu of workers' compensation.

Under the 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 employees in the service of the state, salary continuation not to exceed 480 hours at their total rate of pay for absence as a result of injuries incurred during the performance of, and arising out of, state employment after the implementation date the Director of Administrative Services establishes by rule. If such an employee's absence as the result of such an injury extends beyond 480 hours, the employee immediately becomes subject to sick leave and disability leave benefits. (R.C. 124.381(A)(1)(a).)

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

Participation in salary continuation is subject to rules adopted by the Director. (R.C. 124.381(A)(1)(b).)

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.

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).)

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

(R.C. 124.392)

The bill creates the Cost Savings Fund in the state treasury. Savings accrued through employee participation in the mandatory cost savings program and in mandatory cost savings days that the bill requires are to be allocated to the Fund. The Fund may be used to pay employees who participated in the program or in these days. Any investments earnings of the fund must be credited to it.

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.

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.)

Sufficient competition for purchase of Ohio-produced or mined products

(R.C. 125.11)

Under current law, before awarding a contract for the purchase of products, the Department of Administrative Services (DAS) or a state agency responsible for evaluating such a contract must evaluate the bids received according to criteria and procedures established under current law for determining if a product is produced or mined in the United States or in Ohio. DAS or the other state agency must first remove bids that offer products that have not been or that will not be produced or mined in the United States. From among the remaining bids, DAS or the other state agency must select the lowest responsive and responsible bid from among the bids that offer products that have been produced or mined in Ohio where sufficient competition can be generated within Ohio to ensure that compliance with the preference for Ohio products will not result in an excessive price for the product or acquiring a disproportionately inferior product. If there are two or more qualified bids that offer products that have been produced or mined in Ohio, it is deemed that there is sufficient competition to prevent an excessive price for the product or acquiring a disproportionately inferior product. The bill increases the number of these bids from two to four. (R.C. 125.11(B).)

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.)

State-Sanctioned Public Notice web site

Selection and qualifications of web site service provider

(R.C. 125.183)

The bill requires the Office of Information Technology (OIT) to select a web site service provider to establish, operate, and maintain, and to fund the establishment, operation, and maintenance of, the State-Sanctioned Public Notice web site (SSPN web site). The provider must have all the following qualifications:

(1) Possess appropriate hardware infrastructure and intellectual property for feasible processes deploying a state-sanctioned and national web site with appropriate methods for communicating with the courts of Ohio;

(2) Possess sufficient minimal capital resources to establish and ensure smooth and uninterrupted ongoing operation of the SSPN web site;

(3) Provide a reasonable plan for implementing the SSPN web site so that notices required to be published by a statute or rule may be posted and published on the web site with reasonable ease;

(4) Demonstrate, and be capable of implementing, the technology necessary for the SSPN web site at no cost to the state;

(5) Employ personnel, in number and by qualification, who are necessary to ensure smooth transmission of data to and the posting and publication of notices on the SSPN web site;

(6) Post a bond in an amount to be determined by the OIT that is sufficient to guarantee operation of the SSPN web site as the public interest requires.

The service provider must bear the costs of establishing, operating, and maintaining the SSPN web site. The state neither has nor may assume liability for those costs.

Duties of SSPN web site service provider

(R.C. 125.184)

In establishing, maintaining, and operating the SSPN web site, the web site service provider must do all of the following:

(1) Use a domain name for the web site that will be easily recognizable and remembered by and understandable to users of the web site;

(2) Maintain the web site so that it is fully accessible to and searchable by members of the public at all times;

(3) Not charge a fee to a person who accesses, searches, or otherwise uses the web site;

(4) Ensure that notices displayed on the web site conform to the requirements that would apply to the notices as if they were being published in a newspaper or other publication, as directed in the relevant provision of the statute or rule;

(5) Ensure that notices continue to be displayed on the web site for not less than the length of time required by the relevant provision of the statute or rule;

(6) Devise and display on the web site a form that may be downloaded and used to request publication of a notice on the web site;

(7) Charge responsible parties submitting notices for publication on the web site only the fee fixed by the service provider;

(8) Enable responsible parties to submit notices and requests for their publication and to pay the fee charged therefore on-line;

(9) Maintain an archive of notices that no longer are displayed on the web site;

(10) Enable notices, both those currently displayed and those archived, to be accessed by key word, by party name, by case number, by county, and by other useful identifiers;

(11) Maintain adequate systemic security and backup features, and develop and maintain a contingency plan for coping with and recovering from power outages, systemic failures, and other unforeseeable difficulties;

(12) Maintain the web site in such a manner that it will not infringe legally protected interests, so that vulnerability of the web site to interruption because of litigation or the threat of litigation is reduced;

(13) Submit a status report to the Secretary of State twice annually that demonstrates compliance with the statutory requirements governing publication of notices;

(14) Submit to a quality review, if the OIT Director requests.

The service provider must bear the expense of maintaining the SSPN web site domain name. In the course of a quality review, the OIT Director is entitled to, and the service provider must provide, full access to the hardware and software used by, and the technical and informational operations of, the service provider that relate to operation and maintenance of the SSPN web site.

Publication of legal notices on the SSPN web site

(R.C. 7.16 and 125.182)

The bill provides that a notice required to be published by a provision of a statute or rule may be published on the SSPN web site. A responsible party who is required to publish such a notice may submit a copy of the notice and a request for publication to the SSPN web site service provider, together with the fee charged. The responsible party must identify in the notice or request the provision of the statute or rule that requires the notice to be published. The responsible party may, but is not required to, prepare the request on the form that can be downloaded from the SSPN web site. The notice permitted under this provision is cumulative with other notice provisions under statute or rule.

The bill requires the SSPN web site service provider to publish on the SSPN web site a notice that is submitted to the service provider and that is required to be published by a provision of a statute or rule. The service provider must collect from the responsible party submitting the notice a fee for posting the notice on the web site. The service provider must set the fee; it is not to exceed $10. The fee initially set may not thereafter be increased until two years have elapsed. The service provider must publish the amount of the fee on the SSPN web site.

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.

Report listing all state-owned property and building leases

(Section 753.30)

The bill requires the Director of Administrative Services, not later than October 1, 2009, to prepare and submit a report to the Controlling Board that lists all state-owned real property and building leases throughout Ohio. The report must provide at least the following details for each parcel of real property and each building lease: the location; the lease holder, if relevant; the square footage; and the value.

Scorecard system to track state agency compliance with minority business enterprise and EDGE business enterprise program requirements

(Section 701.97)

The bill requires the Deputy Director of the Equal Opportunity Division of the Department of Administrative Services to develop and implement, and make available to state agencies, a scorecard system that will enable state agencies to track their compliance with minority business enterprise and EDGE business enterprise program requirements. The bill defines "state agency," for this purpose, to mean a discrete unit that is organized as a part of, and that carries out one or more functions of, state government. The scorecard system must be designed to enable state agencies to

transmit compliance tracking data obtained using the scorecard system to the Deputy Director.

The head officer of a state agency must track the agency's compliance with minority business enterprise and EDGE business enterprise program requirements using the scorecard system. Within five business days after the last day of each quarter in fiscal years 2010 and 2011, the head of the state agency must transmit to the Deputy Director the compliance tracking data the state agency has obtained using the scorecard system during the quarter of the fiscal year just ended.

Quarterly, by the first day of the second month following the last month of each quarter in fiscal years 2010 and 2011, the Deputy Director must compile and study the compliance tracking data that has been transmitted by state agencies and prepare a report of state agency compliance with minority business enterprise and EDGE business enterprise program requirements. The Deputy Director must submit copies of the report to the Governor, Senate President, House Speaker, House and Senate Minority Leaders, and chairpersons of the standing committees of the House and Senate having jurisdiction over state finance.

State agency spending controls

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

The spending controls imposed by the bill apply generally to each state agency, that is, to any organized body, office, or agency that is established by law for the exercise of any function of state government. Exempt from the spending controls are the general assembly and any legislative agency, the elected state officers,[2] the courts and any judicial agency, and state institutions of higher education. (R.C. 126.50(B).)

State agency spending plans and their implementation

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

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

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

Management a spending plan for purchasing supplies and services for the following two fiscal years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Specific state agency spending controls

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

State agency travel expense controls

(R.C. 126.503)

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

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

(2) Reducing the mileage reimbursement rate for collective bargaining unit employees to ten cents below the rate set for state agency employees by rule of the Director of Budget and Management;

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

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

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

(6) Limiting mileage reimbursement to 4,000 miles per year for each state agency employee.

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

Office overhead cost controls

(R.C. 126.504)

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

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

Purchasing controls

(R.C. 126.505)

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

Information technology controls

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

Continuing law requires the State Chief Information Officer[3] to lead, oversee, and direct state agency activities related to information technology development and use. In addition to the State Chief Information Officer's current specific duties, the bill requires the State Chief Information Officer (1) to establish policies and standards for the acquisition and use of common information technology by state agencies, including hardware, software, technology services, and security, and for the extension of the service life of information technology systems, (2) to establish policies on the purchasing, use, and reimbursement for the use of handheld computing and telecommunications devices by state agency employees, (3) to establish policies for the reduction of printing and the use of electronic records by state agencies, and (4) to establish policies for the reduction of energy consumption by state agencies. Each state agency must participate in information technology consolidation projects implemented by the State Chief Information Officer under (1) in the preceding list. And each state agency, at the direction of and in the format specified by the Director of Administrative

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

Services, must maintain a list of information technology assets possessed by the agency and associated costs related to those assets.

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

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

Changes in the Minority Business Bonding Program

(R.C. 122.89)

Minority Business Bonding Program

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

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

(1) For each first contract, the minority business may bid or enter into a contract valued at $25,000 or less without being required to provide a bond;

(2) For each second contract, the minority business may bid or enter into a contract valued at $50,000 or less without being required to provide a bond;

(3) For each third contract, the minority business may bid or enter into a contract valued at $100,000 or less without being required to provide a bond;

(4) For each fourth contract, the minority business may bid or enter into a contract valued at $300,000 or less without being required to provide a bond; and

(5) For each fifth or subsequent contract, the minority business may bid or enter into a contract valued at $600,000 or less without being required to provide a bond (R.C. 122.89(G)).

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

(1) For each first contract, the minority business may bid or enter into a contract valued at $25,000 or less without being required to provide a bond;

(2) For each second contract, the minority business may bid or enter into a contract valued at $50,000 or less without being required to provide a bond;

(3) For each third contract, the minority business may bid or enter into a contract valued at $100,000 or less without being required to provide a bond;

(4) For each fourth contract, the minority business may bid or enter into a contract valued at $300,000 or less without being required to provide a bond; and

(5) For each fifth or subsequent contract, the minority business may bid or enter into a contract valued at $600,000 or less without being required to provide a bond (R.C. 122.89(H)).

The bill allows a minority business that has entered into two or more contracts with the state or with any instrumentality of the state to bid or enter into a contract with a political subdivision of the state or with any instrumentality of a political subdivision valued at the level at which the minority business would qualify if entering into an additional contract with the state (R.C. 122.89(I)).

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

(Section 701.70)

The bill requires the Department of Administrative Services (DAS) to conduct a pilot project involving propane-powered state vehicles. During the period commencing October 1, 2009, and ending September 30, 2010, DAS must convert or cause to be converted to a propane fuel system 5% of the gasoline-powered passenger cars, sport utility vehicles, and light-duty pickup trucks owned by the state. During the period commencing October 1, 2010, and ending December 31, 2010, the Department must convert or cause to be converted to a propane fuel system an additional 5% of such state vehicles. Only propane fuel systems that have been approved by the United States

Environmental Protection Agency may be installed in state vehicles under the pilot program.

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

DEPARTMENT OF AGING (AGE)

- Specifies the amounts the Department of Aging must use to determine whether an individual is eligible for a payment under the Residential State Supplement (RSS) program and the amount each resident is to receive per month.

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

- 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.

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

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

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

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

- 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.

- Requires the directors of Aging and Job and Family Services to issue a report on the feasibility of including in the Medicaid managed care program certain aged, blind, and disabled Medicaid recipients who are excluded by current law from the program.

- 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 wind up the program's affairs by January 1, 2010.

- 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.

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

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

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

Residential State Supplement program

Background

The Department of Aging administers the Residential State Supplement (RSS) program, which provides a cash supplement to payments provided to eligible aged, blind, or disabled adults under the Supplement Security Income (SSI) program. The cash supplements provided under the RSS program must be used for the provision of accommodations, supervision, and personal care services.[4]

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.[5] 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;[6]

[4] R.C. 173.35.

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

[6] 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

(2) $927 for a resident of an adult group home;[7]

(3) $824 for a resident of an adult foster home;[8]

(4) $824 for a resident of an adult family home;[9]

(5) $824 for a resident of an adult community alternative home;[10]

(6) $824 for a resident of an adult residential facility;[11]

(7) $618 for a person receiving adult community mental health housing services.[12]

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or mental impairment, and, to at least one of those individuals, certain skilled nursing care (R.C. 3721.01(A)(7)).

[7] 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)).

[8] 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).

[9] 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)).

[10] 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)).

[11] 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)).

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

Residential State Supplement Workgroup

(Section 209.30)

The bill creates the Residential State Supplement Workgroup. The Workgroup is to consist of the following state agency directors or the Directors' designees:

(1) The Director of Aging;

(2) The Director of Health;

(3) The Director of Job and Family Services;

(4) The Director of Mental Health.

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

The Workgroup is charged with examining solely the issue of which state agency is the most appropriate to administer the RSS program. Not later than December 31, 2009, the Workgroup must submit written recommendations on this issue to the Governor and General Assembly.[13] The Workgroup is to cease to exist on submission of its recommendations.

PACE program

Background

Federal law permits a state to include in its Medicaid program a component known as the Program of All-inclusive Care for the Elderly (PACE).[14] The state agency administering the PACE program and the United States Secretary of Health and Human Services enter into an agreement with a provider under which the provider, directly or by contract with other entities, provides medical services to individuals enrolled in the PACE program.

The medical services available under the PACE program must include all items and services covered by the Medicaid program and, in the case of PACE enrollees who

[13] In submitting the report to the General Assembly, the Residential State Supplement Workgroup is to provide it to Senate President, Senate Minority Leader, Speaker of the House of Representatives, House Minority Leader, and the Director of the Legislative Service Commission (R.C. 101.68(B)).

[14] 42 U.S.C. 1396u-4.

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.[15] 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.[16]

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 the number of residents of Cuyahoga and Hamilton counties and the parts of Butler, Clermont, and Warren counties participating

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

[16] R.C. 173.50.

in the PACE program to below the number of participants in those areas of who were enrolled in the PACE program on July 1, 2008.

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.

Kosher home-delivered meals under the PASSPORT program

(R.C. 173.402)

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

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

governing the PASSPORT program's home-delivered meal service while complying with kosher practices for meal preparation and dietary restrictions.

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

Choices Program

(R.C. 173.403)

The Department of Aging administers a Medicaid waiver program called the Choices Program. 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.[17]

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.

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

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, 173.403, 5111.89, 5111.891, 5111.894, and 5111.971)

There is a separate federal Medicaid waiver for each of the three Medicaid waiver programs the Department of Aging administers: the Assisted Living Program, Choices Program, and PASSPORT program. The 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 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.).

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[18] or recipient of community-based long-term care services[19] 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.

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[18] 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)).

[19] "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)).

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

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

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

(1) For a violation of the prohibition on retaliation for providing information to the Office of the State Long-Term Care Ombudsperson Program, participating in registering a complaint with the Office, or participating in investigation of a complaint or in administrative or judicial proceedings resulting from a complaint: $1,000 per incident. An "incident" is the occurrence of a violation with respect to a resident of a long-term care facility or recipient of community-based long-term care services. A violation is a separate incident for each day it occurs and for each resident or recipient who is subject to it (R.C. 173.28(A)(1)).

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

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

Community-based long-term care services

(R.C. 173.392)

Generally, the Department of Aging may not pay a person or government entity for providing community-based long-term care services[20] under a program the Department administers unless the person or government entity is certified by the Department or the Department's designee.[21] 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 under a program the Department administers. The bill provides that the Director's rule-

[20] 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).

[21] R.C. 173.39.

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. The Department or its designee is required to ensure that no person providing the care management and authorization services performs an activity that may not be performed without a valid certificate or license issued by a state agency unless the person holds the valid certificate or license.

Federal approval

(R.C. 173.433)

No provision of the 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,[22] consisting of the following members:

(1) The Director of Aging;

(2) Consumer advocates, representatives of the provider community, representatives of Medicaid managed care organizations, 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 and promote a consumer's independence and autonomy;

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

(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.[23]

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[24] describing the progress towards establishing, or if already established, the effectiveness of the unified long-term care budget.[25]

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.[26]

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

[24] 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).

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

[26] 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

Medicaid managed long-term care report

(Section 209.45)

Current law requires ODJFS to exclude, from the managed care part of the Medicaid program, certain categories of persons who qualify for Medicaid on the basis of being aged, blind, or disabled. ODJFS is to exclude (1) individuals under age 21, (2) institutionalized individuals, (3) individuals who become eligible for Medicaid by spending down their income or resources to a level that meets the Medicaid program's financial eligibility requirements, (4) individuals who are dually eligible under the Medicaid and Medicare programs, and (5) individuals to the extent that they are receiving Medicaid services through a Medicaid waiver program.

The bill requires the Directors of Aging and Job and Family Services to issue a report on the feasibility of including the aged, blind, and disabled persons who are currently excluded from the Medicaid managed care program in that program. The report must include (1) an assessment of Medicaid managed care programs in other states that include such aged, blind, and disabled Medicaid recipients, (2) anticipated costs and savings to the Medicaid program if such aged, blind, and disabled Medicaid recipients were included in the Medicaid managed care program, and (3) options for integrating certain services that the bill requires be covered by the unified long-term care budget[27] into the Medicaid managed care program. The report is due by July 1, 2010, and is to be submitted to the Speaker and Minority Leader of the House of Representatives, President and Minority Leader of the Senate, and members of the Joint Legislative Committee on Medicaid Technology and Reform.

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

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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.

[27] See "**Unified long-term care budget**" above.

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.[28] 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.

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

[28] 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).

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, including any waivers administered by the Department;

(5) 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, 173.99, 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 January 1, 2010, the bill repeals all statutes governing the program.

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

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

The council appoints an executive director for the council.

Under current law, beginning on July 1, 1997, the Department of Aging serves as the council's fiscal agent.[30] The council retains any validation, cure, right, privilege,

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

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

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 to enter into an agreement in writing with "another state agency" to serve as the council's fiscal agent. The fiscal agent will be responsible for all the council's fiscal matters and financial transactions, as specified in the agreement. The fiscal agent must determine fees to be charged to the council, and the council must pay fees owed to the fiscal agent from a general revenue fund of the council or from any other fund from which the operating expenses of the council are paid. Services to be provided by the fiscal agent include, but are not limited to, the following:

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

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

(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.

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(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.

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.

DEPARTMENT OF AGRICULTURE (AGR)

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

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

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

- Changes the name of the 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.

- Transfers administration and enforcement of the retail food establishment program from the Department of Agriculture to the Department of Health.

- 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

License, certificate, inspection, agreement, and per acre fee	Current fee	Proposed fee
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.

Transfer of retail food establishment program

(R.C. 915.24, 3701.83, 3717.01, 3717.02, 3717.03, 3717.04, 3717.041, 3717.05, 3717.06, 3717.07, 3717.071, 3717.08, 3717.11, 3717.111, 3717.22, 3717.221, 3717.23, 3717.25, 3717.27, 3717.28, 3717.29, 3717.30, 3717.31, 3717.32, 3717.33, and 3717.48; Section 515.60)

Under current law, the Department of Agriculture is charged with the responsibility of overseeing the regulation of retail food establishments. "Retail food establishment" means a premises or part of a premises where food is stored, processed, prepared, manufactured, or otherwise held or handled for retail sale. Except when expressly provided otherwise, "retail food establishment" includes a mobile retail food establishment, seasonal retail food establishment, and temporary retail food establishment (R.C. 3717.01(C), not in the bill). Included in the Department's responsibilities are the adoption of rules, with the Public Health Council, establishing the Ohio Uniform Food Safety Code and the approval of boards of health to license retail food establishments. The bill transfers administration and enforcement of the retail food establishment program from the Department of Agriculture to the Department of Health.

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.

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.

- 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.

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

[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.)

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[32] 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

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

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.

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 if the licensee has been convicted of theft, bribery of a public official, or corruption of a sport, or associates or consorts with any person who has been convicted of a crime that involves a sport the Commission regulates, including a conviction for theft, bribery of a public official, or corruption of a sport.

Expansion of Ohio Athletic Commission licensing authority

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

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

Clarification of Ohio Athletic Commission fee statute

(R.C. 3773.43)

In light of its other amendments, the 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.

ATTORNEY GENERAL (AGO)

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

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

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

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

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

- Modifies the fee an applicant must pay for a license to carry a concealed handgun or an emergency license to carry a concealed handgun and removes the specific amount an applicant must pay for a renewal license to carry a concealed handgun.

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

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.

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

(R.C. 2743.51)

The bill modifies the amount of attorney's fees incurred to obtain a restraining order, custody order, or other order to separate a victim from an offender that are an "allowable expense" under the Crime Victims Reparations Law (and, thus, that may be awarded to a crime victim under that Law). Currently, "allowable expense" includes attorney's fees not exceeding $2,500, at a rate not exceeding $150 per hour, incurred for the specified services, if the attorney has not received payment under R.C. 2743.65 for assisting a claimant with a reparations award application. Under the bill: (1) "allowable expense" includes attorney's fees not exceeding $1,320, at a rate not exceeding $60 per hour, incurred for those services, if the attorney has not received payment under R.C. 2743.65 for assisting a claimant with a reparations award

application and provided that, except as described in clause (2), the attorney or the attorney's law firm may only receive attorney's fees as an allowable expense for the services in an amount that does not exceed a cumulative total of $30,000 in any calendar year, (2) the $30,000 maximum described above does not apply to an attorney employed by a legal aid society regarding the specified services the attorney performs while so employed and does not apply to a legal aid society, and (3) attorney's fees for the specified services may include an amount for reasonable travel time incurred while performing them, assessed at a rate not exceeding $30 per hour.

Concealed carry license fee

(R.C. 109.731, 311.42, 2923.125, and 2923.1213)

Amount of fee

Existing law

Current law requires an applicant for a license to carry a concealed handgun or for the renewal of a license to carry a concealed handgun under R.C. 2923.125 to submit a nonrefundable license fee prescribed by the Ohio Peace Officer Training Commission (OPOTC) to the sheriff of the county in which the applicant resides or to the sheriff of any county adjacent to the county in which the applicant resides, except that the sheriff must waive the payment of the license fee for certain specified persons. Current law specifies that OPOTC, in consultation with the Attorney General, must prescribe a fee to be paid by an applicant for a license to carry a concealed handgun or for the renewal of a license to carry a concealed handgun as follows:

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

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

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

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

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

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

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

Operation of the bill

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

(1) For an applicant who has been a resident of this state for five or more years, a fee of $55;

(2) For an applicant who has been a resident of Ohio for less than five years, a fee of $55 plus the actual cost of having a background check performed by the FBI.

Additionally, the bill removes the requirement that OPOTC prescribe a fee to be paid by an applicant for the renewal of a license to carry a concealed handgun. The bill does not specify that the fees prescribed by the bill for a license to carry a concealed handgun apply to a renewal license and does not specify a specific amount for the fee to renew a concealed carry license. It only retains a statement from existing law that an applicant for a renewal license must pay a nonrefundable fee to renew a license.

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

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

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

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

Deposit and distribution of fee

Existing law

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

Operation of the bill

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

Waiver of fee

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

- Requires the Auditor of State to certify to the Director of Budget and Management the amounts of unpaid audit costs for state agencies and local public offices if those state agencies or local public offices have ceased operation.

- Requires independent auditors to notify the Auditor of State of amounts due for audits they perform for local public offices that have ceased operation and requires the Auditor to certify these amounts to the Director.

- Requires the Auditor to certify to the Director the amounts necessary to conduct an appropriate audit program, if in the Auditor's judgment, the money appropriated for biennial audits of state agencies is not sufficient to conduct an appropriate program.

- Requires the Director to transfer the certified amounts from the General Revenue Fund to the Public Audit Expense Fund-Intrastate, the Public Audit Expense Fund-Local Government, or the Public Audit Expense Fund-Independent Auditors (newly created by the bill) and appropriates the transferred amounts.

General Revenue Fund transfers for certain unpaid audit costs

(R.C. 117.13; Section 225.20)

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

Under the bill, the Auditor must certify to the Director of Budget and Management the amounts due or necessary for state agency audit costs and the Director must transfer the certified amounts from the General Revenue Fund (GRF) to the existing Public Audit Expense Fund-Intrastate if either of the following apply:

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

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

If a local public office ceases operation and has not paid audit costs pursuant to law, the bill requires one of the following to occur:

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

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

Public Audit Expense Fund-Independent Auditors

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

Appropriation of GRF transfers

The bill appropriates the moneys transferred from the GRF pursuant to this section relative to the costs of audits of state agencies and local public offices.

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.

- Permits the Director of Budget and Management to issue guidelines to agencies applying for federal money made available to the state for fiscal stabilization and recovery purposes.

- Provides that federal money received by the state for fiscal stabilization in support of elementary, secondary, and higher education, public safety, and any other government service is to be deposited into the state treasury to the credit of the General Revenue Fund and is not to be used as a match for the state's share of Medicaid.

- Prohibits the state from entering into or obtaining a certificate of participation or any similar debt instrument without the express approval of the General Assembly.

- Requires the Director each calendar quarter to prepare a list of all employees paid by warrant of the Director who work primarily for one state agency while being paid from appropriations made to another state agency.

- Directs a state agency with a segregated custodial fund to provide an annual report related to such fund to the Director, in a form and with the information the Director requires.

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.

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.

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.

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).

The bill states that this federal money cannot be used as a match for the state's share of Medicaid. It also states that the federal money received in FYs 2010 and 2011 is not to be used to compute debt service for purposes of Article VIII, Section 17 of the Ohio Constitution.[33]

Legislative approval of certificates of participation

(R.C. 126.10)

The bill prohibits the state from entering into or obtaining a certificate of participation[34] or any similar debt instrument without the express approval of the General Assembly.

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

[34] A "certificate of participation" means a "type of financing where an investor purchases a share of the lease revenues of a program rather than the bond being secured by those revenues," Dictionary.com, available at: http://dictionary.reference.com/browse/certificate%20of%20participation, last visited May 26, 2009.

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

(Section 701.80)

The bill requires the Director of Budget and Management to prepare, beginning on October 1, 2009, and on the first day of each calendar quarter thereafter, a list of all employees paid by warrant of the Director who work primarily for one state agency while being paid from appropriations made to another state agency. The Director must provide a copy of the list to the Senate President, House Speaker, and House and Senate Minority leaders.

Reporting related to segregated custodial funds

(R.C. 131.38; R.C. 1.60 (not in the bill))

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

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

CAPITOL SQUARE REVIEW AND ADVISORY BOARD (CSR)

- Places the Capitol Square Review and Advisory Board in the legislative branch of state government.
- Places Board employees in the unclassified civil service and specifies that they are legislative employees for purposes of the Public Employee Collective Bargaining Act and the law that exempts legislators and legislative employees from paying the Columbus city income tax.
- Exempts the Board from the jurisdiction of the Office of Information Technology.

Placement of the Capitol Square Review and Advisory Board in the legislative branch of state government

(R.C. 105.41; Section 803.60)

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

The bill places the Board in the legislative branch of state government. The bill further places Board employees in the unclassified civil service and specifies that they are legislative employees for purposes of the Public Employee Collective Bargaining Act and the law that exempts General Assembly members and legislative employees from paying the Columbus city income tax. The bill also specifies that these provisions do not abrogate any collective bargaining agreement, for the duration of the agreement, that applies to Board employees and that was entered into under the Public Employee Collective Bargaining Act before the effective date of the provisions.

Exemption of the Board from jurisdiction of the Office of Information Technology

(R.C. 105.41)

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

- The General Assembly and legislative agencies.
- The courts and judicial agencies.

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

The bill also exempts the Capitol Square Review and Advisory Board from the Office's jurisdiction.

STATE CHIROPRACTIC BOARD (CHR)

- Requires that a license to practice chiropractic be renewed biennially rather than annually.
- Requires the State Chiropractic Board to adopt rules establishing the amount of (1) the license renewal fee and (2) the penalty for failure to renew, in place of the statutory renewal fee of $250 and penalty of $150.

Renewal of licenses to practice chiropractic

(R.C. 4734.25)

Under 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.

- 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.

- Provides that, in the Superintendent of Financial Institutions' absence, a deputy superintendent may perform certain examination and regulatory functions of the Superintendent for a limited period of time if written authorization is given by the Superintendent.

- Increases the application and renewal fees for a mortgage broker certificate of registration from $350 to $500, and removes the provision exempting persons registered under the Mortgage Loan Law from having to pay such fees when applying for or renewing a mortgage broker certificate of registration.

- Increases the application and renewal fees for a loan officer license from $100 to $150.

- Adds to Video Service Authorization 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, securities salespersons, and investment advisers.

- 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.

- 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.

--Extends from three months to twelve months the grace period for renewal of an expired real estate appraiser certificate, license, or registration before the holder of the certificate, license, or registration is required to reapply and retake the examination.

--Grandfathers in any individuals whose real estate appraiser certificate, license, or registration expired between October 1, 2008 and the effective date of this amendment so that the extended grace period will apply to those individuals.

--Prohibits an individual from engaging in any activities permitted by a real estate appraisal certificate, registration, or license during the grace period for renewal of an

expired certificate, license, or registration until all renewal fees and the late filing fee have been paid.

--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.

- Requires a D-6 liquor permit to be issued to any of specified liquor permit holders that are authorized to sell intoxicating liquor at retail for on and off premises consumption, rather than only a D-5j liquor permit holder as in current law, for a permit premises that is located in a specified type of community entertainment district to allow sale under the permit between 10 A.M. and midnight on Sunday whether or not that sale has been approved by local option election.

- States that the serving or consumption of beer or intoxicating liquor must not be prohibited in a facility that is owned or leased by the state and that is used by visiting foreign military units for training.

- Gives all public authorities the option of including language in the contracts requiring prevailing wage rate determinations and updates be obtained directly from the Department of Commerce rather than attaching to the contract the schedule of wages that the public authority obtained from the Department.

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.

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 provides that, in the absence of the Superintendent, a deputy superintendent may, for a limited period of time, perform those examination or regulatory functions if written authorization is given by the Superintendent.

Mortgage broker and loan officer license fees

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

Under current law, an applicant for a certificate of registration as a mortgage broker, and an applicant for an annual renewal of that certificate, must submit to the Division of Financial Institutions a fee of $350 for each location of an office to be maintained by the applicant. Persons registered under the Mortgage Loan Law (R.C. 1321.51 to 1321.60), however, do not have to pay this fee when applying for or renewing a mortgage broker certificate of registration. The bill increases the application and renewal fee to $500 for each office location, and eliminates the exemption for registrants under the Mortgage Loan Law.

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

Assessments for video service authorizations

(R.C. 1332.24 and 1332.25)

The Video Service Authorization Law passed in the 127th General Assembly provides for a state franchising system for video programming over wires or cables located in public rights-of-way. Under that law, local franchising authority is preempted once a local franchise expires or terminates according to its terms or an incumbent provider of video service applies for a state franchise under specified conditions. The Director of Commerce must grant a state franchise (referred to as a "video service authorization" or "VSA") upon submission of a completed application, which, by statute, can require only (1) identification of the applicant's business location, video service area, and video service technologies, (2) the making of certain attestations by the applicant, and (3) the provision of a description of the applicant's customer complaint handling process. The Director has the authority to investigate any alleged violation of a prohibition against subscriber group race and income discrimination or any alleged failure by a 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 existing Video Service Authorization Fund, used by Commerce to carry out its USA duties. The assessment is to be paid by video service providers.

Under the bill, the total amount assessed in a fiscal year cannot exceed the lesser of $350,000 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 Ohio's public record law.

By October 16, 2009, initially and then around June 1 of each subsequent year, the Director must send to each video service provider to be assessed a written notice of its proportional amount of the total assessment. The provider must pay the assessment on a quarterly basis not later than 45 days after the calendar quarter ends.

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, securities salespersons, and investment advisers. The fees are increased as follows:

(1) Securities dealer license and annual renewal fee--from $100 to $200.

(2) Securities salesperson license and annual renewal fee--from $50 to $60.

(3) Investment adviser's license and annual renewal fee--from $50 to $100.

(4) Investment adviser's notice filing fee--from $50 to $100.

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.

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. 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. 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 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 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, 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, 4763.06, 4763.07, 4763.09, and 4763.11; Section 803.40)

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.

Current law contains a three-month grace period for a real estate appraiser who fails to timely renew the appraiser's certificate, registration, or license to apply for a late renewal and pay a late filing fee in order to avoid retaking the real estate appraiser examination. The bill extends the grace period to twelve months and grandfathers in any real estate appraiser whose certificate, registration, or license expired between October 1, 2008, and the effective date of the bill so that the extended grace period will apply to those individuals.

Current law also allows a real estate appraiser whose certificate, registration, or license has expired to continue to engage in activities permitted by the certificate, registration, or license during the grace period. The bill prohibits a real estate appraiser whose certificate, registration, or license has expired from engaging in any activity permitted by the certificate, registration, or license until the individual has paid any renewal fees and the late filing fee.

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.

Liquor permits in certain community entertainment districts

(R.C. 4303.182)

Under current law, a D-6 liquor permit (Sunday liquor sales) must be issued to a D-5j liquor permit holder (retail food establishment and food service operation in a community entertainment district) for a permit premises that is located in a community entertainment district that was approved by the legislative authority of a municipal corporation between October 1 and October 15, 2005, to allow sale under the permit between 10 A.M. and midnight on Sunday whether or not that sale has been approved by local option election.[35] The bill instead requires a D-6 liquor permit to be issued to any liquor permit holder that is authorized to sell intoxicating liquor at retail for on and off premises consumption for a permit premises that is located in such a community entertainment district.

Serving or consumption of alcohol on state property

(R.C. 4301.85)

The bill states that the serving or consumption of beer or intoxicating liquor must not be prohibited in a facility that is owned or leased by the state and that is used by visiting foreign military units for training.[36]

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[35] "Community entertainment district" means a bounded area that includes or will include a combination of entertainment, retail, educational, sporting, social, cultural, or arts establishments within close proximity to some or all of the following types of establishments within the district, or other types of establishments similar to these: (1) hotels, (2) restaurants, (3) retail sales establishments, (4) enclosed shopping centers, (5) museums, (6) performing arts theaters, (7) motion picture theaters, (8) night clubs, (9) convention facilities, (10) sports facilities, (11) entertainment facilities or complexes, and (12) any combination of the establishments described above that provide similar services to the community (R.C. 4303.182(J) by reference to R.C. 4301.80(A), not in the bill).

[36] "Beer" includes all beverages brewed or fermented wholly or in part from malt products and containing 0.5% or more, but not more than 12%, of alcohol by volume (R.C. 4301.85(B) by reference to R.C. 4301.01(B)(2), not in the bill). "Intoxicating liquor" and "liquor" include all liquids and compounds, other than beer, containing 0.5% or more of alcohol by volume which are fit to use for beverage purposes, from whatever source and by whatever process produced, by whatever name called, and whether they are medicated, proprietary, or patented. "Intoxicating liquor" and "liquor" include wine even if it contains less than 4% of alcohol by volume, mixed beverages even if they contain less than 4% of alcohol by volume, cider, alcohol, and all solids and confections which contain any alcohol. (R.C. 4301.85(B) by reference to R.C. 4301.01(A)(1), not in the bill.)

Prevailing wage schedule of wages

(R.C. 4115.04)

The Wages and Hours on Public Works Law requires every public authority authorized to contract for or construct with its own forces a public improvement, before advertising for bids or undertaking the construction with its own forces, to have the Director of Commerce determine the prevailing wage rates of mechanics and laborers in accordance with that Law for the class of work called for by the public improvement in the locality where the work is to be performed. The schedule of wages must be attached to and made part of the specifications for the work and must be printed on the bidding blanks where the work is done by contract. A copy of the bidding blank must be filed with the Director before the contract is awarded. In the case of contracts that are administered by the Department of Natural Resources (DNR), the Director of Natural Resources or the Director's designee must include language in the contracts requiring wage rate determinations and updates to be obtained directly from the Department of Commerce through electronic or other means as appropriate. Contracts that include that requirement are exempt from the requirements in the Wages and Hours on Public Works Law that involve attaching the schedule of wages to the specifications for the work, making the schedule part of those specifications, and printing the schedule on the bidding blanks where the work is done by contract.

The bill makes it optional for contracts administered by DNR, the Director of Natural Resources, or the Director's designee to include language in the contracts requiring wage rate determinations and updates be obtained directly from the Department of Commerce and gives all other public authorities the option of including that language in the contract rather than attaching to the contract the schedule of wages that the public authority obtained from the Department of Commerce.

STATE BOARD OF COSMETOLOGY (COS)

- Makes changes to the requirements for restoring a license issued by the State Board of Cosmetology.
- Increases the fines that the Board may impose for specified offenses including failure to comply with Ohio's law regulating cosmetology.

Restoration of expired license

(R.C. 4713.63)

Under the current Cosmetology Licensing Law, a practicing license, managing license, or instructor license expires if it has not been renewed for any reason other than because it has been revoked, suspended, or classified inactive, or because the license holder has been given a waiver or extension. An expired license may be restored if the person who held the license pays the restoration fee and all lapsed renewal fees and submits proof that the person has completed all applicable continuing education requirements. Additionally, applicants for a practicing or managing license renewal must retake the licensing examination test.

The bill requires the person renewing a license to pay the renewal fee for the current renewal period and any applicable late fees and specifies that those fees in addition to the existing law's restoration fee must be paid to the State Board of Cosmetology. The bill also specifies that the required lapsed renewal fee is $45 per license renewal period[37] 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.[38] 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

[37] 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).

[38] 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.

cosmetology and any rules adopted under it, (2) continued practice by a person knowingly having an infectious or contagious disease, (3) habitual drunkenness or addiction to any habit-forming drug, (4) willful false and fraudulent or deceptive advertising, (5) falsification of any record or application required to be filed with the Board, or (6) failure to pay a fine or abide by a suspension order issued by the Board.

The bill increases the fines that the Board may impose from not more than $100 to not more than $500 for a first offense, from not more than $500 to not more than $1,000 for a second offense, and from not more than $1,000 to not more than $1,500 for a third and any additional offenses.

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

- Permits the Counselor, Social Worker, and Marriage and Family Therapist Board to establish, and from time to time adjust, fees for both of the following: (1) verification, to another jurisdiction, of a license or registration the Board has issued, and (2) continuing education programs offered by the Board to licensees or registrants.
- Permits the appropriate professional standards committee of the Board to impose a fine for any disciplinary violation consistent with a graduated system of fines to be established by the Board in rules.

New fees

(R.C. 4757.31)

Under current law, the Counselor, Social Worker, and Marriage and Family Therapist Board is required to establish, and from time to time adjust, fees for licensure and renewal of licensure for all of the following professionals: professional clinical counselors, professional counselors, independent social workers, social workers, independent marriage and family therapists, and marriage and family therapists. Similarly, the Board is required to establish, and from time to time adjust, fees for registration and renewal of registration of social work assistants. The fees must be established in amounts sufficient to cover the direct expenses incurred in examining applicants for licensure and registration and to cover the necessary expenses in administering the law and rules governing these professionals. Current law permits the Board to charge different amounts for the various types of licensure and registration,

except that a single fee cannot exceed $125 unless the Board determines an amount in excess of $125 per licensee or registrant is needed to cover the Board's necessary expenses in administering the law governing these professionals and the fee is approved by the Controlling Board.

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

Authority to fine

(R.C. 4757.10 and 4757.36)

Current law authorizes the professional standards committees of the Counselor, Social Worker, and Marriage and Family Therapist Board, in accordance with the Administrative Procedure Act (R.C. Chapter 119.), to take disciplinary action against an individual who has applied for or holds a license or certificate of registration issued by the Board for any of a number of reasons specified in statute. The Board may refuse to issue a license or certificate of registration; suspend, revoke, or otherwise restrict a license or certificate of registration; or reprimand a person holding a license or certificate of registration.

In addition to the disciplinary actions described above, the bill authorizes the appropriate professional standards committee of the Board to impose a fine for any disciplinary violation specified in current law consistent with a graduated system of fines established by the Board in rules that the bill requires the Board to adopt. The system of fines must be based on the scope and severity of violations and the history of compliance, not to exceed $500 per incident.

The bill requires the Attorney General, on request of the Board, to bring and prosecute to judgment a civil action to collect any fine imposed by a professional standards committee that remains unpaid. All fines must be deposited in the Occupational Licensing and Regulatory Board.

DEPARTMENT OF DEVELOPMENT (DEV)

- Expands the "Appalachian region" represented by the Governor's Office of Appalachian Ohio to include Ashtabula, Mahoning, and Trumbull counties, thereby making those counties eligible for funds from the federal Appalachian Regional Commission.

- 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.

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

- Requires a financial institution to indicate in its certification for each capital access loan made by the financial institution whether the business receiving the loan is a minority business enterprise.

- Requires the Director, upon receipt of a certification indicating that a capital access loan was made to a minority business enterprise, to disburse to the financial institution 80% of the principal amount of the loan from the Capital Access Loan Program Fund, instead of the percentages disbursed for other capital access loans.

- Removes a provision that requires the rules regarding the establishment of procedures for minority businesses applying for surety bonds to provide that a minority business submit documentation, as the Director requires, to demonstrate either that the minority business has been denied a bond by two surety companies or that the minority business has applied to two surety companies for a bond and, at the expiration of 60 days after making the application, has neither received nor been denied a bond.

- Makes a community development corporation eligible for loans under the minority business enterprise loan program if the corporation predominantly benefits minority business enterprises or is located in a census tract that has a population that is 60% or more minority.

- Creates a micro-lending program within the Department of Development's R.C. Chapter 166. Direct Loan programs specifically for small business enterprises, to be funded from a legislatively designated portion of the Facilities Establishment Fund.

- 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.

- 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.

- Requires the Director to seek and use available federal economic stimulus funds to secure and guarantee loans made in connection with historic rehabilitation projects that are approved for an Ohio historic rehabilitation tax credit.

- Includes compressed air in the definition of alternative fuel for the purpose of making alternative fuel transportation grants to businesses, nonprofit organizations, public schools, and local governments for the purpose of increasing the availability and use of alternative fuels.

- Includes compressed air in the definition of alternative fuel for the purpose of requiring all new motor vehicles acquired by the state for use by state agencies be capable of using alternative fuel.

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.

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.

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[39] that predominantly benefits

[39] 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

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.

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.

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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.

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.

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.

Investment purposes

(R.C. 150.01)

Under current law, money in the Venture Capital "program fund" is invested in venture capital funds, which in turn invest in businesses that are in seed or early stages of development or in established businesses that are developing new methods or technologies. The Program Fund consists of money lent to it, presumably by taxpayers

in expectation of security against any losses incurred from investment of the money in venture capital funds.

The 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.

Loan guarantees for historic rehabilitation projects

(R.C. 166.061)

The bill requires the Director of Development to try to obtain up to $75 million in federal economic stimulus funds and to make the funds available to secure and guarantee loans made "in connection with" historic building rehabilitation projects that have been approved for an Ohio historic rehabilitation tax credit (see R.C. 149.311). The federal funds would be any funds available under the federal American Recovery and Reinvestment Act of 2009 or any other federal source of money that may lawfully be applied to that purpose. Any such funds obtained by the Director must be credited to the Ohio Historic Preservation Tax Credit Fund created by the bill.

The Director must enter into loan guarantee contracts under the same general provisions currently governing Chapter 166 loan guarantees (R.C. 166.06, as authorized by Section 13, Article VIII, Ohio Constitution), except that the guarantee is secured

solely by money in the Ohio Historic Preservation Tax Credit Fund instead of the existing Chapter 166 Loan Guarantee Fund. The loan guarantee amount for any project may not exceed the tax credit amount. Rehabilitation projects approved in the first round of rehabilitation tax credit awards would have first priority for loan guarantees.

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

- Specifies that, in FY 2010 and FY 2011, each city, exempted village, and local school district be paid the sum of (1) the amounts the district received for most operating payments in FY 2009, (2) an enhancement payment of either 0.25% of the base in FY 2010 and 0.5% of the base in FY 2011, or 2% of the base in either fiscal year for a qualifying 2% growth in formula ADM, and (3) an all-day kindergarten expansion payment for certain districts that previously did not qualify for a poverty-based assistance payment for all-day kindergarten in FY 2009.

- Specifies that, in FY 2010 and FY 2011, each joint vocational school district be paid the amount the district received in the previous year, inflated by 1.9%.

- Specifies that, in FY 2010 and FY 2011, each community school and STEM school, except a STEM school governed by a school district board, be paid the per pupil amount computed under current law, using the same per pupil amounts for poverty-based assistance and parity aid used in FY 2009.

- Sets the "formula amount" for payments relying on it as a factor at $5,746 in FY 2010 and $5,775 in FY 2011.

- Establishes the Student-Centered Evidence-Based Funding Council to develop a funding model that prescribes a per pupil level of funding that will follow a student to the school that best meets the student's individual learning needs, and to report its recommendations by September 7, 2010.

- Requires the Department of Education to notify each school district superintendent of the amount of federal stimulus funds the Department expects the district to receive, and requires the district superintendent and district board president to sign an acknowledgement of receipt of the Department's notification.

- Requires each district board to adopt and submit to the Department a draft plan indicating how it plans to deploy the federal stimulus funds the district will receive.

- Specifies that school districts must spend portions of their federal stimulus funds on services for students in nonpublic schools as prescribed by federal law.

- Authorizes the Superintendent of Public Instruction and the Chancellor of the Ohio Board of Regents jointly to adopt rules allowing school districts, community schools, STEM schools, and nonpublic schools to enter into alternative funding options to pay colleges and universities for high school students taking college courses through Post-Secondary Enrollment Options programs, including Seniors to Sophomores.

- 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.

- Requires school districts that owe tuition for a regular education student housed in a residential facility to pay an amount determined by a formula approved by the Department of Education, if the student (1) resides in a facility that is not a foster home or a facility maintained by the Department of Youth Services and (2) receives educational services at the facility from a school district under contract with the facility to provide those services.

- Specifies that a school district for which a reduction was made in its reported formula ADM for FY 2005 based on community school enrollment reports and, accordingly, for which state funding was reduced for FY 2005, 2006, or 2007, does not have a legal right to reimbursement for the reduced funding except as expressly provided in a final court judgment or in a settlement agreement executed on or before June 1, 2009.

- Increases to $325 (from $300 as under current law) the maximum per pupil amount for reimbursement of chartered nonpublic school administrative costs.

II. Academic Provisions

Recommendations on proposed education changes

- Directs the State Board of Education and Superintendent of Public Instruction, by July 1, 2010, to make recommendations to the General Assembly regarding the designation of school districts as innovation zones to implement innovative educational practices and regarding the education policies proposed by the Governor and the House relative to (1) academic standards and model curricula, (2) achievement testing, (3) high school diploma requirements, (4) report card performance indicators, and (5) the minimum school year.

School performance ratings

- Revises the requirement to lower the excellent or effective rating of a school district or building that fails to make adequate yearly progress (AYP) for three or more consecutive years, by specifying (1) that the failure must involve two or more of the same student subgroups each year and (2) that an excellent rating may be lowered only one level, to effective (instead of two levels, to continuous improvement, as in current law).

- Reduces the lowest performance rating a district or building that makes AYP may receive to academic watch (rather than continuous improvement, as in current law).

- Repeals the prohibition against lowering a district's or building's performance rating from the previous year based solely on one subgroup not making AYP.

- Requires the State Board of Education to revoke the charter of a school operated by a school district if, after July 1, 2009, it (1) does not offer a grade higher than 3 and has been in academic emergency for four consecutive years, (2) offers any of grades 4 to 8 but no grade higher than 9, has been in academic emergency for three consecutive years, and showed less than one year of academic growth in reading or math for two of those years, or (3) offers any of grades 10 to 12 and has been in academic emergency for four consecutive years.

- Exempts from the charter revocation requirement district-operated schools in which a majority of the students are enrolled in a dropout program that is run by the school and has a waiver from the Department of Education.

- Requires the State Board to dissolve a school district if a school's charter revocation causes the district to not offer grades K to 12 and the district fails to contract with another school district to enroll students in the eliminated grades.

Interstate Compact

- Ratifies the Interstate Compact on Educational Opportunity for Military Children.

- Establishes the State Council on Educational Opportunity for Military Children and authorizes the appointment of a state compact commissioner and a military family education liaison to implement the state's participation in the compact.

Other academic provisions

- Requires the State Board of Education to adopt standards for business education in grades K to12 by July 1, 2010, which any school district or community school may utilize.

- Requires the State Board, by January 29, 2010, to develop a list of best practices for improving parental involvement in schools for optional use by public and nonpublic schools.

- Permits a school district to waive the requirement to complete an eighth-grade American history course for promotion to high school for academically accelerated students who demonstrate mastery of the course content.

- Clarifies that a high school that permits students below ninth grade to take high school work for high school credit must award high school credit for successful completion of that work.

- Permits chartered nonpublic schools to satisfy the minimum school year requirement based on the number of hours of learning opportunities they offer (rather than on the number of days of instruction, as currently required by State Board rule).

III. Educator Licensure and Employment

Educator licenses

- Requires the State Board of Education to issue the following educator licenses beginning January 1, 2011: (1) a resident educator license, (2) a professional educator license, (3) a senior professional educator license, and (4) a lead professional educator license.

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

- Permits the State Board to issue additional educator licenses of categories and types it elects to provide.

- Repeals the prohibition on the State Board requiring an educator license for teaching children two years old or younger.

Alternative credentials

- Renames the alternative educator license as the "alternative resident educator license" and makes it a four-year renewable license for teaching in grades 4 to 12 (instead of a two-year nonrenewable license for teaching in grades 7 to 12, as in current law).

- Requires the Superintendent of Public Instruction and the Chancellor of the Ohio Board of Regents to develop an intensive pedagogical training institute for applicants for the alternative resident educator license.

- Eliminates the one-year conditional teaching permit for teaching in grades 7 to 12 and the one-year conditional teaching permit for teaching as an intervention specialist.

- Expands the requirements for upgrading a provisional educator license for teaching in a STEM school to a professional educator license to include satisfying all of the State Board's requirements for a professional license (in addition to completing an apprenticeship program and receiving positive recommendations, as is currently required).

Principal licenses

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

Transition

- Requires the State Board of Education to accept applications for the current types of educator licenses through December 31, 2010, and to issue the licenses in accordance with existing requirements, and specifies that those licenses remain valid until they expire.

Ohio Teacher Residency Program

- Requires the Superintendent of Public Instruction and the Chancellor of the Ohio Board of Regents to establish the Ohio Teacher Residency Program for entry-level classroom teachers.

Educator preparation programs

- Transfers responsibility for approving teacher preparation programs from the State Board of Education to the Chancellor of the Ohio Board of Regents and expands the duty to include approval of preparation programs for other educators and school personnel.

- Directs the Chancellor, jointly with the Superintendent of Public Instruction, to (1) establish metrics and 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.

Speech-language pathology intern licenses

- Renames the speech-language pathology student permit as the "speech-language pathology intern license" and requires it to be issued by the State Board of Education (rather than the Board of Speech-Language Pathology and Audiology, which issues the current permit).

- Requires the State Board to adopt rules for the renamed license in consultation with the Chancellor of the Ohio Board of Regents.

- Requires the Board of Speech-Language Pathology and Audiology to issue speech-language pathology student permits in accordance with existing requirements until the effective date of the State Board's licensure rules, and specifies that those permits remain valid until they expire.

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.

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 Teacher Residency Program, (3) alternative licensure programs, and (4) any other program identified by the Chancellor and Superintendent.

Teacher tenure

- Revises the qualifications for a continuing contract (tenure) for regular classroom teachers who become licensed for the first time on or after January 1, 2011, so that a teacher is eligible for tenure if the teacher (1) holds a professional, senior professional, or lead professional educator license, (2) has held an educator license for at least nine years, and (3) has completed 30 semester hours of coursework in the area of licensure since initially receiving a license, if the teacher did not have a master's degree at the time of initial licensure, or 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 educator employment contracts

- Eliminates "other good and just cause" as statutory grounds for termination of a school district employment contract with a licensed educator, and adds to other current statutory grounds the following grounds for termination: violations of written rules and regulations of the board of education, incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, or other acts of misfeasance, malfeasance, or nonfeasance.

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

- Repeals an existing provision that limits referees who hear termination cases of licensed educators to hearing no more than two cases per school year.

IV. Community Schools

- 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 within seven business days all student educational records to the students' resident districts, and that failure to do so is a third degree misdemeanor.

- Duplicates, also in uncodified law, Section 269.60.60 of Am. Sub. H.B. 119 of the 127th General Assembly, which prescribes procedures for the Auditor of State, community school sponsors, and the Department with regard to unauditable community schools.

- Permits a community school to continue operating from the facility it occupied in the 2008-2009 school year, rather than relocating to another school district, if the school (1) has been in its current facility for at least three years, (2) is sponsored by a school district adjacent to the district in which the school is located, (3) emphasizes serving gifted students, and (4) has been rated continuous improvement or higher for the previous three years.

- Permits the conversion of a building operated by a joint vocational school district board of education into a community school, in the same manner as a building operated by a city, local, or exempted village school district board of education or an educational service center governing board may be converted under current law.

- Permits Internet- or computer-based community schools (e-schools) to count expenditures for computers and software toward their minimum level of spending for instructional purposes

- Requires the Department of Education to waive the number of hours a community school is closed for a public calamity as long as the school provides the required minimum number of learning opportunities to students in the school year.

V. Scholarship programs

- Qualifies for the Educational Choice Scholarship students who (1) are enrolled in, (2) are eligible to enroll in kindergarten in the school year for which the scholarship is sought and would otherwise be assigned to, or (3) are enrolled in a community school but otherwise be assigned to, a new school building that is operated by the student's resident district under certain circumstances.

- 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.

- Creates the Special Education Scholarship Pilot Program to provide scholarships for disabled children in grades K through 12 to attend alternative public or private special education programs in fiscal years 2012 through 2017.

- Requires the Department to develop a document that compares rights under state and federal special education law and rights under the Special Education

Scholarship Pilot Program, and requires school districts to distribute that document to the parents of all special education students.

- Requires the Department to conduct a "formative evaluation" of the Special Education Scholarship Pilot Program by December 31, 2013.

VI. Early childhood programs

- Creates the Center for Early Childhood Development to make recommendations regarding the transfer from other state agencies to the Department of Education of the responsibility to coordinate early childhood programs and services.

- Creates the Early Childhood Advisory Council to serve as the federally mandated State Advisory Council on Early Childhood Education and Care.

- Creates the Early Childhood Financing Workgroup to develop recommendations that explore the implementation of a single financing system for early care and education programs.

- Continues for the 2010-2011 biennium a GRF-funded program to support early childhood education programs offered by school districts and educational service centers to preschool children whose families earn up to 200% of the federal poverty guidelines.

- 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.

- Requires preschool programs that are licensed by the Department of Education and use the Montessori instructional method to comply with staff member/child ratios and maximum group sizes specified in Montessori accreditation standards when combining preschool-aged children and kindergarteners in the same classroom.

VII. Other Provisions

- Requires the Superintendent of Public Instruction to develop a ten-year strategic plan by December 1, 2009.

- Requires the State Board of Education to broadcast its regular and special business meetings live on the Internet beginning not later than June 30, 2010.

- Eliminates current law that permits the Department of Education to contract with an independent for-profit or nonprofit entity to provide information on Ohio government through the Ohio Education Computer Network (OECN) to school district libraries to assist teachers in social studies course instruction and support student research projects.

- Permits the Department to approve and administer funding for educational technology for OECN information technology centers, school districts, educational service centers, and other entities.

- Specifies that OECN information technology centers are not required to have operating reserve accounts or funds or minimum cash balances relative to their operating funding.

- Allows the Department to use volunteers in performing the Department's functions.

- Repeals current law establishing the School Health and Safety Network under which boards of health, in accordance with standards and procedures adopted by the Director of Health, must inspect public and chartered nonpublic schools and their grounds at least annually to identify conditions dangerous to public health and safety.

- Requires boards of health to inspect the sanitary condition of schools semiannually (rather than annually, as in current law).

- Repeals authorization for boards of health to close a school for an imminent public health threat other than an epidemic or a high prevalence of communicable disease.

- Repeals the specification of current law that the practice of registered sanitarians includes the administration and enforcement of the Director of Health's School Health and Safety Network rules.

- Requires school districts, community schools, STEM schools, and chartered nonpublic schools periodically to review their policies and procedures to ensure (1) the safety of persons using a school from known hazards that pose an immediate risk to health or safety and (2) compliance with federal health and safety laws and regulations applicable to schools.

- Requires school districts, community schools, STEM schools, and chartered nonpublic schools to establish policies to protect students with peanut or other food allergies.

- Specifies that when a person is subject to a periodic criminal records check as a condition of licensure by the State Board or of employment with a public or chartered nonpublic school, the records check is limited to an FBI check if (1) the State Board or employer has previously requested a records check of the person by the Bureau of Criminal Identification and Investigation (BCII) and (2) the person provides proof of Ohio residency for the previous five-year period.

- Prohibits the State Board from requiring a criminal records check for licensure purposes any more often than every five years.

- Requires school districts, community schools, STEM schools, and chartered nonpublic schools annually to inform students and parents of the parental notification procedures in the school's protocol for responding to threats and emergency events.

- Extends to middle and secondary schools the existing requirement that specified categories of school employees complete four hours of in-service training in the prevention of child abuse, violence, substance abuse, and the promotion of positive youth development.

- Directs districts and schools to incorporate training in school safety and violence prevention into their in-service training in the prevention of child abuse, violence, substance abuse, and the promotion of positive youth development.

- Modifies procedures that the State Board is required to adopt with respect to children with disabilities by specifying who may appoint the surrogate for a child whose parents cannot be found or who is a ward of the state.

- Places a two-year moratorium on local school districts relocating from their current educational service centers (ESCs) to adjacent ESCs, and voids recently approved, as well as pending, resolutions for such relocations.

- Specifies that when the State Board considers a local school district's relocation to an adjacent ESC after the moratorium expires, it must (1) consider the impact on the district's current ESC (in addition to the impact on the district and the ESC to which the district seeks to relocate, as in current law) and the financial, staffing, and programmatic impacts on all parties involved, (2) consider the proposed relocation at two or more meetings with an opportunity for public testimony at each meeting, and (3) provide at least 30 days before the Board's first hearing on the matter and its vote.

- Provides procedures for dissolving an ESC if all of its "local" school districts sever from it and annex to another ESC.

- 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.

- Prohibits school districts from preventing a teacher from providing time to recite the Pledge of Allegiance to the flag in the teacher's classroom.

- Prohibits school districts from altering the Pledge of Allegiance to the flag from the wording set forth in the United States Code.

- Permits two local school districts to renew their contract for vocational education (career-technical) services for a term of less than five years, if the district receiving the services had been created out of the territory of the district providing the services and began operating in fiscal year 2005.

- Increases to $50,000 (from $25,000 as under current law) the threshold for requiring competitive bidding for school district or educational service center purchases of public improvements.

- Requires school districts and educational service centers to competitively bid contracts for the purchase of maintenance services on either buildings or grounds or school buses or other transportation equipment if the cost will exceed $50,000.

- Increases the maximum maturity of school district bonds issued to acquire or construct real property, from 30 years to 40 years.

- Transfers the School Employees Health Care Board and any unexpended or unencumbered appropriation or reappropriation balances from the Department of Administrative Services to the Department of Education.

I. State Funding for Primary and Secondary Education

City, exempted village, and local school districts

(Sections 265.30.41 and 265.30.42)

The bill retains the current school funding system, but, for fiscal years 2010 and 2011, it suspends use of that formula and, instead, pays each city, exempted village, and local school district an amount based on what the district received for fiscal year 2009. Under the bill, a district may receive (1) its "state funding base," which is the aggregate of the amounts the district received for most operating payments in fiscal year 2009,

plus (2) an enhancement payment of either 0.25% of the base in fiscal year 2010 and 0.5% of the base in fiscal year 2011, or 2% of the base in either fiscal year for a qualifying 2% growth in formula ADM (student count) over the previous year, plus (3) an all-day kindergarten expansion payment for certain districts that previously did not qualify for a poverty-based assistance payment for all-day kindergarten.

The bill defines a district's "state funding base" as the following items paid to the district for fiscal year 2009 under current law:

(1) The aggregate base cost amount, which also includes the district's poverty-based assistance and parity aid payments if any;

(2) Special education and related services additional weighted funding;

(3) Speech services funding;

(4) Vocational education additional weighted funding;

(5) GRADS funding;[40]

(6) Adjustments for classroom teachers and educational service personnel;[41]

(7) Gifted education units;

(8) Pupil transportation funding;

(9) The excess cost supplement, guaranteeing a district's local share of combined transportation, special education, and vocational education funding will not exceed 3.3 mills of the district's tax valuation over and above the district's 23-mill base cost charge-off;

(10) The charge-off supplement for ("gap aid") districts where the effective tax rate does not equal 23 mills for the base-cost charge-off or does not equal 3.3 mills for the local share of combined transportation, special education, and vocational education funding; and

(11) Transitional aid, if any was paid to the district.[42]

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[40] "GRADS" is an acronym for "graduation, reality, and dual-role skills." GRADS programs provide specialized educational services for pregnant and parenting students.

[41] Current law provides for funding penalties for districts that have fewer classroom teachers and educational service personnel (such as school nurses or counselors) than otherwise required. It also provides for a funding increase for districts that have more classroom teachers than otherwise required.

All-day kindergarten expansion payment

The all-day kindergarten expansion payment is equal to one-half of the per pupil formula amount for each student actually in an all-day kindergarten class.[43] A district may receive the payment in fiscal year 2010 if it did not qualify for the all-day kindergarten poverty-based assistance payment in fiscal year 2009 and its poverty index in that fiscal year was at least 0.8. In fiscal year 2011, a district may receive the expansion payment, if it did not qualify for the all-day kindergarten poverty-based assistance payment in fiscal year 2009 and its poverty index in that fiscal year was at least 0.75. "Poverty index," under current law, is the proportion of the district's students living in families receiving assistance under the Ohio works first program compared to the statewide proportion. Generally, under current law a district must have an index of at least 1.0 to qualify for the all-day kindergarten payment. Thus, the expansion payment permits districts with slightly less poverty than the statewide proportion (that is, less than 1-to-1) to qualify for the other half of the formula amount, but only to the extent that they actually provide students with all-day kindergarten services. Districts that received the all-day kindergarten poverty-based assistance payment in fiscal year 2009 would continue to receive that level of funding through the state funding base.

Joint vocational school districts

(Section 265.30.50)

The bill suspends the current funding formula for joint vocational school districts (JVSD), too. Instead, it specifies that each JVSD's payment for fiscal years 2010 and 2011 will be equal to the amount the district received in the previous year inflated by 1.9%.

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[42] Section 269.30.80 of Am. Sub. H.B. 119 of the 127th General Assembly guaranteed each district as much operating funding for most payments in each of fiscal years 2008 and 2009 as it received for the previous fiscal year. The fiscal year 2009 transitional aid base prescribed in that section is essentially the state funding base prescribed by the bill.

[43] The per pupil all-day kindergarten payment is one-half of the formula amount to credit a district with the other half of the full formula amount for kindergarten students in school for a full day. Otherwise, a district receives only one-half of the formula amount for a kindergarten student because each kindergarten student is counted as one half of one full-time equivalent student in the district's formula ADM.

Community schools and STEM schools

(Sections 265.30.43 and 265.30.44)

Under the bill, each community school and STEM school, except a STEM school governed by a school district board, will receive the per pupil amount computed in the manner prescribed under current law. But the bill specifies that the per pupil amounts for poverty-based assistance and parity aid used in the current formulas for those schools for fiscal years 2010 and 2011 are the same per pupil amounts each respective school received in fiscal year 2009. (Each STEM school governed by a school district board is paid in the manner prescribed for open enrollment students for students who live outside that district.)

Payments to community schools and STEM schools are deducted from the state aid accounts of the resident districts where their enrolled students otherwise are entitled to attend school.

Formula amount

(R.C. 3317.02(B))

The bill sets the "formula amount" at $5,746 in fiscal year 2010 and $5,775 in fiscal year 2011 for payments to community schools, to STEM schools, for open enrollment students, for students participating in the Post-Secondary Enrollment Options Program, and other continuing payments using "formula amount" as a factor. These amounts, respectively, are 0.25% and 0.5% more than the amount for the previous year.

Educational service center funding

(Section 265.50.10)

The bill retains the current permanent law on funding educational service centers (ESC). Accordingly, an ESC may receive state funds in an amount of either $37 or $40.52 per pupil for each local and client (city or exempted village) school district served by the ESC.[44] The latter amount applies in the case of an ESC made up of a merger of at least 3 smaller ESCs. In the event that the total amount appropriated for ESCs is not enough to pay each ESC the full amount, the bill directs the Department of Education to use the same methodology it used for that circumstance in fiscal year 2009. Reportedly, that methodology was a per pupil pro rata distribution to all ESCs.

[44] R.C. 3317.11, not in the bill.

Student-Centered Evidence-Based Funding Council

(Section 265.30.47)

The bill establishes the Student-Centered Evidence-Based Funding Council. It is charged with developing a student-centered evidence-based funding model for schools that will prescribe a per pupil level of funding to follow a student to the school that best meets the student's individual learning needs. The model must be comprised of components that the Council determines to be most likely to result in improved student achievement and readiness for post-secondary education and employment. The Council must make its determinations based on "current, rigorous, research-based evidence affecting student success." The Council must examine all of the following in developing the funding model:

(1) The cost-benefit of an extended school day and school year for all students or for students in need of additional academic intervention;

(2) The cost-benefit and effectiveness of universal class size reductions in lower grades across all schools statewide versus class size reductions among schools targeted by socioeconomic or other educationally relevant factors;

(3) Alternatives to class size reduction;

(4) Additional services needed for successfully serving economically disadvantaged students and an appropriate level of supplemental funding for the identified services;

(5) Whether all-day every-day kindergarten should be required for all students in all schools or whether it should be offered based on student need as determined by socioeconomic and other relevant factors;[45]

(6) Whether schools should have the flexibility to tailor the composition of their educational services in a manner that might differ from the specifications of the funding model;

(7) An appropriate local share level for the state funding formula and the effects of alternative local share requirements;

[45] The council also must examine other early learning services either in lieu of, or in addition to, all-day every-day kindergarten.

(8) The local funding capacity above the adequate education funding level and an appropriate level of enhancement funding for low property wealth schools, if needed.

The Council must submit recommendations to the General Assembly, the State Board of Education, and the Board of Regents not later than September 7, 2010. The bill specifies that the Council ceases to exist on that date.

Membership

The Student-Centered Evidence-Based Funding Council consists of the following members:

(1) The Governor, who is the chair of the Council;

(2) The Superintendent of Public Instruction;

(3) The Chancellor of the Board of Regents;

(4) Two school district teachers, appointed by the Governor;

(5) Two nonteaching, nonadministrative school district employees, appointed by the Governor;

(6) One school district principal, appointed by the Speaker of the House;

(7) One school district superintendent, appointed by the Senate President;

(8) One school district treasurer, appointed by the Speaker of the House;

(9) One member of a school district board, appointed by the Senate President;

(10) One representative of a college of education, appointed by the Speaker of the House;

(11) One representative of the business community, appointed by the Senate President;

(12) One representative of a philanthropic organization, appointed by the Speaker of the House;

(13) One representative of the Ohio Academy of Science, appointed by the Senate President;

(14) One representative of the general public, appointed by the Senate President;

(15) One representative of educational service centers, appointed by the Speaker of the House;

(16) One parent of a student attending a school operated by a school district, appointed by the Governor;

(17) One representative of community school sponsors, appointed by the Governor;

(18) One representative of operators of community schools, appointed by the Senate President;

(19) One community school fiscal officer, appointed by the Speaker of the House;

(20) One parent of a student attending a community school, appointed by the Senate President;

(21) One representative of early childhood education providers, appointed by the Governor;

(22) One representative of chartered nonpublic schools, appointed by the Speaker of the House;

(23) Two persons appointed by the Senate President, one of whom is recommended by the Senate Minority Leader; and

(24) Two persons appointed by the Speaker of the House, one of whom shall be recommended by the House Minority Leader.

Staff assistance

The Department of Education must provide staff assistance to the Student-Centered Evidence-Based Funding Council.

Notice of federal stimulus funds

(Sections 265.30.55 and 265.30.56)

Within 90 days after the bill becomes law, the Department of Education must notify the superintendent of each school district, by letter, of the amount of federal stimulus funding the Department expects the district to receive during the biennium under the American Recovery and Reinvestment Act of 2009. The letter also must state that this federal funding is a one-time supplemental appropriation and the future

continuation of such funding cannot be guaranteed. Each district superintendent must sign an acknowledgement of receipt of the letter and return it to the Department within 30 days. The district superintendent also must forward a copy of the letter to the president of the district board of education, who must place the acknowledgment of the letter on the board's next meeting agenda. The board, then, through its president, must sign its own acknowledgement of receipt of the letter and return it to the Department.

In addition to acknowledging the notice of federal stimulus funds, the bill requires each district board of education, by a date set by the state Superintendent, to adopt by resolution a "draft" indicating how the board plans to deploy those funds. The board must post its draft plan on its web site, if it has one.

Sharing of stimulus funds with nonpublic schools

(R.C. 3301.95)

The federal stimulus funds under the American Recovery and Reinvestment Act of 2009 for primary and secondary education consist of funds to the state for budget stabilization and of funds to be allocated by the state to school districts for Title I services for economically disadvantaged students,[46] for IDEA services to children with disabilities,[47] and for education technology[48] in accordance with existing federal formulas. In all three cases, underlying federal law requires school districts receiving those funds to spend a portion to provide similar services for students enrolled in nonpublic schools.[49] The bill further specifies that each district receiving this federal stimulus funding must use the required amounts of that funding for services for students enrolled in nonpublic schools located in the district as prescribed under the federal statutes.

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[46] "Title I" refers to a long-standing federal education program providing targeted funds to schools with relatively high concentrations of economically disadvantaged students. See 20 United States Code (U.S.C.) 6301 *et seq*.

[47] "IDEA" refers to the federal Individuals with Disabilities Education Improvement Act, 20 U.S.C. 1400 et seq. IDEA requires public schools to identify children with disabilities and to provide those children with a "free appropriate public education" in accordance with their own "individualized education programs."

[48] These education technology funds are provided through the parameters of the "Enhancing Education Through Technology Act of 2001" (EETT). See 20 U.S.C. 6751 et seq.

[49] In the case of IDEA, districts are required to spend a per pupil amount for services to such students placed by their parents in private schools, but those students do not have a federally protected right to a particular level of service like public school students do (20 U.S.C. 1412(a)(3)(A) and 1412(a)(10)(A)(ii)). See also R.C. 3323.041, which partially mimics the federal statute on point.

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.

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 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.

Payments for students in residential facilities

(R.C. 3313.64(C))

Background

Under current law, all persons residing in the state, who are between 5 and 22 years old (or 3 and 22 years old if disabled), are entitled to attend school free of charge in the school district in which their parent resides. In some instances, a person may attend school in the school district in which the person resides regardless of where the person's parent resides. These cases often result from incarceration or other institutionalization of the parent or the necessity of placing the person in a residential facility. In these cases, while the person attending school does not owe tuition, some other entity (usually the district in which the person's parent resides or resided) may be charged tuition for the person's attendance.[50] The tuition amount is the per pupil amount of taxes charged and payable for the district providing the services.[51] If the student is receiving special education and related services for an identified disability, the district providing services may be entitled to charge the entity responsible for tuition for the costs in excess of the amount covered by the tuition and any state payments paid to the district for the student.[52]

The bill

The bill provides a special tuition rule in the case of a child who is admitted to a school district other than the one in which the child's parent resides because the child is placed in a residential facility that is not a foster home or a home maintained by the Department of Youth Services. Under the bill, if a child in such a circumstance receives educational services at the residential facility under a contract between the facility and the school district providing those services and does *not* receive special education, the tuition for the child must be determined by a formula approved by the Department of Education. That formula must be designed to calculate a per diem cost for the educational services provided to the child and to reflect the total actual cost incurred in providing those services. The Department must certify the computed amount to both districts and deduct that amount from the state aid account of the district responsible

[50] R.C. 3313.64(B) and (C). There are numerous specific exceptions in which a person may be admitted to school in the district in which that person and not the person's parent resides and no tuition is owed by anyone (R.C. 3313.64(F)).

[51] R.C. 3317.08. The tuition charged for a person who is not a resident of Ohio also includes the amount of state funding the district would have received for the student if the student were an Ohio resident (R.C. 3317.081 and 3317.082, neither in the bill).

[52] R.C. 3323.142, not in the bill.

for the cost of educating the child and credit it to the account of the district providing the services.

Legal claims for reimbursement of reduced funds

(Section 265.60.70)

The 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[53] 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.

II. Academic Provisions

Recommendations on proposed education changes

(Section 265.60.50)

The bill directs the State Board of Education and Superintendent of Public Instruction, by July 1, 2010, to study several of the education policy proposals included in the Executive and House versions of the budget (and removed by the Senate) and to make recommendations to the General Assembly regarding them. The recommendations must address (1) the necessity of implementing each proposal, (2) a timeline that would be required for implementation, (3) estimated implementation

[53] 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).

costs, and (4) necessary legislative changes. Recommendations must be issued about the following proposals:

(1) Adopting new statewide academic standards and model curricula in English language arts, math, science, and social studies to replace the current standards and curricula in reading, writing, math, science, and social studies;

(2) Revising the existing academic standards and model curricula in fine arts, foreign language, and computer literacy and expanding the computer literacy standards and curricula to cover all grades (currently, grades K to 2 are not required to be addressed);

(3) Adopting academic standards and model curricula for grades K to 12 in the new area of financial literacy and entrepreneurship;

(4) Developing new achievement tests aligned with the revised academic standards in the core subject areas of English language arts, math, science, and social studies;

(5) Combining each of the grade-level reading and writing achievement tests and diagnostic assessments into the single subject area of English language arts;

(6) Reducing the scoring ranges on the achievement tests from the current five levels to three levels by eliminating the "accelerated" and "basic" levels;

(7) Eliminating the statutory restrictions on the dates and times for administering the achievement tests and instead requiring the Superintendent of Public Instruction to designate those dates and times;[54]

(8) Developing a new assessment system for a high school diploma that replaces the existing Ohio Graduation Tests and consists of (a) a nationally standardized assessment in English language arts, math, and science, (b) a series of end-of-course examinations in English language arts, math, science, and social studies, (c) a community service learning project, and (d) a senior-year project;

(9) Establishing new performance indicators for the school district and building report cards. (The performance indicators are one factor in the performance ratings assigned to districts and schools on the report cards.)

(10) Extending the length of the minimum school year; and

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[54] A description of the current restrictions on the timing of the achievement tests may be found in the bill analysis for the House-passed version of H.B. 1 under "**Administration dates**" on pp. 263-264.

(11) Allocating school hours more effectively in terms of classroom instruction, competency-based evaluation, planning time, and professional development.

In addition to these proposals, the State Board and state Superintendent also must study and make recommendations regarding the concept of designating school districts as innovation zones for the purpose of implementing innovative educational practices and exempting the districts from state education mandates.

School district and building performance ratings

(R.C. 3302.03(B))

The bill revises Ohio's method of rating school district and school building academic performance. Currently, if a district or building fails to make the federal standard of adequate yearly progress (AYP) for three or more consecutive years, the highest rating it may receive is continuous improvement. Conversely, a district or building that *makes* AYP currently may be rated no lower than continuous improvement. The bill makes four changes to the way AYP affects individual district and building ratings.

First, under the bill, the failure of an otherwise excellent or effective district or building to make AYP does not affect the district's or building's rating at all, unless the district or building has failed to make AYP *for two or more of the same student subgroups* for three or more consecutive years. Whereas current law considers only how long the district or building has not made AYP, the bill also takes into account which subgroups are not making it. The district or building will have its rating lowered for not making AYP only when there is a pattern of missing AYP with the same subgroups of students.

For example, an otherwise excellent building could fail to make AYP for disabled students and economically disadvantaged students for two consecutive years, but, in the third year, make AYP for economically disadvantaged students and not make AYP for disabled students and limited English proficient students. That building currently would be rated continuous improvement because it failed to make AYP for three straight years. Under the bill, though, the building would still receive an excellent rating since it did not miss AYP for the same two subgroups all three years. However, if, in the third year, the building again failed to make AYP for economically disadvantaged students, its rating would drop because it would have missed AYP for two of the same subgroups (disabled students and economically disadvantaged students) for three years.

Second, in the case of an otherwise excellent district or building that repeatedly fails to make AYP for two or more of the same subgroups, the bill requires that its rating be lowered only one level, to effective, instead of two levels, to continuous

improvement. A district or building that otherwise achieves an effective rating would still be reduced one level, to continuous improvement, for failing to make AYP for two or more of the same subgroups over three or more consecutive years.

Third, the bill lowers the worst rating a district or building may receive if it makes AYP. As noted above, a district or building that makes AYP currently may be ranked no lower than continuous improvement, regardless of its performance on the other components of the rating system. Under the bill, however, a district or building that makes AYP may receive the lower rating of academic watch, if it does not meet at least 31% of the performance indicators and has a performance index score established by the Department of Education. In other words, making AYP will only ensure a district or building an academic watch rating, instead of the higher continuous improvement rating that is currently guaranteed.

Finally, the bill repeals a provision prohibiting the Department of Education from lowering a district's or building's rating from the previous year based solely on one subgroup not making AYP. This change will affect only continuous improvement and academic watch districts and buildings under the bill, since AYP is a factor for excellent and effective districts and buildings only when multiple subgroups fail to make AYP over several years. As a result, a lower performing district or building may be penalized for not making AYP sooner than a highly performing district or building. Whereas a district or building that was previously rated continuous improvement or academic watch could receive a lower rating after one subgroup fails to make AYP for one year, an excellent or effective district or building would not be penalized with a lower rating until the same two subgroups did not make AYP for three consecutive years.

Background

State law provides for the annual rating of school districts and individual school buildings based on their academic performance.[55] The five classes of performance under the rating system are "excellent," "effective," "continuous improvement," "academic watch," and "academic emergency." The ratings are determined by:

(1) Meeting or not meeting specified performance indicators (75% student proficiency on all applicable state achievement tests, 93% attendance rate, and 90% graduation rate);

[55] R.C. 3302.03(B).

(2) Attaining a specified performance index score;[56] and

(3) Making or not making AYP on state achievement tests among specified subgroups of test takers.[57]

The following table shows how the performance ratings currently are determined using these criteria.

Rating	**Percentage of state standards met**		**Performance index score**		***Makes AYP***
Excellent	94%-100%	*or*	100 to 120	*and*	Yes
	94%-100%	*or*	100 to 120	*and*	No*
Effective	75%-93%	*or*	90 to 99	*and*	Yes
	75%-93%	*or*	90 to 99	*and*	No*
Continuous improvement	0%-74%	*and*	0 to 89	*and*	Yes
	50%-74%	*or*	80 to 89	*and*	No
Academic watch	31%-49%	*or*	70 to 79	*and*	No
Academic emergency	0%-30%	*and*	0 to 69	*and*	No

* A district or school can be rated no higher than continuous improvement if it misses AYP for more than two consecutive years. However, no district or school can be rated lower than the prior year solely because one subgroup did not make AYP.

Beginning in the 2007-2008 school year, the performance ratings incorporated a fourth component known as the "value-added progress dimension," which tracks the amount of a student's academic growth attributable to a particular district or building.[58]

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[56] The performance index score is a weighted measure of up to 120 points designed to show improvement over time on the state achievement tests by students scoring at all levels.

57 The subgroups are each of the federally recognized ethnic classifications (African-American, American Indian or Native Alaskan, Asian or Pacific Islander, Hispanic, multi-racial, and white); disabled students; economically disadvantaged students; and limited-English proficient students.

58 R.C. 3302.021.

With this component, if a district or building demonstrates more than a standard year of academic growth in reading and math for two consecutive years, its rating is raised one level. Starting in the 2008-2009 school year, a district or building that shows less than a standard year of academic growth in those subjects for three straight years will have its rating lowered one level.

AYP

AYP is a measure of performance used to determine whether a particular school district or building is meeting the goals of the federal No Child Left Behind Act. Under that act, certain graduated sanctions (ranging from curricular changes and offering tutoring opportunities to reconstitution of administrative and instructional staff) must be imposed if a district or building repeatedly fails to make AYP.[59] Generally, no district or building may make AYP unless (1) 95% of the students in each subgroup required to take a test actually take the test and (2) a specified percentage of each subgroup of test takers attains scores set by the state Department of Education.[60] The expected scoring performance on the state tests for purposes of AYP varies from district-to-district and building-to-building. It is generally different from (and often lower than) the 75% proficiency rate required under the state performance indicators.

While the state must have in place a system to measure AYP and to impose sanctions for districts or buildings that persistently do not make AYP, the use of that measure in the state ranking system is not required under federal law.

Charter revocation for district-operated schools

(R.C. 3301.163 and 3301.164)

Under the bill, the State Board of Education must revoke the charter of a school operated by a school district for consistently poor academic performance, essentially requiring the school to close. The criteria for closing a district-operated school are the same criteria that trigger automatic closure of a community school under continuing law.[61] Specifically, the State Board must revoke a district school's charter if the school satisfies one of the following conditions:

(1) It does not offer a grade higher than 3 and has been in academic emergency for four consecutive years;

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[59] 20 U.S.C. 6316.

[60] 20 U.S.C. 6311(b)(2)(E) to (J).

[61] See R.C. 3314.35.

(2) It offers any of grades 4 to 8 but no grade higher than 9, has been in academic emergency for three consecutive years, and showed less than one standard year of academic growth in reading or math for two of those years; or

(3) It offers any of grades 10 to 12 and has been in academic emergency for four consecutive years.

The first year in which district schools will be evaluated under the new closure criteria is the 2008-2009 school year. In other words, the evaluation will involve a "look back" at a school's performance in that year and up to the three previous school years. Since school performance ratings are issued each August for the previous school year, a school may have already opened for the next school year before finding out it is subject to closure under the bill's provisions. Rather than requiring the school to close immediately, the bill grants the school an additional year of operation before it must permanently close. For example, a school could first meet the closure criteria in August 2009 (based on its performance in the 2008-2009 school year and previous years) and would have to close at the end of the 2009-2010 school year.

Continuing law requires all school districts to maintain grades K to 12.[62] A school's charter revocation may cause a district to be out of compliance with this requirement. In that case, the district must enter into a contract with another school district to enroll resident students of the closed grades in the other district. The terms of the contract must be agreed to by the respective boards of education and the resident district must pay tuition to the district of attendance for the students' enrollment.[63] If the resident district fails to enter into or maintain the contract, the State Board must proceed to dissolve the entire district.[64]

Exemption for dropout programs

Like community schools, district-operated schools are exempt from the bill's closure provisions if a majority of their students are enrolled in a dropout prevention and recovery program that is operated by the school and has received a waiver from the Department of Education. The Department must grant a waiver to a dropout program that does the following:

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[62] R.C. 3311.29, not in the bill.

[63] R.C. 3317.08, 3327.04 and 3327.06 (latter sections not in the bill). However, under continuing law, the resident district does not owe tuition for a high school student who lives within three miles of the high school in another district that the student attends under the contract (R.C. 3327.04(C)).

[64] If the surrounding school districts do not voluntarily agree to the distribution of the dissolved district's territory, the State Board must order that distribution and provide for an equitable assignment of the district's funds, property, and debt (R.C. 3311.29, not in the bill).

(1) Serves only students between 16 and 21 years old;

(2) Enrolls students who, at the time of their initial enrollment, are one or more grades behind their cohort age group or experience crises that interfere with their academic progress and prevent them from continuing in traditional educational programs;

(3) Requires students to pass the Ohio Graduation Tests;[65]

(4) Develops an individual career plan for each student that specifies the student matriculating to a two-year degree program, acquiring a business or industry credential, or entering an apprenticeship;

(5) Provides counseling and support related to the student's career plan during the remainder of high school; and

(6) Prior to receiving the waiver, submits an instructional plan to the Department indicating how the State Board of Education's academic content standards will be taught and assessed.

Waivers must be granted within 60 days after application. If the Department does not approve or deny a waiver within that period, the waiver is considered granted.

Interstate Compact on Educational Opportunity for Military Children

(R.C. 3301.60)

Introduction

The bill proposes the enactment of R.C. 3301.60 and related sections to ratify the Interstate Compact on Educational Opportunity for Military Children. The compact seeks to address on a uniform basis enrollment and other issues that school-age children of military parents may face when they are required to relocate across state lines. The compact prevails over conflicting laws of member states (Article XVIII).

The compact also establishes the Interstate Commission on Educational Opportunity for Military Children to make rules for and oversee and arbitrate matters among member states (Articles IX, X, XI, XII, and XIII). The Interstate Commission may levy and collect annual assessments from each member state to cover the cost of operating the commission (Article XIV(B)). Each member state has one vote in

[65] Passing the Ohio Graduation Tests is a diploma requirement for most students, unless specifically exempted by law. Therefore, the act's stipulation that students of dropout programs must pass the OGTs appears merely to affirm continuing law.

decisions made by the Interstate Commission (Article IX(B)(1)). Among the powers granted to the Interstate Commission is the authority to file an enforcement action in the U.S. District Court for the District of Columbia, or for the federal district where the commission has its principal offices (Article XIII(D)).

By its own terms, the compact is effective among member states when at least ten states have ratified it (Article XV(B)). According to the Council of State Governments, to date, 20 states have now ratified it, and the compact is effective.[66]

Each member state must have its own state council, a liaison to assist military families in school enrollment matters, and a compact commissioner to administer the state's participation in the compact (Article VIII). The bill creates these entities for Ohio and specifies that appointments to the state council and other positions may not be made until at least ten states have ratified the compact. Since more than ten states have ratified the compact, the appointments prescribed in the bill would be authorized as soon as the bill is effective. (R.C. 3301.61 to 3301.64; see "**State coordination**" below).

Matters between a "sending state" and a "receiving state"

(Article II (L), (N), and (O))

The compact controls matters when the child of a military parent leaves a public school of one member state (the "sending state") and enrolls in a public school of another member state (the "receiving state") because the family must relocate, or the child must reside with someone other than a parent, due to the child's parent's or parents' military assignments. It controls enrollment in public schools only.[67] For purposes of the compact, "state" refers any of the 50 U.S. states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other U.S. territory.

Applicability

(Articles II(B) and III)

The provisions of the compact apply *only* to school-age children in grades K through 12 of:

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[66] See http://www.csg.org/programs/ncic/EducatingMilitaryChildrenCompact.aspx.

[67] The compact refers to a public school as a "local educational agency," which it defines as "a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through twelfth grade public educational institutions" (Article II(H)).

(1) "Active duty members of the uniformed services,"[68] including members of the National Guard and Reserve while on active duty;

(2) Members or veterans of the uniformed services who are severely injured and either are medically discharged or are retired, for a period of one year after their medical discharge or retirement; and

(3) Members of the uniformed services who die while on active duty or die as a result of injuries sustained while on active duty, for a period of one year after their death.

Records and enrollment

(Articles IV and VI)

The compact specifies that when the child of a military parent seeks to enroll in a new school and the student's "official" education records cannot be released at that time, the keeper of the records in the sending state must prepare and furnish to the parent a complete set of "unofficial" educational records. Upon receipt of the unofficial records by a school in the receiving state, the school "as quickly as possible" must enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records. The compact also requires the school in the receiving state to request the student's official education record from the school in the sending state. The school in the sending state must process and furnish the student's official education records within ten days or "within such time as is reasonably determined under the rules promulgated by the Interstate Commission."[69]

States are required under the compact to give at least 30 days from the date of enrollment, "or within such time as is reasonably determined under the rules promulgated by the Interstate Commission," for students to obtain any immunizations

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[68] The compact defines "uniformed services" as the Army, Navy, Air Force, Marine Corps, Coast Guard, and the Commissioned Corps of the National Oceanic and Atmospheric Administration and the Public Health Service (Article II(R)).

[69] Under current Ohio law, likely not affected by the compact, each public or nonpublic school, within 24 hours of a student's first enrollment, must request the student's official record from the student's former school. The school must notify the appropriate law enforcement agency that the newly enrolled student may be a missing child if (1) the school does not receive the record within 14 days, (2) the school to which the request was made indicates that it does not have a record for that student, or (3) the student does not provide the school with a birth certificate or other legitimate proof of birth date and birthplace. (R.C. 3313.672, not in the bill.)

required by the receiving state. Current Ohio law generally gives only 14 days for students to provide a record of the required immunizations.[70]

The compact specifies that anyone who has a "special power of attorney, relative to the guardianship of a child" may enroll the child in school. No tuition may be charged for a child of a military parent who is placed with a guardian while the parent is away on active duty.[71]

Placement

(Articles IV and V)

The school in the receiving state must allow the student to enroll in the same grade level in which the student was enrolled in the sending state. In addition, if the student has satisfactorily completed the prerequisites for promotion to the next grade level of the school in the sending state, the school in the receiving state must honor that promotion. Also, a school in the receiving state must initially honor the "placement" for the student in educational courses based on the student's enrollment in the sending state, if those courses are offered by the school in the receiving state. The compact specifies that school officials must have the flexibility to waive course or program prerequisites if necessary to accommodate the placement of the child of a military parent.

Graduation requirements

(Article VII)

The compact requires that local school officials waive specific courses required for graduation from high school if the child of a military parent has satisfactorily

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[70] R.C. 3313.671, not in the bill.

[71] Under current Ohio law, probably not affected by the compact, every student residing in Ohio who is at least 5 and less than 22 years old (or, if disabled, at least 3 and less than 22) may attend school free of tuition in the school district in which the student's parent resides. In many prescribed circumstances, a child may enroll in the school district in which the child, but not the child's parent, resides. In some situations, tuition must be charged to some other district or entity. But no tuition may be charged for the child of a military parent living with a person who has a military power of attorney or a comparable document giving that person care, custody, and control of the child while the parent is on active duty. Also, a child of a military parent who has relocated out of the parent's permanent resident Ohio school district while on active duty may continue to attend school in that district free of tuition but is not entitled to transportation to school in that district. (R.C. 3313.64 and 3313.65, neither in the bill.) A child who resides in Ohio and is between 6 and 18 years old is "of compulsory school age" and must attend a public or private school that meets the minimum education standards set by the State Board of Education unless excused for home instruction or medical reasons (R.C. 3321.01, not in the bill).

completed similar coursework at a public school in a sending state or provide "reasonable justification" for denial of a waiver. If a waiver is not granted to a student who would qualify to graduate from the student's former school, the school in the receiving state must provide an alternative means of acquiring required coursework so that student still may graduate on time. If a student transfers during the student's senior year and is not eligible for graduation even "after all alternatives have been considered," the school officials in both the sending and receiving states must "ensure the receipt of a diploma" from the school in the sending state. The compact also specifies that states must accept end-of-course exams required in sending states, national norm-referenced tests, and "alternative testing."[72]

Excused absences

(Article V(E))

The compact requires that school officials grant a child of a military parent "additional excused absences" to visit the child's parent, if the parent is called to active duty in a combat zone or is on leave from a combat zone.

Extracurricular participation

(Articles II(F) and VI(B))

The compact requires that state and local school officials must "facilitate the opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified." It defines an extracurricular activity as "a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities."

[72] R.C. 3313.603, not in the bill, prescribes a minimum of 20 specified units of study for graduation from any high school in the state. Graduation from both public and chartered nonpublic high schools in Ohio requires both (1) completion of the school's curriculum, and (2) attainment of a proficient score on all five Ohio Graduation Tests, or in some instances four of the five tests (R.C. 3313.61, 3313.612, 3313.615, and 3325.08, none in the bill).

State coordination

(R.C. 3301.61, 3301.62, 3301.63, and 3301.64)

As required by the compact (Article VIII), the bill establishes a state council and other offices to implement the state's participation in the compact. The state council is under the Department of Education, which must provide staff support for the council.

State council

The State Council on Educational Opportunity for Military Children must oversee and coordinate the state's participation in the compact. It is made up of the following voting members:

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

(2) The Director of Veterans Services or the Director's designee;

(3) The superintendent of a school district that has a high concentration of children of military families, appointed by the Governor;

(4) A representative of a military installation located in Ohio, appointed by the Governor; and

(5) A representative of the Governor's office, appointed by the Governor.

The state council also includes the following nonvoting members:

(1) Two members of the House of Representatives, one each appointed by the Speaker and minority leader of the House;

(2) Two members of the Senate, one each appointed by the President and minority leader of the Senate;

(3) The state compact commissioner (see below);

(4) The military family education liaison (see below); and

(5) Other members appointed in the manner prescribed by and seated at the discretion of the voting members of the council.

Compact commissioner

The bill requires the Governor to appoint a compact commissioner, to be a state officer within the Department of Education, to administer the state's participation in the interstate compact. The compact commissioner is the state's voting representative on

the Interstate Compact Commission (Articles II(C) and IX(B)). The commissioner serves at the pleasure of the Governor.

Liaison

The bill directs the state council to appoint a military family education liaison to assist families and the state in implementing the interstate compact.

Annual assessment

Finally, the bill requires the Department of Education and the Department of Veterans Services to divide and pay equally the annual assessment charged to the state for participating in the compact.

Business education standards

(R.C. 3301.0719)

By July 1, 2010, the bill requires the State Board of Education to adopt standards for business education in grades K to 12. Under the bill, "business education" includes, but is not limited to, accounting, career development, economics and personal finance, entrepreneurship, information technology, management, and marketing.

The standards that the State Board adopts must incorporate existing business education standards as appropriate to help guide instruction in the state's schools. Further, the bill specifies that the standards must supplement, and not supersede, academic content standards adopted by the State Board. The Department of Education must provide the standards and any revisions of the standards to all school districts, community schools, and STEM schools. Any school district, community school, or STEM school may use the standards.

Parental involvement best practices

(Section 265.80.40)

Not later than January 29, 2010, the bill requires the State Board of Education to develop a list of best practices for improving parental involvement in schools that public and nonpublic schools may use to increase parental participation. The Department of Education must make the list available to schools on its web site.

Waiver of eighth-grade American history

(R.C. 3313.60)

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 American history and ½ unit (60 hours) in American government, as a condition for receiving a high school diploma.[73] 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.

Minimum school year for chartered nonpublic schools

(R.C. 3321.07)

Background

The minimum school year for school districts and nonpublic schools currently is 182 days. The 182-day minimum is statutorily mandated for districts.[74] However, current law specifies that the "hours and term of attendance" for nonpublic schools must be "equivalent" to those required for districts. Consequently, the State Board of Education, by rule, has applied the 182-day minimum school year to nonpublic schools.[75] In complying with the 182-day requirement, a district or nonpublic school 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

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

[74] R.C. 3313.48, not in the bill.

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

development, and up to five days for a public calamity, such as inclement weather. Taking into account these permitted closings, a school must be open for instruction at least 173 days each 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 district 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 district 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.

Community (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.[76]

The bill

The bill permits *chartered* nonpublic schools to measure the minimum school year in the same manner as community schools, based on the hours of learning opportunities offered rather than on days of instruction. Therefore, it appears that if a chartered nonpublic school chooses this option, it must offer at least 920 hours of learning opportunities to students each school year. It further appears that the school may not count hours used for parent-teacher conferences or reporting periods or for teacher professional development in meeting the 920-hour minimum, as it currently may do to meet the 182-day minimum school year.

As a result, if a chartered nonpublic school has the minimum five-hour school day, the school would need 184 days to attain the 920 hours of required learning opportunities. A chartered nonpublic school with a longer school day, though, could complete the 920 hours in fewer days, resulting in a school year with less days than the 182 days currently required. Chartered nonpublic schools always may provide more than 920 hours of learning opportunities.

[76] R.C. 3314.03(A)(11)(a) and 3314.08(L)(3).

Calamity days

The bill grants each community school an unlimited number of calamity days or hours so long as the school provides the minimum 920 hours of learning opportunities (see "**Community school calamity days**").[77] It is not clear how this provision will affect chartered nonpublic schools that base their minimum school year on hours. One possibility is that a chartered nonpublic school also may use as many calamity days as it needs and is not required to make any of them up, if it still provides the minimum 920 hours of learning opportunities. Under current law, nonpublic schools, like school districts, must make up any calamity days in excess of the five excused days.

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.[78] 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

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[77] R.C. 3314.08(L)(4).

[78] 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).)

professional educator license. The bill repeals an existing prohibition on the State Board requiring an educator license for teaching children two years old or younger.

Resident educator license

The resident educator license is designed for teachers who follow a traditional path to licensure by majoring in education in college. It replaces the provisional educator license for entry-level teachers, which is currently issued by the State Board and eliminated by the bill. The table below compares the new resident educator license with the current provisional license.

	Current provisional educator license	New resident educator license
Duration	2 years	4 years
Renewable	Yes	Yes
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.	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
	A provisional license may be renewed upon completion of 3 semester hours of coursework in pedagogy or the area of specialization since issuance of the current provisional license.[79]	

[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 (4) Passage of the Praxis III assessment, which evaluates	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 educator license, successful

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

	Current professional educator license	New professional educator license
	teacher performance based on observations of the teacher's classroom instruction.[80]	completion of the Ohio Teacher Residency Program; (3) If the applicant's prior license was a resident educator license for teaching in grades K to 6, completion of 6 semester hours of undergraduate or graduate coursework in the teaching of reading since issuance of the resident license; and (4) Demonstration that students in the applicant's classroom have achieved a value-added measure designated by the Superintendent of Public Instruction. The State Board may adopt additional qualifications for the license, which could include any of the criteria it currently requires for the professional license.

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);

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

(4) Meeting the criteria for the accomplished or distinguished level of performance described in the standards for teachers adopted by the State Board, based

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

on recommendations of the Educator Standards Board. Under those standards, an accomplished teacher is one who (a) successfully integrates the knowledge and skills needed for effective content-area instruction, (b) shows purposefulness, flexibility, and consistency, and (c) anticipates and monitors situations in the teacher's classroom and school and responds appropriately. A distinguished teacher is one who (a) uses a strong foundation of knowledge and skills to innovate and enhance the teacher's classroom, building, and school district, (b) empowers and influences others, (c) anticipates and monitors situations in the teacher's classroom and school and reshapes the environment accordingly, and (d) responds to the needs of students and colleagues immediately and effectively.[81]

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;

(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; and

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

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

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

Education Management Information System (EMIS) and included on the district and building report cards.[82]

Alternative resident educator license

(R.C. 3319.26 and repealed R.C. 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	Yes
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	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

[82] 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).

	Current alternative educator license	Bill's alternative resident educator license
	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 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]	Board of Regents. The instruction must cover such topics as student development and learning, assessment procedures, curriculum development, classroom management, and teaching methodology. (3) Passage of an examination in the teaching area, which could still be the Praxis II subject area assessment. The State Board may adopt additional qualifications for the license, which could include any of the criteria it currently requires for the alternative license.
Conditions of holding license	Show satisfactory progress in taking and completing at least 12 additional semester hours of college coursework in the principles and practices of teaching at an approved teacher preparation program.	(1) Show satisfactory progress in taking and completing at least 12 additional semester hours of college coursework in the principles and practices of teaching; (2) Participate in the Ohio Teacher Residency Program; and (3) Take an assessment of professional knowledge in the second year of teaching under the license.
Licensure upon expiration	The holder of an alternative license is eligible for a provisional educator license upon completing: (1) Two years of successful teaching under the alternative license, as verified by the employer;	The holder of an alternative resident license is eligible for a professional educator license upon successfully completing: (1) At least four years of teaching under the alternative resident license;

	Current alternative educator license	Bill's alternative resident educator license
	(2) The 12 semester hours of additional coursework described above with a GPA of at least 2.5; and (3) The Praxis II professional knowledge assessment.[83]	(2) The 12 semester hours of additional coursework described above; (3) The Ohio Teacher Residency Program; (4) The assessment of professional knowledge; and (5) All other requirements for a professional educator license adopted by the State Board, which includes the bill's requirement that an applicant for a professional license demonstrate that the applicant's students have achieved a value-added measure designated by the Superintendent of Public Instruction.

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

[b] However, under current law repealed by the bill, 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.

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.

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

Background

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

(1) Have a bachelor's degree;

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

(3) Have completed 15 semester hours of coursework in the teaching area, except that, in the case of an applicant for a permit to be an intervention specialist, the coursework must be in the principles and practices of teaching exceptional children;

(4) Except in the case of an applicant for a permit to be an intervention specialist, have completed six semester hours of additional coursework within the previous five years with a GPA of at least 2.5. This coursework, which must be approved by the applicant's prospective employer, must be in the teaching area, characteristics of student learning, diversity of learners, planning for instruction, instructional strategies, learning environments, communication, assessment, or student support.

(5) Have entered into an agreement with the applicant's prospective employer under which the employer will provide a structured mentoring program; and

(6) Agree to complete another three hours of coursework in the teaching area (or in reading in the case of an intervention specialist) while employed under the permit.

Provisional license for teaching in a STEM school

(R.C. 3319.28)

Although the bill eliminates the general provisional educator license, it retains a requirement that the State Board issue a two-year provisional license for teaching in grades 6 to 12 in a STEM school.[84] 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.

[84] 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.

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

Principal licenses

(R.C. 3319.22(C))

The bill requires the State Board to align its standards and qualifications for a principal license with the standards for principals adopted by the State Board, based on recommendations of the Educator Standards Board. Furthermore, the State Board's licensure rules must require an applicant for a principal license to demonstrate that students the applicant is responsible for have achieved a value-added measure designated by the Superintendent of Public Instruction. In the case of a teacher seeking a principal license for the first time, that measure applies to students in the teacher's classroom. In the case of a principal applying for renewal of a principal license, the measure applies to students in the principal's building.

Continuing effect of current licenses

(R.C. 3319.222)

The bill directs the State Board of Education to accept applications for new, and renewal or upgrade of, all current educator licenses and teaching permits through December 31, 2010, and to issue the licenses and permits to qualified applicants in accordance with the current statutes and rules regarding licensure. Those licenses and permits remain valid for teaching in the specified subjects and grades until their expiration.[85] 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.

[85] 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.)

Ohio Teacher Residency Program

(R.C. 3319.223)

Under the bill, by January 1, 2011, the Superintendent of Public Instruction and the Chancellor of the Ohio Board of Regents jointly must establish a four-year, entry-level program for classroom teachers, to be known as the Ohio Teacher Residency Program. Individuals who hold a resident educator license or an alternative resident educator license issued under the bill's new licensure provisions (see "**Resident educator license**" and "**Alternative resident educator license**" above) must participate in the program. The program is to be operational in the 2011-2012 school year when the first recipients of the new licenses will begin teaching. Successful completion of the program is a requirement for individuals holding those licenses to qualify for a professional educator license.

The residency program must include (1) mentoring by teachers who hold a lead professional educator license, (2) counseling to ensure that participants received needed professional development, (3) use of measures of student academic gain to evaluate participants' effectiveness, and (4) measures of appropriate progression through the program. Furthermore, the program must be aligned with the standards for teachers adopted by the State Board of Education, based on recommendations of the Educator Standards Board (see "**Duties of Board**" 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.[86] As in current law, if the metrics require a teacher preparation program to meet the standards of an independent accreditation organization, the Chancellor must allow the program to satisfy the standards of either the National Council for Accreditation of Teacher Education or the Teacher Education Accreditation Council.

Finally, the bill specifies that if rules adopted by the Chancellor necessitate changes in the curricula of preparation programs as a condition of approval by the Chancellor, those rules do not take effect for at least one year after the January 1 following publication of the rule change. Current law places the same restriction on State Board rules regarding teacher preparation programs, so the bill simply broadens the restriction to apply to rule changes affecting preparation programs for other school personnel. Under the bill, institutions of higher education must pay for curricular changes from their existing appropriations.

Report on quality of teacher preparation programs

(R.C. 3333.049)

Under current law, the State Board of Education, in collaboration with the Chancellor of the Board of Regents and the Teacher Quality Partnership,[87] 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.

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

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

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.

Speech-language pathology intern license

(R.C. 3319.227, 4753.02, 4753.05, and 4753.11 and repealed R.C. 4753.101; Section 265.80.10)

Under current law, the Board of Speech-Language Pathology and Audiology issues a two-year, renewable speech-language pathology student permit that enables graduate students in speech-language pathology to work in schools. The bill changes the name of the permit to a "speech-language pathology intern license" and transfers authority to issue the license to the State Board of Education. The State Board, in consultation with the Chancellor of the Ohio Board of Regents, must adopt rules for issuing the license. Until those rules are effective, the Board of Speech-Language Pathology and Audiology must continue to accept applications for speech-language pathology student permits and issue the permits in accordance with the current statutes and its own rules. Those permits remain valid until their expiration.

The bill retains the current statutory requirements for obtaining a speech-language pathology student permit and applies them to the renamed license, although the State Board may adopt additional requirements by rule. Specifically, to qualify for the license, a person must (1) be enrolled in a speech-language pathology graduate program at an Ohio institution of higher education accredited by the Council on Academic Accreditation in Audiology and Speech-Language Pathology, (2) have completed at least one year of graduate training, or equivalent coursework, and any student clinical experience required by rule, (3) have submitted a plan approved by the graduate program, and (4) pay a licensure fee.

The license, like the current permit, authorizes the holder to practice speech-language pathology within limits prescribed by rule. The rules must limit (1) the size of the license holder's caseload and (2) the scope of practice, based on the coursework and clinical experience completed by the license holder and the recommendation of the license holder's graduate program. A license holder may practice only under the supervision of a licensed speech-language pathologist who is acting under the direction of the license holder's graduate program.

Finally, the bill transfers authority to establish rules governing disciplinary action for license holders to the State Board.[88] Nevertheless, the Board of Speech-Language Pathology and Audiology remains responsible for enforcing ethical standards in the practice of license holders and for investigating alleged irregularities in that practice or violations of the statutory provisions or State Board rules regarding licensure.

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 new standards for teachers must reflect the Ohio Leadership Framework.[89]

The bill also requires the Educator Standards Board to recommend standards for school district superintendents and district treasurers and business managers that

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[88] As in current law, these rules for disciplinary action are not subject to the adjudication procedures, such as notice and an opportunity for a hearing, of the Administrative Procedure Act (R.C. 3319.227(F)). Until the State Board's licensure rules are effective, the Board of Speech-Language Pathology and Audiology may enforce its own disciplinary rules against the holder of a speech-language pathology student permit (Section 265.80.10(C)).

[89] 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).

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. Additionally, the standards for superintendents must be aligned with the Buckeye Association of School Administrators' standards, and the standards for treasurers and business managers must be aligned with the Association of School Business Officials International's standards. Finally, the Educator Standards Board's standards for license renewal must include standards for the renewal of treasurer and business manager licenses.

In developing the standards required by the bill, the Educator Standards Board must ensure that teachers "have sufficient knowledge . . . to provide learning opportunities for all children to succeed." The Board further must ensure that "principals, superintendents, treasurers, and business managers have the knowledge to provide principled, collaborative, foresighted, and data-based leadership that will provide learning opportunities for all children to succeed." Also, as in current law, the Board must consider indicators of cultural competency and the impact on the achievement gap between students when developing the standards.

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 and on student performance, as measured by value-added data and other demonstrations of students' abilities;

(3) Monitor compliance with all of the standards required by the bill and make recommendations for corrective action if the standards are not met. (The Board currently must do this for the teacher and principal standards.)

(4) Adopt criteria that a candidate for a lead professional educator license who is not certified by the National Board for Professional Teaching Standards 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),[90] 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.[91]

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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[90] 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.

[91] 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.

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 Teacher Residency Program created in the bill as part of the new educator licensing requirements (see above);

(3) Alternative educator licensure procedures; and

(4) Any other program as identified jointly by the Chancellor and the Superintendent.

Teacher tenure

(R.C. 3319.08 and 3319.11)

Current law

There are generally two types of employment contracts for classroom teachers employed by school districts and educational service centers (ESCs). A limited contract is for a fixed length of time, which may be no longer than five years. A continuing contract, however, is considered "tenure" because it remains in effect until the teacher resigns or retires. To receive a continuing contract, a teacher must meet the following requirements:

(1) Hold a professional educator license; and

(2) Have completed the applicable one of the following: (a) if the teacher did not hold a master's degree at the time of initial receipt of an educator license, 30 semester hours of coursework in the area of licensure or a related area since initial issuance of the license or (b) if the teacher held a master's degree at the time of initial receipt of an educator license, six semester hours of graduate coursework in the area of licensure or a related area since initial issuance of the license.[92]

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

[92] A teacher who holds a professional or permanent teaching certificate issued under prior law, and never upgraded that certificate to an educator license, is eligible for a continuing contract without further coursework (R.C. 3319.08(D)(1)).

January 1, 2011, remain subject to the existing tenure requirements described above, except that a teacher holding a senior professional educator license or a lead professional educator license issued under the bill's licensure provisions (see "**New teacher licenses**" above) also meets the requirement in (1). The existing tenure requirements continue to be a potential issue for collective bargaining. The bill explicitly states that the changes regarding tenure do not void or otherwise affect any continuing contract entered into with a teacher prior to the effective date of the changes.

A teacher who is initially licensed on or after January 1, 2011, is eligible for tenure if the teacher:

(1) Holds a professional educator license, senior professional educator license, or lead professional educator license;

(2) Has held an educator license, other than a substitute teaching license, for at least nine years; and

(3) Has completed the applicable one of the following: (a) if the teacher did not hold a master's degree at the time of initial licensure, 30 semester hours of coursework in the area of licensure or a related area since initial issuance of the license or (b) if the teacher held a master's degree at the time of initial licensure, six semester hours of graduate coursework in the area of licensure or a related area since initial issuance of the license.

The bill retains current law requiring a teacher to have taught for a certain period of time in the employing district or ESC to qualify for tenure. Specifically, the teacher must have taught there for at least three of the past five years or, if the teacher attained continuing contract status elsewhere, have taught there for the last two years.[93] 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*.[94] This means, for example, that a person who is licensed as a substitute

[93] 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)).

[94] 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.

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 educator employment contracts

(R.C. 3319.16)

Current law

Current law provides that a school district's employment contract with a person licensed by the State Board of Education may be terminated for gross inefficiency or immorality, willful and persistent violations of district regulations, sexual conduct with a student, or "other good and just cause."[95] Separate statutes also specify that a licensed educator's contract may be terminated or suspended for willfully belonging to an organization that advocates overthrow of the U.S. or state government by force or violence,[96] falsification of a sick or assault leave statement,[97] and assisting a student in cheating on a statewide achievement test.[98] Statutory law also sets out specific contract termination procedures requiring prior notice, chance for a hearing before the district board, and the right of appeal of the board's decision to the appropriate common pleas court. Either the employee or the district board also may have the right to appeal the common pleas court's decision to the appropriate court of appeals subject to the Rules of Appellate Procedure.[99]

The bill

The bill eliminates "other good and just cause" as statutory grounds for termination of a an educator's employment contract. It does not affect the other current statutory grounds for termination or suspension of an educator's employment contract. The bill further adds as statutory grounds for termination of a licensed educator's

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[95] 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).

[96] R.C. 124.36, not in the bill.

[97] R.C. 3319.141 and 3319.143, neither section in the bill.

[98] R.C. 3319.151.

[99] 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).

employment contract the same grounds for termination that apply to nonteaching school employees who are not covered by the Civil Service Law (*i.e.*, nonteaching employees who work for a local or exempted village, rather than a city, school district). Those grounds are violations of written rules and regulations of the board of education, incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, or any other acts of misfeasance, malfeasance, or nonfeasance affect the statutory due process procedures. The bill states that its changes to the grounds for termination of an educator's employment contract prevail over conflicting provisions of a collective bargaining agreement entered into after the amendment's effective date.

Contract termination referees

(R.C. 3319.161)

Under continuing law, in a contract termination case involving a licensed educator employed by a school district where the employee has requested a hearing, either the employee or the board of education may request a referee to conduct the hearing.[100] Current law limits referees to hearing no more than two contract termination cases involving a licensed educator each school year. The bill repeals this provision, thereby allowing referees to hear an unlimited number of such termination cases in a single school year.

IV. Community Schools

Background

Community schools (often called "charter schools") are public schools that operate independently from any school district under a contract with a sponsoring entity. A conversion community school, created by converting an existing school district school, may be located in and sponsored by any school district in the state. On the other hand, a "start-up" community school may be located only in a "challenged school district." A challenged school district is any of the following: (1) a "Big-Eight" school district, (2) a school district in academic watch or academic emergency, or (3) a school district in the original community school pilot project area (Lucas County).[101]

The sponsor of a start-up community school may be any of the following:

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[100] Referees are selected from a list provided by the State Bar Association and must be mutually agreed to by the employee and the board or, if no agreement can be reached, appointed by the Superintendent of Public Instruction.

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

(1) The school district in which the school is located;

(2) A school district located in the same county as the district in which the school is located has a major portion of its territory;

(3) A joint vocational school district serving the same county as the district in which the school is located has a major portion of its territory;

(4) An educational service center serving the county in which the school is located or a contiguous county;

(5) The board of trustees of a state university (or the board's designee) under certain specified conditions; or

(6) A federally tax-exempt entity under certain specified conditions.[102]

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

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. The table below lists the closure criteria.

Type of school	Closure criteria
A school that does not offer a grade higher than 3	Has been in academic emergency for four consecutive 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
A school that offers any of grades 10 to 12	Has been in academic emergency for four consecutive 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

[102] R.C. 3314.02(C)(1)(a) through (f).

from the Department of Education.[103] Additionally, it grants an exemption to a community school in which a majority of the students are disabled students receiving special education.

Handling of student records after school closes

(R.C. 3314.44)

Under the bill, when a community school permanently closes, the school's chief administrative officer must transmit all educational records of past and current students, within seven business days of the school's closing, to each student's school of residence. The chief administrative officer must act in good faith to take all reasonable steps necessary to collect and assemble the records in an orderly manner prior to the transfer. Failure of the chief administrative officer to collect, assemble, or transmit student records as required by the Department is a third degree misdemeanor.

Unauditable community schools

(Section 265.80.20)

The bill includes an uncodified provision that duplicates an uncodified measure of Am. Sub. H.B. 119 of the 127th General Assembly (the main budget act for the 2007-2009 biennium) addressing unauditable community schools. Under this provision, if the Auditor of State finds a community school to be unauditable, the Auditor must provide written notification of that fact to the school, the school's sponsor, and the Department of Education, and post the notification on the Auditor's web site. The school's sponsor is prohibited from entering into contracts with any additional community schools until the Auditor is able to complete a financial audit of the school. Also, within 45 days after the notification, the sponsor must send a written response to the Auditor describing (1) the process the sponsor will use to review and understand the circumstances that led to the school becoming unauditable, (2) a plan for providing the Auditor with the documentation needed to complete an audit and for ensuring that all financial documents are available in the future, and (3) the actions the sponsor will take to ensure that the plan is implemented.

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[103] 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 plan indicating how the State Board of Education's academic content standards will be taught and assessed (R.C. 3314.36).

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.

All of these requirements are maintained in uncodified law. The bill states that its uncodified provisions have no effect after June 30, 2011, unless their context clearly indicates otherwise.[104] It is not certain, therefore, whether these requirements will expire on that date or could be construed to operate after that date.

Exception to community school location

(R.C. 3314.028)

Under the 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.

Conversion community schools

(R.C. 3314.02)

The bill permits the conversion of a building operated by a joint vocational school district board of education into a community school in the same manner as a building operated by a city, local, or exempted village school district board of education or an educational service center governing board may be converted under current law.

[104] Section 809.10.

Upon receipt of a proposal, a board of a joint vocational school district may enter into a preliminary agreement with the person or group proposing the conversion of the public school or service center building, indicating the intention of the board to support the conversion to a community school. A proposing person or group that has a preliminary agreement may proceed to finalize plans for the school, establish a governing authority for the school, and negotiate a contract with the board. Provided the proposing person or group adheres to the preliminary agreement and all provisions of R.C. Chapter 3314., the board must then negotiate in good faith to enter into a contract.

E-school expenditures for instruction

(R.C. 3314.085)

Current law requires Internet- or computer-based community schools (e-schools) to spend at least the per pupil amount of their state funds designated for base classroom teachers on instructional purposes, including (1) teachers, (2) curriculum, (3) academic materials *other than computers and obscenity filtering software*, and (4) other purposes specified by the Superintendent of Public Instruction. If an e-school does not comply with the spending requirement, it must pay a fine equal to the greater of 5% of its total state payments for the fiscal year or the amount the school underspent on instruction.

The bill eliminates the prohibition on e-schools counting toward this requirement their expenditures to purchase computers and obscenity filtering software, both of which the schools are statutorily required to provide for their students.[105] It also adds other types of software to the list of allowable expenditures for instructional purposes.

Community school calamity days

(R.C. 3314.08(L))

Under current law, community schools must provide each student enrolled for a full school year at least 920 hours of learning opportunities. But each community school's full-time equivalency for purposes of calculating per pupil state funding for the school is based on the number of hours actually offered by that school to a student who attends for the school's entire school year. In other words, for a school to be paid the full per pupil amount for each student the student must participate in each scheduled hour of learning opportunities. This does not appear to permit a community school to

[105] R.C. 3314.21 and 3314.22, neither section in the bill.

be excused from making up days the school is closed due to a public calamity even though its scheduled hours of operation exceed the statutory minimum.[106]

The bill specifies that, with respect to the calculation of full-time equivalency, the Department of Education must waive the number of hours or days of learning opportunities not offered by a community school because it was closed during the school year due to a public calamity, so long as the school was actually open for instruction with students in attendance during that school year for at least the minimum number of hours required by law (that is, 920 hours under current law). The Department must treat those waived hours as if the school were open for instruction with students in attendance during that time. The public calamities recognized by this provision are the same ones recognized under current law for excused calamity days for school districts and chartered nonpublic schools. They are (1) disease epidemic, (2) hazardous weather conditions, (3) inoperability of school buses or other necessary equipment, (4) damage to the school building, or (5) utility failure.

V. Scholarship programs

Ed Choice eligibility

(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;

[106] Current law permits a school operated by a school district on a schedule that just meets the statutory minimum 182 days to miss up to five days due to a public calamity without having to make up those days (R.C. 3317.01(B)).

(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 qualifies students who are enrolled in, are eligible to enroll in kindergarten in the school year for which the scholarship is sought and would otherwise be assigned to, or are enrolled in a community school but otherwise be assigned to, a new school building that is operated by the student's resident district for the scholarship if all of the following applies to the new school building:

(1) The new building is open for instruction for its second or third school year.

(2) For the first school year the building was open for instruction, at least 75% of the enrolled students had transferred directly from two or more school buildings that closed; and the closed buildings were: (a) operated by the same school district that operates the new building, (b) offered at least some of the grade levels offered by the new building, and (c) were declared, for at least two of their last three report card ratings, to be in a state of academic emergency or watch, and not excellent or effective in their last rating.

(3) If the new building is in its second year of instruction, the building was declared to be in a state of academic emergency or watch in its first year of instruction.

(4) If the new building is in its third year of instruction, the building was declared in either its first or second year to be in a state of academic emergency or watch, but not excellent or effective in its second year of instruction.

Administration of achievement assessments to 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.[107] 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 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

[107] 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.)

must be compared to students of similar age, grade, race or ethnicity, gender, and socioeconomic status.

Special Education Scholarship Pilot Program

(R.C. 3310.52, 3310.53, and 3310.62(C))

The bill establishes the Special Education Scholarship Pilot Program, to begin operating in fiscal year 2012 and to operate through fiscal year 2017. The program is to provide scholarships for disabled children to attend special education programs other than those offered by their school districts. The program applies to any identified disabled child in grades K through 12. A scholarship may be used to pay the expenses of a public or private provider of special education programs for implementation of the child's IEP and other services that are not in the IEP but are associated with educating the child. The bill also permits the "eligible applicant" (generally the child's parent, see below) and the provider to agree to alter the services provided to the child.

While a child is using a scholarship, the school district in which the child would otherwise be enrolled has no obligation to provide the child with a free appropriate public education. But the bill also specifies that if that district has agreed to provide some services for the child, or if the district is required by separate law to provide some services, including transportation services, the district may not discontinue them pending completion of any administrative proceedings regarding those services. (See "**Continuation of some school district services**" below.) The district also has a continuing obligation to develop the child's IEP.

Eligibility

"Qualified special education child"

(R.C. 3310.51(H), 3310.61, and 3310.62)

Under the bill, a child is eligible, or "qualified," for a special education scholarship if the child is from 5 to 21 years old and the child's resident school district has identified the child as disabled and developed an IEP for the child. In addition, the child must either (1) have been enrolled in the district in which the child is entitled to attend school in any grade from K through 12 in the school year prior to the year in which the scholarship would first be used or (2) be eligible to enroll for services from that district in the school year in which the scholarship would first be used. The bill explicitly specifies that a child attending a public special education program under an agreement between the child's school district and the program provider or a child

attending a community school may apply for a scholarship.[108] A child is not eligible for a scholarship in any school year in which the child has been awarded a scholarship under the Autism Scholarship Program.

A child is not eligible for a scholarship for the first time while the child's IEP is being developed or while any administrative or judicial proceedings regarding the content of that IEP are pending. On the other hand, the bill also specifies that, in the case of a child for whom a scholarship already has been awarded, development of subsequent IEPs and the prosecuting of administrative or judicial mediation or proceedings with respect to any of those subsequent IEPs do not affect continued eligibility for scholarship payments. In other words, a scholarship will not be awarded and paid until the child's IEP is in place and it is clear that there are no challenges to that IEP. But *future* challenges to *subsequent* IEPs will not disqualify the child for a scholarship.

"Eligible applicant"

(R.C. 3310.51(E))

The bill permits the following individuals to apply for and accept a scholarship for a qualified special education child:

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

(2) The child's guardian;

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

(4) The child's grandparent if the grandparent is an attorney-in-fact under a power of attorney or if the grandparent has executed a caregiver affidavit (both under continuing law);[109]

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

[109] Current law, not changed by the bill, permits a grandparent to be named the attorney-in-fact in a power of attorney executed by a child's parent or permits a grandparent to execute a caregiver affidavit, if the child's parents cannot be located after reasonable attempts to do so. Either instrument authorizes the grandparent, with whom the child lives, to register the child in school and to seek medical care for the child. (See R.C. 3109.51 to 3109.80.)

(5) The child's "surrogate parent" appointed under state and federal special education law;[110] or

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

Annual limit on the number of scholarships

(R.C. 3310.52(B))

The bill limits the number of scholarships that may be awarded each year under the Special Education Scholarship Pilot Program to not more than 3% of the number of identified disabled students residing in the state during the previous fiscal year.

Alternative providers of special education programs

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

Alternative public providers

(R.C. 3310.51(A))

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

[110] See "**Special education**" above.

Registered private providers

(R.C. 3310.58 and 3310.59)

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

(1) Its special education program meets the minimum education standards established by the State Board of Education;[111]

(2) It must comply with the antidiscrimination provisions of the federal Civil Rights Act of 1964,[112] which prohibits discrimination on the basis of *race, color, or national origin* in the administration of benefits assisted with federal funds. The bill specifies that this antidiscrimination statement applies to a registered private provider regardless of whether the provider receives federal financial assistance. A student's scholarship under the program is not funded with federal money.

(3) It agrees to conduct criminal records checks of applicants for employment, if it is not already required to do so pursuant to law;[113]

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

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

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

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[111] The State Board must prescribe minimum standards for public and private elementary and secondary schools. These standards cover teacher certification, administrative organization, graduation requirements, curriculum, assessments, health and safety issues, length of the school day, and other topics. (See R.C. 3301.07(D) and Ohio Administrative Code Chapter 3301-35.)

[112] The bill refers to 42 U.S.C. 2000d.

[113] Under the bill, private entities must conduct criminal records checks in the same manner as must chartered nonpublic schools under continuing law (see R.C. 3319.39). While the bill requires a private school or entity to conduct criminal records checks of future applicants prior to hiring, it does not mandate that the school or entity request records checks of current employees. (See also R.C. 109.57 and 109.572.)

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

(8) It agrees to provide to the child's resident school district a record of the implementation of the child's IEP, including evaluation of the child's progress;

(9) It agrees that if it declines to enroll a particular child under the program, it will notify the eligible applicant in writing of its reasons for declining to enroll that child; and

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

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

Scholarship amount

(R.C. 3310.56)

Each scholarship is worth the smallest of the following amounts:

(1) $20,000;

(2) The total fees charged by the provider; or

(3) The amount that otherwise would be calculated for state and local funding for the school district's provision of special education and related services to the child. This last amount comprises the base-cost (formula amount plus base funding supplements) and special education weighted funding (both state and local shares) that would be calculated for the student under the state formulas.

Payment of scholarships

(R.C. 3310.52, 3310.54, 3310.55, 3310.57, and 3317.03(A), (B), and (F)(5))

The Department of Education must make periodic payments throughout the school year to the eligible applicant for services provided to a qualified special education child, until the full amount of the scholarship has been paid. The amount of the scholarship is deducted from the state aid account of the school district in which the child is entitled to attend school. That district is authorized under the bill to count the child in its formula ADM and special education ADM. If the child is not included in the formula ADM of that district, the Department must adjust the district's ADM to include

the child and recalculate the district's state aid payments for the entire fiscal year accordingly.

The scholarship may be used only to pay fees charged by the alternative special education program for implementation of the child's IEP and other services agreed to by the provider and the eligible applicant that are not in the IEP but are associated with educating the child. The Department must prorate a child's scholarship amount if the child withdraws from the alternative program before the end of the school year.

Application deadlines

(R.C. 3310.52(C))

In order to qualify for a scholarship, either for the first time or to renew a scholarship, an eligible applicant must submit an application in the manner prescribed by the Department of Education by April 15 prior to the school year for which the scholarship or renewal is sought. In addition, by April 15, the eligible applicant must notify the child's school district that the applicant has applied for a scholarship or renewal.

Transportation of scholarship children

(R.C. 3310.60)

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

Continuing law requires school districts to provide transportation to nonpublic school students in grades K to 8 who reside in the district and live more than two miles from the school they attend. Districts may also transport high school students to and from their nonpublic schools. A district, however, is not required to transport students of any age to and from a nonpublic school if the direct travel time by school bus from the district school the student would otherwise attend to the nonpublic school is more than 30 minutes.[114] In the case of some special education students, transportation might be mandated by their IEPs.

[114] R.C. 3327.01. When transportation by the district is impractical, the district may offer payment to a student's parent instead of providing the transportation.

Continuation of some school district services

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

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

Written notice of rights and informed consent

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

The bill requires the Department of Education to develop by January 31, 2011, and subsequently to revise as necessary, a document that compares a parent's and child's rights under state and federal special education law with their rights under the Special Education Scholarship Pilot Program, including the scholarship program's statutory application deadlines (see above). It also requires the Department and each school district to distribute the document to parents of disabled children as a part of, appended to, or in conjunction with the procedural safeguards notice required under federal law. It then specifies that an eligible applicant's receipt of the comparison document, as acknowledged in a format prescribed by the Department, constitutes notice that the eligible applicant has been informed of those rights. It further provides that acceptance of a scholarship constitutes the eligible applicant's informed consent to the provisions of the Special Education Scholarship Pilot Program.

Background

Federal special education law requires that the parents of disabled children be given notice of the procedural safeguards available to them regarding their children's special education and related services. Specifically, both the state and each school district are obligated to provide a "full explanation" of those safeguards "written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner."[115] That document must be provided once each year and upon referral or request for the child's evaluation, upon the first filing of an

[115] 20 U.S.C. 1415(d) and 34 C.F.R. 300.503 and 300.504.

administrative complaint, or upon parental request.[116] The federal statute and rules provide an extensive list of items that must be included in the document.

In compliance with this federal requirement, the Ohio Department of Education has developed a document entitled "Whose IDEA is This? A Resource Guide for Parents," written in English, Spanish, and French. School districts must distribute it to parents in accordance with the law, and it also is available on the Department's web site.[117]

Provider profile

(R.C. 3310.521)

Each alternative public provider and each registered private provider that enrolls a child under the program must submit a written "profile" of the provider's services to the eligible applicant. The profile must be in a form prescribed by the Department of Education and must contain all of the following:

(1) Information related to the provider's financial status;

(2) Methods of instruction that will be used in providing services to the child;

(3) Qualifications of teachers, instructors, and other persons who will provide services to the child;

(4) Results of the evaluation of the provider's academic program; and

(5) Any other information required by the Department.

As a condition of receiving scholarship payments under the program, an eligible applicant must attest, in a form and manner prescribed by the Department, to having received the profile.

Access to student data verification codes

(R.C. 3301.0714(D) and 3310.63)

Each school district or community school in which a student initially enrolls must assign that student a unique data verification code for purposes of reporting individual student performance data to the Education Management Information System

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

[117] See http://www.ode.state.oh.us/GD/Templates/Pages/ODE/ODEDetail.aspx?page=3&TopicRelationID=967&ContentID=11128&Content=62785.

(EMIS).[118] The bill grants the Department access to these codes for the purpose of administering the Special Education Scholarship Pilot Program. Access to the codes will allow the Department to match a qualified special education child's name with the child's data verification code. Therefore, these provisions are an exception to the general prohibition in continuing law against the Department having access to information that would enable a data verification code to be matched to personally identifiable student data.

The bill permits the Department to have access to data verification codes in the same manner it currently does for the Educational Choice Scholarship Pilot Program. Specifically, the Department may request a qualified special education child's data verification code from (1) the school district in which the child is entitled to attend school, (2) the community school in which the child is enrolled, if applicable, or (3) the independent contractor hired by the Department to create and maintain data verification codes.

Districts and community schools must provide the child's data verification code to the Department.[119] If a child has not yet been assigned a code because the child will be entering kindergarten, the district in which the child is entitled to attend school must assign a code to the child prior to submission. If the district does not assign the code by a date specified by the Department, the Department must assign the code. Each year, the Department must provide school districts with the name and data verification code of each scholarship child residing in the district for whom the Department has assigned a data verification code.

The Department may not release a child's data verification code to any person, unless such release is otherwise authorized by law. Furthermore, documents held by the Department relating to the scholarship program are not public records if they contain both a child's name or other personally identifiable information and the child's data verification code.

State Board rules

(R.C. 3310.64; Section 265.80.50)

The State Board of Education must adopt rules for the Special Education Scholarship Pilot Program in accordance with the Administrative Procedure Act so that

[118] EMIS is a statewide electronic database of demographic, fiscal, and academic information on school districts and buildings. The Department of Education uses EMIS data to calculate state payments for districts and schools and to monitor their performance.

[119] They also must provide the code to the eligible applicant for the child, upon request.

they are in effect by January 31, 2011. Those rules must include application procedures and standards and procedures for the registration of private providers of special education programs.

Formative evaluation of Special Education Scholarship Pilot Program

(Section 265.80.51)

The bill requires the Department of Education to conduct a "formative evaluation" of the Special Education Scholarship Pilot Program and to report its findings to the General Assembly by December 31, 2013. In doing so, the Department is required to the extent possible to gather comments from parents who have been awarded scholarships under the program, school district officials, representatives of registered private providers, educators, and representatives of educational organizations. The Department also is required to use quantitative and qualitative analyses in conducting its evaluation.

VI. 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 and the Governor. The Superintendent and the Governor must also hire a Director of the Center, who must report to the Superintendent and the Governor. The Center, under the supervision of the Director, must research and make recommendations about the coordination of early childhood programs and services for children, from prenatal care and through entry into kindergarten, and the eventual transfer of the authority to implement those programs and services from other state agencies to the Department of Education.

The Center must promote family-centered programs and services to support the social, emotional, cognitive, intellectual, and physical development of children and the role of families in the well-being and success of children.

After considering advice from the Early Childhood Advisory Council, the Director of the Center, in partnership with staff from the Departments of Education, Job and Family Services, and Health and any other state agency as determined necessary, must submit an implementation plan to the Superintendent and the Governor by

December 31, 2009. The implementation plan must include research and recommendations regarding all of the following:

(1) The identification of programs, services, and funding sources to be transferred from other state agencies to the Department of Education;

(2) The creation of a new administrative structure within the Department for implementing early childhood programs and services;

(3) Statutory changes necessary to implement the new administrative structure within the Department; and

(4) A timeline for the transition from the current administrative structure within other state agencies to the new administrative structure within the Department.

The 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 appropriations 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.

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.[120] 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;[121]

(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;

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[120] 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.

[121] 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.)

(4) Require teachers, except for those working toward an associate or bachelor's degree in a related field, to attend at least 20 hours every two years of professional development;

(5) Document and report child progress; and

(6) Meet and report compliance with the Department's early learning program guidelines.

In distributing funds to providers of early childhood education programs, the Department of Education must give priority in each fiscal year to previous recipients of state funds for such programs. The remainder of the funding must be directed to new program providers or to previous recipients for serving more children or for program expansion, improvement, or special projects to promote quality and innovation. The Department may use up to 2% of the total appropriation in each fiscal year for administrative expenses.

Funding must be distributed on a per-pupil basis. Per-pupil funding for programs must be sufficient to provide services for half of the statewide average length of the school day for 186 days each school year.[122] 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.

[122] 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.

Monitoring may involve monthly reports, inspections, a timeline for correction of deficiencies, or technical assistance provided by the Department or another source. If an early childhood education program does not improve, the Department may withdraw all or part of the funding for the program.

If a program provider has its funding withdrawn or voluntarily waives its right to funding, the provider must transfer property, equipment, and supplies obtained with state funds to other early childhood education program providers designated by the Department. It also must return any unused funds to the Department along with any reports requested by the Department. State funds made available when a program provider is no longer funded may be used by the Department to fund new early childhood education program providers or to award expansion grants to existing providers. In each case, interested providers must apply to the Department in accordance with the Department's selection process.

The bill requires the Department to compile an annual report regarding GRF-funded early childhood education programs and the Department's early learning program guidelines. Copies of the report must be given to the Governor, the Speaker of the House, and the President of the Senate. The report also must be posted on the Department's web site.

Early Learning Initiative

(Section 309.40.60)

The bill re-establishes the Early Learning Initiative (ELI) to provide early learning services on a full-day, part-day, or both a full-day and part-day basis, to eligible children. An eligible child is a child who is at least three years of age but not of compulsory school age or enrolled in kindergarten, is eligible for Title IV-A services,[123]

[123] 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).)

and whose family income at the time of application does not exceed 200% of the federal poverty line. Each county department of job and family services must determine eligibility for Title IV-A services for children who wish to enroll in an early learning program within 15 days after the county department receives a completed application.

The Department of Education (ODE) and the Ohio Department of Job and Family Services (ODJFS) must jointly administer ELI in accordance with the law governing the administration of Title IV-A programs. Under the bill, ODJFS and ODE have both separate and joint duties to fulfill for ELI.

ODJFS duties

The bill directs ODJFS to reimburse early learning agencies for services provided to eligible children under the terms of the ELI contract and in accordance with rules adopted by ODJFS and ODE (see "**Contracting with an early learning agency**" and "**Joint ODJFS and ODE duties**").

ODE duties

The bill directs ODE to (1) define the early learning services that will be provided to eligible children through ELI, (2) establish an application deadline for entities seeking to become early learning agencies, and (3) establish early learning program guidelines for school readiness to assess the operation of early learning programs.[124]

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);

[124] 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.

(b) An exemption from co-payment requirements for families whose family income is equal to or less than 100% of the federal poverty line;

(c) A definition of "enrollment" for the purpose of compensating early learning agencies;

(d) Establishing compensation rates for early learning agencies based on the enrollment of eligible children;

(e) Completion of criminal record checks for certain employees of early learning agencies and early learning providers;

(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.

The bill specifies that participation in an ELI program does not prohibit an individual from obtaining a certificate for payment for publicly funded child care under R.C. 5104.32(C) (not in the bill).

Day-care certificates for payment

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.

Montessori preschool programs

(R.C. 3301.56)

Under current law, when an accredited Montessori program combines preschool-aged children and kindergartners in the same classroom, the maximum number of children per staff member is 12 and the maximum group size is 24 children. The bill, instead, requires preschool programs that are licensed by the Department of Education and use the Montessori instructional method to comply with staff member/child ratios and maximum group sizes specified in the accreditation standards of either the American Montessori Society or the Association Montessori Internationale.

VII. Other Provisions

Strategic plan

(R.C. 3301.122)

The bill requires the Superintendent of Public Instruction to develop a ten-year strategic plan that is aligned with the strategic plan for higher education developed by the Chancellor[125] not later than December 1, 2009. The Superintendent must submit the

[125] 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.

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.

Meetings of the State Board of Education

(R.C. 3301.041)

Beginning not later than June 30, 2010, the bill requires the State Board of Education to broadcast live via the Internet, all regular and special business meetings of the State Board. The bill specifies that executive sessions of the State Board, dealing with issues exempt from the Sunshine Law,[126] are not to be broadcast.

The bill allows the State Board to contract or consult with the Ohio Government Telecommunications Service and the Ohio Government Telecommunications Service to provide the State Board technical assistance.

Ohio Education Computer Network

Current law provides for the establishment of the Ohio Education Computer Network (OECN), which is a collective of 23 information technology centers (ITCs), formerly called data acquisition sites or "DA sites."[127] The network is under the oversight of a "management council" made up of representatives of each ITC. The ITCs provide a variety of administrative and instructional computer services to member school districts and other education entities, including accounting, payroll, curriculum

[126]Under R.C. 121.22(G) (not in the bill), a public body, including the State Board of Education, may hold executive sessions, closed to the public, when dealing with certain issues including: employment, purchase of or sale of land using competitive bidding, legal matters, collective bargaining, matters required to remain confidential under state or federal law, and security/emergency response protocols.

[127] Current law specifies that there may not be more than 27 ITCs.

management, test scoring, student scheduling, and data entry for the Education Management Information System. They are organized through multiple-district cooperative agreements or as regional councils of government.

Programs

(R.C. 3301.075)

The bill eliminates a current provision of law that permits the Department of Education to contract with an independent for-profit or nonprofit entity to provide information on Ohio government through the OECN to school district libraries to assist teachers in social studies course instruction and support student research projects. Separately, it specifically permits the Department to approve and administer funding for educational technology technical support, maintenance, consulting, and group purchasing services for ITCs, school districts, educational service centers, and other entities and to deliver to schools programs operated by the INFOhio Network[128] and the OECN Management Council.

ITC funding reserves

(R.C. 3301.076)

A rule of the State Board of Education requires all ITCs to "maintain a minimum cash balance equivalent to the higher of the following: an average of thirty days' expenditures for the previous twelve-month period; or anticipated expenditures for the next sixty days" (Ohio Administrative Code 3301-3-07(B)(2)(b)). The bill specifies that ITCs may not be required to have operating reserve accounts or funds or minimum cash balances relative to their operating funding.

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.

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[128] INFOhio provides students and teachers with electronic educational resources. According to its web site, INFOhio is a project of the Department of Education and is "accountable" to the OECN Management Council (http://www.infohio.org/about/organization.html).

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.

School Health and Safety Network; periodic review of school safety policies

(Repealed R.C. 117.102, 3313.473, 3314.15, 3701.93, 3701.931, 3701.932, 3701.933, 3701.934, 3701.935, and 3701.936; R.C. 3707.26, 3313.86, 3314.03, 3326.11, and 4736.01)

The bill

The bill repeals the laws establishing School Health and Safety Network and the corresponding provisions of law described below. Further, the bill requires school districts, community schools, STEM schools, and chartered nonpublic schools to periodically review their policies and procedures to ensure the safety of students, employees, and other persons using a school building from any known hazards in the building or on building grounds that, in the judgment of the board or governing authority pose an immediate risk to health or safety. The board or governing authority must also further ensure that its policies and procedures comply with all federal laws and regulations regarding health and safety applicable to school buildings.

The bill requires boards of health to inspect the sanitary condition of schools semiannually rather than annually, as in current law. However, the bill repeals the authorization for boards of health to close a school for an imminent public health threat other than an epidemic or a high prevalence of communicable disease. The bill also repeals the requirement that the Director of Health adopt rules establishing minimum standards for school sanitary inspections.

Background--current law

Current law requires the Director of Health to establish the School Health and Safety Network, under which local boards of health are required to inspect each public (school districts and community schools) and chartered nonpublic school building and building grounds within its jurisdiction at least once annually to identify conditions dangerous to public health and safety. Inspectors must use forms, templates, and checklists developed or approved by the Director of Health. Further, current law requires that the Director adopt rules establishing minimum standards and procedures for Network inspections and sanitary inspections.

Reports of the inspection findings must be reported to officials responsible for the school and the Auditor of the State and include recommendations. A school must develop a plan for abatement of conditions that are determined to be hazardous to occupants. The Director must develop information specifying dangerous conditions and products and distribute the information on a quarterly basis via electronic mail and the Department of Health's web site.

The Auditor of State must review all submitted reports of each Network inspection of a public school building and grounds.

Also, current law dictates that the practice of environmental science by registered sanitarians includes the administration and enforcement of rules adopted by the Director for Network inspections and sanitary inspections of schools and school buildings.

School policies on food allergies

(R.C. 3313.719, 3314.03, and 3326.11)

The bill requires all school districts, community schools, and STEM schools to establish a written policy with respect to protecting students with peanut or other food allergies. In developing the policy, schools must consult with parents, school nurses and other school employees, school volunteers, students, and community members.

Criminal records checks of school employees

(R.C. 109.57, 109.572(B)(2), 3319.291, 3319.391, and 3327.10)

Current law

Under current law, all employees of school districts, educational service centers (ESCs), community schools, STEM schools, and chartered nonpublic schools are subject to periodic criminal records checks conducted by the Bureau of Criminal Identification and Investigation (BCII). Each records check must include records of the Federal Bureau of Investigation (FBI).[129] School employees must undergo criminal records checks as follows:

[129] The only exception is that adult education instructors who do not have unsupervised access to children are not required to have an FBI check prior to employment if they have been Ohio residents for the five-year period prior to the date the records check is requested (R.C. 3319.39(A)(1), not in the bill).

(1) The State Board of Education must request a records check prior to issuing or renewing a license for an educator (such as a teacher, principal, administrator, paraprofessional, counselor, or school nurse).

(2) The employing district, ESC, or school must request a records check of each employee prior to hiring.

(3) For each employee who is not licensed by the State Board and is not a bus driver, the employer must request a new records check every five years.

(4) For bus drivers, the employer must request a new records check every six years.

Continuing law requires BCII to maintain the Retained Applicant Fingerprint Database, which is a database of fingerprints of persons on whom BCII has conducted criminal records checks to determine eligibility for employment with or licensure by a public office. When BCII receives information that a person in the database has been arrested for or convicted of any offense, it must notify the public office that employs or licensed the person of the arrest or conviction, if the public office elects to receive those notifications. The Department of Education must participate in the notification program regarding persons licensed by the State Board of Education.[130]

The bill

The bill makes two changes to the criminal records check requirements for school employees. First, while the bill retains the requirement that all persons have a BCII check prior to initial licensure or employment, it eliminates the BCII check for most subsequent licensure or employment checks. Specifically, the bill requires a person to have *only an FBI check* when (1) the requester of the records check (either the State Board, in the case of a licensure check, or the employer, in the case of an employment check) has previously requested a BCII records check of the person and (2) the person provides proof of Ohio residency for the preceding five years.

By requiring the initial licensure or employment records check to include a BCII check, the bill ensures that the person subject to the check will be entered into BCII's Retained Applicant Fingerprint Database. In the case of licensed persons, the Department of Education will receive notification of any arrests or criminal convictions in Ohio involving those persons. School districts, ESCs, or schools may opt to receive the notification regarding their employees. Limiting subsequent records checks to FBI

[130] R.C. 3319.316, not in the bill.

records does not appear to result in the loss of any information about criminal activity, since an FBI check will report all convictions in all states, including Ohio.

Second, the bill prohibits the State Board of Education from requiring a criminal records check for licensure purposes any more often than every five years. The State Board issues licenses of varying lengths, up to five years. Under current law, a person must have a criminal records check every time the person applies for a new license or renews an existing one. A person with a two-year license, for example, must have a records check every two years to renew the license. The bill specifies instead that a person applying for issuance or renewal of a license must have a records check only if the person has not had one for licensure purposes within the previous five years.[131]

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.[132]

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.[133] Specified categories of employees in elementary schools must complete at least four hours of this training within two years of commencing

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[131] As in current law, a person that holds more than one license issued by the State Board is subject to the bill's criminal records check requirements only when applying for renewal of the person's primary license or the license with the longest duration (R.C. 3319.291(F)).

[132] This requirement applies to community schools and STEM schools by virtue of a reference in R.C. 3314.03 and 3326.11, respectively.

[133] This requirement applies to community schools and STEM schools by virtue of a reference in R.C. 3314.03 and 3326.11, respectively.

employment and every five years thereafter. The specified categories are: nurse, teacher, counselor, school psychologist, and administrator.

The bill extends to public middle and high schools this in-service training requirement, requiring it of the same specified categories of employees as for elementary schools and requiring completion within two years of commencing employment and every five years thereafter. For persons employed on the effective date of the act, the training must be completed within two years of that date and every five years thereafter.

The bill modifies the manner in which districts and schools are to develop the in-service curriculum. Existing law stipulates that districts and schools develop the curriculum, but the bill allows districts and schools as an alternative to adapt or adopt the curriculum that the state Department of Education develops. The bill also directs districts and schools to incorporate school safety and violence prevention into their in-service training in the prevention of child abuse, violence, substance abuse, and the promotion of positive youth development.

Special education

(R.C. 3323.05)

Continuing law requires the State Board of Education to establish procedures to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to receiving a free appropriate public education. Included are procedures to assign an individual to act as a surrogate when the parents cannot be found or the child is a ward of the state.

Existing law does not specify who is to appoint the surrogate. The bill modifies existing law by specifying that the surrogate be assigned by the school district or other educational agency responsible for educating the child or by the court with jurisdiction over the child's custody.

ESC switches by local school districts

Background

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.[134] The local district board's resolution to do so is subject to approval by both (1) the State Board of

[134] R.C. 3311.059.

Education and (2) the district's voters at a referendum election if a petition is filed within 60 days following the district board's adoption of the resolution. The severance and annexation action may not take effect sooner than one year after the first day of July that follows the later of the date the State Board approves the action or the date voters approve the action at a referendum election, if one is held.

Moratorium on ESC switches

(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 ESCs and annex to different ESCs. 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.

State Board procedures for approval of ESC switches

(R.C. 3311.059; Section 265.70.41)

Despite the temporary moratorium on severance and annexation actions by local school districts, the bill modifies the procedures the State Board of Education must follow when considering whether to approve a proposed action. Although the bill specifies that the modified procedures apply to any proposals pending before the State Board on the provision's effective date, in effect, they will be used only after the moratorium expires and proposals may be considered again.

While continuing law requires the State Board to consider the impact of a severance and annexation on the school district proposing the action and the ESC to which the district seeks annexation, the bill also requires consideration of the impact on the ESC that currently serves the district. Furthermore, under the bill, the State Board must specifically consider the financial, staffing, programmatic, and other effects of the transfer on all the parties involved, including the effect on each ESC's costs of operation and ability to deliver services in a cost-effective, efficient manner.

The bill prohibits the State Board from voting on a proposed severance and annexation action until it has been presented on its agenda as an independent item for consideration and heard by the Board at two or more separate meetings. The State Board must provide each ESC affected by the proposal with prior notice of each hearing and with any documentation filed by the school district making the proposal. In addition, the State Board must allow public testimony at each hearing on the proposal.

Finally, the bill requires at least a 30-day period between the State Board's first hearing on the proposal and its vote on whether to approve the proposal.

Dissolution procedures for ESCs

(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.[135] 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 and the "city" and "exempted village" school districts with which the ESC had service agreements during the ESC's last fiscal year of operation. The Superintendent's order "is final and not appealable."[136] 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 and the city and exempted village school districts that it last served. 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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[135] 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.

[136] 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.[137] 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.

Pledge of allegiance

(R.C. 3313.602)

Under current law, school districts must adopt a policy specifying whether or not oral recitation of the pledge of allegiance to the flag will be a part of the school's program and, if so, establish a time and manner for the recitation. No policy, however, may require a student to recite the pledge. The policy must also prohibit the intimidation of any student by other students or staff aimed at coercing participation.

The bill further specifies that regardless of the policy adopted by the school district board, a teacher may still choose to provide a reasonable amount of time in the teacher's classroom to recite the pledge. However, no teacher may require a student to recite the pledge, and teachers must prohibit the intimidation of a student to coerce participation.

In addition, the bill prohibits school districts from altering the wording in the oral recitation of the pledge of allegiance to the flag from the words set forth in 4 U.S.C. 4: "I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all."

Vocational education contracts

(Section 265.80.30)

Each city, local, and exempted village school district is required under current law to provide vocational (career-technical) education services to its students. A district may do so by operating its own vocational education program, being a member of a joint vocational school district, or by contracting for those services from another

[137] 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).

district.[138] When a district opts to contract with another district for vocational education services, under a rule of the State Board of Education the term of the contract must be at least five years.[139]

The bill provides a temporary exception from the five-year minimum contract term for a vocational education services contract between (1) a local school district receiving the services that was created out of another (now adjacent) district and that began operating in fiscal year 2005, and (2) the other local school district out of which the district receiving the services was created. In such a case, the bill specifies that the current contract between those districts expiring on or before June 30, 2010, may be renewed one time for a term of less than five years.

School district competitive bidding

(R.C. 3313.46 and 3313.461)

Current law requires school district and educational service center boards when contracting for the purchase of public improvements valued over $25,000 or of school buses, to make those purchases only through a specific competitive bidding process. In both cases, the board must advertise for bids and, upon opening the sealed bids, must award a contract to the lowest responsible bidder or, in some cases, to the lowest responsive and responsible bidder.[140] A district or service center board does not appear to be required to seek competitive bids when purchasing other goods and services.

The bill increases the threshold for requiring competitive bidding for district or service center public improvements to $50,000. The bill also requires school district and service center boards to competitively bid contracts for maintenance services, on either buildings or grounds or on school buses or other transportation equipment, if the cost of those services will exceed $50,000.

School construction bonds: 40-year maturity

(R.C. 133.20(B)(4) and (F))

The bill permits school districts to increase the length of time within which certain school building bonds must be repaid, from a maximum of 30 years to 40 years.

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[138] R.C. 3313.90(A), not in the bill.

[139] Ohio Administrative Code 3301-61-06(A)(5).

[140] R.C. 9.312 (not in the bill), 3313.46, and 3327.08 (not in the bill). A district board may dispense with competitive bidding in the acquisition of some certified energy savings measures (R.C. 3313.372 (not in the bill)).

The provision applies to general obligation bonds issued to finance the construction or acquisition of real property. To issue bonds with a maturity of more than 30 years, the district's fiscal officer must certify to the school board that the useful life of the bond-financed property will exceed 30 years.

Transfer of School Employees Health Care Board

(Section 265.60.90)

Under the bill, on July 1, 2009, all duties, powers, obligations, and functions performed by, all rights exercised by, and the remaining unexpended, unencumbered balance of any money appropriated or reappropriated to the Department of Administrative Services with regard to the School Employees Health Care Board, whether obligated or unobligated, are transferred to the Department of Education. The Department of Education succeeds to, and must assume, all duties, powers, obligations, and functions performed by, all rights exercised by, and the remaining unexpended, unencumbered balance of any money appropriated or reappropriated to the Department of Administrative Services with regard to the board.

Any aspect of the board's operations commenced but not completed by the Department of Administrative Services on July 1, 2009, must be completed by the Superintendent of Public Instruction or staff of the Department of Education in the same manner, and with the same effect, as if completed by the Department of Administrative Services or the staff of the Department of Administrative Services. Any validation, cure, right, privilege, remedy, obligation, or liability related to the board's operations is neither lost nor impaired by reason of the transfer and must be administered by the Department of Education.

Furthermore, all of the rules, orders, and determinations of the Department of Administrative Services in relation to the board's operations continue in effect as rules, orders, and determinations of the Superintendent of Public Instruction until modified or rescinded by the Superintendent. At the request of the Superintendent, and if necessary to ensure the integrity of the numbering of the Administrative Code, the Director of the Legislative Service Commission must renumber the rules of the board to reflect the transfer to the Department of Education.

The Department of Administrative Services and the Superintendent must identify the employees of the board to be transferred to the Department of Education. The employees must be transferred on July 1, 2009, or as soon as possible thereafter.

The bill requires that whenever the Department of Administrative Services is referred to in relation to the board in any law, contract, or other document, the reference must be deemed to refer to the Department of Education in relation to the board.

Any action or proceeding that is related to the board's operations and that is pending on the immediate effective date of the bill is not affected by the transfer and must be prosecuted or defended in the name of the Superintendent or the Department of Education. In all these actions and proceedings, the Superintendent or the Department of Education, upon application to the court or agency, must be substituted as a party.

On or after July 1, 2009, notwithstanding any provision of law to the contrary, the Director of Budget and Management must take any action with respect to budget changes made necessary by the transfer, including the creation of new funds and the consolidation of funds. The Director can transfer cash balances between funds. The Director can cancel encumbrances and re-establish encumbrances or parts of encumbrances as needed in the fiscal year in the appropriate fund and appropriation item for the same purpose and to the same vendor. As determined by the Director, encumbrances re-established in the fiscal year in a different fund or appropriation item used by an agency or between agencies are appropriated. The Director must reduce each year's appropriation balances by the amount of the encumbrance canceled in their respective funds and appropriation item. Any unencumbered or unallocated appropriation balances from the previous fiscal year can be transferred to the appropriate appropriation item to be used for the same purposes, as determined by the Director.

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 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.

- Exempts members and employees of the Capitol Square Review and Advisory Board from the definition of "public employee" under the Public Employees Collective Bargaining Law.

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.

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 members and employees of the Capitol Square Review and Advisory Board

(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.[141] The bill adds to that list of exemptions members and employees of the Capitol Square Review and Advisory Board, meaning that, under the bill, such persons are not "public employees" for purposes of the PECBL.

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

[141] 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).)

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 (EPA) solid, infectious, and hazardous waste and construction and demolition debris management programs and to pay the EPA's costs associated with administering and enforcing environmental protection programs.

- 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.

- Requires the fees on the disposal of construction and demolition debris levied under the Construction and Demolition Debris Law to be paid by a customer to the owner or operator of a construction and demolition debris facility or solid waste facility, as applicable; specifies that the owner or operator is entitled to and may request a refund or credit of the fees that are remitted to a board of health or the Director of Environmental Protection, as applicable, if a customer fails to pay the fees to the owner or operator; declares that an owner or operator is not responsible for any penalties regarding those fees; and defines "customer" as including any person who contracts with or utilizes the services of a construction and demolition debris facility or solid waste facility for the disposal of construction and demolition debris.

- 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.

- Alters the purposes for which money in the Scrap Tire Management Fund may be used 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.

- Alters the definition of "new construction and demolition debris facility" or "new facility" in the Construction and Demolition Debris Law.

- Revises the definition of "pulverized debris" in the Construction and Demolition Debris Law, and states that the existence of small particles and dust in a load of construction and demolition debris does not render the load unidentifiable as construction and demolition debris.

- Declares that for purposes of the statute that establishes certain notification requirements when a load of construction and demolition debris is rejected, acceptance of a load of construction and demolition debris is deemed to occur when the debris is placed on the working face of a construction and demolition debris facility for final disposal and rejection of a load of construction and demolition debris before acceptance of the load of debris is not a violation of the Construction and Demolition Debris Law.

- Requires the Director of Environmental Protection to appoint and convene an advisory board to advise the Director with respect to the adoption of rules under the Construction and Demolition Debris Law, requires the advisory board to include three representatives of construction and demolition debris facilities in the state and three representatives from certain types of health districts, and requires the Director to obtain the advice of the advisory board in adopting those rules.

- Adds the Construction and Demolition Debris Law and rules adopted under it to the list of environmental laws to which the existing five-year statute of limitations for civil actions for civil or administrative penalties brought under those laws applies, and, with regard to that Law and rules adopted under it, provides that if an agency, department, or governmental authority actually knew or was informed of an occurrence, omission, or facts on which a civil action is based prior to the effective date of the bill's provisions, the cause of action for civil or administrative penalties must be commenced not later than five years after that effective date.

- Authorizes the Governor to issue an executive order providing for the extension for a period of six months of the motor vehicle inspection and maintenance program contract that is scheduled to expire on June 30, 2009; upon termination of the six-month contract extension, authorizes the Governor to issue such an executive order ordering any new contract governing the motor vehicle inspection and maintenance program through June 30, 2011, with a possible extension through June 30, 2012; and limits the implementation of the program to counties in which the program was operating on January 1, 2009, without the approval of the General Assembly.

- Makes other changes regarding the motor vehicle inspection and maintenance program, including provisions that establish requirements governing a competitive selection process for a contract to operate the program, replace the Motor Vehicle Inspection and Maintenance Fund with the Auto Emissions Test Fund, state the General Assembly's intent concerning the program, and require the Director of Environmental Protection annually to request the United States Environmental Protection Agency to provide information on alternative approaches to meet federal performance standards and program changes.

- 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, 3714.074, 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.

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.

Refund of construction and demolition debris disposal fees

Current law requires owners and operators of construction and demolition debris facilities and solid waste facilities to collect construction and demolition debris fees, file monthly returns, and forward the fees to the applicable board of health or the Director of Environmental Protection, as applicable. The bill requires the fees to be paid by a customer to the owner or operator of a construction and demolition debris facility or solid waste facility, as applicable. The bill then specifies that the owner or operator is entitled to and may request a refund or credit of the fees that are remitted to a board of health or the Director, as applicable, if a customer fails to pay the fees to the owner or operator. Further the bill declares that an owner or operator is not responsible for any penalties regarding those fees. The bill defines "customer" as including any person who contracts with or utilizes the services of a construction and demolition debris facility or solid waste facility for the disposal of construction and demolition debris.

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.

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 EPA'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 must 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 retains the cap on the amount of money that may be expended to administer and enforce the scrap tire management program. It then streamlines the requirements for other expenditures of money in the Scrap Tire Management Fund in each fiscal year as follows:

(1) $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;

(2) $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

(3) 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.

Construction and demolition debris management program

(R.C. 3714.01, 3714.011, 3714.02, 3718.081, 3714.083, and 3745.31)

Definition of "new construction and demolition debris facility"

The Construction and Demolition Debris Law currently defines "new construction and demolition debris facility" or "new facility" as including an existing

facility that is proposing to expand the facility beyond the limits of construction and demolition debris placement approved by a board of health or the Director of Environmental Protection, as applicable. The bill alters the definition of "new construction and demolition debris facility" or "new facility" by stating that it means:

(1) A facility applying for an initial permit to install after December 22, 2005;

(2) A facility in existence on December 22, 2005, that is proposing to horizontally expand the facility beyond the boundary of the property owned or controlled by the owner or operator of the facility as of December 22, 2005; and

(3) A facility for which an initial permit to install has been issued after December 22, 2005, for which there is a proposal to horizontally expand the limits of construction and demolition debris placement beyond the limits approved in the initial permit to install.

The bill then declares that "new facility" does not include a facility for which there is a proposal to vertically expand the limits of construction and demolition debris placement approved for the facility under the Construction and Demolition Debris Law and rules adopted under it.

Pulverized debris

Current law defines "pulverized debris" to mean a load of debris that, after demolition has occurred, but prior to acceptance of the load of debris for disposal, has been shredded, crushed, ground, or otherwise rendered to such an extent that the load of debris is unidentifiable as construction and demolition debris. The bill instead defines "pulverized debris" to mean a load of debris that has been uniformly shredded, ground, or reduced by mechanical means prior to acceptance for disposal to such an extent that the majority of the load of debris cannot be identified as resulting from construction and demolition debris activities. The bill then states that for purposes of the Construction and Demolition Debris Law, the existence of small particles and dust in a load of construction and demolition debris does not render the load unidentifiable as construction and demolition debris.

Acceptance of construction and demolition debris

Under current law, if the owner or operator of a construction and demolition debris facility rejects a load of debris that has been accepted at the unloading zone of the facility because the load is not eligible for disposal at the facility under the Construction and Demolition Debris Law and rules adopted under it, the owner or operator must notify the Director of Environmental Protection or a board of health, as applicable, of the rejection of the load. Current law then establishes requirements

governing the notification and the type of information that must be included with it. The bill declares that acceptance of a load of construction and demolition debris is deemed to occur when the debris is placed on the working face of a construction and demolition debris facility for final disposal. The bill further declares that rejection of a load of construction and demolition debris before acceptance of the load of debris is not a violation of the Construction and Demolition Debris Law and rules adopted under it.

Construction and demolition debris advisory board

The bill requires the Director of Environmental Protection to appoint and convene an advisory board to advise the Director with respect to the rules that the Director must adopt governing construction and demolition debris facilities and the inspection of and issuance of permits to install and licenses for those facilities. The advisory board must include, without limitation, three representatives of construction and demolition debris facilities in the state, one of whom must be the owner or operator of a licensed construction and demolition debris facility, and three representatives from health districts that are on the approved list for the purposes of issuing permits to install and licenses under the Construction and Demolition Debris Law, each of whom must represent a health district in which an existing licensed construction and demolition debris facility is located. The bill then requires the Director to obtain the advice of the advisory board in adopting those rules.

Statute of limitations

Current law provides that any action under any of specified environmental laws (see below) for civil or administrative penalties of any kind brought by any agency or department of the state or by any other governmental authority charged with enforcing those environmental laws must be commenced within five years of the time when the agency, department, or governmental authority actually knew or was informed of the occurrence, omission, or facts on which the cause of action is based. However, if an agency, department, or governmental authority actually knew or was informed of an occurrence, omission, or facts on which a cause of action is based prior to July 23, 2002, the cause of action for civil or administrative penalties of any kind for the alleged violation must be commenced not later than five years after July 23, 2002.

Current law defines "environmental law" to mean the statutes governing the issuance of national pollutant discharge elimination system permits in the Concentrated Animal Feeding Facilities Law, the statutes governing petroleum underground storage tanks in the Fire Marshal Law, the Air Pollution Control Law, the Solid, Hazardous, and Infectious Waste Law, the Environmental Protection Agency Law, the Emergency Planning Law, the Hazardous Substances Law, the Cessation of Regulated Operations Law, the Risk Management Program Law, the Safe Drinking Water Law, the Water

Pollution Control Law, any rule adopted under those statutes or laws or adopted for the purpose of implementing them, and any applicable provisions of the Nuisance Law when an environmentally related nuisance action is brought.

The time periods established under current law apply only if, during those periods, proper service of process can be given in accordance with the Rules of Civil Procedure and jurisdiction of a court in Ohio can be obtained. In addition, current law provides that the time periods may be tolled by mutual agreement between the enforcing agency, department, or authority and the person who is subject to a civil or administrative penalty of any kind under an environmental law. Existing law also provides that when an action seeks injunctive relief or another remedy in addition to a remedy of civil or administrative penalties of any kind under an environmental law, the time periods apply only to the remedy of civil or administrative penalties.

The bill adds the Construction and Demolition Debris Law to the current definition of "environmental law," thus applying all of the above provisions concerning the existing five-year statute of limitations for civil actions for civil or administrative penalties brought under those laws to such civil actions brought under the Construction and Demolition Debris Law. In addition, with regard to the Construction and Demolition Debris Law and rules adopted under it, the bill provides that if an agency, department, or governmental authority actually knew or was informed of an occurrence, omission, or facts on which a civil action is based prior to the effective date of the bill's provisions, the cause of action for civil or administrative penalties must be commenced not later than five years after that effective date.

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 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 for the extension of the motor vehicle inspection and maintenance program through June 30, 2012. Under the bill, if the Governor determines that the implementation of a motor vehicle inspection and maintenance program is necessary for the state to effectively comply with the requirements of the federal Clean Air Act after June 30, 2009, the Governor, by executive order, may provide for the implementation of the program in those counties in this state in which such a program is in operation on January 1, 2009, pursuant to a federal mandate by ordering 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 order, 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 ordered under the bill by the Governor, the Governor, by executive order, may order 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 in operation on January 1, 2009, pursuant to a federal mandate. The contract must provide for the operation of the program through June 30, 2011. The contract also must include an option for the state to renew the contract through June 30, 2012. However, the option to renew the contract must require the Governor to issue an executive order authorizing such a renewal.

The Director of Administrative Services must select a vendor through a competitive selection process in compliance with current law. Notwithstanding any law to the contrary, the bill requires the Director to ensure that a competitive selection process regarding a contract to operate a motor vehicle inspection and maintenance program in Ohio incorporates the following elements, which must be included in the contract:

(1) A requirement that the vendor selected to operate the program provide notification of the program's requirements to each owner of a motor vehicle that is required to be inspected under the program. The contract must require the notification to be provided not later than 60 days prior to the date by which the owner of the motor vehicle is required to have the motor vehicle inspected. The Director of Environmental Protection and the vendor must jointly agree on the content of the notice. However, the notice must include at a minimum the locations of all inspection facilities within a specified distance of the address that is listed on the owner's motor vehicle registration.

(2) A requirement that the vendor selected to operate the program spend not more than $500,000 over the term of the contract for public education regarding the locations at which motor vehicle inspections will be conducted;

(3) A requirement that the vendor selected to operate the program acquire all facilities that were previously utilized for motor vehicle emissions inspections via arm's-length transactions at the discretion of the interested parties if the vendor chooses to utilize those inspection facilities for purposes of the contract. The competitive selection process must not include a requirement that a vendor pay book value for such facilities.

(4) A requirement that the motor vehicle inspection and maintenance program utilize established local businesses, such as existing motor vehicle repair facilities, for the purpose of expanding the number of inspection facilities for consumer convenience and increased local business participation.

Any competitive selection process that is or has been initiated for purposes of a new contract to operate a motor vehicle inspection and maintenance program must comply with the above provisions.

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 repeals 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. Instead, the bill declares that a motor vehicle inspection and maintenance program must not be implemented in any county in which such a program is not authorized under the bill without the approval of the General Assembly through the enactment of legislation. Further, the bill declares that a motor vehicle inspection and maintenance program must not be implemented in any county beyond June 30, 2012, without the approval of the General Assembly through the enactment of legislation.

The Director must adopt rules in accordance with the Administrative Procedure Act that the Director determines are necessary to implement 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 of Environmental Protection must use money in the Auto Emissions Test Fund solely for the implementation, supervision, administration, operation, and enforcement of the motor vehicle inspection and maintenance program

established under the 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.

Declarations of intent

The bill declares that, notwithstanding the provisions of the bill establishing the authority to continue the motor vehicle inspection and maintenance program, it is the intent of the General Assembly that the motor vehicle inspection and maintenance program that was in operation pursuant to the federal Clean Air Act on January 1, 2009, in certain counties of Ohio pursuant to a contract that is scheduled to expire June 30, 2009, not be extended beyond that date in those counties. However, if the Governor determines that the continuation of the program in those counties is necessary to comply with federal law, the Governor must issue executive orders extending the program in accordance with the bill. All executive orders issued under the bill must include provisions providing the authority that is necessary for the Director of Environmental Protection to establish decentralized approaches that meet federal performance standards.

Upon the issuance of any executive order regarding E-Check, the Governor must notify the General Assembly in writing of the Governor's decision to issue the executive order.

The bill then declares that it is the intent of the General Assembly that a tailpipe motor vehicle inspection and maintenance program not be implemented in any county in Ohio. Moreover, the bill declares that it is the intent of the General Assembly that, if

a motor vehicle-based ozone testing program is mandated by federal law for counties in the northeastern portion of Ohio, a tailpipe motor vehicle inspection and maintenance program not be implemented and that an onboard diagnostics only inspection and gas-cap testing program be utilized to satisfy any federal requirements for vehicle emissions testing.

Request to USEPA

Not later than 30 days after the effective date of the bill's provisions governing E-Check and on January 1 of each subsequent year, the Director of Environmental Protection must request the United States Environmental Protection Agency (USEPA) to provide the Director a list of alternative approaches to meet federal performance standards and program changes that Ohio may employ to comply with the federal Clean Air Act in lieu of the implementation of a motor vehicle inspection and maintenance program. Based on the information received from the USEPA, the Director must prepare a report concerning those alternative approaches. The Director must issue the report and provide it to the General Assembly not later than 30 days after receiving the list of alternative approaches from the USEPA.

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 EPA'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 EPA's and the Director's responsibilities for which money may be expended from the Hazardous Waste Clean-up Fund, the Environmental Protection Remediation Fund, and the Natural Resource Damages Fund.

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.

- Prohibits the Governor from issuing executive orders that have been previously issued and declared as anti-competitive.

- Prohibits the Governor's Residence Advisory Commission from using prison labor in exercising its responsibility (1) to provide for the care, provision, repair, and placement of furnishings and other objects and accessories on the grounds and public areas of the first floor of the Governor's Residence and (2) for the care and placement of plants on the grounds.

- Prohibits the Department of Administrative Services from using prison labor in providing for the general maintenance of the Governor's Residence.

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.

Executive orders of the Governor

(R.C. 107.19)

Article III, Section 5 of the Ohio Constitution vests the "supreme executive power" of the state in the Governor, and Article III, Section 6 requires the Governor to "see that the laws are faithfully executed." Inherent in these sections is the ability of the Governor to issue executive orders. The power to issue executive orders does not, however, appear to be absolute. For instance, the Governor cannot issue an executive order that directly conflicts with a statute (*State ex rel. S. Monroe and Son Co. v. Baker* (1952), 112 Ohio St. 356).

The bill specifies that the Governor has no power to issue any executive order that has previously been issued and that the Federal Trade Commission, Office of Policy Planning, Bureau of Economics, and Bureau of Competition has opined is anti-competitive and is in violation of anti-trust laws. The bill further provides that any such executive order shall be considered invalid and unenforceable.

Prohibition on the use of prison labor at the Governor's Residence

(R.C. 107.40)

Current law creates the Governor's Residence Advisory Commission, which is responsible for the care, provision, repair, and placement of furnishings and other objects and accessories on the grounds and public areas of the first floor of the Governor's Residence and (2) for the care and placement of plants on the grounds. The bill prohibits the Commission, when exercising this responsibility, from using prison labor. (R.C. 107.40(A).)

Current law also obliges the Department of Administrative Services to provide for and adopt policies and procedures regarding the use, general maintenance, and operating expenses of the Governor's Residence. The bill prohibits the Department

from using prison labor in providing for the general maintenance of the Governor's Residence. (R.C. 107.40(B).)

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.

- Requires the Department of Health to use certain appropriated funds to distribute subsidies to counties to implement the Help Me Grow program, and specifies how these funds may be used in conjunction with other departments, funds, and services.

- Specifies requirements for home-visiting programs selected by a county family and children first council to be eligible for funding.

- Codifies the existing Help Me Grow Advisory Council, mirroring the requirements set forth in federal law.

- Allows the Director of Health to establish the Drug Rebate Program for Medically Handicapped Children (BCMH Drug Rebate Program), requires the program to be substantially similar to the Medicaid Supplemental Drug Rebate Program, allows the Director and the ODJFS Director to cooperate in obtaining rebates for all drug products that are covered by both programs, and authorizes ODJFS to act as the administrative agent for collection of rebates for the BCMH Drug Rebate Program.

- Eliminates the Governor's Advisory Council on Physical Fitness, Wellness, and Sports.

- Allows any health care provider to conduct an HIV test if an individual has consented to medical or other health care treatment from the provider and the provider determines that the test is necessary for providing diagnosis and treatment.

- Eliminates from statute the express requirement that a person or government entity obtain informed consent from a person prior to conducting an HIV test on the person.

- Eliminates the requirement that a person or government entity, before conducting an HIV test on a person, provide the person with certain information.

- Requires a health care provider conducting an HIV test to provide post-test counseling when a person's test result is HIV-positive.

- Requires a health care provider to inform an individual of the individual's existing right to an anonymous HIV test.

- Exempts certain entities from the requirement to obtain a license from the Department of Health as a freestanding diagnostic imaging center.

- 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.

- Requires the Director of Health to accept CON applications for up to 30 nursing home beds in an existing nursing home if the beds are relocated from a contiguous county and beds will remain in the original county.

- Establishes a new CON comparative review 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.

- 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, beginning with the second review period after an initial two-year review period.

- Modifies current reasons and establishes new reasons for which the Director must deny a CON application for addition of long-term care beds to an existing facility or for the development of a new facility, particularly by replacing the standard for denial that is based on a long-standing pattern of deficiencies with a standard for denial that is based on citations for deficiencies during the period encompassed by the three most recent standard surveys of the facility.

- Eliminates provisions of the CON statutes concerning health care activities for which a CON is no longer required.

- Revises the Dentist Loan Repayment Program.

- Extends the required length of service in a dental health shortage area to two years (from one).

- Increases the maximum amount of the dentist loan repayment to $25,000 for each of the first two years, 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.

- Requires the State Registrar of Vital Statistics to review, each month, all death certificates received from local registrars of vital statistics and vital statistics officials in other states in the preceding month and to report to county boards of elections and county auditors certain information from such certificates regarding adults who resided in the respective counties at the time of their deaths.

- Requires county boards of elections and county auditors to use the information received from the reports from the Registrar to cancel the voter registrations of the decedents and to verify whether a property where a decedent resided continues to qualify for a reduction in real property taxes under the senior citizen homestead exemption or the 2.5% owner-occupied rollback.

- 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.

- 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, rather than the Joint Commission or the American Osteopathic Association.

- 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.

- Requires the Director of Health to apply for federal funding under the Abstinence Education Program component of the Maternal and Child Health Services Block Grant.

- Amends provisions of Am. Sub. H.B. 119 of the 127th General Assembly that temporarily suspended the operation of certain provisions of the Household and Small Flow On-Site Sewage Treatment Systems Law and that enacted temporary provisions regarding that Law by extending the termination of the suspension and the temporary law from July 1, 2009, to July 1, 2011.

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 or a national child death review database, either of which must maintain the confidentiality of information that would permit a person's identity to be ascertained.

Help Me Grow program funding

(Section 289.20)

The bill permits appropriations made to the Department of Health to distribute subsidies to counties to implement the Help Me Grow program to be used in conjunction with Early Intervention funding from the Department of Mental Retardation and Developmental Disabilities, and in conjunction with other early childhood funds and services to promote the optimal development of young children and family-centered programs and services that acknowledge and support the social, emotional, cognitive, intellectual, and physical development of children and the vital role of families in ensuring the well-being and success of children.

The bill also requires the Department of Health to enter into an interagency agreement with the Department of Education, the Department of Mental Retardation and Developmental Disabilities, the Department of Job and Family Services, and the Department of Mental Health to ensure that all early childhood programs and initiatives are coordinated and school linked.

Help Me Grow home-visiting programs

(Section 289.20)

Under the bill, if a county family and children first council selects home-visiting programs, the home-visiting program will only be eligible for funding if it serves pregnant women or parents or other primary caregivers and the parent or other primary caregiver's child or children under three years of age, through quality programs of early childhood home visitation. The bill also provides that to be eligible for funding, the home visitations must be performed by nurses, social workers, child

development specialists, or other well-trained and competent staff, as demonstrated by education or training and the provision of ongoing specific training and supervision in the model of service being delivered.

The bill requires eligible home-visiting programs to have outcome and research standards that demonstrate ongoing positive outcomes for children, parents, and other primary caregivers that enhance child health and development, and to conform to a clear consistent home visitation model that has been in existence for at least three years. The home visitation model must be research-based; grounded in relevant, empirically based knowledge; linked to program-determined outcomes; associated with a national organization or institution of higher education that has comprehensive home visitation program standards that ensure high quality service delivery and continuous program improvement; and have demonstrated significant positive outcomes when evaluated using well-designed and rigorous randomized, controlled, or quasi-experimental research designs, and the evaluation results have been published in a peer-reviewed journal.

Help Me Grow Advisory Council

(R.C. 3701.611)

The 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.[142] 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;[143]

(2) Advise and assist the Department of Health in the preparation and amendment of applications related to the Department of Health's responsibilities;

(3) Advise and assist the Department of Education regarding the transition of toddlers with disabilities to preschool and other appropriate services;

(4) Prepare and submit an annual report to the Governor, before September 30, on the status of early intervention programs for infants and toddlers with disabilities and their families operated within Ohio during the most recent fiscal year.

The bill permits the Help Me Grow Advisory Council to advise and assist the Department of Health and the Department of Education regarding the provision of appropriate services for children age five and younger. The Council may advise appropriate agencies about the integration of services for infants and toddlers with disabilities, and at-risk infants and toddlers and their families, regardless of whether at-risk infants and toddlers are eligible for early intervention services.

The bill requires the Help Me Grow Advisory Council to promote family-centered programs and services that acknowledge and support the social, emotional, cognitive, intellectual, and physical development of children and the vital role of families in ensuring the well-being and success of children.

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[142] 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)).

[143] The bill designates the Department of Health as the "lead agency" for the purposes of this federal law.

Bureau for Children with Medical Handicaps drug rebate program

(R.C. 3701.021, 3701.0212, and 5111.081)

The bill permits the Director of Health to adopt rules establishing the Drug Rebate Program for Medically Handicapped Children (BCMH Drug Rebate Program) and requires the program to be substantially similar to the Medicaid Supplemental Drug Rebate Program. If the Director establishes the BCMH Drug Rebate Program, the Director must consult with drug manufacturers regarding the implementation of the program. A drug manufacturer participating in the program must provide drug rebates to the program for medically handicapped children in accordance with the Director's rules. All rebates received are to be credited to the Drug Rebate for Medically Handicapped Children Fund in the state treasury, created by the bill, and used for the administration of the Program for Medically Handicapped Children.

The bill also allows the Director of Health and the Director of Job and Family Services to cooperate in obtaining rebates for all drug products that are covered by the BCMH and Medicaid Drug Rebate Programs. ODJFS may serve as the administrative agent for the collection of drug rebates for the BCMH Drug Rebate Program.

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.

HIV testing

(R.C. 3701.242)

The bill modifies the existing laws governing the procedures to be followed before and after performing a test on a person for the human immunodeficiency virus (HIV). The table below compares the provisions of current law with the provisions of the bill.

TOPIC	CURRENT LAW	THE BILL
CONSENT	In order to perform an HIV test, the person or agency of state or local government ordering or performing the test must obtain informed consent from the individual to be tested prior to the test.[144]	The bill generally eliminates this requirement.
	Consent to be tested is presumed to be valid and effective, and no evidence is admissible in a civil action to impeach, modify, or limit the consent.	The bill eliminates this provision.
	A minor may also consent to an HIV test; the parents or guardian of the minor are not liable for payment for the test. The consent is not subject to disaffirmance because of minority.	Same as current law, but the bill additionally specifies that the parents or guardian of the minor must *not be charged* for the test.
INFORMATION GIVEN TO PERSON TO BE TESTED	The person or agency must also provide the individual to be tested, or the individual's guardian, with an explanation of the following: (1) the test and testing procedures, including the purposes and limitations of the test and the meaning of its results, (2) that the test is voluntary, (3) if the test is performed on an outpatient basis, that consent to be tested may be withdrawn at any time before the individual tested leaves the premises where blood is taken for the test, or, if the test is performed on an inpatient basis, within one hour after the blood is taken for the test, (4) that the individual or guardian	The bill eliminates this requirement.

[144] Consent may be oral or written (R.C. 3701.242(A)).

TOPIC	CURRENT LAW	THE BILL
	may elect to have an anonymous test, and (5) the behaviors known to pose risks for transmission of HIV infection. [145]	
COUNSELING	The person or government agency ordering or performing an HIV test must provide counseling to the individual tested when the individual is (1) told the result of the test or (2) informed of a diagnosis of AIDS or of an AIDS-related condition. The individual is to be given an explanation of the nature of AIDS and AIDS-related conditions, the relationship between the HIV test and those diseases, and a list of resources for further counseling or support. When necessary, the individual is to be referred for further counseling to help cope with the emotional consequences of learning the test result.	The bill eliminates this requirement and instead specifies that a health care provider[146] ordering an HIV test must provide post-test counseling for an individual who receives an HIV-positive test result.
ANONYMITY	Any individual seeking an HIV test has the right to an anonymous HIV test upon request. A health care facility[147] or health care provider that does not provide anonymous testing	The bill retains this provision and requires a health care provider to inform the individual of this right when the provider orders an HIV test.

[145] A person or government agency required to provide this information may obtain the signature of the individual to be tested on an informed consent form prepared by the Director of Health in rule as evidence of satisfying this requirement (R.C. 3701.242(A)).

[146] "Health care provider" means an individual who provides diagnostic, evaluative, or treatment services. The Public Health Council has the authority to adopt rules further defining the scope of the term "health care provider." (R.C. 3701.24(A)(11).)

[147] "Health care facility" means any facility, except a health care practitioner's office, that provides preventive, diagnostic, therapeutic, acute convalescent, rehabilitation, mental health, mental retardation, intermediate care, or skilled nursing services (R.C. 1751.01(M)).

TOPIC	CURRENT LAW	THE BILL
	must refer the individual to a site where it is available.	
EXCEPTIONS	Generally, if the following circumstances exist, the consent, information to be given to the individual being tested, counseling, and anonymity provisions of current law (discussed above) do not apply: (1) When the test is performed in a medical emergency by a nurse or physician and the test results are medically necessary to avoid or minimize an immediate danger to the health or safety of the individual to be tested or another individual. However, counseling must be given to the tested person as soon as possible after the emergency is over. (2) When the test is performed for the purpose of research if the researcher does not know and cannot determine the identity of the tested individual. (3) When the test is performed by a person who procures, processes, distributes, or uses a human body part from a deceased person donated as an anatomical gift, if the test is medically necessary to ensure that the body part is acceptable for its intended purpose. (4) When the test is performed on an individual incarcerated in a correctional institution	The bill eliminates the exemption from the informed consent requirement for these circumstances, but retains the exemptions from the minor consent, counseling, and anonymity provisions. (1) The bill retains this exception but instead specifies that the post-test counseling shall be given if the individual receives an HIV-positive test result, rather than after the emergency. (2) No change. (3) No change. (4) No change.

TOPIC	CURRENT LAW	THE BILL
	under the control of the Department of Rehabilitation and Correction if the head of the institution has determined, based on good cause, that a test is necessary.	
	(5) When the test is performed by or on the order of a physician who, in the exercise of his professional judgment, determines the test to be necessary for providing diagnosis and treatment to the individual to be tested, if the individual or the individual's parent or guardian gives consent to the physician for medical treatment.	(5) The bill instead permits any health care provider, rather than only a physician, to order or perform an HIV test. The bill also specifies that the health care provider may perform or order the test if the individual, or individual's parent or guardian, consents to medical *or other health care* treatment. This provision replaces the informed consent requirement eliminated by the bill.
	(6) When the test is performed on a person after the infection control committee of a health care facility, or other similar body, determines that a health care provider, emergency medical services worker, or peace officer, while rendering health or emergency care to the individual, has sustained a significant exposure to the body fluids of that individual, and the individual has refused to give consent for testing.	(6) No change.
	(7) When the test is ordered by a court in connection with a criminal investigation.	(7) The bill eliminates this provision.

TOPIC	CURRENT LAW	THE BILL
PUBLIC HEALTH COUNCIL RULES	The Public Health Council must adopt rules, pursuant to recommendations from the Director of Health and in accordance with the Administrative Procedure Act, specifying the information required to be given to an individual before the individual is given an HIV test, including specifications for an informed consent form that includes the required information and is to be prepared and distributed by the Director of Health.	The bill eliminates the requirement to adopt these rules. (The requirement becomes obsolete under the changes made by the bill.)
	No provision.	The bill permits the Public Health Council to adopt rules, pursuant to recommendations from the Director of Health and in accordance with the Administrative Procedure Act, which specify the information to be provided in the post-test counseling required by the bill.

The bill also makes conforming changes to the law governing the testing and treatment of sex offenders for HIV and the law permitting certain persons to bring an action in court to compel another person to undergo HIV testing (R.C. 2907.27 and 3701.247).

Licensure as a freestanding diagnostic imaging center

(R.C. 3702.30)

Current law prohibits certain types of health care facilities from operating without a license issued by the Director of Health. This licensing requirement applies to all of the following: (1) an ambulatory surgical facility, (2) a freestanding dialysis center, (3) a freestanding inpatient rehabilitation facility, (4) a freestanding birthing center, (5) a freestanding radiation therapy center, and (6) a freestanding or mobile diagnostic imaging center.

The bill exempts the following entities from the requirement to obtain a license as a freestanding diagnostic imaging center:

(1) A registered hospital providing diagnostic imaging;

(2) An entity that is reviewed as part of a hospital accreditation or certification program providing diagnostic imaging;

(3) An ambulatory surgical facility providing diagnostic imaging in conjunction with or during any portion of a surgical procedure.

Certificate of Need program

(R.C. 3702.51, 3702.52, 3702.524, 3702.525, 3702.53, 3702.532, 3702.54, 3702.544, 3702.55, 3702.57, 3702.59, 3702.592, 3702.593, 3702.594, 3702.60, 3702.61, and 5155.38; 3702.511, 3702.523, 3702.527, 3702.528, 3702.529, and 3702.542 (repealed))

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 a new or existing one in the same county and the beds are proposed to be one of the following types of beds:

(1) Beds used in a new or existing health care facility and licensed by the Director as nursing home beds;

(2) Beds used in a new or existing county home or county nursing home and certified under Medicare as skilled nursing facility beds or under Medicaid as nursing facility beds;

(3) Beds used in a hospital and registered with the Department of Health as long-term care beds 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 a contiguous county

The bill requires the Director to accept CON applications for an increase of up to 30 beds in an existing nursing home if all of the following conditions are met:

(1) The proposed increase is attributable solely to a relocation of licensed nursing home beds from an existing nursing home to another existing nursing home in a contiguous county;

(2) After the relocation, existing nursing home beds will remain in the county from which the beds are relocated;

(3) The beds are proposed to be licensed as nursing home beds.

Comparative review for relocation between counties

The 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 if the relocated beds are proposed to be one of the following types of beds:

(1) Beds used in a new or existing health care facility and licensed by the Director as nursing home beds;

(2) Beds used in a new or existing county home or county nursing home and certified under Medicare as skilled nursing facility beds or under Medicaid as nursing facility beds;

(3) Beds used in a hospital and registered with the Department of Health as long-term care beds.

The Director is to do all of the following to implement the comparative review:

(1) Determine the long-term care bed supply for each county, which is to consist of all of the following:

(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;[148]

(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, again on April 1, 2012, and every four years thereafter, determine for each county, using the formula developed in rules to be adopted under the 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 to be 90% for a projected population aged 65 and older.

The Director's consideration of a CON that would increase the number of beds in a county must be consistent with the county's bed need with two exceptions:

(1) If a county's occupancy rate is less than 85%, the county is to be considered to have no need for additional beds.

(2) Even if a county is determined not to need any additional long-term care beds, if it has a long-term care bed occupancy rate greater than 90%, the Director may approve an increase in beds equal to up to 10% of the county's bed supply.

The period for each comparative review is to be four years, except that the first period is to be two years, beginning July 1, 2010, and ending June 30, 2012.

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[148] 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.)

CON applications are to be accepted and reviewed from the first day of each period through April 30 of the following year, which is to be the initial phase of the review period for all review periods except for the first, which is to have only one phase. If the Director determines that there will be acceptance and review of additional CON applications, the second phase of the review period is to begin on July 1 of the third year of the review period. The second phase is to be limited to acceptance and review of applications for redistribution of beds made available as described below.

Beds taken out of service

When a CON application is approved during the initial phase of a four-year review period, on completion of the project under which the beds are relocated, that number of beds must cease to be operated in the health care facility from which they were relocated. If the licensure or certification of those beds cannot be or is not 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 four-year review period is complete, the Director must make a new determination of the bed need for each county by reducing the county's bed need by the number of beds approved in that phase for relocation to the county. The new bed-need determination must be made not later than April 1 of the third year of the review period.

If the Director decides to redistribute the additional beds that were taken out of service, the Director may publish on the Department's web site the remaining bed need for counties that will be considered for redistribution of the additional beds. The Director must base the determination of whether to include a county on the web site on all of the following:

(1) The statewide number of additional beds that have ceased or will cease to be operated;

(2) The county's remaining bed need;

(3) The county's bed occupancy rate.

If the Director publishes the remaining bed need for a county, the Director may, beginning on the first day of the second phase of the review period, accept CON applications for redistribution of the additional beds. Any beds not approved for redistribution during the second phase 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 the census tract in which the facility is located if the facility is in a federally designated health professional shortage area, or, if the facility is not in a shortage area, the bed need for the area within a 15-mile radius of the facility, is at least equal to the state bed-need rate.

In determining which applicants should receive preference in the comparative review process, the Director must consider all of the following as weighted priorities:

(1) Whether the beds will be part of a continuing care retirement community;

(2) Whether the beds will serve an underserved population, such as low-income individuals, individuals with disabilities, or individuals who are members of racial or ethnic minority groups;

(3) Whether the project in which the beds will be included will provide alternatives to institutional care, such as adult day-care, home health care, respite or

hospice care, mobile meals, residential care, independent living, or congregate living services;

(4) Whether the health care facility's owner or operator will participate in Medicaid waiver programs for alternatives to institutional care;

(5) Whether the project in which the beds will be included will reduce alternatives to institutional care by converting residential care beds or other alternative care beds to long-term care beds;

(6) Whether the facility in which the beds will be placed has positive resident and family satisfaction surveys;

(7) Whether the facility in which the beds will be placed has fewer than 50 long-term care beds;

(8) Whether the health care facility in which the beds will be placed is located within the service area of a hospital and is designed to accept patients for rehabilitation after an in-patient hospital stay;

(9) Whether the health care facility in which the beds will be placed is, or proposes to become, a nurse aide training and testing site;

(10) The rating, under the Centers for Medicare and Medicaid Services'[149] 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

[149] CMS is part of the United State Department of Health and Human Services, the federal agency that administers Medicare and Medicaid.

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.

Reasons to deny CON

Current law requires the Director to deny a CON application for addition of long-term care beds or for the development of a new health care facility under certain circumstances. For example, the Director must deny a CON application unless the existing health care facility to which beds are being relocated has no waivers for life safety code deficiencies, no state fire code violations, and no state building code violations, or the project identified in the application proposes to correct such problems.

Under current law, a CON application is to be denied unless, during the 60-month period preceding the filing of the application, no notice of proposed license revocation was issued under state law governing nursing home licensure to the operator of the existing facility to which the beds are being relocated or to any health care facility owned or operated by the applicant or any principal participant in the corporation or other business. The bill provides instead that a CON application is to be denied if, during the 60-month period preceding the filing of the application, a notice of proposed license revocation was issued under state law governing nursing home licensure for the existing health care facility in which the beds are being placed or a nursing home (rather than a health care facility)[150] owned or operated by the applicant or the corporation or other business that operates or seeks to operate the health care facility in which the beds are being placed (rather than the principal participant in the same corporation or other business).

Current law requires the Director to deny a CON application unless neither the existing health care facility to which the beds are being relocated nor any health care facility owned or operated by the applicant or any principal participant in the same corporation or other business has had a long-standing pattern of violations of state law governing CONs or deficiencies that caused one or more residents physical, emotional, mental, or psychosocial harm. The bill eliminates this "long-standing pattern of

[150] Nursing homes are one type of facility included in the definition of "health care facility" but, even though current law uses the term health care facility, this provision applies only to facilities for which a notice of proposed license revocation is issued under state law governing nursing home licensure.

violations or deficiencies" reason to deny a CON application and instead establishes other reasons for which a CON must be denied.

Under the bill, a CON application is to be denied if, during the period that precedes the filing of the application and is encompassed by the three most recent standard surveys of the existing health care facility in which the beds are being placed, any of the following occurred:

(1) The facility was cited on three or more separate occasions for final, nonappealable deficiencies that, under a federal regulation, either constitute a pattern of deficiencies resulting in actual harm that is not immediate jeopardy or are widespread deficiencies resulting in actual harm that is not immediate jeopardy.

(2) The facility was cited on two or more separate occasions for final, nonappealable deficiencies that, under a federal regulation, either constitute a pattern of deficiencies resulting in immediate jeopardy to resident health or safety or are widespread deficiencies resulting in immediate jeopardy to resident health or safety.

(3) More than two nursing homes operated in Ohio by the applicant or the person who operates the facility in which the beds are being placed or, if the applicant or person operates more than 20 nursing homes in Ohio, more than 10% of those nursing homes, were each cited on three or more separate occasions for final, nonappealable deficiencies that, under a federal regulation, either constitute a pattern of deficiencies resulting in actual harm that is not immediate jeopardy or are widespread deficiencies resulting in actual harm that is not immediate jeopardy.

(4) More than two nursing homes operated in Ohio by the applicant or the person who operates the facility in which the beds are being placed or, if the applicant or person operates more than 20 nursing homes in Ohio, more than 10% of those nursing homes, were each cited on two more occasions for final, nonappealable deficiencies that, under a federal regulation, either constitute a pattern of deficiencies resulting in immediate jeopardy to resident health or safety or are widespread deficiencies resulting in immediate jeopardy to resident health or safety.

The bill prohibits the Director, in applying the reasons under current law and the bill to deny a CON application due to deficiencies, from considering deficiencies citied before the current operator began to operate the health care facility at which the deficiencies were cited. The Director is permitted to disregard deficiencies cited after the health care facility was acquired by the current operator if the deficiencies are attributable to circumstances that arose under the previous operator and the current operator has implemented measures to alleviate the circumstances. In the case of an application proposing development of a new health care facility by relocation of beds,

the Director is prohibited from considering deficiencies that were solely attributable to the physical plant of the existing health care facility from which the beds are being relocated.

Rather than requiring the Director to deny a CON application if the applicant or any principal participant in the same corporation or other business has had a long-standing pattern of violations of state law governing CONs, the bill requires the Director to deny a CON application if, during the 60-month period preceding the filing of the application, the applicant has violated state law governing CONs on two or more separate occasions.

Dentist Loan Repayment Program

(R.C. 3702.87, 3702.89, 3702.90, 3702.91, 3702.92, 3702.93, and 3702.94; Section 289.20)

The Department of Health oversees the Dentist Loan Repayment Program. Under 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.[151]

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.

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[151] 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.

Dentist Loan Repayment Program report

The Dentist Loan Repayment Advisory Board must submit an annual report to the General Assembly describing the operations of the Program during the previous calendar year. The bill requires the Board to also submit the report to the Governor.

Vital statistics--reports of deaths to county auditors and boards of elections

(R.C. 3705.03, 3705.031, 319.24, and 3503.18, 3503.21)

Current law requires the chief health officer of each political subdivision and the Director of Health to file with each county board of elections, at least once each month, the names, dates of birth, dates of death, and residences of all adults who have died within the subdivision or within Ohio or another state within such month. Each county board of elections is required to use this information to promptly cancel the voter registrations of each deceased elector. Current law does not require similar reports to be made to county auditors.

The bill replaces the provision described above with the following:

(1) The State Registrar of Vital Statistics must review, in each calendar month, all death certificates received in the preceding month from local registrars of vital statistics pursuant to a requirement in current law (R.C. 3705.07), as well as those received from vital statistics officials in other states.

(2) The Registrar must determine from each death certificate identified pursuant to the review all of the following information:

(a) The decedent's name, date of birth, date of death, and age on the date of death;

(b) The address of the decedent's residence on the date of death;

(c) The county and state in which the decedent's residence was located.

(3) The Registrar must file, not later than the end of the calendar month in which a review occurs, a report with each county auditor and each county board of elections a report that summarizes the information described in (2), above, for each decedent whose residence was located in that county.

On a county auditor's receipt of a report from the Registrar, the bill requires the auditor to use the information to assist the auditor in verifying whether real property or a manufactured or mobile home is eligible for the senior citizen homestead exemption

provided for under current law (R.C. 323.15(A) or 4503.065)[152] or the 2.5% rollback in real property taxes that applies under current law (R.C. 323.15(B)) to owner-occupied residences.

On a county board of elections' receipt of a report from the Registrar, the bill requires the board to cancel the voter registration of each decedent named in the report.

Hospice licensing fees

(R.C. 3712.03)

Current law authorizes the Ohio Public Health Council to establish a license fee and license renewal fee for hospice care programs in Ohio "not to exceed" $300. The bill increases the maximum amount to $600 and clarifies that the limitation applies to license fees and license renewal fees.

Nursing home and residential care facility licensing fees

(R.C. 3721.02)

The Director of Health is responsible for licensing nursing homes[153] and residential care facilities.[154] The Director must inspect a home or facility at least once before issuing a license and at least once every 15 months thereafter. The Director is required to charge an application fee and an annual renewal licensing and inspection fee. Current law sets the fees at $170 for each 50 persons or part thereof of a home or facility's licensed capacity. The bill increases the fees as follows:

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[152] Under the homestead exemption, the property taxes charged against homes, and the manufactured home tax on manufactured or mobile homes, owned and occupied by all of the following are reduced: (1) an owner who is permanently and totally disabled, (2) an owner who is at least 65 years of age, and (3) the surviving spouse (at least 59 years of age but not age 65 or older) of a deceased owner who, at the time of death, was permanently and totally disabled or at least 65 years of age and who applied and qualified for a reduction in taxes in the year of death.

[153] 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)).

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

(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.

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.[155]

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.

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[155] Revised Code § 3722.01(A)(6).)

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[156] and an adult care facility. In that case, individuals in the unit licensed as a nursing home are counted separately from individuals in the unit licensed as an adult care facility.

The bill provides that if an adult care facility is also licensed as a nursing home, residential facility,[157] or both, individuals in the unit licensed as a nursing home, residential care facility, or both, are to be counted separately from individuals in the unit licensed as an adult care facility.

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[156] "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).)

[157] "Residential care facility" means a home that provides either of the following: (1) accommodations for 17 or more unrelated individuals and supervision and personal care services for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment or (2) accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment and skilled nursing care to at least one of those individuals. (R.C. § 3721.01(A)(7).)

Temporary licenses

(R.C. 3722.04)

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.

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.[158]

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

[158] A "mental health resident program participation agreement" means a written agreement between an adult care facility and the ADAMHS board serving the alcohol, drug addiction, and mental health service district in which the facility is located, under which the facility is authorized to admit residents who are receiving or are eligible for publicly funded mental health services. (R.C. 3722.01(A)(15).)

resident program participation agreements. As part of approving the form, the Director is required to specify the requirements that facilities must meet to admit residents who are receiving or are eligible for publicly funded mental health services.

Under 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 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[159] 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[160] payments: (1) the inspection is to be coordinated with the appropriate mental health agency, ADAMHS board, or PASSPORT[161] administrative agency and (2) the inspection may be conducted jointly with the mental health agency, ADAMHS board, or PASSPORT administrative agency.

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.

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[159] 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).)

[160] 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.

[161] 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.

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[162] or the American Osteopathic Association.[163] 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

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[162] The Joint Commission evaluates and accredits more than 15,000 health care organizations and programs in the United States. It is an independent, not-for-profit organization. *Facts about The Joint Commission* (last visited Feb. 4, 2009), available at <http://www.jointcommission.org/AboutUs/Fact_Sheets/joint_commission_facts.htm>.

[163] 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>.

organization approved by the Centers for Medicare and Medicaid Services,[164] rather than the Joint Commission or the American Osteopathic Association.

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.

Federal funds for abstinence education

(Section 289.60)

The bill requires the Director of Health to apply to the United States Secretary of Health and Human Services for funding under the Abstinence Education Program component of the Maternal and Child Health Services Block Grant (Title V of the Social Security Act).

According to the United States Department of Health and Human Services Administration, Children and Families' Family and Youth Services Bureau, the purpose of the Abstinence Education Program is to "enable States to create or augment existing abstinence education programs and, at the option of the state, provide mentoring, counseling, and adult supervision to promote abstinence from sexual activity with a focus on those groups most likely to bear children out-of-wedlock." Abstinence education is defined as an educational or motivational program that:

- Has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;
- Teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

[164] The Centers for Medicare and Medicaid is part of the U.S. Department of Health and Human Services.

- Teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems;

- Teaches that a mutually faithful monogamous relationship in the context of marriage is the expected standard of human sexual activity;

- Teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

- Teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;

- Teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances;

- Teaches the importance of attaining self-sufficiency before engaging in sexual activity.

Grants are awarded to states based on a statutory formula determined by the proportion of low-income children in a state to the total number of low-income children in all states according to the latest census data. Ohio would be required to match 75% of the federal funds.[165]

Extension of moratorium regarding the sewage treatment systems program

(Sections 640.20 and 640.21)

Am. Sub. H.B. 119 of the 127th General Assembly suspended until July 1, 2009, the operation of most of the provisions of the Household and Small Flow On-Site Sewage Treatment Systems Law that was enacted by Sub. H.B. 231 of the 125th General Assembly. In addition, Am. Sub. H.B. 119 generally restored the law related to household sewage disposal systems that existed prior to the enactment of Sub. H.B. 231 until July 1, 2009. In order to effectuate the suspension of the Sub. H.B. 231 provisions and the restoration of the law that existed prior to its enactment, Am. Sub. H.B. 119 required the Director of Health, not later than July 2, 2007, to adopt rules related to household sewage disposal systems that were identical to those in effect prior to January 1, 2007, and to rescind the rules adopted pursuant to Sub. H.B. 231. Am. Sub. H.B. 119 also established additional requirements governing the duties of boards of

[165] Information obtained from the United States Department of Health and Human Services Administration for Children and Families' web site (www.acf.hhs.gov/programs/fysb/content/abstinence/factsheet.htm).

health with respect to the approval or denial of the use of sewage treatment systems and with respect to the inspection of systems. Those requirements are required to be effective until the effective date of new rules to be adopted by the Public Health Council when the suspended provisions of the Household and Small Flow On-Site Sewage Treatment Systems Law become operational again on July 1, 2009. Am. Sub. H.B. 119 prohibited the Director of Health and the Public Health Council from adopting new rules that modify or change the requirements established by Am. Sub. H.B. 119 prior to July 1, 2009. The provisions established by Am. Sub. H.B. 119 that govern household and small flow on-site sewage treatment systems expire on the effective date of the new rules.

The bill amends the provisions of Am. Sub. H.B. 119 that temporarily suspended the operation of provisions of the Household and Small Flow On-Site Sewage Treatment Systems Law and that enacted temporary provisions regarding that Law by extending the termination of the suspension and the temporary law from July 1, 2009, to July 1, 2011. The bill also extends the date until which the Director of Health and the Public Health Council are prohibited from adopting rules that modify or change the requirements established by Am. Sub. H.B. 119 from July 1, 2009, to July 1, 2011.

OHIO HOUSING FINANCE AGENCY (HFA)

- Requires the Ohio Housing Finance Agency, in providing homeownership program assistance, to give preference to grants or loans for activities that provide housing and housing assistance to honorably discharged veterans.

Housing assistance for honorably discharged veterans

(R.C. 175.052)

The bill requires the Ohio Housing Finance Agency, in providing homeownership program assistance, to give preference to grants or loans for activities that provide housing and housing assistance to honorably discharged veterans.

DEPARTMENT OF INSURANCE (INS)

- Transfers from the Director of Health to the Superintendent of Insurance authority to review a health insuring corporation's capability of providing the health care services for which the corporation is seeking a certificate of authority.

- Makes changes to the way preexisting conditions exclusions and limitations are determined.

- 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.

- 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.

- Requires third party payers to pay claims for health care services to a provider electronically under Ohio's Prompt Payment Law when the third party payer receives the claim electronically.

- Clarifies that insurers must file the premium rates for small employer health benefit plans according to the requirements for group policies of a heath insuring corporation or sickness and accident insurer, as applicable.

- Reduces the minimum number of employees or members of a trade or professional organization, labor union, or other association necessary to qualify for a sickness and accident insurance franchise plan with respect to long-term care insurance or disability income insurance.

- Clarifies that policies or certificates of sickness and accident insurance that are sold on the market to individuals are individual policies for the purposes of premium rate review regardless of whether those policies or certificates are issued through group policies.

- Creates the Health Care Coverage and Quality Council to advise the Governor, General Assembly, public and private entities, and consumers on strategies to expand affordable health insurance coverage to more individuals and improve the cost and quality of Ohio's health insurance system and health care system.

- Removes the statutory cap on homeowners insurance rates and basic property insurance rates that are established by the Ohio Fair Plan Underwriting Association

for urban areas and instead requires that those rates be subject directly to the approval of the Superintendent of Insurance.

- Allows the Ohio Fair Plan Underwriting Association to approve payment of a percentage of the estimated annual premium due, instead of the entire estimated annual premium, before issuing a binder.

- Changes the effective date of a binder issued by the Ohio Fair Plan Underwriting Association from 15 days after the date of application to the day after the Association receives the application.

- Requires property and casualty insurance companies to annually submit to the Superintendent of Insurance specified actuarial documents.

- Places a moratorium on the Department of Insurance's designation of entities to provide investment options under alternative retirement plans established by public institutions of higher education until July 1, 2010.

Review of health insuring corporation's capability and availability of services--certificate of authority

(R.C. 1751.03, 1751.04, 1751.05, 1751.19, 1751.32, 1751.321,1751.34, 1751.35, 1751.36, 1751.45, 1751.46, 1751.48, and 1753.09)

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.

Franchise plans

(R.C. 3923.11)

A franchise plan is a group of insurance policies issued to individuals in a group rather than to the group as a whole. Under current law sickness and accident insurers may issue franchise plans to either of the following:

(1) Five or more employees of any corporation, copartnership, or individual employer, or of any governmental corporation or agency or a department;

(2) Ten or more members of any trade or professional association, or labor union, or any other association having had an active existence for at least two years where the association or union has a constitution or bylaws and is formed in good faith for purposes other than that of obtaining insurance.

In order for the policies to be considered as issued on a franchise plan, the employees or members must be issued the same form of an individual policy, varying only in the amounts and kinds of coverage for which the employees or members apply. Additionally, the premiums may be paid to the insurer periodically by the employer or by the association for its members, or by some designated person acting on behalf of the employer or association.

The bill reduces to two or more the number of employees or members of a trade or professional organization, labor union, or other association necessary to qualify for a sickness and accident insurance on a franchise plan with respect to long-term care insurance or disability income insurance.

Independent, external reviews of health care coverage decisions

(R.C. 1751.831, 1751.84, 1751.85, 3923.66, 3923.67, 3923.68, 3923.75, 3923.76, and 3923.77)

Under continuing law, health insuring corporations, sickness and accident insurers (insurers), and public employee benefit plans (plans) must provide for external reviews of certain health care coverage decisions made by those entities.

External reviews at the request of the insured person

If a health care coverage decision denies, reduces, or terminates coverage for a particular service on the basis that the service is not medically necessary, continuing law requires the health insuring corporation, insurer, or plan that makes that decision to afford the insured person who has been denied coverage an opportunity for an external review upon that person's request. The same is required if a decision denies, reduces, or terminates coverage for a drug, device, procedure, or other therapy for a terminal condition on the basis that the therapy is experimental or investigatory.

Under 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 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.

Electronic payment of claims

(R.C. 3901.381)

The bill requires third party payers to pay claims for health care services to a provider electronically under Ohio's Prompt Payment Law when the third party payer receives the claim electronically. The bill also prohibits providers from refusing to accept those payments on the basis that they were transmitted electronically. Both of these changes would become effective 12 months after the bill's effective date.

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,[166] 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.

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[166] 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 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.

Health Care Coverage and Quality Council

(R.C. 3923.90 and 3923.91; Section 307.20)

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, with the advice and consent of the Senate:

(a) Two representatives of consumers of health care services;

(b) Two representatives of employers that provide health care coverage to their employees;

(c) Two representatives of medical facilities, at least one of whom is a representative of a research and academic medical center;

(d) Two physicians;

(e) Two individuals or representatives of individuals authorized to practice dentistry, optometry, podiatry, or chiropractic;

(f) Two representatives of sickness and accident insurers or health insuring corporations;

(g) Two representatives of organized labor;

(h) One representative of a nonprofit organization experienced in health care data collection and analysis;

(i) One individual with expertise in health information technology and exchange;

(j) One representative of a state retirement system;[167]

(k) One public health professional.

(9) Other members to be appointed by the Superintendent of Insurance.

Appointments to the Council must be made not later than 30 days after the bill's effective date. The initial legislative members are to be appointed for terms ending three years from the date of appointment.[168] 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

[167] 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).

[168] Legislative members cease to be Council members on ceasing to be members of the General Assembly.

appointments to the Council. Thereafter, all appointed members are to serve terms of three years.

The Council is required to hold its first meeting not later than September 1, 2009. The Superintendent of Insurance or the Superintendent's designee is to serve as chairperson of the Council. Members are to serve without compensation, except to the extent that serving on the Council is considered part of their regular employment duties. The Superintendent is authorized by the bill to provide staff and other administrative support for the Council to carry out its duties.

Duties and reports

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;

(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) 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.

In addition to the duties specified above, the Council is required to evaluate and recommend strategies pursuant to the recommendations of the former Ohio Medicaid Administrative Study Council[169] to establish an initiative conducted by clinicians in the Office of Ohio Health Plans within the Department of Job and Family Services to do all of the following:

(1) Adopt evidence-based protocols for the prevention and management of disease;

(2) Develop a centralized system for payment of Medicaid claims;

(3) Provide physicians, nurses, and allied health professionals with training on Medicaid claims procedures and payment reforms;

(4) Monitor results for preventive and primary care services.

Not later than June 30, 2010, the Council must submit a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

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.

[169] The Ohio Medicaid Administrative Study Council was created under Am. Sub. H.B. 66 of the 126th General Assembly, the main operating budget for fiscal years 2006 and 2007. The Council ceased to exist after issuing its final report to the Governor, Senate President, and House Speaker in December 2006. (Ohio Medicaid Administrative Study Council, *About the Council* (last visited May 29, 2009), available at <http://www.medicaidstudycouncil.ohio.gov/description.asp>.

The Ohio Fair Plan Underwriting Association

(R.C. 3929.43)

Under continuing law, the Ohio Fair Plan Underwriting Association is charged with making basic property insurance and homeowners insurance available in urban areas to people whose property is insurable in accordance with reasonable underwriting standards but who are unable to get insurance through normal channels. This task is accomplished through a plan of operation, which is approved by the Superintendent of Insurance and implemented by every insurer who is authorized to write basic property insurance in Ohio as members of the Association.

Rates for basic property insurance and homeowners insurance

Current law specifies that the rates for the basic property insurance offered under the Fair Plan cannot exceed those filed with the Superintendent of Insurance by the major rating organization in Ohio. For homeowners insurance rates, the Association can file deviations from the rating organization's rates, but those deviations are subject 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.

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 a qualified actuary[170] prepare the following documents:

(1) A "Statement of Actuarial Opinion" (an actuarial opinion that certifies to the reasonableness of the insurance company's reserves);

(2) An "Actuarial Opinion Summary" (a summary in support of the Statement of Actuarial Opinion). Except, the 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 exempt property and casualty insurance companies from the requirement to prepare and submit these documents.

Additionally, 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 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.

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[170] 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.

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 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.

Providers of investment options under alternative retirement plans

(Section 739.10)

Current law requires the Department of Insurance to designate three or more entities to provide investment options under alternative retirement plans established by public institutions of higher education in accordance with Ohio's law governing alternative retirement plans (R.C. Chapter 3305.) and provides specific requirements that, if met, qualify an entity to be a designated provider. The bill requires the Department to withhold from designating any additional entities that the Department has not designated prior to the effective date of this provision of the bill until July 1, 2010.

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 or

when ODJFS determines through an annual close out or reconciliation of funds that a county did not use the entire amount of the funds.

- 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

- Requires the parent, guardian, or custodian of each child receiving child care from a type A or type B family day-care home that is not covered by liability insurance to sign a written statement, instead of an affidavit, provided by the licensee of the type A family day-care home or the provider of the type B family day-care home stating that the family day-care home does not carry liability insurance.

- Creates a committee to study publicly funded child care services, which must prepare a report of its findings by June 30, 2010, and provide a copy of the report to the Governor, the Speaker of the House of Representatives, and the President of the Senate.

IV. Child Support Enforcement

- Requires health insurance providers to send information to the Office of Child Support in ODJFS identifying policy holders and policy information upon request.

- 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.

- Authorizes a court or child support enforcement agency to transmit a child support withholding or deduction notice to an obligor's payor by secure electronic format instead of by regular mail.

- Requires payors who submit combined child support withholdings and deductions to the Office of Child Support in ODJFS to provide the case numbers from the income withholding or deduction notice.

- Requires the ODJFS Director to adopt rules for the compromise and waiver of child support arrearages owed to the state and federal governments, consistent with the federal Title IV-D program.

V. Temporary Assistance for Needy Families (TANF)

- Reenacts prior law that provides for a sanction under the Ohio Works First (OWF) program to continue for the longer of one to six months (depending on the number of previous sanctions) and the date the failure or refusal to comply with a self-sufficiency contract ceases.

- Requires ODJFS to provide an OWF assistance group member who causes a sanction a compliance form the member may complete to indicate willingness to come into full compliance with a provision of a self-sufficiency contract.

- Provides that an OWF member's failure or refusal to comply in full with a provision of a self-sufficiency contract is deemed to have ceased on the date a CDJFS receives the compliance form from the member if the compliance form is completed and provided to the CDJFS in the manner specified in ODJFS's rules.

- Provides that an OWF assistance group must reapply to participate in OWF before resuming participation following a sanction if a CDJFS does not receive the compliance form within a period of time specified in ODJFS rules.

VI. Medicaid

- Prohibits the Medicaid program from covering a group of persons or a service designated by federal law as a group or service that a state, at its option, may cover under its Medicaid program unless the Medicaid program covers the group or service on the effective date of this provision of the bill or Ohio law enacted after that date expressly authorizes the Medicaid program to cover the group or service.

- Authorizes a CDJFS, subject to federal approval if needed, to permit a parent to not have 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 local agencies administering parts of the Medicaid program to report annually to ODJFS and the Office of Budget and Management regarding Medicaid expenditures.

- 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.

- Requires the ODJFS Director to establish and administer a pilot program for the purpose of identifying third parties that are liable for paying all or part of a claim for a medical item or service provided to a Medicaid recipient before the claim is submitted to, or paid by, the Medicaid program and specifies that the pilot program may not be terminated prior to 18 months after it is established.

- Modifies the laws governing ODJFS's use of time-limited Medicaid provider agreements by (1) extending the phase-in period to January 1, 2015 (from January 1, 2011), (2) extending the duration of time-limited agreements to seven years (from three), and (3) exempting hospitals from the requirement that provider agreements be time-limited.

- Provides that ODJFS is not required to issue an order pursuant to an adjudication conducted in accordance with the Administrative Procedure Act when doing any of the following: (1) denying, terminating, or not renewing a Medicaid provider agreement because a provider's owner, officer, authorized agent, associate, manager, or employee has been convicted of an offense that caused the provider agreement to be suspended, (2) terminating or not renewing a Medicaid provider agreement because the provider has not billed or otherwise submitted a Medicaid claim to ODJFS for at least two years, regardless of whether ODJFS has determined that the provider has moved from the address on record with ODJFS without leaving an active forwarding address, or (3) denying, terminating, or not renewing a Medicaid provider agreement because the provider fails to provide to ODJFS the National Provider Identifier assigned to the provider.

- Adds to the offenses that disqualify a person from being a Medicaid provider or employed by a Medicaid provider, and applies the same disqualifying offenses to a provider of home and community-based waiver services and any of its employees.

- Includes, among the additional disqualifying offenses, cruelty to animals, permitting child abuse, menacing, arson, and a violation of any municipal ordinance that is substantially equivalent to the new or existing disqualifying offenses.

- Specifies that the date a person was convicted of, entered a guilty plea to, or was found eligible for intervention in lieu of conviction for an offense that disqualifies the person from being a Medicaid provider, provider of home and community-based services, or an employee of such providers is irrelevant for purposes of determining the person's eligibility to be a provider or an employee.

- Requires ODJFS to prepare an annual Medicaid fraud, waste, and abuse report in collaboration with fraud and investigative personnel from the Attorney General's office, State Auditor's office, and other state and local agencies that administer Medicaid services.

- Requires each Medicaid provider selected by ODJFS to give a surety bond against the risk of fraud, and requires ODJFS to apply the bond requirement to each provider investigated for any criminal offense of fraud.

- Prohibits ODJFS and Medicaid managed care organizations from reimbursing a provider for providing a high-technology radiological service to a Medicaid recipient unless the service is prior authorized in accordance with rules.

- Provides that the prior authorization requirement does not apply if the high-technology radiological service is needed due to a documented, medical emergency or used as part of mammography screening or cytological screening covered by the Medicaid program.

- Requires ODJFS to study the issue of requiring prior authorization for all services and goods available under the fee-for-service component of the Medicaid program and to submit a report of its study to the General Assembly not later than October 1, 2009.

- Requires, rather than permits, the ODJFS Director to establish an e-prescribing system for the Medicaid program.

- Requires the ODJFS Director to pay a dispensing fee of $12 to a Medicaid pharmacist-provider (rather than the dispensing fee established by the ODJFS Director on a biennial basis (currently $3.70)) if (1) the prescription was filled for a

Medicaid recipient who received the prescription while being treated by a health care professional who is an employee or agent of, or volunteer for, an organization that participates in the federal 340B Drug Pricing Program, and (2) the per unit price that the organization paid to acquire the drug from the manufacturer is $20 or more.

- Requires the ODJFS Director to reimburse a pharmacy for each prescription filled under the conditions described above an amount that equals the product of (1) the per unit price the 340B participating organization paid to acquire the drug from the manufacturer, and (2) the total number of units of the drug dispensed.

- Modifies the duties, administration, and membership of ODJFS's Pharmacy and Therapeutics Committee.

- Requires ODJFS to post certain information regarding the Pharmacy and Therapeutics Committee on the ODJFS web site.

- Requires ODJFS to establish a disease management program for Medicaid.

- Requires ODJFS to conduct a review of case management services provided under the fee-for-service component of the Medicaid program.

- Requires ODJFS to implement an Alternative Care Management Program under which ODJFS evaluates the effectiveness of varying alternative care management models and maintains statistics on each model.

- Creates a committee consisting of two members of the Senate, two members of the House of Representatives, and members appointed by the Governor to study the issue of funding the Medicaid program through franchise permit fees on providers of health-care services.

- 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.

- Changes the franchise permit fee on nursing home beds and hospitals' long-term care beds to an amount determined by a formula rather than an express dollar amount.

- Provides for the Home and Community-Based Services for the Aged Fund to receive 8.55% 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 two groups of nursing homes and (2) reduce, for each nursing facility with more than 200 Medicaid-certified beds, the franchise permit fee for a number of the nursing facility's beds specified by ODJFS to the amount necessary to obtain approval of the waiver.

- Permits ODJFS to increase uniformly the franchise permit fee for each nursing home and hospital not qualifying for a reduction to an amount that will have the franchise permit fee raise an amount of money that does not exceed the amount the franchise permit fee would raise if not for the waiver.

- 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.

- Provides for a successor index published by the United States Bureau of Labor Statistics to be used in applying inflationary adjustments to nursing facilities' Medicaid rates for direct care and ancillary and support costs if the indexes specified in statute cease to be published.

- 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.

- Revises the law governing nursing facilities' Medicaid rates for direct care costs by (1) using the nursing facility in each peer group that is at the median, rather than the

25th percentile, of the cost per case-mix unit in a certain calculation and (2) changing the percentage used in that calculation.

- Revises the law governing nursing facilities' Medicaid rates for ancillary and support costs by changing, beginning with fiscal year 2012, (1) the percentile used in determining which nursing facility in each peer group is to be used in a certain calculation and (2) the percentage used in that calculation.

- Requires ODJFS to use various factors from calendar year 2003 in determining nursing facilities' rates for direct care and ancillary and support costs until fiscal year 2015 rates are calculated.

- 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.

- Requires ODJFS, beginning in fiscal year 2013, to adjust nursing facilities' total Medicaid rates annually by the market basket index used in calculating skilled nursing facilities' Medicare rates.

- Requires ODJFS, not later than December 31, 2010, to issue a report with recommendations for developing a new system for reimbursing nursing facilities' capital costs under the Medicaid program.

- Requires, for purposes of Medicaid reimbursement, that the costs of day programming be part of the direct care costs of an ICF/MR as off-site day programming if the area in which the day programming is provided is not certified as an ICF/MR and regardless of whether (1) the area in which the day programming is provided is less than 200 feet away from the ICF/MR or (2) the provider of the day programming is a related party to the ICF/MR.

- 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.

- 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.

- 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 $279.88, (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 $282.54, (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.

- Revises the law governing the collection of a nursing facility or ICF/MR's Medicaid debt when the nursing facility or ICF/MR undergoes a change of operator, closes, or ceases to participate in the Medicaid program.

- 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.

- 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.

- Provides that a community behavioral health board (1) is required to use state funds provided to the board for the purpose of funding community behavioral health services to pay a provider for services under a Medicaid component the Department of Mental Health or Department of Alcohol and Drug Addiction Services administers and (2) is permitted to use money raised by a county tax levy to make the payment if using the money for that purpose is consistent with the purpose for which the tax was levied.

- Provides that the comprehensive annual plan is permitted, rather than required, to certify the availability of unencumbered community mental health local funds to match Medicaid reimbursement funds earned by community mental health facilities.

- Imposes, for fiscal years 2010 and 2011, an assessment on hospitals based on their total facility costs but conditions imposition of the assessment on the state receiving federal approval for the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program.

- Permits ODJFS to audit a hospital to ensure that the hospital properly pays its assessment and permits 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 specifies how the money in the fund is to be used.

- Requires ODJFS to take all necessary actions to cease implementation of the hospital assessment if the federal government determines that the assessment is an impermissible health care-related tax under federal Medicaid law.

- Repeals the law governing the hospital assessment effective July 1, 2011.

- 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, other than children's hospitals, and requires that the system for making the supplemental Medicaid payments not cause cost outlier and supplemental payments to children's hospitals to be reduced or eliminated.

- Requires ODJFS to take all necessary actions to cease implementation of the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program if the federal government determines that the assessments on hospitals are an impermissible health care-related tax under federal Medicaid law.

- Repeals the law governing the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program effective July 1, 2011.

- For fiscal years 2010 and 2011, (1) requires the ODJFS Director to pay the full cost (100%) of Medicaid cost outlier claims for inpatient admissions at children's hospitals that are less than a threshold amount ($443,463 in 2002, adjusted annually for inflation), rather than just 85% of the cost, but (2) specifies that paying the full cost of such claims must cease and revert back to 85% of the estimated cost when the difference between the total amount the Director has paid at full cost for the outlier claims and the total amount the Director would have paid for such claims at the 85% level exceeds the sum of the state funds made available for the additional cost outlier payments in each fiscal year and the corresponding federal match.

- For fiscal years 2010 and 2011, requires the ODJFS Director to make supplemental Medicaid payments to children's hospitals for inpatient services under a program modeled after the program that ODJFS was required to create under Am. Sub. H.B. 66 of the 126th General Assembly 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 made available for the additional cost outlier payments in the applicable fiscal year.

- Prohibits the ODJFS Director from adopting, amending, or rescinding any rules that would result in decreasing the amount paid to children's hospitals for cost outlier claims.

- Increases the Medicaid reimbursement rate for hospital inpatient and outpatient services provided during fiscal years 2010 and 2011 by 5% over the rate for such services provided on June 30, 2009.

- Requires the ODJFS Director to increase the Medicaid reimbursement rate for hospital home health, ambulance, and hospice services (other than children's hospitals' home health, ambulance, and hospice services) to the maximum extent permitted by federal law but makes payment of the rate increases subject to funds being available in the Hospital Assessment Fund after money in that fund is spent according to specified priorities.

- Requires ODJFS to submit a report to the General Assembly on Medicaid expenditures for durable medical equipment and make recommendations on strategies to reduce the cost of such equipment.

- Requires ODJFS to study the potential use of a system under which wheelchairs received by Medicaid recipients are reallocated for reuse by other eligible Medicaid recipients when the wheelchairs are discarded, no longer required, or otherwise unused.

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.

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. Workforce Development

- Includes reimbursements to a county public assistance fund for expenditures made for activities funded by the Workforce Investment Act in the requirement that all expenditures of workforce development activities be made from local workforce development funds.

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[171] that is the subject of the report to the ODJFS General Services Administration and Operating Fund. Money in the ODJFS General Services Administration and Operating Fund is to be used to pay for expenses of the programs ODJFS administers and ODJFS's administrative expenses, including the costs of state hearings, required audit adjustments, and other related expenses.

[171] The Refunds and Audit Settlements Fund is a state fund used as a holding account for checks whose disposition cannot be determined at the time of receipt. The Fund was originally created by Am. Sub. H.B. 238 of the 116th General Assembly but law authorizing it has never been codified in the Revised Code.

Collaboration on welfare reform training

(R.C. 5101.072 (repealed))

The General Assembly enacted various welfare reforms in the 1990s, including Sub. H.B. 167 of the 121st General Assembly and Sub. H.B. 408 of the 122nd General Assembly. H.B. 167 predated federal welfare reform legislation that, in part, replaced the Aid to Families with Dependent Children program with the 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 or when ODJFS determines through an annual close out or reconciliation of funds that a county did not use the entire amount of any of the funds allocated to the county for either fiscal year. 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."

With respect to the reallocation, ODJFS must reallocate the portion of the funds the county will or did 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 will or did 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.[172]

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 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

[172] R.C. 5101.33.

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[173] feels that good grounds exist for an earlier change. The bill provides instead that no designation change may be made until the next eligibility

[173] The statute uses the term "department" in this context making it ambiguous as to whether it refers to ODJFS or a CDJFS.

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[174] 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 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

[174] *Id.*

implementation of an Alternative Response approach to child protection, ODJFS may expand the Alternative Response approach statewide through a schedule determined by ODJFS. Prior to statewide implementation, ODJFS must adopt rules, in accordance with the Administrative Procedure Act, as necessary to carry out the purposes of the Alternative Response program. Until that time, ODJFS may adopt rules, as if they were internal management rules, as necessary to carry out the purposes of the Alternative Response pilot program.

III. Publicly Funded Child Care

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.

Committee to study publicly funded child care services

(Section 309.40.70)

The bill creates a committee to study publicly funded child care services, including the Early Learning Initiative enacted pursuant to the bill and pursuant to changes in the administrative rules governing reimbursement and eligibility for publicly funded child day-care. The study must include the following subjects:

(1) The effects of changing the definitions of full-time and part-time care on children, families, and providers of care, including the effects on the quality of care; the number of children served and the availability and accessibility of subsidized care to caregivers with full-time and part-time jobs; the availability of full-time and part-time care in areas with a high incidence of poverty; private pay rates; closure of centers and center programs; and loss of jobs in the child care industry.

(2) The effects of changes to the Early Learning Initiative on families and children, including the distribution and use of program slots across the state; the effect

of mandatory participation in the voluntary child day-care center quality-rating program on program quality; outcomes in terms of school readiness, and other related factors for children who participate in the program.

The committee must consist of the following members:

(1) Three members of the House of Representatives, two appointed by the Speaker of the House of Representatives and one appointed by the Minority Leader of the House of Representatives;

(2) Three members of the Senate, two appointed by the President of the Senate and one appointed by the Minority Leader of the Senate;

(3) One parent of a child receiving publicly funded child care services, appointed by the President of the Senate;

(4) Two representatives of licensed child care centers serving low-income areas, one appointed by the Speaker of the House of Representatives and one appointed by the President of the Senate;

(5) One representative from the Ohio Association of Child Care Providers, appointed by the President of the Senate;

(6) One representative from the Ohio State Alliance of Young Men's Christian Associations, appointed by the Speaker of the House of Representatives;

(7) One representative from the Department of Job and Family Services, appointed by the Speaker of the House of Representatives; and

(8) One representative from the Department of Education, appointed by the President of the Senate.

The Department of Education must provide the committee meeting space and clerical assistance. The bill requires the committee to prepare a report of its findings by June 30, 2010, and to provide a copy of the report to the Governor, the Speaker of the House of Representatives, and the President of the Senate, at which time the committee will cease to exist.

IV. Child Support Enforcement

Office of Child Support requests for medical insurance information

(R.C. 3119.371)

The 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.

Issuance of income withholding notices

(R.C. 3121.03)

Continuing law requires a court or child support enforcement agency to issue a child support withholding or deduction notice to an obligor's payor by regular mail. The bill authorizes the court or child support enforcement agency to transmit the notice by secure federally managed electronic format instead of by regular mail.

Mandatory electronic remittance of child support by certain payors

(R.C. 3121.037, 3121.0311, and 3121.19)

Continuing law requires an employer to submit the entire amount withheld from an obligor's income pursuant to a child support withholding or deduction notice to the Office of Child Support in ODJFS immediately, but not later than 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 Ohio Works First (OWF) and the Prevention, Retention, and Contingency (PRC) program. Participants of OWF receive TANF-funded assistance and are therefore subject to the federal TANF requirements applicable to assistance such as time limits and work requirements. Each county is required to develop its own PRC program to provide benefits and services, but not assistance, that individuals need to overcome immediate barriers to achieving or maintaining self sufficiency and personal responsibility.

Ohio Works First (OWF) sanctions

(R.C. 5107.05, 5107.16, 5107.17, and 5111.01)

Continuing law modified by the 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. ODJFS is responsible for the administration of Medicaid. ODJFS, however, contracts with other entities to administer parts of the Medicaid program on ODJFS's behalf and perform certain administrative functions.

Medicaid coverage of optional groups and services

(R.C. 5111.01 and 5111.0211)

Federal Medicaid law requires states participating in Medicaid to cover certain groups of persons and types of services and gives states options for covering other groups of persons and types of services. Current state law authorizes ODJFS to provide medical assistance under the Medicaid program to persons in groups designated by federal law as groups to which a state, at its option, may provide medical assistance under the Medicaid program if sufficient funds are appropriated for the Medicaid

program. Current law also authorizes ODJFS to adopt rules establishing the amount, duration, and scope of services the Medicaid program covers.

The bill limits ODJFS's authority as regards the optional groups of persons and types of services the Medicaid program covers. ODJFS is prohibited by the bill from covering an optional group of persons or type of service under the Medicaid program unless (1) the Medicaid program covers the group or service on the effective date of this provision of the bill or (2) state statute enacted after the effective date of this provision of the bill expressly authorizes the Medicaid program to cover the group or service.

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 authorizes a CDJFS to permit such a parent to not have to undergo a redetermination of eligibility 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. However, a CDJFS's implementation of this authority is conditioned on the United States Secretary of Health and Human Services granting a federal Medicaid waiver if a waiver is needed. The ODJFS Director is required to apply for the waiver if the waiver is necessary.

Local reports on Medicaid expenditures

(R.C. 5111.093)

The bill requires certain local agencies that administer parts of the Medicaid program to report Medicaid expenditure information annually to ODJFS and the Office of Budget and Management. The following agencies are charged with providing the information: county departments of job and family services; county boards of mental retardation and developmental disabilities; community behavioral health boards; PASSPORT administrative agencies; boards of education of cities, local, and exempted village school districts; and the governing authorities of community schools. A local agency's annual report must contain the following information regarding the previous calendar year:

(1) The total amount of local government funds the local agency expended for the Medicaid program;

(2) The portion of that total amount that represents funds raised by local property tax levies;

(3) The local agency's total administrative costs for the Medicaid program;

(4) The local agency's administrative costs for the Medicaid program for which the local agency receives no federal financial participation;

(5) The total amount of state funds provided to the local agency for the Medicaid program.

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.[175] Consistent with federal law reflecting this intent, the U.S. Secretary of Health and Human Services has promulgated regulations[176] requiring states to have plans to (1) identify Medicaid recipients' other sources of health coverage, (2) determine the extent of the liability of third parties, (3) avoid payment of third party claims, and (4) seek reimbursement from third parties for claims paid if the state can reasonably expect to recover more than it spends in seeking the reimbursement.

Duties of liable third parties

(R.C. 5101.573)

Federal law

To enhance states' ability to identify and obtain payments from liable third parties, the Deficit Reduction Act of 2005[177] made several changes to the third party liability provisions of federal Medicaid law.[178] Under the federal act, states are required

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[175] 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.

[176] 42 C.F.R. Part 433, subpart D (2005).

[177] Pub. L. 109-171.

[178] 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>.

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.[179]

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.[180]

The bill--prior authorization

In addition to the current requirements, the bill (1) requires a third party to consider ODJFS's payment of a claim for a medical item or service to be the equivalent of the Medicaid recipient having obtained prior authorization for the item or service from the third party and (2) prohibits a third party from denying a claim paid by ODJFS solely on the basis of the Medicaid recipient's failure to obtain prior authorization for the medical item or service.

Pilot program

The bill requires the ODJFS Director, using technology designed to identify all persons liable to pay a claim for a medical item or service, to administer a pilot program for the purpose of identifying third parties that are liable for paying all or a portion of a claim for a medical item or service provided to a Medicaid recipient before the claim is submitted to, or paid by, the Medicaid program. The Director must determine the duration of the pilot program, but the bill prohibits the program from ending less than 18 months after it is established.

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[179] Discussed in letter from Dennis G. Smith, *supra*.

[180] R.C. 5101.573.

In administering the pilot program, the ODJFS Director must ensure that all aspects of the program comply with Ohio and federal law, including the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and regulations promulgated to implement HIPAA. The duty to ensure compliance with these laws, however, does not prohibit (1) a third party from providing information to ODJFS or disclosing or making use of information as permitted under current law governing third party responsibilities (R.C. 5101.572) or when required by any other provision of Ohio or federal law, or (2) ODJFS from using information provided by a third party as permitted by law governing third parties responsibilities or when required by any other provision of Ohio or federal law.

The bill permits the ODJFS Director to enter into a contract with any person under which the person serves as the administrator of the pilot program. Before entering into the contract, the ODJFS must issue a request for proposals from persons seeking to be considered. ODJFS must develop a process to be used in issuing the request for proposals, receiving responses, and evaluating the responses on a competitive basis. In accordance with that process, ODJFS must select the person to be awarded the contract.

The ODJFS Director is permitted by the bill to delegate to the person awarded the contract any of the Director's powers or duties with respect to the pilot program. The terms of the contract must specify the extent to which the powers or duties are delegated to the pilot program administrator. In exercising powers or performing duties delegated under the contract, the pilot program administrator is subject to the same provisions of the bill that grant powers or duties to the Director, as well as any limitations or restrictions that are applicable to or associated with those powers or duties. The terms of a contract for a pilot program administrator must include a provision that specifies that the ODJFS Director or any agent of the Director is not liable for the failure of the administrator to comply with a term of the contract, including any term that specifies the administrator's duty to ensure compliance with federal and state laws, including HIPAA.

Twelve months after the pilot program is established, the bill requires the ODJFS Director to evaluate the program's effectiveness. As part of this evaluation, the Director must determine both of the following:

(1) For the 12 months immediately preceding the establishment of the pilot program, all of the following:

(a) The amount of money paid for each Medicaid claim in which no third party liability was indicated by the Medicaid recipient but for which at least one third party

was liable to pay all or a portion of the claim, and the amount attributable to each liable party;

(b) The portion of the amounts attributable to each liable third party that were recovered by the Director or a person with which the Director has contracted to manage the recovery of money due from liable third parties.

(c) The portion of the amounts attributable to each liable third party that would have been identified by the technology used by the pilot program had the technology been used in those 12 months.

(2) For the first 12 months of the pilot program, the items described in divisions (1)(a) and (b), above, and the portion of the amounts attributable to each liable third party that were identified by the technology used by pilot program.

The bill requires the ODJFS Director, not later than three months after the evaluation is initiated, to prepare and submit to the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate a report that summarizes the results of the evaluation of the pilot program. At a minimum, the report must summarize and compare the Director's determinations regarding third party liability and recovery before and after the pilot program is established, as described above, conclude whether the program achieved savings for the Medicaid program, and make a recommendation as to whether the pilot program should be extended or be made permanent.

The bill permits the ODJFS Director to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) as necessary to implement the pilot program.

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[181] that is not an independent provider[182] 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.[183] The suspension is to continue in effect until the proceedings in the criminal case are completed through conviction, dismissal of the indictment, plea,

[181] A noninstitutional Medicaid provider is any Medicaid provider other than a hospital, nursing facility, or intermediate care facility for the mentally retarded.

[182] 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.

[183] ODJFS is permitted to adopt rules specifying circumstances under which ODJFS would not suspend such a Medicaid provider agreement.

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.[184]

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.

Exception related to National Provider Identifier

The bill creates a new exception that provides for ODJFS to deny, terminate, or not renew a Medicaid provider agreement without issuing an order pursuant to an adjudication when the provider fails to provide ODJFS the National Provider Identifier assigned the provider by the National Provider System under federal law. ODJFS is permitted to deny, terminate, or not renew a Medicaid provider agreement in such a situation by sending a notice explaining the proposed action to the provider. The notice must be sent to the provider's address on record with ODJFS and may be sent by regular mail.

Disqualifying offenses--Medicaid providers and home and community waiver services providers

(R.C. 109.572, 5111.032, 5111.033, and 5111.034)

Except in circumstances specified in rules ODJFS is permitted to adopt under current law, ODJFS is required to terminate a Medicaid provider agreement or independent provider agreement, or deny issuance of such an agreement, if the

[184] R.C. 5112.031.

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 fraud, waste, and abuse report

(R.C. 5111.092)

The bill requires ODJFS to prepare an annual report on its efforts to minimize fraud, waste, and abuse in the Medicaid program. Each report is to include goals and objectives to minimize fraud, waste, and abuse that are mutually agreed upon by ODJFS and the entities it collaborates with in preparing the report. Each report also must include performance measures for monitoring all state and local activities related to minimizing fraud, waste, and abuse.

ODJFS is to collaborate with all of the following in preparing the annual report:

(1) The Medicaid Fraud Control Unit of the Office of the Attorney General;

(2) The Fraud and Investigative Audit Group of the Auditor of State;

(3) State agencies that ODJFS contracts with to administer one or more components of the Medicaid program (for example, the Department of Aging and Department of Mental Retardation and Developmental Disabilities);

(4) County departments of job and family services.

The annual reports are to be available on ODJFS' web site and ODJFS is to make copies of the report available to the public on request. The first report is to be prepared no later than January 1, 2010.

Surety bond for Medicaid providers

(R.C. 5111.035)

Current law provides for specific civil penalties against a Medicaid provider under contract with ODJFS who, by deception, obtains or attempts to obtain payments under the Medicaid program to which the provider is not entitled or provides false information regarding a Medicaid payment.[185]

The bill requires each Medicaid provider selected by ODJFS to give bond with surety to ODJFS for the faithful adherence to the prohibitions against obtaining or attempting to obtain payments under the Medicaid program to which the provider is not entitled or providing false information regarding a Medicaid payment. ODJFS is to determine which providers are subject to the bond with surety requirement but, at a minimum, is to apply the requirement to each provider who has been investigated for any criminal offense of fraud. ODJFS is to set the amount of the bond at a level that reflects the level of risk of fraud by the provider.

Prior authorization for high-technology radiological services

(R.C. 5111.0210)

The bill prohibits, with certain exceptions, ODJFS and Medicaid managed care organizations from reimbursing a provider of a high-technology radiological service unless the service is prior authorized in accordance with ODJFS rules. The prohibition is to take effect November 1, 2009. "High-technology radiological service" is defined as a radiological service that the ODJFS Director identifies in rules as involving highly advanced or specialized systems or devices, including a radiological service that involves computed tomography, magnetic resonance imaging, nuclear cardiology, or a

[185] R.C. 5111.03.

positron emission tomography modality. The rules ODJFS adopts must establish a prior authorization system that applies evidence-based criteria in decisions regarding the medical necessity for a high-technology radiological service.

Prior authorization is not to be required if a high-technology radiological service is needed due to a documented, medical emergency or is used as part of a mammography screening or cytological screening that Medicaid covers.

Prior authorization study

(Section 309.32.50)

The bill requires ODJFS to study the issue of requiring prior authorization for all services and goods available under the fee-for-service component of the Medicaid program. ODJFS is required to issue a request for information to obtain information needed to conduct the study not later than August 1, 2009, and must issue a report regarding the study not later than October 1, 2009. The report must include a discussion of expected cost savings such as a prior authorization system would have for the Medicaid program. ODJFS is to submit the report to the General Assembly.[186]

Medicaid e-prescribing system

(R.C. 5111.083)

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[187] 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

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[186] 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)).

[187] 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).)

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 requires, rather than permits the ODJFS Director to establish such an e-prescribing system for the Medicaid program.

340B drugs

Background

The 340B Drug Pricing Program is a federal program created in 1992 with the enactment of Section 602 of the Veterans Health Care Act of 1992 (P.L. 102-585) (which put Section 340B of the Public Health Service Act into place). The Program requires drug manufacturers to provide access to outpatient drugs to certain "covered entities" specified in the statute (*e.g.*, federally qualified health centers, disproportionate share hospitals, family planning clinics, migrant health clinics, and HIV/AIDS programs and clinics, among others) at reduced prices. The 340B price defined in the statute is a ceiling price, meaning it is the highest price a covered entity would have to pay for a given outpatient drug. Entities can negotiate below ceiling prices with manufacturers. As a result, 340B prices have been found to be roughly 50% less than the Average Wholesale Price (AWP) and about 30% less than the "Medicaid Rebate Price."[188]

[188] U.S. Department of Health and Human Services, Health Resources and Services Administration, Pharmacy Services Support Center. *What is the 340B Program?* (last visited June 3, 2009), available at <http://pssc.aphanet.org/about/whatisthe340b.htm>. The "average wholesale price" is a national average of prices charged by wholesalers to pharmacies, calculated by pricing services. A "Medicaid rebate" is an amount of money that ODJFS receives from manufacturers on behalf of the Medicaid program after the sale of certain drugs.

Special dispensing fee

(R.C. 5111.071)

Current law requires the ODJFS Director to biennially in December establish a dispensing fee that is effective for the following January. The dispensing fee that is established must take into consideration the results of a survey of retail pharmacies that ODJFS is required to conduct every two years under current law (R.C. 5111.07). The dispensing fee that ODJFS established in July 1998 (that has not been changed since then) is $3.70.[189]

Notwithstanding the dispensing fee established by the ODJFS Director pursuant to current law (*i.e.*, the current $3.70 fee), the bill requires the ODJFS Director to pay to pharmacists a special dispensing fee of $12 per prescription filled for a Medicaid recipient if both of the following conditions apply:

(1) The prescription was issued by a licensed health professional authorized to prescribe drugs[190] while the professional was treating the patient as part of the professional's responsibilities as an employee or agent of, or volunteer for, a "covered entity"[191] (*i.e.*, a 340B organization).

(2) The per unit price that the covered entity paid to acquire the covered outpatient drug from a manufacturer of dangerous drugs is equal to or greater than $20.

For all other prescriptions dispensed to a Medicaid recipient, the normal $3.70 dispensing fee would be paid.

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[189] Telephone interview with Margaret Scott, Pharmacologist, ODJFS Ohio Health Plans Division (June 3, 2009).

[190] A "licensed health professional authorized to prescribe drugs" is an individual who is authorized by law to prescribe drugs or dangerous drugs or drug therapy related devices in the course of the individual's professional practice, including only the following: dentists; clinical nurse specialists, certified nurse-midwives, and certified nurse practitioners who hold a certificate to prescribe; optometrists who hold a therapeutic pharmaceutical agents certificate; physicians and podiatrists; physician assistants who hold a certificate to prescribe; and veterinarians. (R.C. 4729.01.)

[191] The bill defines a "covered entity" consistent with the definition in the law governing the 340B Program (42 U.S.C. 256b(a)(4)).

Special reimbursement rate

(R.C. 5111.085)

In general, states base their Medicaid reimbursements to a retail pharmacy for a covered outpatient prescription drug on the lowest of the following:[192]

(1) The state's best estimate of the retail pharmacy's acquisition cost for the drug;

(2) The pharmacy's usual and customary charge for the drug;

(3) The federal upper limit for the drug,[193] if applicable;

(4) The state's maximum allowable cost (MAC)[194] for the drug, if applicable.

The bill requires the ODJFS Director to reimburse a terminal distributor of dangerous drugs (*i.e.*, a pharmacy) that dispenses a Medicaid prescription that meets the conditions for a $12 dispensing fee (described above) an amount that equals the product of (a) the per unit price that the covered entity paid to acquire the drug from a manufacturer of dangerous drugs (*i.e.*, the 340B price or the "prime vendor price,"[195]) and (b) the total number of units of the drug dispensed. This special reimbursement rate applies notwithstanding any state maximum allowable cost for the drug

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[192] Government Accountability Office, Letter to Joe Barton (former chairman), U.S. House of Representatives Committee on Energy and Commerce (GAO-07-239R Medicaid Federal Upper Limits) (Dec. 22, 2006).

[193] Federal upper limits (FULs) must be established for what are generally referred to as "generic drugs" (i.e., multiple source drugs for which there are three or more therapeutically equivalent drug products) (42 U.S.C. 1396r-8(e)(4)). Required by law as a cost-containment strategy, FULs are calculated as 150% of the lowest price for a drug from among the prices published nationally in three drug pricing compendia. State Medicaid programs are authorized to determine their own reimbursements to retail pharmacies for covered outpatient multiple-source prescription drugs, as long as those reimbursements do not exceed established FULs in the aggregate. (Government Accountability Office letter, supra.)

[194] States that administer a Maximum Allowable Cost program publish lists of selected multiple-source drugs with the maximum price at which the state will reimburse for those drugs. Pharmacies generally do not receive payments that are higher than the MAC price. The MAC lists differ from the FUL list, as states have more discretion in determining which drugs to include on their MAC lists. Generally, state MAC lists include more drugs, and establish lower reimbursement prices, than the FUL list. Government Accountability Office letter, supra.

[195] Through the Prime Vendor Program, 340B organizations can negotiate with drug manufacturers for prices below the 340B ceiling price. National Conference of State Legislatures, STATE LEGISLATURES MAGAZINE, "Pharmaceutical Savings," (Oct./Nov. 2007), at 7.

determined pursuant to the State Maximum Allowable Cost Program that ODJFS must establish under current law (R.C. 5111.082) or any federal upper limit for the drug.[196]

ODJFS Pharmacy and Therapeutics Committee

(R.C. 5111.084)

Current law establishes the ODJFS Pharmacy and Therapeutics Committee. The bill specifies that the Committee must assist ODJFS with developing and maintaining a preferred drug list for the Medicaid program. The Committee must review and recommend, by a majority of a quorum, to the ODJFS Director the drugs that should be included on the preferred drug list. The recommendations must be based on the evaluation of competent evidence regarding the relative safety, efficacy, and effectiveness of prescription drugs within a class or classes of prescription drugs. In the case of a tie, the chairperson must decide the outcome.

The bill requires the ODJFS Director to act on the Committee's recommendations not later than 30 days after a Committee recommendation is posted on the ODJFS web site (see below). If the ODJFS Director does not accept a recommendation, the Director must present the basis for this determination not later than 14 days after making the determination or at the next scheduled committee meeting, whichever is sooner.

Administration

The bill requires the Committee to establish guidelines necessary for the committee's operation.

The bill permits the Committee to establish one or more subcommittees to investigate and analyze issues consistent with the Committee's duties. The subcommittees may submit proposals regarding the issues to the Committee and the Committee may adopt, reject, or modify the proposals.

The bill permits an interested party to make a presentation or submit written materials during a Committee meeting relevant to an issue under consideration by the Committee. Any written material, including a transcript of testimony to be given on the day of the meeting, may be submitted to the Committee in advance of the meeting.

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[196] See footnotes above for descriptions of state maximum allowable cost programs and federal upper limits.

Membership

Current law requires the ODJFS Director to appoint ten members consisting of the following: (1) three licensed pharmacists, (2) two medical doctors and two osteopathic doctors, (3) a licensed registered nurse, (4) a pharmacologist holding a doctoral degree, and (5) a psychiatrist. The Committee is to elect from one of its members a chairperson.

When selecting the members, the bill requires the ODJFS Director to seek recommendations for membership from relevant professional organizations. However, the candidate must have professional experience working with Medicaid recipients. The bill prohibits the ODJFS Director from appointing a member who is employed by ODJFS.

The bill also specifies that of the four physician members, one must be a family practice physician.

ODJFS web site

Under the bill, ODJFS must post the following on its web site:

--Committee guidelines;

--Detailed committee agendas not later than 14 days prior to the date of a regularly scheduled meeting and not later than 72 hours prior to the date of a special meeting;

--Committee recommendations not later than seven days after the meeting at which the recommendation was approved;

--The ODJFS Director's final determination as to the Committee recommendations.

Medicaid disease management program

(R.C. 5111.141)

ODJFS is required by the bill to implement a disease management program for Medicaid consisting of a system of coordinated health care interventions and patient communications for groups of Medicaid recipients who have medical conditions for which ODJFS determines patient self-care efforts are significant. The bill provides that Medicaid recipients participating in the existing Care Management System are excluded from the program.

The bill's disease management program must do all of the following:

(1) Support physicians, the professional relationship between patients and their medical caregivers, and patients' plans of care;

(2) Emphasize prevention of exacerbations and complications of medical conditions using evidence-based practice guidelines and patient empowerment strategies;

(3) Evaluate clinical, humanistic, and economic outcomes on an ongoing basis with the goal of improving overall health.

The bill provides that contracts that ODJFS enters into with other state agencies for the other agencies to administer a part of the Medicaid program on ODJFS's behalf must, to the extent ODJFS considers appropriate, provide for the other agencies to include the disease management program in the part of the Medicaid program the other agencies administer.

Review of Medicaid case management services

(R.C. 5111.142)

The bill requires ODJFS to conduct a review of case management services provided under the fee-for-service component of the Medicaid program. ODJFS must identify which groups of Medicaid recipients are ineligible to participate in the existing Care Management System and designate those individuals as participants in an alternative care management model included in the Alternative Care Management Program to be established under the bill (see "Alternative Care Management Program," below).

Alternative Care Management Program

(R.C. 5111.165 and 5111.142)

The bill requires ODJFS to develop and implement an Alternative Care Management Program for Medicaid recipients. The program must be implemented no later than October 1, 2009, or as soon as practicable if the program requires federal approval. ODJFS is to designate the Medicaid recipients who are required to participate in the program,[197] but is not to include any individual participating in the existing

[197] The bill expressly requires Medicaid recipients to be designated if they are identified through the bill's requirement for ODJFS to review case management services provided under Medicaid's fee-for-service system (see "Review of Medicaid case management services," below).

Medicaid Care Management System. Therefore, those participating in the fee-for-service Medicaid component are to participate in the Alternative Care Management Program.

The bill provides that the purpose of the Alternative Care Management Program is to test and evaluate multiple alternative care management models for providing health care services to Medicaid recipients. In implementing the program, ODJFS is to ensure that each model included in the program is operated in at least three counties selected by ODJFS. ODJFS may expand a model program to other counties if ODJFS determines that the expansion is necessary to evaluate the effectiveness of the model. ODJFS is permitted to alter the requirements, design, or eligible participants in the Program in order to test and evaluate the effectiveness of varying models. However, each model must be in effect for a period of time necessary to evaluate its effectiveness. In evaluating each model, ODJFS is required to maintain statistics on physician expenditures, hospital expenditures, preventable hospitalizations, costs for each participant, effectiveness, and health outcomes for participants.

ODJFS is to adopt rules under the Administrative Procedure Act (R.C. Chapter 119.) as necessary. The rules are to specify procedures for use in designating participants in the program.

Committee to study Medicaid provider franchise permit fees

Section 309.31.55

The bill creates a committee to study the issue of funding the Medicaid program through franchise permit fees on providers of health-care services. The President of the Senate is to appoint two members of the Senate and the Speaker of the House of Representatives is to appoint two members of the House to serve on the committee. The two Senate members are to be from different political parties, as are the two House members. The Governor is permitted to appoint as many members as the Governor determines appropriate. The Senate President and House Speaker are to designate co-chairpersons for the committee. Members are to serve without compensation, except to the extent that serving on the committee is considered part of their regular employment duties. ODJFS is required to provide any support staff the committee needs.

The committee must issue a report with recommendations not later than June 30, 2010. The report is to be submitted to the Governor and General Assembly.[198] The bill provides for the committee to cease to exist on submission of the report.

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.[199]

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[198] In submitting the report to the General Assembly, the committee is to provide it to the Senate President, Senate Minority Leader, House Speaker, House Minority Leader, and the Director of the Legislative Service Commission (R.C. 101.68(B)).

[199] R.C. 3721.56.

ODJFS is required to use money in the Nursing Facility Stabilization Fund to make Medicaid payments to nursing facilities.[200]

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 provides for the franchise permit fee to equal the sum of (1) $6.25 and (2) the difference between (a) an amount calculated for a nursing facility in determining the nursing facility's fiscal year 2010 Medicaid rate if the nursing facility pays the franchise permit fee[201] and (b) the Medicaid rate the provider of the nursing facility is paid for nursing facility services the nursing facility provides on June 30, 2009.[202] Whereas current law provides for 16% of the money generated by the fee to be

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[200] R.C. 3721.561.

[201] This amount is the amount calculated for a nursing facility in determining its fiscal year 2010 Medicaid rate when the amount calculated for the nursing facility in accordance with the statutory formula (also known as the nursing facility's price) as adjusted by the bill is more than the sum of (1) the nursing facility's fiscal year 2009 rate and (2) 173% of the mean of certain amounts calculated in determining nursing facilities' direct care costs if the nursing facility pays the franchise permit fee and zero if the nursing facility does not pay the franchise permit fee. This amount is the result obtained by increasing the nursing facility's price as adjusted by the bill by the difference between the nursing facility's adjusted price and the sum of (1) the nursing facility's fiscal year 2009 rate and (2) 173% of the mean of certain amounts calculated in determining nursing facilities' direct care costs if the nursing facility pays the franchise permit fee and zero if the nursing facility does not pay the franchise permit fee.

[202] The bill does not clearly create a uniform franchise permit fee that is the same for all nursing home beds and hospitals' long term care beds. It is possible to construe the bill as creating a franchise permit

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 8.55% and the latter fund to continue to get the remainder.

Waiver to reduce fee

The bill requires ODJFS to seek a federal waiver to (1) reduce the franchise permit fee to zero dollars for two groups of nursing homes meeting certain requirements and (2) reduce the franchise permit fee for a number of nursing facility beds located in a nursing facility with more than 200 Medicaid-certified beds. The waiver's effective date is to be the first day of the calendar quarter beginning after the United States Secretary of Health and Human Services approves the waiver.

The first group that is eligible to have its franchise permit fee reduced to zero consists of nursing homes that (1) are exempt from state taxation, (2) are exempt from federal income taxation, (3) do not participate in Medicaid or Medicare, and (4) provide services for the life of each resident without regard to the resident's ability to secure payment for the services. The second group to have its franchise permit fee reduced to zero consists of nursing homes that (1) have had a written affiliation agreement with a university in Ohio for education and research related to Alzheimer's disease for each of the 20 years preceding the effective date of this provision of the bill and have such an agreement on the effective date of this provision of the bill, (2) were granted a certificate of need under a provision of legislation from the 116th General Assembly,[203] and (3) do not participate in Medicaid or Medicare.

The amount of the reduction in the franchise permit fee for a nursing facility with more than 200 Medicaid-certified beds is to be the amount necessary to obtain the waiver. ODJFS is to specify the number of such a nursing facility's beds that are to be subject to the reduced franchise permit fee.

ODJFS is required, if the United States Secretary approves the waiver, to reduce the franchise permit fee for each nursing home and hospital that qualifies for a reduction in its franchise permit fee under the waiver. ODJFS is to reduce the franchise

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fee that varies from facility to facility and that does not specify how much the franchise permit fee is for certain facilities.

[203] Section 3 of Am. Sub. S.B. 256 of the 116th General Assembly required a certificate of need application for long-term care to be granted if the application met a number of requirements, including a requirement that the application be for the construction or conversion of a nursing home, nursing home wing, or licensed rest home designed to be specially adapted exclusively to care for and treat persons having or suspected of having Alzheimer's disease and to conduct research related to Alzheimer's disease.

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.[204] 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

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

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.[205]

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.[206]

Tax costs are costs for real estate taxes, personal property taxes, corporate franchise taxes, and commercial activity taxes.[207]

Capital costs means a nursing facility's costs of ownership, which is the actual expense incurred for (1) depreciation and interest on capital assets costing $500 or more per item, (2) amortization and interest on land improvements and leasehold improvements, (3) amortization of financing costs, and (4) lease and rent of land, building, and equipment.[208]

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,[209] was set at $3 per Medicaid day.[210]

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[205] 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.)

[206] R.C. 5111.20 and 5111.24.

[207] R.C. 5111.242.

[208] R.C. 5111.20 and 5111.25.

[209] "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.)

[210] R.C. 5111.244.

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 Employment Cost Index for Total Compensation, Health Services Component, as published by the United States Bureau of Labor Statistics, in calculating the inflation adjustment for direct care costs. ODJFS 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 revises the inflation measuring systems to be used to determining nursing facilities' direct care and ancillary and support costs. For direct care costs, the bill requires ODJFS to use the Employment Cost Index for Total Compensation, Nursing and Residential Care Facilities Occupational Group, published by the United States Bureau of Labor Statistics (rather than the Health Services Component) or, if that index ceases to be published, the index the United States Bureau subsequently publishes that covers nursing facilities' staff costs. For ancillary and support costs, ODJFS is to use the Consumer Price Index for all items for all urban consumers for the Midwest (rather than North Central) region published by the United States Bureau of Labor Statistics or, if that index ceases to be published, the index the United States Bureau subsequently publishes that covers urban consumers' prices for items for the region that includes Ohio.

Deadline for nursing facility to submit corrections

(R.C. 5111.232)

ODJFS is required to determine average case-mix scores for nursing facilities as part of the process of determining the facilities' direct care costs. Direct care costs are among the costs included in the total rate paid nursing facilities under the Medicaid program.

Nursing facilities are required to provide the state information used in calculating their case-mix scores. The information must be provided quarterly. If a nursing facility fails to submit the information in time for ODJFS to be able to calculate the nursing facility's case-mix score, or submits incomplete or inaccurate information, ODJFS is authorized to assign the nursing facility a case-mix score that is 5% less than its case-mix score for the previous quarter. The reduced score may be used in calculating the nursing facility's rate for direct care costs for one or more months of the quarter for which the rate will be paid. However, before taking such action, ODJFS

must permit the nursing facility a reasonable period of time to correct the information. The 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' direct care costs

(R.C. 5111.231)

A nursing facility's rate for direct care costs is determined semiannually by multiplying the cost per case-mix unit determined for the nursing facility's peer group by the nursing facility's case-mix score. There are multiple steps in calculating a peer group's cost per case-mix unit.[211]

The first step is to determine the cost per case-mix unit for each nursing facility in the peer group.

The second step is to identify which nursing facility in the peer group is at a certain amount of the cost per case-mix units determined for each of the nursing facilities in the peer group. Under current law, the nursing facility so identified is the nursing facility at the 25th percentile of the cost per case-mix units. The bill provides for the nursing facility at the median of the cost per case-mix units to be so identified.

The third step is to calculate the amount that is a certain percentage above the cost per case-mix unit for the nursing facility identified in the second step. Under current law, 7% is the percentage used. The bill provides for the following percentage to be used:

(1) For each peer group in fiscal year 2010, 0%.

(2) For peer group one in fiscal year 2011, 6.5%.

(3) For peer group two in fiscal year 2011, 6.75%.

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[211] Nursing facilities are divided into three peer groups for purposes of calculating the Medicaid rate for direct care costs. Which peer group a nursing facility is in depends on which county the nursing facility is located in. For example, a nursing facility located in Brown, Butler, Clermont, Clinton, Hamilton, or Warren County is part of the peer group one.

(4) For peer group three in fiscal year 2011, 7.5%.

(5) For peer group one in fiscal year 2012 and each fiscal year thereafter, 10%.

(6) For peer group two in fiscal year 2012 and each fiscal year thereafter, 11%.

(7) For peer group three in fiscal year 2013 and each fiscal year thereafter, 15%.

The fourth and final step concerns an inflationary adjustment. (See "**Inflation adjustments used in nursing facility rates**," above.)

The calculations in the first step and fourth step rely on information from a specific calendar year. ODJFS was initially required to use information from calendar year 2003. ODJFS is permitted by current law to select which calendar year to use for subsequent calculations under the first and fourth steps. The bill requires ODJFS to continue to use calendar year 2003 until it makes the calculations for Medicaid rates to be paid for fiscal year 2015. ODJFS may select which calendar year to use beginning with the calculations to be made for Medicaid rates to be paid beginning in fiscal year 2015.

Current law requires that ODJFS determine each peer group's cost per case-mix unit at least once every ten years. The bill requires ODJFS to make the determination more often as necessary to implement the bill's changes. Otherwise, ODJFS is to continue to make the determinations at least once every ten years.

Nursing facilities' ancillary and support costs

(R.C. 5111.24)

A nursing facility is placed into one of six peer groups for the purpose of calculating its Medicaid rate for ancillary and support costs. A nursing facility's rate for ancillary and support costs is the rate determined for the nursing facility's peer group. As is the case in calculating a peer group's rate for direct care costs, there are multiple steps in determining a peer group's rate for ancillary and support costs.

The first step is to determine the ancillary and support rate for each nursing facility in the peer group.

The second step is to identify which nursing facility in the peer group is at a certain percentile of the rate for ancillary and support costs determined for the nursing facilities in the peer group. Under current law, the nursing facility so identified is the nursing facility at the 25th percentile. The bill provides for the nursing facility at 50th percentile to be so identified beginning with fiscal year 2012.

The third step is to calculate the amount that is a certain percentage above the rate for ancillary and support costs determined for the nursing facility identified in the second step. Under current law, 3% is the percentage used. The bill provides for 3% to continue to be used for fiscal years 2010 and 2011. Zero per cent is to be used for fiscal year 2012. Five per cent is to be used for fiscal year 2013 and each fiscal year thereafter.

The fourth and final step concerns an inflationary adjustment. (See "**Inflation adjustments used in nursing facility rates**," above.)

The calculations in certain of the steps rely on information from a specific calendar year. ODJFS was initially required to use information from calendar year 2003. ODJFS is permitted by current law to select which calendar year to use for subsequent calculations. The bill requires ODJFS to continue to use calendar year 2003 until it makes the calculations for Medicaid rates to be paid for fiscal year 2015. ODJFS may select which calendar year to use beginning with the calculations to be made for Medicaid rates to be paid beginning in fiscal year 2015.

Current law requires that ODJFS determine each peer group's rate for ancillary and support costs at least once every ten years. The bill requires ODJFS to make the determination more often as necessary to implement the bill's changes. Otherwise, ODJFS is to continue to make the determinations at least once every ten years.

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.[212] 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,[213] 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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[212] 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.

[213] 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 and FY 2011 Medicaid reimbursement rates 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.[214] ODJFS must also annually adjust the mean quality incentive payment starting in fiscal year 2008 by the same adjustment factors.[215] (See "**Future adjustments**," below.)

The bill establishes adjustments to the fiscal year 2010 and fiscal year 2011 Medicaid rates for nursing facilities that have a valid Medicaid provider agreement on the day preceding the first day of the fiscal year and a valid Medicaid provider agreement during the fiscal year for which the rate is paid.

A nursing facility's 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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[214] R.C. 5111.222.

[215] 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.

The total rate calculated above can be referred to as a nursing facility's adjusted price rate. If the adjusted price rate for a nursing facility for fiscal year 2010 is more than the sum of (1) the nursing facility's fiscal year 2009 rate and (2) 173% of the mean of certain amounts calculated in determining nursing facilities' direct care costs if the nursing facility pays the franchise permit fee and zero if the nursing facility does not pay the franchise permit fee, ODJFS is required to reduce its fiscal year 2010 adjusted price rate by one-half of the difference between its fiscal year 2010 adjusted price rate and that sum.[216] If a nursing facility's fiscal year 2010 or fiscal year 2011 adjusted price rate is less than the sum specified in the previous sentence, ODJFS is required to increase its fiscal year 2010 or fiscal year 2011 adjusted price rate by the difference between its fiscal year 2010 or fiscal year 2011 adjusted price rate and that sum.

If the United States Centers for Medicare and Medicaid Services requires that the franchise permit fee for nursing facilities be reduced or eliminated, ODJFS is required to reduce the amount it pays nursing facilities for fiscal year 2010 and fiscal year 2011 as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

The bill requires that ODJFS implement the rate adjustments in determining nursing facilities' fiscal year 2010 and fiscal year 2011 Medicaid rates notwithstanding anything to the contrary in the Revised Code governing nursing facilities' Medicaid rates.

Future adjustments

(R.C. 5111.222)

As discussed above under the heading "**FY 2010 and FY 2011 Medicaid reimbursement rates for nursing facilities**," current law requires ODJFS to make certain adjustments to the rates determined under the formulas included in the Revised Code for various price centers and the quality incentive payment. The bill requires instead that ODJFS adjust the total rate determined for nursing facilities under the Revised Code formulas starting in fiscal year 2013. ODJFS is to adjust the total rate by the market basket index used in calculating the prospective payment rates for skilled nursing facilities under the Medicare program. In making the adjustment for a fiscal

[216] The bill does not provide for a corresponding reduction to a nursing facility's fiscal year 2011 adjusted price rate.

year, ODJFS must use the skilled nursing facility market basket index used in calculating the prospective payment rates that went into effect the first day of October preceding the fiscal year.

Nursing facility capital costs study

(Section 309.30.30)

The bill requires ODJFS to issue a report with recommendations for developing a new system for reimbursing nursing facilities' capital costs under the Medicaid program. The report is due December 31, 2010, and is to be submitted to the Governor and General Assembly.[217] ODJFS is to prepare the report in consultation with the Ohio Academy of Nursing Homes; the Association of Ohio Philanthropic Homes, Housing, and Services for the Aging; and the Ohio Health Care Association.

The recommendations must focus on (1) resulting in a statewide average per diem rate, weighted by Medicaid days, for capital costs for the first fiscal year the system is implemented that is budget neutral compared to the statewide average per diem rate, weighted by Medicaid days, for capital costs as calculated under the bill and (2) appropriately recognizing increased costs incurred by nursing facilities for capital improvements to, and replacement of, existing nursing facilities.

The report may include recommendations for changes to other parts of the Medicaid reimbursement system for nursing facilities.

Medicaid rates for ICFs/MR

The formula for determining the rate ICFs/MR are to be paid under the Medicaid program 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

[217] In submitting the report to the General Assembly, ODJFS is to provide it to the Senate President and Minority Leader, Speaker and Minority Leader of the House of Representatives, and the Director of the Legislative Service Commission (R.C. 101.68(B)).

ICF/MR's rate for direct care costs is determined in part by calculating a cost per case mix-unit for the ICF/MR.[218]

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.[219]

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.[220]

Indirect care costs are all reasonable costs incurred by an ICF/MR that are not direct care costs, other protected costs, or capital costs. Indirect care costs include such costs as habilitation supplies, medical and habilitation records, incontinence supplies, food, housekeeping, security, administration, human resources, dues, license fees, legal services, accounting services, minor equipment, maintenance and repairs, and employee benefits.[221]

ICF/MR off-site day programming

(R.C. 5111.233)

The bill requires that the costs of day-programming be part of the direct care costs of an ICF/MR as off-site day programming if the area in which the day programming is provided is not certified by the Director of Health as an ICF/MR and regardless of either of the following:

(1) Whether or not the area in which the day programming is provided is less than 200 feet away from the ICF/MR;

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[218] R.C. 5111.20(H) and 5111.23.

[219] R.C. 5111.20(R).

[220] R.C. 5111.20(C).

[221] R.C. 5111.20(K).

(2) Whether or not the day programming is provided by an individual who, or organization that, is a related party to the provider of the ICF/MR.[222]

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.[223]

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[224] 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

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[222] Current law defines "related party" as an individual or organization that, to a significant extent, has common ownership with, is associated or affiliated with, has control of, or is controlled by, the provider (R.C. 5111.20).

[223] O.A.C. 5101:3-10-13.

[224] 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.

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.

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 $279.88, 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 $279.88.

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 $282.54, 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 $282.54.

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, the Ohio Health Association, and the Ohio Association of County Boards of Mental Retardation and Developmental Disabilities.

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.

Medicaid debt collection process

(R.C. 5111.65, 5111.651, 5111.68, 5111.681, 5111.685, 5111.686, 5111.688, 5111.689, 5111.874, and 5111.875)

Current law establishes requirements for a nursing facility or ICF/MR that undergoes a change of operator,[225] facility closure,[226] voluntary termination,[227] or voluntary withdrawal of participation.[228] The requirements concern the state collecting debts a nursing facility or ICF/MR owes under the Medicaid program.

Estimate of Medicaid debt

Current law requires an operator to notify ODJFS of an impending change of operator, facility closure, voluntary termination, or voluntary withdrawal of

[225] 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)).

[226] 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)).

[227] 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)).

[228] 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)).

participation.[229] 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.[230] The bill clarifies that ODJFS is to estimate, rather than determine, this amount and provides that the amount of the estimated debt includes any franchise permit fee the operator owes or may owe under the Medicaid program. ODJFS is required by the bill to use a debt estimation methodology in estimating the operator's actual and potential Medicaid debts. The debt estimation methodology is to be established in rules. The bill eliminates a requirement that ODJFS, if it is unable to determine the amount of Medicaid debts for any period of time before the effective date of the new provider's Medicaid provider agreement in the case of a change of operator or the effective date of a facility closure, voluntary termination, or voluntary withdrawal of participation, make a reasonable estimate of the Medicaid debts for the period using information available to ODJFS, including prior determinations of Medicaid debts.

ODJFS is required by the bill to provide the operator written notice of ODJFS's estimate of the operator's Medicaid debt not later than 30 days after ODJFS receives the notice of the change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation. The notice must include the basis for the estimate.

Withholding

Current law requires, with a certain exception, that ODJFS withhold a specified amount from payment due the operator under the Medicaid program. The bill permits rather than requires ODJFS to make the withholding, changes the amount to be withheld, eliminates the existing exception to the withholding requirement, and creates new circumstances under which the withholding is not to occur or is to be reduced.

Under current law, ODJFS must withhold the greater of (1) the total amount of any overpayments made under the Medicaid program to the operator, including overpayments the operator disputes, and other actual and potential debts, including unpaid penalties, the operator owes or may owe under the Medicaid program and (2) an amount equal to the average amount of monthly payments to the operator under the Medicaid program for the 12-month period immediately preceding the month that includes the last day the operator's Medicaid provider agreement is in effect or, in the case of a voluntary withdrawal of participation, the effective date of the voluntary withdrawal of participation. The bill provides instead for the withholding to equal the

[229] R.C. 5111.66 and 5111.67.

[230] R.C. 5111.68.

total amount of the operator's Medicaid debt as specified in the notice the bill requires ODJFS to provide the operator.

Current law permits ODJFS to choose not to make the withholding in the case of a change of operator if the new operator (1) enters into a nontransferable, unconditional, written agreement with ODJFS to pay ODJFS the former operator's Medicaid debt and (2) provides ODJFS a copy of the new operator's balance sheet that assists ODJFS in determining whether to make the withholding. The bill eliminates this provision and establishes circumstances applicable to a change of operator under which the withholding is not to occur or is to be reduced and circumstances applicable to a facility closure, voluntary termination, or voluntary withdrawal of participation under which the withholding is not to occur or is to be reduced.

In the case of a change of operator, ODJFS is not to make the withholding if the new operator or a qualified affiliated operator executes a successor liability agreement to assume liability for the entire amount of the former operator's Medicaid debt as specified in ODJFS's notice to the former operator.[231] ODJFS is to reduce the amount of the withholding if the new operator or qualified affiliated operator executes such a successor liability agreement to assume liability for the portion of the former operator's Medicaid debt that represents the franchise permit fee the former operator owes. The amount of the reduction is to equal that portion of the former operator's Medicaid debt.

In the case of a facility closure, voluntary termination, or voluntary withdrawal of participation, ODJFS is not to make the withholding if the former operator or a qualified affiliated operator executes a successor liability agreement to assume liability for the entire amount of the former operator's Medicaid debt. ODJFS is to reduce the amount of the withholding if the former operator or qualified affiliated operator executes a successor liability agreement to assume liability for the portion of the former operator's Medicaid debt that represents the franchise permit fee the former operator owes. The amount of the reduction is to equal that portion of the former operator's Medicaid debt.

The bill provides that execution of a successor liability agreement does not waive the former operator's right to contest the amount that ODJFS specifies in its notice to the former operator that the operator owes under the Medicaid program.

"Qualified affiliated operator" is defined by the bill as a nursing facility or ICF/MR operator to whom all of the following apply:

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[231] A successor liability agreement is to be executed in a manner ODJFS is to prescribe.

(1) The operator is affiliated with either the former operator for whom the affiliated operator is to assume liability for all or part of the former operator's Medicaid debt or the new operator involved in a change of operator with the former operator;

(2) The operator has one or more valid Medicaid provider agreements;

(3) During the 12-month period preceding the month in which ODJFS receives notice of the change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation, the average monthly Medicaid payment made to the operator equals at least 90% of the average monthly Medicaid payment made to the former operator.

Determination of actual Medicaid debt

Current law requires ODJFS to determine the actual amount of an operator's Medicaid debt by completing all final fiscal audits not already completed and performing all other appropriate actions ODJFS determines to be necessary. ODJFS must issue a debt summary report not later than 90 days after the operator files a properly completed cost report with ODJFS or, if ODJFS waives the requirement for the operator to file a cost report, not later than 90 days after the date ODJFS waives the cost report requirement. The bill provides for this report to be issued as an initial debt summary report and reduces the number of days ODJFS has to issue it to 60 days following the date the operator files a properly completed cost report or ODJFS waives the cost report requirement.

The bill permits the operator and a qualified affiliated operator who executes a successor liability agreement to request an informal settlement conference to contest any of ODJFS's findings included in the initial debt summary report. The request must be submitted to ODJFS not later than 30 days after the date ODJFS issues the initial debt summary report. If ODJFS has withheld money from payment due the operator under the Medicaid program, ODJFS is required to conclude the conference not later than 60 days after the date ODJFS receives the timely request unless ODJFS and the operator or qualified affiliated operator agree to a later conclusion date. The operator and qualified affiliated operator are permitted to submit information to ODJFS explaining what is contested before and during the conference, including documentation of the amount of any debt ODJFS owes the operator. ODJFS is required to issue a revised debt summary report after the conference's conclusion. If ODJFS has made a withholding, ODJFS is required to issue the revised debt summary report not later than 60 days after the conference's conclusion. The revised debt summary must include ODJFS's findings and the amount of debt ODJFS determines the operator owes under the Medicaid program. ODJFS is required to explain its findings and determination in the revised debt summary report.

Current law provides that only the parts of a debt summary report that are subject to an adjudication under another provision of state Medicaid law are subject to an adjudication under the Administrative Procedure Act (R.C. Chapter 119.).[232] The bill provides instead that the operator or qualified affiliated operator may request an adjudication regarding any part of an initial or revised debt summary report. The adjudication must be consolidated with any other uncompleted adjudication that concerns a matter addressed in the initial or revised debt summary report. ODJFS must complete the adjudication not later than 60 days after receiving the request for the adjudication if ODJFS has made a withholding.

Release of withholding

Current law requires ODJFS to release the amounts ODJFS withholds from an operator, less any amount the operator owes under the Medicaid program, according to the following deadlines:

(1) If ODJFS fails to issue a debt summary report within the required time, 91 days after the date the operator files a properly completed cost report or the date ODJFS waives the cost report requirement;

(2) If ODJFS issues the debt summary report within the required time, not later than 30 days after the operator agrees to a final fiscal audit resulting from the debt summary report.

The bill revises the deadlines for ODJFS to release the amount of the withholding that is to be released. The following are the bill's deadlines:

(1) If ODJFS fails to release the initial debt summary report within the required time, 61 days after the date the operator files the properly completed cost report or ODJFS waives the cost report requirement;

(2) If ODJFS releases the initial debt summary report within the required time, not later than the following:

(a) Thirty days after the later of the deadline for requesting an informal settlement conference and the deadline for requesting an adjudication regarding the

[232] Current law may contain an incorrect citation regarding which parts of a debt summary report are subject to an adjudication. Presumably what is meant are the parts of a debt summary report that pertain to (1) an audit disallowance that ODJFS makes as the result of an audit of a Medicaid cost report, (2) an adverse finding that results from an exception review of resident assessment information conducted after the effective date of a nursing facility or ICF/MR's Medicaid rate that is based on the assessment information, (3) a Medicaid payment deemed an overpayment, or (4) an ODJFS-imposed penalty.

initial debt summary report if the operator and a qualified affiliated operator who executes a successor liability agreement fail to request both the conference and adjudication on or before the deadline;

(b) Thirty days after the deadline for requesting an adjudication regarding a revised debt summary report if the operator or a qualified affiliated operator who executes a successor liability agreement requests an informal settlement conference on or before the deadline but fails to request an adjudication on or before the deadline;

(c) Thirty days after the completion of an adjudication of the initial or revised debt summary report if the operator or a qualified affiliated operator who executes a successor liability agreement requests the adjudication on or before the deadline.

Medicaid Payment Withholding Fund

The bill requires that all amounts withheld from a nursing facility or ICF/MR operator be deposited into the existing Medicaid Payment Withholding Fund. Money in the fund is to be used to pay an operator when a withholding is released and to pay ODJFS and federal government the amount an operator owes under the Medicaid program. Amounts used to be paid to ODJFS or federal government from the fund are to be deposited into the appropriate ODJFS fund.

Home first rules for home and community-based services

(R.C. 5111.85 (primary), 5111.705, and 5111.851)

Current law permits the ODJFS Director to adopt rules regarding components of the Medicaid program authorized by a waiver granted by the United States Department of Health and Human Services (i.e., a Medicaid waiver component). For example, the 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[233] 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[234] who is capable of selecting, directing the actions of, and dismissing a home care attendant.

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[233] 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.)

[234] The parent, custodian, or guardian of a consumer under 18 years of age is to serve as the consumer's authorized representative for purposes related to home care attendant services.

Requirements for home care attendant service providers

The 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[235] or has successfully completed at least (a) a competency evaluation program or training and competency evaluation program approved or conducted by the Director of Health for nurse aides or (b) a training program approved by ODJFS that includes training in certain subjects[236] and provides training equivalent to a training and competency program approved or conducted by the Director of Health for nurse aides or meets requirements set in federal regulations.

(2) That the individual has obtained a certificate of completion of a course in first aid from a first aid course that (a) is not provided solely through the Internet, (b) includes hands-on training provided by a first aid instructor who is qualified to provide such training according to standards set in rules the ODJFS Director is authorized to adopt, and (c) requires the individual to demonstrate successfully that the individual has learned the first aid taught in the course.

(3) That the individual meets any other requirements for the Medicaid provider agreement specified in rules the ODJFS Director is authorized to adopt.

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[235] 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.)

[236] The training program must include training in at least all of the following: (1) basic home safety, (2) universal precautions for the prevention of disease transmission, including hand-washing and proper disposal of bodily waste and medical instruments that are sharp or may produce sharp pieces if broken, (3) personal care aide services, and (4) the labeling, counting, and storage requirements for schedule II, III, IV, and V medications.

An individual issued a Medicaid provider agreement to provide home care attendant services under the Ohio Home Care program or Ohio Transitions II Aging Carve-Out program is required to complete not less than 12 hours of in-service continuing education regarding health care attendant services each year. The individual must provide the ODJFS Director evidence satisfactory to the Director that the individual has satisfied this requirement. The evidence must be submitted to the ODJFS Director not later than the annual anniversary of the issuance of the individual's Medicaid provider agreement.

The 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.

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[237] or jejunostomy tube;[238]

(3) Assist the consumer with the self-administration of a medication unless the medication is in its original container and the label attached to the container displays (a) the consumer's full name in print, (b) the medication's dispensing date, which must not be more than 12 months before the date the attendant assists the consumer with self-administration of medication, and (c) the exact dosage and means of administration that match the physician or registered nurse's authorization to the attendant;

(4) Assist the consumer with the self-administration of a schedule II, III, IV, or V medication unless (a) the medication has a warning label on its container, (b) the attendant counts the medication in the consumer's or authorized representative's presence when the medication is administered to the consumer and records the count on a form used for the count as specified in rules the 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;

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[237] A gastrostomy tube is a percutaneously inserted catheter that terminates in the stomach.

[238] A jejunostomy tube is a percutaneously inserted catheter that terminates in the jejunum, which is the middle portion of the small intestine.

(10) Insert or initiate an infusion therapy;

(11) Perform a central line dressing change.

Use of a metered dose inhaler is permitted when assisting a consumer with self-administration of a medication that is administered orally. Use of an eye, ear, or nose drop or spray or a vaginal or rectal suppository is permitted when assisting a consumer with self-administration of a medication that is administered topically. Transdermal medication is included as a topical medication. A home care attendant may assist with the self-administration of a medication that is administered via a gastrostomy tube or jejunostomy tube only when a pre-programmed pump is used.

Practice of nursing without a license

The 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.[239] 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.

[239] Section 6071 of the Deficit Reduction Act of 2005, Public Law No. 109-171.

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.

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 seek federal approval not later than October 1, 2009. The ODJFS Director must implement the system on receipt of federal approval. The ODJFS Director is required by the 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.

Funding of Medicaid-covered behavioral health services

(R.C. 5111.023, 5111.912, and 5111.913.93)

Current law requires the Department of Mental Health, Department of Alcohol and Drug Addiction Services, and community behavioral health boards to pay the nonfederal share of any Medicaid payment to a provider for services under a Medicaid program that the Department of Mental Health or Department of Alcohol and Drug Addiction Services administers pursuant to an interagency agreement with ODJFS. The bill requires a community behavioral health board to use state funds provided to the board for the purpose of funding community behavioral health services to make the required payments. A community behavioral health board is permitted by the bill to

use money available to the board that is raised by a county tax levy to make such a payment if using the money is consistent with the purpose for which the tax was levied.

The Medicaid program is required to cover certain mental health services provided by community mental health facilities.[240] Current law requires the comprehensive annual plan to certify the availability of sufficient unencumbered community mental health state subsidy and local funds to match federal Medicaid reimbursement funds earned by community mental health facilities. The bill provides that the comprehensive annual plan[241] is permitted rather than required to certify the availability of sufficient unencumbered community mental health local funds.

Hospital assessments

(Sections 309.30.74, 690.20, and 690.21)

The bill imposes an assessment on hospitals for fiscal years 2010 and 2011. A hospital, other than a federal hospital or hospital that does not charge its patients for its services, is to be subject to the assessment if any of the following apply to the hospital:

(1) It is registered with the Department of Health as a general medical and surgical hospital or a pediatric general hospital and provides inpatient hospital services.

(2) It is recognized under the Medicare program as a cancer hospital and is exempt from the Medicare prospective payment system.

(3) It is a psychiatric hospital licensed by the Department of Mental Health.

The assessment is in addition to the assessment imposed under the Hospital Care Assurance Program (HCAP).[242] However, ODJFS is not to impose the assessment on any hospital unless the United States Secretary of Health and Human Services approves the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program.[243]

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[240] A community mental health facility is a community mental health facility with a quality assurance program accredited by the Joint Commission on Accreditation of Healthcare Organizations or that is certified by the Department of Mental Health or ODJFS.

[241] Neither current law nor the bill specify what is meant by the "comprehensive annual plan."

[242] See "**Hospital Care Assurance Program (HCAP)**," below for a discussion of that program.

[243] See "**Hospital Supplemental Upper Payment Limit Program**," below.

Amount of assessment

The amount of a hospital's assessment for fiscal year 2010 is to equal 1.61% of the hospital's total facility costs for the hospital's cost reporting period[244] that falls during the period beginning January 1, 2007, and ending June 30, 2008. The amount of a hospital's assessment for fiscal year 2011 is to equal 1.52% of the hospital's total facility costs for the hospital's cost reporting period that falls during the period beginning January 1, 2008, and ending June 30, 2009.

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.[245] 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 HCAP. The cost-reporting data used to determine a hospital's assessment is subject to the same type of adjustments made to the data under HCAP.

Notice of assessments

ODJFS is required to mail to each hospital by certified mail, return receipt requested, the preliminary determination of the amount that the hospital is assessed for fiscal year 2010 not later than the later of (1) December 15, 2009, and (2) 15 days after the date the United States Secretary of Health and Human Services approves the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program.[246] Notice of the

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[244] The bill defines "cost reporting period" as a 12-month period used by a hospital in reporting costs for purposes of the Medicare program.

[245] These costs are to be shown on cost-reporting data ODJFS is to use for purposes of determining the hospital's assessment.

[246] See "**Hospital Supplemental Upper Payment Limit Program**," below.

preliminary determination of the amount of each hospital's fiscal year 2011 assessment is due by certified mail, return receipt requested, not later than one year after notice for fiscal year 2010 is due. The preliminary determination becomes the final determination for the applicable fiscal year for a hospital 15 days after the preliminary determination is mailed to the hospital unless the hospital requests that ODJFS reconsider the preliminary determination 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 a timely request, ODJFS is required to reconsider the preliminary determination and is permitted to adjust the preliminary determination on the basis of the written materials accompanying the request. The result of the reconsideration is the hospital's final determination.

ODJFS must mail to each hospital a written notice of the final determination of its assessment for the applicable fiscal year. A hospital is permitted to appeal the final determination to the court of common pleas of Franklin county. While a judicial appeal is pending, the hospital must pay any amount of its assessment that is not in dispute.

Paying assessments

The bill requires hospitals to pay their assessments for fiscal year 2010 in three equal installments. Unless ODJFS establishes an alternative schedule, the first payment is due not later than 15 days after the date ODJFS mails the hospital written notice of the final determination of the hospital's assessment. The second installment is due not later than three months after the date the first installment is due, and the third installment is due not later than three months after the second installment is due. ODJFS is permitted to establish an alternative schedule for fiscal year 2010 if the United States Secretary of Health and Human Services approves the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program not later than January 15, 2010. No installment payment is to be due earlier than 60 days after the date the previous installment payment was due under the alternative schedule even if that results in an installment payment being due after the end of fiscal year 2010.

Hospitals are to pay their assessments for fiscal year 2011 in three equal installments also. Each installment is due one year after the date the corresponding installment payment for the assessment for fiscal year 2010 was due even if that results in an installment payment being due after the end of fiscal year 2011.

Hospital audits

The bill permits ODJFS to audit a hospital to ensure that the hospital properly pays the amount it is assessed. ODJFS may 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 assessments 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 for the following purposes and in the following order of priority:

(1) To fund the bill's 5% Medicaid rate increase for hospital inpatient and outpatient services;[247]

(2) Of the amounts deposited into the fund for fiscal year 2010 that remain in the fund after ODJFS uses the money for the first priority, $4.4 million is to be used for the bill's Medicaid payments to children's hospitals for cost outlier claims and supplemental Medicaid payments to children's hospitals, and of the amounts deposited into the fund for fiscal year 2011 that remain in the fund after ODJFS uses the money for the first priority, $4 million is to be used for such payments to children's hospitals;[248]

(3) Of the amounts deposited into the fund for fiscal years 2010 and 2011 that remain in the fund after ODJFS uses the money for the first two priorities, as much as is available is to be used for the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program;

(4) Of the amounts deposited into the fund for fiscal years 2010 and 2011 that remain in the fund after ODJFS uses the money for the first three priorities, as much as is available is to be used for the bill's Medicaid rate increase for hospital home health services;

(5) Of the amounts deposited into the fund for fiscal years 2010 and 2011 that remain in the fund after ODJFS uses the money for the first four priorities, as much as is available is to be used for the bill's Medicaid rate increase for hospital ambulance services;

(6) Of the amounts deposited into the fund for fiscal years 2010 and 2011 that remain in the fund after ODJFS uses the money in the fund for the first five priorities, as much as is available is to be used for the bill's Medicaid rate increase for hospital hospice services.[249]

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[247] See "**Increase in Medicaid rates for hospital services**," below.

[248] See "**Cost outlier and supplemental payments to children's hospitals**," below.

[249] See "**Increase in Medicaid rates for hospital services**," below.

ODJFS letter regarding assessments as a community benefit

ODJFS is required by the bill to provide a hospital, on request, a written letter stating that it is ODJFS's official position that the assessments are a community benefit for purposes of federal taxation.

Federal issues

Federal Medicaid law places restrictions on federal financial participation for the Medicaid program when a state receives revenue generated by health-care related taxes.[250] 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.[251] The federal financial participation that a state receives for its Medicaid program is to be reduced by the sum of any revenue received during a fiscal year from health-care related taxes that are deemed impermissible.[252] 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.[253] A state may obtain a federal waiver of aspects of the broad-based and uniform requirements but not the hold harmless prohibition.[254]

The bill requires the ODJFS Director to implement the hospital assessment in a manner that makes the assessment a permissible health care-related tax for purpose of federal Medicaid law. However, if the United States Secretary of Health and Human Services determines that the hospital assessment is an impermissible health care-related tax, 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

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[250] 42 U.S.C. 1396b(w).

[251] 42 C.F.R. 433.55.

[252] 42 U.S.C. 1396b(w)(1)(A).

[253] 42 C.F.R. 433.68(b).

[254] 42 U.S.C. 1396b(w)(3)(E) and 42 C.F.R. 433.72(b)(3).

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 July 1, 2011. However, the bill provides that the repeal does not eliminate the requirement for a hospital to make an installment payment that is due after the repeal.

Hospital Supplemental Upper Payment Limit Program

(Sections 309.30.75, 690.20, and 690.21)

The bill requires the ODJFS Director to submit a Medicaid state plan amendment to the United States Secretary of Health and Human Services to create the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program. If the United States Secretary approves the Medicaid state plan amendment, the ODJFS Director is required to do all of the following for hospitals other than children's hospitals:

(1) To the maximum extent permitted by federal regulations establishing upper payment limits for Medicaid payments for hospital inpatient and outpatient services, make supplemental Medicaid payments under the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program using funds in the Hospital Assessment Fund made available for the program;[255]

(2) Develop and utilize a system for making the supplemental Medicaid payments that (a) is fair and equitable to all hospitals, (b) recognizes, to the extent permitted by federal law, the amount of the assessments hospitals pay under the bill, and (c) ensures that payments to children's hospitals for cost outlier claims and supplemental Medicaid payments to children's hospitals are not reduced or eliminated due to the federal upper payment limits;

(3) Except as necessary to comply with the requirement to not reduce or eliminate the payments to children's hospitals discussed above, make the supplemental Medicaid payments to hospitals in three equal installments for fiscal year 2010 and three equal installments for fiscal year 2011 that are due not later than 15 days after the date the hospital makes the corresponding installment payments for its assessment.

The bill requires the ODJFS Director to take all necessary actions to cease implementation of the Hospital Inpatient and Outpatient Supplemental Upper Payment Program if the United States Secretary of Health and Human Services determines that

[255] See "**Hospital assessments**," above.

the bill's hospital assessments are an impermissible health care-related tax under federal Medicaid law.

The ODJFS Director is authorized by the bill to adopt, amend, and rescind rules as necessary to implement the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program. The ODJFS Director is to follow the Administrative Procedure Act (R.C. Chapter 119.) when adopting, amending, or rescinding the rules.

The bill repeals the law governing the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program (i.e., sunsets) effective July 1, 2011. However, the bill provides that the repeal does not eliminate the requirement for ODJFS to make an installment payment under the program that is due after the repeal.

Cost outlier and supplemental payments to children's hospitals

(Section 309.30.15)

Background

Ohio pays hospitals for Medicaid inpatient admissions under a prospective payment system that includes pre-established, fixed amounts for each admission based on diagnosis-related group (DRG) codes. ODJFS makes additional payments to hospitals, called "cost outlier payments" and "exceptional outlier payments," to supplement base DRG payments for certain high- and extraordinarily high-cost inpatient admissions. The outlier payment policy is intended to promote access to care for patients with more costly claims.[256] 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

[256] 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>.

inpatient admissions at children's hospitals[257] 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 made available for the additional cost outlier payments in each fiscal year and the corresponding federal match. The amount of state funds made available for this purpose for fiscal year 2010 is $6 million plus an additional $4.4 million from funds in the Hospital Assessment Fund.[258] In fiscal year 2011, a total of $10 million of state funds is made available for this purpose, of which $4 million is to come from funds in the Hospital Assessment Fund.

In addition, the 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 Director has paid at full cost for Medicaid outlier claims and the total amount the Director would have paid at the 85% level for the claims does not require the expenditure of all state and federal funds made available for the additional cost outlier payments in the applicable fiscal year. The program may be the same as the program the Director used for making supplemental payments 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.

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[257] 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.

[258] See "**Hospital assessments**," above.

Increase in Medicaid rates for hospital services

(Sections 309.30.73, 309.30.76, 309.30.77, and 309.30.78)

Inpatient and outpatient services

The bill requires the ODJFS Director to amend Medicaid rules as necessary to increase, for fiscal years 2010 and 2011, the Medicaid reimbursement rates for Medicaid-covered hospital inpatient and outpatient 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 June 30, 2009.

Home health services

The ODJFS Director is required by the bill to amend Medicaid rules as necessary to increase, for fiscal years 2010 and 2011, the Medicaid reimbursement rates for Medicaid-covered home health services provided by a home health service provider that is wholly owned or controlled by one or more hospitals (other than a children's hospital) or one or more nonprofit entities that own or control one more hospitals in Ohio (other than a children's hospital). The rates are to be increased to the maximum extent permitted by federal law. However, ODJFS is to pay the rate increase only to the extent funds are available in the Hospital Assessment Fund after money in that fund is used to pay for the 5% rate increase for hospital inpatient and outpatient services, children's hospitals' cost outlier claims and supplemental Medicaid payments to children's hospitals,[259] and the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program.[260]

Ambulance services

The ODJFS Director is required by the bill to amend Medicaid rules as necessary to increase, for fiscal years 2010 and 2011, the Medicaid reimbursement rates for Medicaid-covered ambulance services provided by an ambulance service provider that is wholly owned or controlled by one or more hospitals (other than a children's hospital) or one or more nonprofit entities that own or control one or more hospitals in Ohio (other than a children's hospital). The rates are to be increased to the maximum extent permitted by federal law. However, ODJFS is to pay the rate increase only to the extent funds are available in the Hospital Assessment Fund after money in that fund is used to pay for the 5% rate increase for hospital inpatient and outpatient services, children's hospitals' cost outlier claims and supplemental Medicaid payments to

[259] See "**Cost outlier and supplemental payments to children's hospitals**," above.

[260] See "**Hospital Supplemental Upper Payment Limit Program**," above.

children's hospitals, the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program, and the Medicaid rate increase for hospital home health services.

Hospice services

The ODJFS Director is required by the bill to amend Medicaid rules as necessary to increase, for fiscal years 2010 and 2011, the Medicaid reimbursement rates for Medicaid-covered hospice services provided by a hospice service provider that is wholly owned or controlled by one or more hospitals (other than a children's hospital) or one or more nonprofit entities that own or control one or more hospitals in Ohio (other than a children's hospital). The rates are to be increased to the maximum extent permitted by federal law. However, ODJFS is to pay the rate increase only to the extent funds are available in the Hospital Assessment Fund after money in that fund is used to pay for the 5% rate increase for hospital inpatient and outpatient services, children's hospitals' cost outlier claims and supplemental Medicaid payments to children's hospitals, the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program, the Medicaid rate increase for hospital home health services, and the Medicaid rate increase for hospital ambulance services.

Durable medical equipment study

(Section 309.32.70)

The bill requires ODJFS to prepare and submit a report on expenditures for durable medical equipment by the Medicaid program to the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate. ODJFS is to do all of the following in preparing the report:

(1) Identify the types of durable medical equipment that represent, in total, greater than 50% of the state's total Medicaid expenditures for durable medical equipment;

(2) Consult with durable medical equipment suppliers to identify cost-saving strategies;

(3) Evaluate opportunities for competitive purchasing procedures for durable medical equipment.

The report is to include recommendations on strategies to reduce the Medicaid program's costs for durable medical equipment and must be submitted not later than July 1, 2010.

Study of wheelchair reallocation system

(Section 309.30.72)

The bill requires ODJFS to study the potential of using an asset management service under which discarded, no longer required, or otherwise unused but functional durable medical mobility equipment is reallocated to eligible Medicaid recipients for reuse. For purposes of the study, "durable medical mobility equipment" means manual and power wheelchairs. The state is to retain ownership of the wheelchairs provided to Medicaid recipients under such an asset management service.

The bill requires ODJFS to evaluate all of the following in conducting the study:

(1) The use of an online database that facilitates the reallocation of the wheelchairs;

(2) The use of an annual inspection and maintenance system to service and maintain the wheelchairs;

(3) A process whereby wheelchairs that have been provided in the past to Medicaid recipients may be included in the asset management service;

(4) The potential costs and cost savings of an asset management service;

(5) Implementation of a trial asset management service before statewide implementation;

(6) Whether any adjustments to the state's Medicaid plan are necessary to implement the service.

ODJFS is to submit a report of its findings and recommendations to the Governor, Speaker and Minority Leader of the House of Representatives, and President and Minority Leader of the Senate not later than January 1, 2010. The report is to include specific recommendations as to whether an asset management service should be implemented under the Medicaid program.

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 scheduled 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"[261] 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.[262] The bill specifies that a school-based

[261] Public Law 111-3.

[262] 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).

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 and 5101.5213)

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.

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. Workforce Development

(R.C. 6301.03)

Current law requires all expenditures for activities funded by the Workforce Investment Act (29 U.S.C. § 2801, *et seq*.) to be made from the workforce development funds established by local areas and subrecipients of local areas. The bill includes reimbursements to a county public assistance fund for expenditures made for activities funded by the Workforce Investment Act in the expenditures that must be made from the local workforce development funds.

JOINT LEGISLATIVE ETHICS COMMITTEE (JLE)

- Creates the Joint Legislative Ethics Committee Investigative Fund and requires that all receipts that the Joint Legislative Ethics Committee receives from the payment of financial disclosure statement filing fees be deposited into the fund.

- Requires a state agency that employs an officer or employee who actively advocates in a fiduciary capacity as a representative of that agency to pay the officer's or employee's registration fee as a legislative agent.

Creation of the Joint Legislative Ethics Committee Investigative Fund

(R.C. 101.34 and 102.02)

Current law requires that the Joint Legislative Ethics Committee (JLEC) deposit into the state General Revenue Fund all money it receives as regular and late filing fees from public officers and employees who must file annual financial disclosure statements with JLEC. The bill requires instead that JLEC deposit these fees into the Joint Legislative Ethics Committee Investigative Fund, which the bill creates in the state treasury. Money in the fund must be used solely for the operations of JLEC in conducting investigations. Investment earnings of the fund must be credited to it. (R.C. 101.34(G) and 102.02(G)(1) and (3).)

Payment of legislative agent registration fees by the state agency that employs legislative agents

(R.C. 101.72)

Current law generally requires the payment of a registration fee of $25 for filing an initial registration statement with JLEC as a legislative agent, but not if the registrant is an officer or employee of a state agency who actively advocates in a fiduciary capacity as a representative of that state agency. The bill eliminates this exemption from paying the registration fee, but requires the state agency that employs the officer or employee who actively advocates in a fiduciary capacity as a representative of that state agency to pay the officer's or employee's registration fee. (R.C. 101.72(E).)

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.

- 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 the Ohio Legal Assistance Foundation or any recipient of financial assistance from the Foundation that receives, or benefits from, any portion of the additional filing fees that are collected by a court for the charitable public purpose of providing financial assistance to Ohio legal aid societies may not bring or maintain any class action and may not bring or maintain any action against the state or any political subdivision of the state.

- Allows a municipal court to disburse moneys deposited into either a general special projects fund or a fund established for a specific special project to a county program that is not operated by the court and that addresses issues of domestic violence if the court determines that the program assists in the efficient operation of the court.

- 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.

- Expands the definition of "peace officer" that applies to the prohibition against impersonating a peace officer and the provision allowing a peace officer to file a request with the BMV to prohibit the disclosure of the officer's residence address contained in BMV motor vehicle records.

- Expands the definition of "law enforcement officer" that applies to the prohibition against an insurer considering the circumstance that an applicant or policyholder has been involved in a motor vehicle accident while in the pursuit of the applicant's or policyholder's official duties as a law enforcement officer, and applies that prohibition to an investigator of BCII.

- Allows a gasoline purchase card with a value not exceeding $10 to be awarded as a prize for playing a skill-based amusement machine even if the machine is not located at a gasoline station or if the card is not redeemable at the location of, or at the time of playing, the machine.

- Changes from mandatory to permissive the requirement that the cost of electronic monitoring for indigents subject to a protection order under R.C. 2903.14 be paid out of the Reparations Fund, limits the amount that may be paid out of the Fund for such purposes, and authorizes the Attorney General to adopt rules governing these payments.

- Specifies that the *perfection* of an appeal, *including an administrative-related appeal*, does not operate as a stay of execution until a stay of execution has been obtained pursuant to the Rules of Appellate Procedure or in another applicable manner, and a supersedeas bond is executed under current law.

- Requires that an appellant who obtains a stay of execution pending the appeal of a final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state, execute a supersedeas bond to the appellee, with sufficient sureties and in such an amount as is determined by the court, and requires that bond to be conditioned as provided in current law.

- Specifies that an appellant is not required to give a supersedeas bond in connection with the *perfection of* an appeal by certain persons specified in current law, or the *perfection of* an administrative-related appeal of a final order that is not for the payment of money.

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.

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.[263]

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:

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[263] Under existing Rule XV, section 3 of the Rules of Practice of the Supreme Court, an affidavit of indigency may be filed in lieu of filing fees or security deposits. The party on whose behalf the affidavit is filed must execute it within six months prior to it being filed in the Supreme Court. The affidavit must state the specific reasons for the party not having sufficient funds to pay the filing fees or security deposit. The Supreme Court may review and determine the sufficiency of the affidavit at any stage in the proceeding. Counsel appointed by a trial or appellate court to represent an indigent party may file a copy of the entry of appointment in lieu of an affidavit of indigency.

(1) In accordance with the Rules of Practice, an indigent defendant in a criminal action or proceeding files in the appropriate court of appeals a notice of appeal within 30 days from the date of the entry of the judgment or final order that is the subject of the appeal.

(2) The indigent defendant fails to file or offer for filing in the Supreme Court within 30 days from the date of the filing of the notice of appeal in the court of appeals, a copy of the notice of appeal supported by a memorandum in support of jurisdiction and other documentation and information as required by the Rules of Practice.

(3) The prosecutor or a representative of the prosecutor associated with the criminal action or proceeding files a motion to docket and dismiss the appeal of the indigent defendant for lack of prosecution as authorized by the Rules of Practice.

(4) The prosecutor states in the motion that the $40 filing fee does not accompany the motion because of the applicability of this provision, and the Clerk of the Supreme Court determines that this provision applies.

The bill repeals the above provisions.

Additional filing fees to assist legal aid societies

(R.C. 1901.26(C), 1907.24(C), and 2303.201(C))

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 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.

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. 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.

The bill also provides that the Ohio Legal Assistance Foundation or any recipient of financial assistance from the Foundation that receives, or benefits from, any portion of the additional filing fees that are collected by a municipal court, county court, or court of common pleas for charitable public purpose of providing financial assistance to Ohio legal aid societies and transmitted as described above may not bring or maintain any class action and may not bring or maintain any action against the state or any political subdivision of the state (R.C. 1901.26(C), 1907.24(C), and 2303.201(C)).

Municipal Court special project funds

(R.C. 1901.26(B))

Current law provides that the municipal court may determine that, for the efficient operation of the court, additional funds are necessary to acquire and pay for special projects of the court. The court by rule may charge a fee, in addition to all other court costs, on the filing of each criminal cause, civil action or proceeding, or judgment by confession. All moneys collected for this purpose are paid to the county treasurer if the court is a county-operated municipal court or to the city treasurer if the court is not a county-operated municipal court for deposit into either a general special projects fund or a fund established for a specific special project. The bill allows the court to disburse moneys deposited into either a general special projects fund or a fund established for a specific special project to a county program that is not operated by the court and that addresses issues of domestic violence if the court determines that the program assists in the efficient operation of the court.

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.[264]

Impersonating a peace officer--definition of "peace officer"

(R.C. 2921.51)

Current law prohibits the following: (1) any person from impersonating a "peace officer," private police officer, federal law enforcement officer, or investigator of BCII, (2) any person, by impersonating a "peace officer," private police officer, federal law enforcement officer, or investigator of BCII, from arresting or detaining any person, searching any person, or searching the property of any person, (3) any person, with purpose to commit or facilitate the commission of an offense, from impersonating a "peace officer," private police officer, federal law enforcement officer, officer, agent, or employee of the state, or investigator of BCII, and (4) any person from committing a felony while impersonating a "peace officer," private police officer, federal law enforcement officer, officer, agent, or employee of the state, or investigator of BCII. Prohibition (1) is a misdemeanor of the fourth degree. Prohibition (2) is a misdemeanor of the first degree. Prohibition (3) is a misdemeanor of the first degree or a felony of the fourth degree. Prohibition (4) is a felony of the third degree. For each prohibition, the term "peace officer" means a sheriff, deputy sheriff, marshal, deputy marshal, member of the organized police department of a municipal corporation, or township constable, who is employed by a political subdivision of Ohio, a member of a police force employed by a metropolitan housing authority, a member of a police force employed by a regional transit authority, a state university law enforcement officer, a veterans' home police officer, a special police officer employed by a port authority, or a state highway patrol trooper whose primary duties are to preserve the peace, to protect life and property, and to enforce the laws, ordinances, or rules of the state or any of its political subdivisions.

The bill expands the definition of "peace officer" described in the preceding paragraph to include an officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within limits of that statutory duty and authority.

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[264] 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.

Disclosure of peace officer's residence address in BMV records--definition of "peace officer"

(R.C. 4501.271)

Current law provides that a "peace officer," correctional employee, or youth services employee may file a written request with the Bureau of Motor Vehicles to prohibit disclosure of the officer's or employee's residence address as contained in motor vehicle records of the Bureau, provide a business address to be displayed on the officer's or employee's driver's license or certificate of registration, or both. Procedures regarding the filing and granting of this request are specified in R.C. 4501.271. Current law defines "peace officer" to mean those persons described in R.C. 109.71(A)(1), (2), (4), (5), (6), (9), (10), (12), or (13), the house sergeant at arms appointed under R.C. 101.311(B)(1), and any assistant sergeant at arms appointed under R.C. 101.311(C)(1). "Peace officer" includes state highway patrol troopers but does not include the sheriff of a county or a supervisory employee who, in the absence of the sheriff, is authorized to stand in for, exercise the authority of, and perform the duties of the sheriff.

The bill expands the definition of "peace officer" described in the preceding paragraph to include a member of a police force employed by a regional transit authority under R.C. 306.35(Y), an officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority, and an investigator of the Bureau of Criminal Identification and Investigation as defined in R.C. 2903.11.

Prohibition against insurers considering certain motor vehicle accidents of specified employees

(R.C. 3937.41)

Current law provides that an insurer may not consider the circumstance that an applicant or policyholder has been involved in a motor vehicle accident while in the pursuit of the applicant's or policyholder's official duties as a "law enforcement officer," firefighter, or operator of an emergency vehicle or ambulance, while operating a vehicle engaged in mowing or snow and ice removal as a county, township, or Department of Transportation employee, or while operating a vehicle while engaged in the pursuit of the applicant's or policyholder's official duties as a member of the motor carrier enforcement unit of the state highway patrol under R.C. 5503.34, as a basis for doing either of the following: (1) refusing to issue or deliver a policy of insurance upon a private automobile, or increasing the rate to be charged for such a policy, or (2)

increasing the premium rate, canceling, or failing to renew an existing policy of insurance upon a private automobile. Current law also sets forth an appeal procedure that any applicant or policyholder affected by an action of an insurer in violation of the prohibition described above may utilize. It also sets forth procedures by which the employer of a person protected by the prohibition must certify to the appropriate office or agency that the person was engaged in the performance of the person's official duties at the time of the accident.

The bill applies the prohibitions and procedures explained in the preceding paragraph to an investigator of the Bureau of Criminal Identification and Investigation as defined in R.C. 2903.11. Additionally, the bill redefines "law enforcement officer" for purposes of the preceding two paragraphs. Under current law, "law enforcement officer" is defined as a sheriff, deputy sheriff, constable, marshal, deputy marshal, municipal or township police officer, state highway patrol trooper, police officer employed by a qualified nonprofit police department pursuant to R.C. 1702.80, or police officer employed by a proprietary police department or security department of a hospital operated by a public hospital agency or nonprofit hospital agency pursuant to R.C. 4973.17. The bill expands this definition to also include (1) a police officer of a joint township police district, (2) a member of a police force employed by a metropolitan housing authority under R.C. 3735.31(D), (3) an officer, agent, or employee of the state or any of its agencies, instrumentalities, or political subdivisions, upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority, (4) a veterans' home police officer appointed under R.C. 5907.02, and (5) a member of a police force employed by a regional transit authority under R.C. 306.35(Y).

Award of a gasoline purchase card for playing a skill-based amusement machine

(R.C. 2915.01)

Current law prohibits any person from establishing, promoting, or operating, or from knowingly engaging in conduct that facilitates, any scheme of chance and punishes a violation as a first degree misdemeanor (R.C. 2915.02(A)(2) and (F), not in the bill). Existing law defines "scheme of chance" to mean a slot machine, lottery, numbers game, pool conducted for profit, or other scheme in which a participant gives a valuable consideration for a chance to win a prize, but does not include bingo, a skill-based amusement machine, or a pool not conducted for profit (R.C. 2915.01(C)). Thus, playing a skill-based amusement machine does not violate the prohibition described above.

Present law defines "skill-based amusement machine" as a mechanical, video, digital, or electronic device that rewards the player or players, if at all, only with merchandise prizes or with redeemable vouchers redeemable only for merchandise prizes, provided with respect to rewards for playing the game all of the following apply:

(1) The wholesale value of a merchandise prize awarded as a single play of a machine does not exceed $10.

(2) Redeemable vouchers awarded for any single play of a machine are not redeemable for a merchandise prize with a wholesale value of more than $10.

(3) Redeemable vouchers are not redeemable for a merchandise prize that has a wholesale value of more than $10 times the fewest number of single plays necessary to accrue the redeemable vouchers required to obtain that prize.

(4) Any redeemable vouchers or merchandise prizes are distributed at the site of the skill-based amusement machine at the time of play. (R.C. 2915.01(AAA)(1).)

The bill provides that a card for the purchase of gasoline is a redeemable voucher for purposes of the definition above even if the skill-based amusement machine for the play of which the card is awarded is located at a place where gasoline may not be legally distributed to the public or the card is not redeemable at the location of, or at the time of playing, the skill-based amusement machine (R.C. 2915.01(AAA)(1)).

Cost of electronic monitoring devices

(R.C. 2903.214)

Under current law, if a court orders electronic monitoring of a respondent in response to a request for a protection order under R.C. 2903.214 (menacing by stalking protection order or sexually oriented offense protection order) and determines that the respondent is indigent, the cost of the installation and monitoring of the electronic monitoring device must be paid out of funds from the Reparations Fund created under R.C. 2743.191.

The bill changes the requirement that the cost of installing and monitoring an electronic monitoring device for indigent respondents be paid out of the Reparations Fund from mandatory to permissive. The bill limits the total amount of costs paid under this provision for the installation and monitoring of electronic monitoring devices to $300,000 per year. The bill permits the Attorney General to promulgate rules to govern such payments from the Reparations Fund and provides that the rules may include reasonable limits on the total cost paid per respondent, the amount of the

$300,000 allocated to each county, and how invoices may be submitted by a county, court, or other entity.

Appeals

(R.C. 2505.09, 2505.12, 2505.122)

Execution of supersedeas bond

Under current law, with certain exceptions, an appeal does not operate as a stay of execution until a stay of execution has been obtained pursuant to the Rules of Appellate Procedure or in another applicable manner, and a supersedeas bond is executed by the appellant to the appellee, with sufficient sureties and in a sum that is not less than, if applicable, the cumulative total for all claims covered by the final order, judgment, or decree and interest involved, except that the bond cannot exceed $50 million excluding interest and costs, as directed by the court that rendered the final order, judgment, or decree that is sought to be superseded or by the court to which the appeal is taken. The bill specifies that the above provision applies to *the perfection of* an appeal, *including an administrative-related appeal*.[265]

The bill requires that an appellant who obtains a stay of execution pending the appeal of a final order, adjudication, or decision of any officer, tribunal, authority, board, bureau, commission, department, or other division of any political subdivision of the state execute a supersedeas bond to the appellee, with sufficient sureties and in such an amount as is determined by the court. That bond must be conditioned as provided in R.C. 2505.14 (the condition that the appellant must abide and perform the appellate court's order, judgment, or decree and pay all money, costs, and damages that may be required of or awarded against the appellant upon the final determination of the appeal and any other conditions that the court provides).

Exceptions to execution of supersedeas bond

Under current law, an appellant is not required to give a supersedeas bond in connection with any of the following: (1) an appeal by an executor, administrator, guardian, receiver, trustee, or trustee in bankruptcy who is acting in that person's trust capacity and who has given bond in this state, with surety according to law, by the state or any political subdivision of the state, or by any public officer of the state or of any of its political subdivisions who is suing or is sued solely in the public officer's representative capacity as that officer, or (2) an administrative-related appeal of a final

[265] An "administrative-related appeal" means an appeal to a court of the final order of an administrative officer, agency, board, department, tribunal, commission, or other instrumentality (R.C. 2505.01(B)--not in the bill).

order that is not for the payment of money. The bill specifies that an appellant is not required to give a supersedeas bond in connection with the *perfection of* an appeal by the persons described in (1), above, or the *perfection of* an administrative-related appeal of a final order that is not for the payment of money.

LEGAL RIGHTS SERVICE COMMISSION (LRS)

- Requires the Legal Rights Service Commission to study the potential transition of the Legal Rights Service from a public entity to a nonprofit organization.

Legal Rights Service Commission Transition Study

(Section 317.20)

The Ohio Legal Rights Service (OLRS) is Ohio's designated protection and advocacy system and client assistance program for children and adults with mental disabilities. For Ohio to receive federal funds for services to persons who are mentally disabled, the state is required by federal law to have a protection and advocacy system.[266] 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.[267] The study is to include an analysis of all of the following:

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[266] 42 U.S.C.15041 *et seq.*; the specific requirement is in 42 U.S.C. 15043.

[267] 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)).

(1) The feasibility of a transition to a nonprofit organization;

(2) The potential effects on service delivery, including client service and access to required resources, and any other service delivery advantages or disadvantages that might result from the transition to a nonprofit organization;

(3) Potential organizational effects, including cost savings and non-state funding sources, and any other organizational advantages or disadvantages that might result from the transition to a nonprofit organization;

(4) The approximate amount of time necessary to achieve a transition to nonprofit status.

The Commission is also to develop a process plan by which a transition to a nonprofit organization could be implemented by July 1, 2011. The Commission is required, not later than six months after the bill's effective date, to provide a written report of the results of the study and a copy of the process plan to the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate.

LEGISLATIVE SERVICE COMMISSION (LSC)

- Broadens the use of the House and Senate Telephone Usage Fund to include reimbursements and expenditures on account of telephone calls made by the Joint Legislative Ethics Committee and any other legislative agency specified by the 14-member Legislative Service Commission.

Changes in the House and Senate Telephone Usage Fund

(R.C. 103.24; Section 321.10)

Early in 2007 the Controlling Board created the House and Senate Telephone Usage Fund. The Legislative Information Systems Office (LIS) uses the fund to pay the monthly telephone bills it receives for calls made from House and Senate telephones and deposits reimbursements the Office receives for such calls to the credit of the fund.

The bill creates the fund anew in statute, expands its use, and renames it the Legislative Agency Telephone Usage Fund. Money collected for telephone calls made from not only House and Senate telephones, but also those of the Joint Legislative Ethics Committee and any other legislative agency specified by the 14-member

Legislative Service Commission, is to be credited to the fund. The fund is to be used to pay the telephone carriers for all such telephone calls.

STATE LIBRARY BOARD (LIB)

- Creates the Bill and Melinda Gates Foundation Grant Fund for use by the State Library Board.

Bill and Melinda Gates Foundation Grant Fund

(R.C. 3375.79)

The 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.

LIQUOR CONTROL COMMISSION (LCO)

- Authorizes a D-5l liquor permit to be issued in a municipal corporation or township in which the number of D-5 permits equals the number of those permits that may be issued in the municipal corporation or township under the population quota restrictions established by law.

Number of D-5l permits that may be issued in a municipal corporation or township

(R.C. 4303.181)

Current law allows the D-5l liquor permit to be issued to the owner or operator of a retail food establishment or a food service operation licensed under state law to sell beer and intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold and to sell beer and intoxicating liquor in the same manner and amounts not for consumption on the premises where sold as may be sold by the holders of D-1 (beer) and D-2 (wine) permits. A D-5l permit

holder may exercise the same privileges and must observe the same hours of operation as the holder of a D-5 (night club) permit.

A D-5l permit can only be issued to a premises that (1) has gross annual receipts from the sale of food and meals that constitute not less than 75% of its total gross annual receipts, (2) is located in a revitalization district established by a municipal corporation or township, (3) is located in a municipal corporation or township in which the number of D-5 permits issued *exceeds* the number of those permits that may be issued in a municipal corporation or township under the population quota restrictions established by law, and (4) is located in a county with a population of 125,000 or less according to population estimates certified by the Department of Development for calendar year 2006. The bill changes item (2) above to provide that a D-5l permit can only be issued in a municipal corporation or township in which the number of D-5 permits issued *equals or exceeds* the number of those permits that may be issued in the municipal corporation or township under the population quota restrictions established by law. (R.C. 4303.181(L)(2).)

LOCAL GOVERNMENT (LOC)

- Modifies the makeup of a financial planning and supervision commission and the qualifications of commission members.
- Specifies the number of commission members necessary to constitute a quorum and to constitute an affirmative vote.
- 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.
- 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.

- Requires the board of county commissioners, within a reasonable time before the next general election occurring not less than 75 days after the requirement's effective date, in a county with a population of 1.2 million or more according to the 2000 federal decennial census to vote upon the question of whether to adopt a resolution to cause the board of elections to submit to the electors of the county the question of adopting the blended form of county government.

- Creates the blended county government plan that consists of: a 13-member county council elected by districts; a county executive elected at large; a chief financial officer; a chief operating officer; an appointed medical examiner; an appointed county engineer; an appointed clerk of the court of common pleas; and the retained elected offices of county prosecutor and county sheriff.

- Amends current law that provides for an alternative form of county government to include the blended county government plan.

- Extends the time from October 15, 2009, to October 15, 2010, during which local governments may enter enterprise zone agreements.

- 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 and permits a local law enforcement agency to charge a higher fee for these items if, in the future, the State Highway Patrol is authorized to charge a fee in excess of $4 for any of these items and the board of county commissioners of the county in which the local law enforcement agency is located approves that same higher fee.

- Allows a regional council of governments to enter into unit-priced construction contracts if the contracts are awarded pursuant to specified notice and competitive bidding procedures.

- Provides that, for purposes of statutes and regulations requiring counties to make second and later publications of a notice, advertisement, list, or other information in a newspaper of general circulation, the second and later publication requirement can be satisfied by complying with specified Internet posting requirements.

- Permits a board of county commissioners to authorize commercial advertising on a county's web site, and specifies the information that must be included in the resolution authorizing such advertising.

- Requires a board of county commissioners that authorizes commercial advertising on the county's web site to send a copy of the authorizing resolution to each county official who is authorized to place commercial advertisements on a county web site; requires the county official to notify the board if the official intends to implement the resolution; permits the county official to make requests for proposals for such advertising; and permits the board of county commissioners to enter into a contract with such an advertiser.

- Requires an advertiser to pay a fee, which is deposited into the county general fund.

- Specifies that a county web site on which commercial advertising is placed must be used exclusively to provide information and must not be used as a public forum.

- Authorizes a county appointing to establish a mandatory cost savings program for its employees who are not subject to a collective bargaining agreement that includes a loss of pay or loss of holiday pay of not more than 80 hours during each of state fiscal years 2010 and 2011.

- Authorizes a county appointing to establish a mandatory cost savings program for such employees after June 30, 2011 in the event of a fiscal emergency.

- Authorizes a municipal corporation to establish a program to make low-cost loans to residents of the municipal corporation so that they can install solar panels in their residences.

- Specifies that port authorities are required to prepare a plan for future development, construction, and improvement only for maritime facilities; limits the effect of the plan on port authority financial instruments and contracts; and revises notification requirements.

- Includes townships among the current entities authorized to commence a civil action to abate a public nuisance.

- Changes the definition of "small wind farm" within the county zoning law to conform to definitions of small wind farm with township and municipal zoning laws.

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 a majority of the 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 constitute a quorum of the commission and the affirmative vote of a majority of the members is necessary for any action taken by vote of the commission. The 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 a majority of the 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.

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.

The blended county government plan

Background; organization and governance of counties

The Ohio Constitution provides authority for the organization and governance of counties. Article X, section 1 provides that the General Assembly must provide by general law for the organization and government of counties, and can provide by general law for alternative forms of county government. Under Article X, section 3 of the Ohio Constitution, a county can adopt a charter to change its form of government. The charter can provide for the appointment of county officials who are otherwise elected under the general statutory scheme. Any charter must provide for "the exercise of all powers vested in, and the performance of all duties imposed upon counties and county officers by law." Summit County is the only county in Ohio currently operating under a charter.

All counties in Ohio that are organized under the general statutory scheme have three county commissioners, two being elected at the time of the presidential election and one at the time of the gubernatorial election. Each county organized under the general statutory scheme has 11 elected officials consisting of the three county commissioners, an auditor, treasurer, prosecuting attorney, clerk of courts of common pleas, engineer, coroner, recorder, and sheriff. There is no chief executive officer, but rather, each officer possesses some executive authority.

Under Article X, section 1 of the Ohio Constitution, the General Assembly can provide by general law for alternative forms of county government. No alternative form can become operative in any county until it has been submitted to the electors and approved by a majority of the electors. Existing Revised Code Chapter 302. authorizes the electors of any county to adopt an alternative form of county government to replace the existing form. The electors can petition the board of county commissioners or the board can vote to have the question submitted to the electors. An alternative form must include either an elective county executive or an appointive county executive who serves as the administrative head of the county. The alternative form can authorize an expansion of the board of county commissioners, requires the appointment of an executive, and provides for the establishment of a series of departments. It appears that under this form of government the county commissioners are the policy-making and legislative body and the executive performs administrative and executive functions that are the responsibility of county commissioners in a general statutory form. To date, no county operates under an alternative form of county government.

There appear to be two primary differences between county charter governments and the alternative form of government under Chapter 302. The current alternative form does not permit the elimination of any county elected official, as is possible under a charter. The charter affords greater flexibility while the alternative form is more specific and limited.

Creation: submission to the electors

(R.C. 302.011, 302.015, 302.02, and 302.082)

The bill requires the board of county commissioners, within a reasonable time before the next general election occurring not less than 75 days after the effective date of the requirement, of a county with a population of 1.2 million or more according to the 2000 federal decennial census (Cuyahoga County) to vote on the adoption of a resolution to cause the board of elections of the county to submit to the electors of the county the question of adopting the alternative form of county government known as the blended county government plan created under the bill. If at least two-thirds of the board of county commissioners votes in the affirmative, the question must be voted

upon at the next general election occurring not less than 75 days after the effective date of the requirement.

In submitting to the electors of the county the question of adopting an alternative form of county government known as the blended county government plan, the board of elections must submit the question in language substantially as follows:

"Shall the county of . . . . . adopt the form of county government known as the blended county government plan with an elected county executive and a county council of 13 members elected by districts, as provided for in sections 302.012, 302.013, and 302.014 of the Revised Code?

( ) For adoption of the blended county government plan.

( ) Against adoption of the blended county government plan."

By April 30, 2011, the Secretary of State must divide the county into districts in the manner provided under the existing provision of law applicable to the other alternative form of county government, aligning the districts with, to the greatest extent possible, the districts for the House of Representative members in effect in the county on the effective date of the requirement.[268]

At least 45 days before the election, the board of county commissioners must cause a copy of the blended county government plan to be distributed to each elector of the county so far as may be reasonably possible. Immediately following the election the board of elections must file a certificate of the results with the Secretary of State.

Officers under the blended county government plan

(R.C. 302.012, 302.013, 302.014, 302.081, 302.12, and 302.18)

The blended county government plan has the following characteristics:

Under the blended county government plan, the board of county commissioners is replaced by a 13-member county council (that is the policy-determining body of the county), all of whom are elected by districts. The General Assembly must set the compensation of the county council members and can change it at any time before a

[268] R.C. 302.082 provides that any or all districts may be multimember districts, but the division of the county into districts for county commissioners or county council members must conform to the constitutional standards for division of the state into districts for election of members of the general assembly. After the initial districts are drawn, the board of county commissioners or county council must, every ten years, divide the county into county commissioner districts or county council districts, as the case may be, according to the most recent decennial federal census.

primary election for a member. Any law, contract, or other document referring to a board of county commissioners, is deemed to refer to the county council.

A county executive (who is the administrative head of the county) will serve as the chief executive officer and will first be elected for a four-year term at the 2011 general election and takes office on January 1, 2012. Only an elector of the county is eligible to be elected as county executive and must remain so during the entire term. The candidate must be nominated and elected in the manner provided by general law for officers of the county. The salary of the first individual elected county executive must be set by the General Assembly. The General Assembly can change the salary at any time before the primary election for the office, but must not be effective until the next term begins.

The formerly elected offices of county auditor, county treasurer, county recorder, county coroner, county engineer, and clerk of the court of common pleas are eliminated[269] and replaced as follows:

(1) The offices of county auditor, county treasurer, and county recorder are combined into a chief financial officer. The chief financial officer will be appointed by a vote of at least nine county council members. The chief financial officer must fulfill all the duties vested by law in county auditors, treasurers, and recorders. The General Assembly must set the chief financial officer's salary.

(2) The chief operating officer is created and must be appointed by a vote of at least nine county council members. The chief operating officer must oversee the offices of medical examiner, county engineer, and clerk of the court of common pleas. The General Assembly must fix the salary of the chief operating officer.

(3) The elected office of county coroner will become an appointed office of medical examiner. The chief operating officer must appoint the medical examiner, subject to the approval of at least nine members of the county council.

The appointed medical examiner must have the same qualifications prescribed by law for, and must fulfill all the duties vested by law in, a county coroner.

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[269] It is not clear whether the elimination of an office under the bill will constitute the abolishment of an office for purposes of Article II, Sec. 20 of the Ohio Constitution which provides that no change in the term or compensation of officers shall affect the salary of any officer during his existing term, unless the office is abolished. Additionally, current law states that if an alternative form of county government is adopted it becomes the form of government of the county which may contemplate the abolishment of offices (R.C. 302.05).

(4) The elected office of county engineer is replaced by an appointed office of county engineer. The chief operating officer must appoint the county engineer, subject to the approval of at least nine members of the county council. The appointed engineer must have the same qualifications prescribed by law for, and must fulfill all the duties vested by law, in a county engineer.

(5) The elected office of clerk of the court of common pleas is replaced by an appointed office of clerk of the court of common pleas. The chief operating officer must appoint the clerk of the court of common pleas, subject to the approval of at least nine members of the county council. The appointed clerk must have the same qualifications prescribed by law for, and must fulfill all the duties vested by law, in a clerk of the court of common pleas.

The blended form of county government plan retains the office of county prosecutor and the office of county sheriff, who both continue to be elected, as provided by law.

Conforming with current alternative form of county government law

(R.C. 302.03, 302.09, 302.10, 302.11, 302.13, 302.14, 302.17, 302.18, 302.19, 302.201, 302.202, 302.204, 302.21, 302.22, and 302.24)

The bill amends current law provisions that set out parameters for an alternative form of county government and the duties and powers of officers under that form to include the blended county government plan. The bill provides, for a blended form of county government, that vacancies occurring in the offices of elected officials must be filled as provided for in current law for the filling of vacancies of county officials. If a vacancy occurs in the offices of appointed officials, the vacancy must be filled in the same manner as is provided for the appointment of those officers.

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.

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 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[270] determines that the use of a reverse auction[271] 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

[270] "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.

[271] "Reverse auction" means a purchasing process in which offerors submit proposals in competing to sell supplies or services in an open environment via the Internet.

the 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[272] 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 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).)

[272] "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).

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.

The bill provides, however, that if, after the bill's general effective date, the State Highway Patrol is authorized to charge a fee in excess of $4 for an accident report relating to an accident investigated by the State Highway Patrol and all related reports and statements or a fee in excess of $4 for photographs or other electronic formats related to an accident report, a local law enforcement agency may charge that same fee for an accident report relating to an accident investigated by that law enforcement agency and all related reports and statements or for photographs or other electronic formats related to an accident report investigated by that law enforcement agency upon approval of the board of county commissioners of the county in which that law enforcement agency is located. (R.C. 5502.12.)

Regional councils of governments

(R.C. 167.081)

Under continuing law, the governing bodies of any two or more counties, municipal corporations, townships, special districts, school districts, or other political subdivisions can enter into an agreement with each other, or with the equivalent political subdivisions in other states, to establish a regional council of governments consisting of those political subdivisions (R.C. 167.01, not in the bill). A council, once established, has authority to do a range of things that focus on cooperation among the various political subdivisions, the state, and federal government (R.C. 167.03, not in the bill). A political subdivision can contract with a council to receive services from a council or to provide services to a council (R.C. 167.08, not in the bill).

Unless certain provisions requiring separate bids apply,[273] the bill permits a council to enter into a contract that establishes a unit price for, and provides upon a per unit basis, materials, labor, services, overhead, profit, and associated expenses for the repair, enlargement, improvement, or demolition of a building or structure if the contract is awarded pursuant to a competitive bidding procedure of a county, municipal corporation, or township or a special district, school district, or other political subdivision that is a council member; a statewide consortium of which the council is a member; or a multistate consortium of which the council is a member. The bill specifies that purchases under such a contract are exempt from any competitive selection or bidding requirements otherwise required by law.

Additionally, the bill permits a county, municipal corporation, or township and a special district, school district, or other political subdivision that is a council member to participate in such a contract. However, such a council member is not entitled to participate in such a contract if it has received bids for the same work under another contract, unless participation in the council's contract will enable the council member to obtain the same work, upon the same terms, conditions, and specifications, at a lower price.

The bill specifies that a public notice requirement pertaining to the contract must be considered to have been met if the public notice is given once a week for at least two consecutive weeks in a newspaper of general circulation within a county in Ohio in which the council has members and if the notice is posted on the council's Internet web site for at least two consecutive weeks before the date specified for receiving bids.

Satisfaction of multiple publication requirements through Internet postings

(R.C. 305.20)

Many sections of statutory law, for a variety of purposes, require counties and other political subdivisions to give notice by publication in a newspaper of general

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[273] Under ongoing law, a public authority is required to solicit separate and distinct bids for furnishing materials or doing work for plumbing and gas fitting; steam and hot-water heating, ventilating apparatus, and steam-power plant; and electrical equipment. A public authority is not required to solicit separate and distinct bids if the cost is less than $5,000. (R.C. 153.50, not in the bill.) A public authority cannot award a single, aggregate contract for an entire project or for a greater portion of the project than is embraced in one class of work unless one of the following applies: (1) the separate bids do not cover all the work or materials required, or (2) the bids for the whole or two or more kinds of work or materials are lower than the separate bids combined (R.C. 153.51, not in the bill). Public authorities must award contracts for the separate branches of work described above to the lowest and best separate bidder. However, the separate bid requirements do not apply to the erection of buildings and other structures that cost less than $50,000. (R.C. 153.52, not in the bill.)

circulation in the county or other political subdivision. Often multiple publications may be required.

The bill provides that for purposes of any such statute or regulation pertaining to a county, the second and subsequent publications are satisfied by posting the notice, advertisement, list, or other information on the county's Internet web site if the newspaper publication states that the notice, advertisement, list, or other information is posted on the county's web site, provides the county's Internet address on the worldwide web, and includes instructions for accessing the notice, advertisement, list, or other information on the county's web site. The Internet web site posting must provide the same information as is otherwise required for the newspaper publication.[274] If a county does not operate and maintain, or ceases to operate and maintain, an Internet web site, it may not use this authority and must comply with the statutory publication requirements that otherwise apply to the notice, advertisement, list, or other information.

The bill defines "county" to mean a board of county commissioners, a county elected official, or any contracting authority as defined in current law. Contracting authorities include any board, department, commission, authority, trustee, official, administrator, agent, or individual that has authority to contract for or on behalf of the county or any agency, department, authority, commission, office, or board of the county.

Commercial advertisements on county web sites

(R.C. 9.03, 307.12, and 307.121)

The bill permits a board of county commissioners, by resolution adopted by a majority of the board's members, to authorize commercial advertisements on a county web site. The resolution authorizing the advertisements must include all of the following:

(1) A specification of the county officials who, and of the county offices under those officials that, are authorized to place commercial advertisements on county web sites.[275]

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[274] The information in the newspaper notice about accessing the county's web site does not have to be included.

[275] County officials who may receive such an authorization include the County Auditor, County Treasurer, County Engineer, County Recorder, County Prosecuting Attorney, County Sheriff, County Coroner, Board of County Commissioners, Clerk of the Probate Court, Clerk of the Juvenile Court, Clerk

(2) Criteria for choosing the advertisers and types of advertisements that may be placed on a county web site;

(3) Requirements and procedures for making requests for proposals for such advertising; and

(4) Any other requirements or limitations necessary to authorize commercial advertising on county web sites.

A board of county commissioners that adopts a resolution authorizing commercial advertisements to be placed on county web sites must send a copy of the resolution to each county official who is authorized by the resolution to place commercial advertisements on a county web site. After receiving the resolution, the county official must notify the board, in writing, if the official intends to implement the resolution.

After providing such a written notice, the county official may make requests for proposals in the manner specified by the resolution for the purpose of identifying advertisers who, and whose advertisements will, meet the criteria, requirements, and limitations specified in the resolution. The board of county commissioners may enter into a contract with such an advertiser whereby the advertiser places an advertisement on the office's web site and pays a fee in consideration to the county general fund.

A county web site on which commercial advertising is placed must be used exclusively to provide information from a county office to the public and must not be used as a public forum.

Mandatory cost savings program for county exempt employees

(R.C. 124.393)

The bill authorizes a county appointing authority to establish a mandatory cost savings program applicable to its county exempt employees. A "county exempt employee" is a permanent full-time or permanent part-time county employee who is not subject to a collective bargaining agreement between a public employer and an exclusive representative.

Each county exempt employee must participate in the program of mandatory cost savings for not more than 80 hours, as determined by the employee's appointing authority, in each of state fiscal years 2010 and 2011. The program may include, but is

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of Court for all divisions of the Court of Common Pleas, Clerk of a County-operated Municipal Court, and Clerk of a County Court.

not limited to, a loss of pay or loss of holiday pay. The program may be administered differently among employees based on their classifications, appointment categories, or other relevant distinctions.

After June 30, 2011, a county appointing authority may implement mandatory cost savings days as described above that apply to its county exempt employees in the event of a fiscal emergency. A "fiscal emergency" is any of the following: (1) a fiscal emergency declared by the Governor under the bill, (2) a lack of funds as defined in the Layoff Law, or (3) reasons of economy as described in the Layoff Law.

A county appointing authority must issue guidelines concerning how the appointing authority will implement the mandatory cost savings program.

Authority for municipal corporations to make loans to their residents so that they can install solar panels in their homes

(R.C. 717.25)

The bill authorizes the legislative authority of a municipal corporation to establish a low-cost solar panel revolving loan program to assist residents of the municipal corporation to install solar panels at their residences. If the legislative authority decides to establish such a program, the legislative authority must adopt an ordinance that provides for all the following:

(1) Creation in the municipal treasury of a residential solar panel revolving loan fund;

(2) A source of money, such as gifts, bond issues, real property assessments, or federal subsidies, to seed the fund;

(3) Facilities for making loans from the fund, including an explanation of how municipal residents may qualify for loans from the fund, a description of the solar panels and related equipment for which a loan can be made from the fund, authorization of a municipal agency to process applications for loans and otherwise to administer the low-cost solar panel revolving loan program, a procedure whereby loans can be applied for, criteria for reviewing and accepting or denying applications for loans, criteria for determining the appropriate amount of a loan, the interest rate to be charged, the repayment schedule, and other terms and conditions of a loan, and procedures for collecting loans that are not repaid according to the repayment schedule;

(4) A specification that repayments of loans from the fund may be made in installments and, at the option of the resident repaying the loan, the installments may be paid and collected as if they were special assessments paid and collected in the

manner specified in the Municipal Special Assessments Law and as specified in the ordinance;

(5) A specification that repayments of loans from the fund are to be credited to the fund, that the money in the fund is to be invested pending its being lent out, and that investment earnings on the money in the fund is to be credited to the fund; and

(6) Other matters necessary and proper for efficient operation of the program as a means of encouraging use of renewable energy.

The interest rate charged on a loan from the fund must be below prevailing market rates. The legislative authority may specify the interest rate in the ordinance or may, after establishing a standard in the ordinance whereby the interest rate can be specified, delegate authority to specify the interest rate to the administrator of loans from the fund.

The fund must be seeded with sufficient money to enable loans to be made until the fund accumulates sufficient reserves through investment and repayment of loans for revolving operation.

Port authority plan for future development

(R.C. 4582.07, 4582.08, 4582.32, and 4582.33; Section 745.50)

Chapter 4582. regulates port authorities. Sections 4582.01 to 4582.20 apply exclusively to a port authority in existence on July 9, 1982. Sections 4582.21 to 4582.59 apply exclusively to a port authority created after July 9, 1982, and to a port authority in existence on that date if all subdivisions that created the port authority elect to operate under those sections. The bill affects both parts of the law governing port authorities in the same way.

Existing law requires all port authorities to prepare a plan for future development, construction, and improvement of the port and its facilities. The plan must include maps, profiles, and other data and descriptions as necessary to describe the location and character of the work to be undertaken. Plans and proposed plans by a port authority also must contain a description of any and all financing under bonds, leases, or otherwise, and a description of any and all related tax abatements, tax credits, tax increment financing, emoluments, subsidies, grants, loans, and financial participation. When the plan is completed, the port authority board of directors must give specified notice in each county in which there is a political subdivision participating in the creation of the port authority, and must serve notice upon any owners of the uplands contiguous to any submerged lands affected by such plan. The board must permit the inspection of the plan at its office by all interested persons. The

notice must fix the time and place for a hearing of all objections to the plan, which must be not less than 30 nor more than 60 days after the last publication of the notice and after service of notice upon the owners of any uplands. Any interested person may file written objections to the plan.

Under existing law, the board of directors, from time to time after the adoption of an official plan, may modify, amend, or extend the plan, but the board must give notice and conduct a hearing. Additionally, the board may consider, implement, modify, amend, or extend any proposal for any type of financing related to the plan as described above, but the board must give notice and conduct a hearing on any proposal. The plan and any change to the plan, when adopted by the board of directors after notice and hearing, is final and conclusive and its validity must be conclusively presumed.

The bill requires a plan only for any future development, construction, and improvement of the "maritime facilities" of a port authority, which the bill defines as "docks, wharves, warehouses, piers, and other terminal and transportation buildings or structures used in connection with the transport, storage, or distribution of commercial goods on, over, or across the waterways or shorelines of this state, or buildings or structures for the construction, rehabilitation, maintenance, or repair of commercial vessels used for such purposes, which facilities are or are expected to be owned or leased by a port authority, operated by or on behalf of a port authority, or publicly owned and financed by a port authority."

A plan for future maritime facilities must include a then-current good faith estimate of the cost of the proposed facilities and must contain the port authority's proposal for payment of the cost of maritime facilities, including revenues, grants, subsidies, loans, and financing, rather than the plan containing a description of any and all financing.

The bill specifies that the plan and any payment proposal do not affect the legality, validity, or enforceability of any of the following: (1) bonds, notes, leases, certificates, or other financing instruments, (2) any real estate, (3) operating or management contracts or instruments, or (4) any taxes, tax abatements or exemptions, tax credits, tax increment financing, assessments, or other financial participation related to maritime facilities or the plan.

Upon completing a plan for maritime facilities, the bill requires the board of directors to give notice by publication as to each county in which there is a political subdivision that participated in the creation of the port authority and removes a requirement for notice to be served upon the owners of the uplands contiguous to any affected submerged lands.

The bill defines "notice by publication" as publication once in a newspaper of general circulation in the county or counties where such publication is required and the posting of the notice on the web site, if any, of the port authority and specifies that notice is complete on the later of the date of posting or the date of newspaper publication. The hearing of comments on the plan must be held not less than 30 nor more than 60 days after completion of the publication. Under the bill, the hearing must allow for comments on the plan, rather than hearing objections to the plan.

In regard to the power to modify, amend, or extend a plan for maritime facilities, the bill requires notice by publication and a hearing prior to making a change to the plan. Boards have the power to modify, amend, or supplement any proposal for any type of financing related to the plan and must change the plan prior to undertaking any financing not identified in the plan; however, the board must give the prescribed notice and conduct a hearing on the that proposal. As with the original plan, changes or proposed changes to the plan expressly do not affect the legality, validity, or enforceability of financing instruments, any real estate, operating or management contracts or instruments, or any taxes, tax abatements or exemptions, tax credits, tax increment financing, assessments, or other financial participation related to maritime facilities, the plan, or the proposal.

The bill specifies that it does not require a port authority to amend a plan, publish a notice, or hold a public hearing except to add or delete maritime facilities to the plan, to describe changes or deletions in the location or character of the maritime facilities covered by the plan, or to add, change, or delete financings not previously identified in the plan or cost projection changes not previously identified in the plan.

In an uncodified provision, the bill states that all those changes are intended to eliminate requirements that unintentionally burdened the process by which Ohio port authorities promote their authorized purposes, including transportation, economic development, housing, recreation, education, governmental operation, culture, or research, and the creation and preservation of jobs and employment opportunities. Therefore, the bill continues, the changes apply to pending financial proceedings and work commenced or to be commenced, as well as proceedings occurring, after the applicable effective date of the bill. Such financial proceedings are deemed to have been taken, and securities authorized, sold, issued, delivered, and validated, are deemed in conformity with the bill.

Township authority to initiate a civil action to abate a public nuisance

(R.C. 3767.41)

The current Public Nuisance Law, Chapter 3767., authorizes specified entities to initiate a civil action to abate a public nuisance. A public nuisance action may be initiated by a municipal corporation, neighbor, tenant, or nonprofit corporation. The action may be commenced in specified courts to enforce any local building, housing, air pollution, sanitation, health, fire, zoning, or safety code, ordinance, or regulation applicable to buildings. The bill includes a township among the entities allowed to initiate a public nuisance action to enforce its resolutions applicable to buildings. If a property is a public nuisance under current law, the judge may issue an injunction ordering the owner to abate the nuisance, appoint a receiver, or order the sale of the property.

The bill provides that nothing in this provision of law authorizing the initiation of a civil action to abate a public nuisance shall be construed to limit or prohibit a municipal corporation or township that has adopted an ordinance or resolution to participate in the fire loss claims program[276] from receiving insurance proceeds under that program. Under the existing fire loss claims program, a portion of fire insurance proceeds are deposited with a municipal corporation or township to cover the cost of removing, repairing, or securing structures.

County zoning of small wind farms

(R.C. 303.213; Section 812.20)

Under continuing law, county, township, and municipal zoning laws may address the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of a small wind farm.[277] "Small wind farm" means a wind farm designed for, or capable of, operation at an aggregate capacity of less than five megawatts. In current township and municipal zoning law definitions, "small wind farm" refers to wind turbines and associated facilities "with a single interconnection to the electrical grid." The county zoning law defines small wind farm differently as wind turbines and associated facilities that are "interconnected with a medium voltage power collection system and communications network." The bill changes the existing county zoning law definition of "small wind farm" to conform with the township and municipal zoning law so that it refers to wind turbines and associated facilities with a single interconnection to the electrical grid. The bill also makes this

[276] R.C. 3929.86--not in the bill.

[277] See also R.C. 519.213 and 713.081 (not in the bill).

amendment take effect immediately when the bill becomes law, exempting it from the referendum.

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 and brokers. 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, current law allows a motor vehicle or manufactured housing dealer to display, offer for sale, or sell a used motor vehicle, used manufactured home, or used mobile home without first obtaining a certificate of title in the name of the dealer if the dealer 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 specifies that a motor vehicle dealer has this authority with respect to used motor vehicles while a manufactured housing dealer has this authority with respect to used manufactured homes and used mobile homes. The 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.

MEDICAL BOARD (MED)

- Requires the State Medical Board to provide verification of licensure in Ohio, rather than certify an application, for persons applying to practice in another state.
- Requires the Board to issue duplicate certificates of registration for a $35 fee.
- Permits Board vouchers to be approved by any person the Board authorizes, rather than only the Board's president or executive secretary.
- Exempts certain radiology practitioner assistants from the requirement to obtain from the State Medical Board a certificate to practice as a radiology assistant.

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.

Radiology practitioner assistants

(R.C. 4774.02)

Current law generally prohibits a person from practicing as a radiologist assistant unless the person holds a current, valid certificate to practice as a radiologist assistant issued by the State Medical Board.[278] Those exempt from this prohibition are (1) students participating in an advanced academic program that must be completed to receive a certificate to practice as a radiologist assistant, and (2) persons who are otherwise authorized to perform any of the activities that a radiologist assistant is authorized to perform, either pursuant to statute or rules adopted by the Board governing physician delegation of medical tasks.

The bill also exempts from the prohibition individuals who, on or before the effective date of this provision of the bill, passed the national certifying examination for radiology practitioner assistants administered by the Certification Board for Radiology Practitioner Assistants.

[278] Pursuant to Section 3 of Sub. S.B. 229 of the 127th General Assembly, the radiologist assistant licensing requirement begins June 11, 2009.

- 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.

- 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 Administration Advisory Group and requires the Group to study the 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.

- Permits ODMH and ODADAS to implement recommendations included in the Advisory Group's report, but provides that the Departments' implementation of the recommendations is subject to changes in state law that otherwise would conflict with the implementation, 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 give incentives to encourage care coordination agencies to provide the information to the Council and to use the information to help improve care coordination for at-risk individuals throughout Ohio.

- Requires a public children services agency to report annually to the Family and Children First Cabinet Council the number of times during the previous calendar year that a parent, guardian, or other legal custodian voluntarily surrendered custody of a mentally ill child for the sole purpose of qualifying the child for government funded mental health benefits and requires the Council to submit an annual report of the results to the President of the Senate and the Speaker of the House of Representatives.

- 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.

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[279] must provide certain information for these systems, but ODMH and ODADAS are prohibited from collecting from the ADAMHS boards any information for the purpose of identifying by name any person who receives a service through a board, except when the collection is required by state or federal law to validate appropriate reimbursement.

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

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

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,[280] as long as the use and disclosure otherwise comports with HIPAA regulations.[281]

Medicaid Community Behavioral Health Administration Advisory Group

(Section 751.10)

The bill creates the Medicaid Community Behavioral Health Administration Advisory Group. The Group is charged with studying the administration and management of Medicaid-covered community behavioral health services.[282]

Membership

The Group is to consist of all of the following:

(1) The ODMH Director or the Director's designee;

(2) The ODADAS Director or the Director's designee;

(3) The Director of the Ohio Department of Job and Family Services (ODJFS);

(4) Representatives of ADAMHS boards;[283]

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[280] 45 C.F.R. 164.512.

[281] 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)).

[282] 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.

(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;

(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.

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

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[284] not later than June 30, 2010. The report must include all of the following:

(1) A plan for the administration and management of Medicaid-covered community behavioral health services in accordance with federal requirements;

(2) A fiscal analysis of the impact that changing the entity that is responsible for paying providers of Medicaid-covered community behavioral health services and changing related management functions would have on ODMH and ODADAS and ADAMHS boards;[285]

(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 for the effective administration and management of the Medicaid-covered community behavioral health services.[286]

The Group is to cease to exist on submission of its report.

Departments' implementations of recommendations

The bill permits ODMH and ODADAS to implement, in whole or in part, the recommendations included in the Group's report. If ODMH and ODADAS implement

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[284] 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)).

[285] The fiscal analysis must include an examination of funding options for changing the entity that is responsible for paying the providers and focus on creating the most efficient and effective payment system possible.

[286] The recommendations must focus on increasing efficiencies, transparency, and accountability in order to improve the delivery of community behavioral health services.

any of the recommendations, the Departments must implement the recommendations under ODJFS's supervision. The bill provides, however, that the Departments' implementation of the recommendations is subject to changes in state law, including state law regarding funding, that otherwise would conflict with the Departments' implementation of the recommendations. ODMH and ODADAS are permitted to take actions as part of the implementation of the recommendations 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;[287]

(3) Providers of community behavioral health services;

(4) Consumers of community behavioral health services and advocates of such consumers.

Members of the group are to serve without compensation, except to the extent that serving on the group is considered part of their regular employment duties.

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.[288] The group is to cease to exist on submission of the report.

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[287] The reference to ADAMHS boards also refers to community mental health boards and alcohol and drug addiction services boards.

[288] 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)).

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;

(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 give incentives to encourage care coordination agencies to provide information to the Council. The Council is also permitted to use the information from care coordination agencies to help improve care coordination for at-risk individuals throughout Ohio.

The Council is required to adopt rules to define the terms "at-risk individual" and "care coordination agency." The rules are to be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

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.

Reporting of relinquished custody of a mentally ill child

(R.C. 121.376)

Current law allows a parent, guardian, or other legal custodian of a child to voluntarily surrender custody of the child to a public children services agency (R.C. 5103.15, not in the bill). Relinquished custody of a child, either by a court-order or by a

voluntary surrender agreement, is a requirement for certain federal Title IV-E benefits under the Social Security Act.

The bill requires each public children services agency to report annually to the Family and Children First Cabinet Council the number of times during the previous calendar year that a parent, guardian, or other legal custodian voluntarily surrendered custody of a mentally ill child to the agency for the sole purpose of qualifying the child for government funded mental health benefits. The bill also requires the Council to submit an annual report of the results to the President of the Senate and the Speaker of the House.

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.

- Establishes conditions under which a nursing home seeking licensure as residential facility for up to 25 persons with mental retardation or a developmental disability is not required to obtain approval of a development plan.

- Provides that an intermediate care facility for the mentally retarded (ICF/MR) is not required to have received approval of a development plan to be eligible for Medicaid payments if, under the bill, the ICF/MR obtained licensure as a residential facility without having to obtain approval of a development plan.

- Provides that ODMR/DD is not responsible for the state share of a Medicaid claim for ICF/MR services even though the ICF/MR receives initial certification as an ICF/MR after June 1, 2003, if the ICF/MR, pursuant to the bill, obtained licensure as a residential facility without having to obtain approval of a development plan.

- 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 board of mental retardation and developmental disabilities (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.

Nursing home seeking residential facility license

(R.C. 5123.193 (primary), 5111.21, 5111.211, and 5123.19; Section 337.40.30)

Licensure issues

Current law prohibits a private or governmental entity from operating a residential facility that serves individuals with mental retardation or a developmental disability unless the facility is licensed by ODMR/DD.[289] An applicant for a residential facility license must provide ODMR/DD a copy of a development plan for the proposed residential facility that has been approved by a county MR/DD board.

The bill creates an exception to the requirement for a residential facility license applicant to provide ODMR/DD a copy of an approved development plan. A license applicant is not required to obtain a county MR/DD board's approval for the proposed facility if all of the following apply:

(1) The facility for which the license is sought is licensed as a nursing home on the effective date of this provision of the bill and the nursing home license authorizes the facility to have 50 nursing home beds.

(2) The facility was previously certified as an intermediate care facility for the mentally retarded (ICF/MR) before July 1, 1992.

(3) The facility is operated as a nonprofit organization exempt from federal income taxation.

(4) The facility's governing board has passed a resolution to close the facility unless a residential facility is obtained for the facility.

(5) The license application seeks authorization to operate a residential facility with not more than 25 beds on the same site where the nursing home is currently located.

(6) The applicant applies to the Director of Health to have the facility certified as an ICF/MR.

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[289] R.C. 5123.20.

(7) The applicant agrees to have the facility's licensed capacity as a nursing home reduced to not more than 25 nursing home beds effective on the date ODMR/DD issues the residential facility license and agrees to surrender the nursing home license, ending the applicant's right to have any nursing home beds in the facility, effective on the date the Director of Health certifies the facility as an ICF/MR.

(8) The applicant provides ODMR/DD assurances that the applicant will cooperate with ODJFS in having each resident of the facility who needs a greater or lesser level of care that ICFs/MR provide relocated to another facility or residence that is authorized to provide the level of care the resident needs and is willing to accept the resident's placement in the facility or residence.

(9) The applicant submits the application for the residential facility license to ODMR/DD not later than 120 days after the effective date of this provision of the bill.

Medicaid issues

Current law requires an ICF/MR to meet certain conditions to be eligible for Medicaid payments. One of the conditions is that the ICF/MR must comply with all applicable state and federal laws and rules. The bill provides that an ICF/MR is eligible for Medicaid payments even though the ICF/MR does not meet a state rule that requires an ICF/MR to have obtained a county MR/DD board's approval of a development plan if the ICF/MR meets the bill's conditions for obtaining a residential facility license without having to obtain a county MR/DD board's approval of a development plan.

ODMR/DD is required by current law to pay the nonfederal share of claims for Medicaid-covered services provided by an ICF/MR initially certified as an ICF/MR on or after June 1, 2003. The bill provides that this requirement does not apply to claims submitted by an ICF/MR that, under the bill, obtains a residential facility license without having to obtain a county MR/DD board's approval of a development plan.

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.[290]

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

[290] 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.

the same purposes that ODMR/DD rules provide for money in the two abolished funds to be used.

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.[291]

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.

[291] 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.[292] 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)

- Vests with the Department of Natural Resources (DNR) the exclusive authority to enter into leases for the drilling for oil or gas on all land that is owned by the state and administered by a state agency, and repeals the authority of certain state agencies to enter into such leases.

- Creates the Oil and Gas Lease Fund consisting of money from oil and gas leases entered into under the bill, and requires the Director of Natural Resources to use money in the Fund to pay the costs of capital projects for and improvements to state parks.

- Requires the Director of Natural Resources to adopt rules governing the oil and gas leasing program, and requires the rules to establish certain procedures,

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

requirements, and standards regarding oil and gas leases, including procedures and standards for establishing the terms and conditions of oil or gas leases.

- Requires persons entering into leases under the bill to comply with all applicable state and federal regulations, including Ohio's Oil and Gas Law.

- Requires the Directors of Environmental Protection, Natural Resources, and Development jointly to establish a streamlined permitting process for permits issued by the Environmental Protection Agency and any other state agency that are related to the siting or expansion of oil and gas refineries, coal gasification facilities, and other energy resource related facilities.

- Expands the definition of "air quality facility" in the Air Quality Development Authority Law to include facilities or projects that will assist Ohio in achieving energy independence through the utilization of the state's resources, thus making those types of facilities and projects eligible for construction and operation by, or funding from, the Ohio Air Quality Development Authority.

- Creates the Energy Planning Task Force to develop a state energy plan, and requires the Task Force to present the plan to the Governor and the General Assembly not later than 18 months after the effective date of the applicable provisions of 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 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.

- Requires a person constructing a potable water well for use in a private or public water system to pay a well log filing fee of $20 or an amount established in rules, whichever is applicable; requires the Chief of the Division of Soil and Water Resources to adopt rules governing the payment and collection of the fee; and requires boards of health and the Environmental Protection Agency to collect the fee on behalf of the Division and submit the proceeds of the fee to the Division quarterly.

- Amends the statutory fee schedule with respect to the annual fee that generally is required to be paid by the owner of a dam that is required to be inspected by increasing most of the fee amounts and by requiring that the fee be based not only on the height of a class I, class II, or class III dam, but also on the linear foot length of the dam and the per-acre foot of volume of water impounded by the dam, and establishes fee amounts using the new criteria.

- Requires rules adopted by the Chief of the Division of Soil and Water Resources regarding the annual fees to be subject to the prior approval of the Director.

- Establishes a compliant dam discount program that allows for certain discounts of the annual fee if the owner of a dam is in compliance with specified safety and maintenance requirements and has developed an emergency action plan.

- Specifies that grandchildren may be of any age, instead of under 18 years of age, for purposes of a provision in current law that allows the owner of 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.

- Requires the Chief of the Division of Wildlife to adopt rules that require the Chief to issue annual fishing licenses, hunting licenses, or a combination of those licenses free of charge to members of the Ohio National Guard when application is made to the Chief.

- 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.

Leases for oil and gas drilling on state land

(R.C. 123.01, 1501.50, 1501.51, 1505.07, 1531.06, 5119.40 (repealed), 5120.12 (repealed), and 5123.23 (repealed))

Under current law, various state agencies have authority to enter into leases for the drilling for oil and gas on lands owned or controlled by them. For example, the Director of Mental Health is granted authority to enter into leases for oil and gas on land that is placed under the supervision of the Department of Mental Health. Similar authority is granted to the Department of Administrative Services, the Department of Rehabilitation and Correction, the Department of Mental Retardation and Developmental Disabilities, and the Department of Natural Resources.

The bill declares that the Department of Natural Resources has exclusive authority to lease land that is owned by the state and administered by a state agency[293] for the purpose of the exploration for, development of, and production of oil or natural gas. The extraction of oil or natural gas pursuant to such a lease cannot unreasonably interfere with the primary use of the state land or unreasonably impact the scenic, aesthetic, and environmental quality of land on which drilling takes place as determined by the Director of Natural Resources. In addition, the Department is prohibited from entering into a lease for the exploration for, development of, and production of oil or natural gas from and under the bed of Lake Erie unless such leases are authorized by federal law. The bill also prohibits the Department from entering into a lease if the state or a state agency does not own, control, or have an interest in the mineral rights in the land that is owned or maintained by the state or a state agency. Correspondingly, the bill repeals the authority of other state agencies to enter into such leases and the authority of DNR to do so only under specified laws.

Oil and Natural Gas Lease Fund

The bill creates in the state treasury the Oil and Natural Gas Lease Fund consisting of money credited to the Fund from oil and gas leases entered into under the bill. Any investment proceeds earned on the money in the Fund must be credited to the Fund. The bill requires all money received by the Director in payment for leases to be paid into the state treasury to the credit of the Fund.

The Director must use money in the Fund to pay the costs of capital projects for and improvements to state parks.

Rules

Under the bill, the Director must adopt rules in accordance with the Administrative Procedure Act that establish all of the following:

(1) Procedures for the submission of a nomination of a parcel of land that is owned or controlled by a state agency for the purpose of the exploration for, development of, and production of oil or natural gas under the bill. In addition, the rules must require the Director, not later than 90 days after the receipt of a nomination, to either approve the nomination by initiating the process for the submission of competitive bids for the development or production of oil or natural gas on the nominated parcel or deny the nomination. The rules also must require that before the Director makes a determination concerning the nomination, the Director consider all

[293] The bill defines "state agency" to mean an organized body, office, or agency that is established by the laws of the state for the exercise of any function of state government.

feasible drilling methods, including directional drilling, and whether the nominated parcel will comply with the requirements established in rules adopted under the bill. Finally, the rules must require the Director, if the Director denies a nomination, to so notify the person that submitted the nomination and provide a written explanation of the denial.

(2) Procedures for the submission and selection of competitive bids, by drilling locations or acreage, after the Director approves a nomination by initiating the process for submission of such bids to conduct drilling under the bill;

(3) Procedures and standards for establishing the terms and conditions of oil or gas leases entered into under the bill. In addition, the rules must require that the terms and conditions of such leases ensure that the scenic, aesthetic, and environmental quality of land on which drilling takes place is maintained while maximizing revenue to the state. The rules also must establish guidelines for determining the amount of lease annual payments[294] and lease bonus payments[295] under the terms and conditions of a lease.

(4) Requirements applicable to drilling conducted in accordance with a lease entered into under the bill that are necessary to maintain the scenic, aesthetic, and environmental quality of land on which drilling takes place;

(5) Procedures in accordance with which a person may request to be on a notification list for the purpose of receiving notifications of the Director's determinations under the bill and rules adopted under it. In addition, the rules must require the Director to notify all persons on the notification list of the Director's determinations concerning nominations and the submission and selection of competitive bids under the bill and rules adopted under it. The rules must authorize the Director to provide the notice electronically or via other means as determined by the Director.

(6) Procedures and requirements for maximization of revenue to the state; and

(7) Any other procedures and requirements that the Director determines are necessary to implement the bill and are consistent with the purposes of the bill.

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[294] The bill defines "lease annual payments" to mean the state's share of the annual royalties from the annual production of oil or natural gas from a well pursuant to a lease entered into under the bill.

[295] The bill defines "lease bonus payments" to mean the amount of money paid to the state for the award of an oil or natural gas lease under the bill.

Lease conditions regarding state and federal laws and regulations

A lease for the drilling for oil or gas that is entered into under the bill and rules adopted under it is required to be conditioned on the lessee's satisfying all applicable state and federal laws and regulations. The conditions must include a requirement that the lessee comply with Ohio's Oil and Gas Law and rules adopted under it.

Assignment of lease

The bill states that a lease that is entered into under the bill may be assigned by the lessee with the approval of the Director.

Streamlined permitting process for certain energy-related facilities

(R.C. 3745.50)

The bill requires the Director of Environmental Protection, the Director of Natural Resources, and the Director of Development, for the purpose of promoting the expansion of oil and gas production in this state, the development and production of other energy resources in this state, and the protection of the environment, jointly to establish procedures and policies for the purpose of streamlining the permitting process for permits issued by the Environmental Protection Agency (EPA) and any other state agency that are related to the siting or expansion of oil and gas refineries, coal gasification facilities, and other energy resource related facilities.

Definition of "air quality facility"

(R.C. 3706.01)

The Air Quality Development Authority Law defines "air quality facility" to include specified types of facilities, projects, and properties. One of the specified types of facilities is ethanol or other biofuel facilities, including any equipment used at the ethanol or other biofuel facility for the production of ethanol or other biofuels. Another specified type of project included in the definition is any coal research and development project conducted under the Coal Research and Development Law.[296] The bill adds to

[296] "Coal research and development project" means any coal research and development, or any coal research and development facility, including undivided or other interests, acquired or to be acquired, constructed or to be constructed, or operating or to be operated by a person doing business in this state or by an educational or scientific institution located in this state with all or a part of the cost of the project being paid from a loan or grant from the Ohio Coal Development Office or a loan guaranteed by the Office under [the Coal Research and Development Law], including all buildings and facilities that the Office determines necessary for the operation of the project, together with all property, rights, easements, and interests that may be required for the operation of the project (R.C. 1555.01(C), not in the bill).

the definition facilities or projects, in addition to the two types of facilities and projects discussed above, that will assist Ohio in achieving energy independence through the utilization of the state's resources such as facilities or projects for the development of solar, wind, natural gas, oil, and other energy resources.

Under the Air Quality Development Authority Law, the Ohio Air Quality Development Authority is authorized to acquire, construct, and operate air quality projects, which by definition are air quality facilities; to cause such air quality projects to be operated under a lease or other agreement with any person or governmental agency; to make loans and grants to governmental agencies and persons for the acquisition or construction of air quality facilities; and to issue air quality revenue bonds to pay the costs of those projects (R.C. 3706.03, not in the bill). Thus, by expanding the definition of "air quality facility," the bill makes the types of facilities and projects that it adds to the definition eligible for construction and operation by, or funding from, the Authority.

Energy Planning Task Force

(Section 715.10)

The bill creates the Energy Planning Task Force that consists of the following members:

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

(2) The Director of Environmental Protection or the Director's designee;

(3) The Director of Development or the Director's designee;

(4) Two members of the Senate appointed by the President of the Senate, one from each party;

(5) Two members of the House of Representatives appointed by the Speaker of the House of Representatives, one from each party; and

(6) The following members appointed jointly by the President of the Senate and the Speaker of the House of Representatives: a representative of Ohio's business community who represents businesses with fewer than 50 employees, a representative of Ohio's business community who represents businesses with 50 or more employees, a representative of large commercial energy users, a representative of a statewide environmental advocacy organization, a person with knowledge and expertise in the area of alternative energy, and a person with knowledge and expertise in the area of coal gasification.

All appointments must be made to the Task Force not later than 30 days after the bill's effective date. At the first meeting of the Task Force, the members must select a chairperson and a vice-chairperson. Thereafter, the Task Force must meet on a regular basis as determined by the chairperson. Vacancies must be filled in the manner provided for original appointments. Members of the Task Force cannot receive compensation for serving on it. The bill requires the Department of Natural Resources to provide technical support to the Task Force.

The Task Force must develop a state energy plan with the goal of maximizing access to and utilization of Ohio's energy resources for the purpose of facilitating Ohio's energy independence. It must present its state energy plan to the Governor and the General Assembly not later than 18 months after the effective date of the applicable provisions of the bill. Upon submission of the plan, the Task Force ceases to exist.

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 DNR 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.

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 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.

Annual dam inspection fee and compliant dam discount program

(R.C. 1521.063)

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 revises the exemption by specifying that the owner's grandchildren may be of any age to hunt on the lands without a 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.

Free hunting and fishing licenses for members of the Ohio National Guard

(R.C. 1533.12)

The bill requires the Chief of the Division of Wildlife to adopt rules that require the Chief to issue annual fishing licenses, hunting licenses, or a combination of those licenses free of charge to members of the Ohio National Guard when application is made to the Chief in the manner prescribed by and on forms provided by the Chief.

"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.

STATE BOARD OF PHARMACY (PRX)

- Requires the drug repository program established by the State Board of Pharmacy to (1) accept donations of orally administered cancer drugs that are not controlled substances and do not require refrigeration, freezing, or storage at a special temperature, regardless of whether the drugs are in original sealed and tamper-evident unit dose packaging, and (2) dispense the cancer drugs to persons who are eligible to receive them.

- Requires the Board to adopt rules regarding standards and procedures a drug repository site must use to determine, based on a basic visual inspection, that orally administered cancer drugs that are not in original sealed and tamper-evident unit dose packaging appear to be unadulterated, safe, and suitable for dispensing.

- Extends the timeframes established by Sub. S.B. 203 of the 127th General Assembly for compliance with its requirements to become a qualified pharmacy technician.

- Specifies that any examination materials the State Board of Pharmacy requires a person that develops or administers a pharmacy technician examination to submit to the Board for approval are not public records.

Drug repository program--acceptance of certain cancer drugs

(R.C. 3715.87, 3715.871, and 3715.873; R.C. 3715.872 (not in the bill))

Background

Current law requires the State Board of Pharmacy to establish a drug repository program for the collection and redistribution of drugs donated by drug manufacturers, health care facilities, and others to Ohio residents who meet eligibility standards established by the Board in rules. Drugs that may be donated and dispensed under the program must meet the following requirements: (1) they must be in their original sealed and tamper-evident unit dose packaging, (2) the packaging must be unopened

(except that drugs packaged in single unit doses may be accepted and dispensed when the outside packaging is opened, provided that the single unit dose packaging is undisturbed), (3) there can be no reason to believe that the drugs are adulterated, and (4) if donated by individuals, the drugs cannot bear an expiration date that is less than six months from the date the drugs are donated. In the absence of bad faith, the Board, drug donors, and drug repository sites (pharmacies, hospitals, and nonprofit clinics that have elected to participate in the program and meet eligibility requirements established by the Board) are immune from criminal and civil liability as well as professional disciplinary action for matters related to the acceptance or dispensing of the donated drugs.

The Board is required to adopt rules governing the drug repository program. In adopting the rules, the Board must establish standards and procedures for drug repository sites to inspect donated drugs to determine that the original unit dose packaging is sealed and tamper-evident and that the drugs are unadulterated, safe, and suitable for dispensing. For drugs donated or given to the program by individuals or health care facilities, the rules must include lists of drugs, arranged either by category or by individual drug, that the program will accept and will not accept from individuals and health care facilities.

Cancer drugs

Subject to rules adopted by the Board, the bill permits the drug repository program to accept and dispense orally administered cancer drugs, regardless of whether they are in original sealed and tamper-evident unit dose packaging, as long as the drugs are not controlled substances and do not require refrigeration, freezing, or storage at a special temperature. The bill requires the Board to adopt rules establishing standards and procedures for drug repository sites to determine, based on a basic visual inspection, that orally administered cancer drugs that are not in original sealed and tamper-evident unit dose packaging appear to be unadulterated, safe, and suitable for dispensing. The bill specifies that the Board's rules establishing lists of drugs that will and will not be accepted under the program must comply with the bill's provisions regarding acceptance of orally administered cancer drugs.

Qualified pharmacy technicians

(R.C. 4729.42)

Timeframes to meet qualified technician criteria

Sub. S.B. 203 of the 127th General Assembly established, among other things, criteria to be met for an individual to be considered a "qualified pharmacy technician." The act also specified timeframes in which these criteria had to be met.

The bill extends these timeframes as follows:

Topic	Current Law	The Bill
Individuals employed as pharmacy technicians on the effective date of Sub. S.B. 203 (April 1, 2009)	Not later than April 1, 2010	Not later than October 1, 2010
Individuals employed as pharmacy technicians after April 1, 2009	Not later than 210 days after initial employment	Not later than one year after initial employment
Individuals who complete a pharmacy technician program operated by a vocational school	Not later than 210 days after completing the program	Not later than one year after completing the program

Examination materials

Under Ohio's Public Records Law (R.C. 149.43), a "public record" is a record kept by any public office, including state, county, city, village, township, and school district units. On request and within a reasonable period of time, a public office or person responsible for public records generally must make copies available at cost.

The bill specifies that if, pursuant to the Board's rulemaking authority in current law (R.C. 4729.26), the Board requires a person that develops or administers a pharmacy technician examination to submit examination materials to the Board for approval, such materials are not public records.

OCCUPATIONAL THERAPY, PHYSICAL THERAPY, AND ATHLETIC TRAINERS BOARD (PYT)

- Permits the Occupational Therapy Section of the Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board to charge any or all of the fees the Section is required under current law to charge, additionally permits the Section to charge fees for initial license applications and license verifications, and expressly permits the Section to charge fees for late license renewal applications and for reviewing continuing education activities but limits the amounts of these two fees to the actual costs the Section incurs.

- Requires that the Occupational Therapy Section's fee amounts be established in rules adopted by the Section.

Occupational therapist fees

(R.C. 4755.06 and 4755.12)

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. The bill permits the Section to charge any or all of these fees.

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 permits the Section to charge fees (not just establish fee amounts) for these services.

The bill also requires the Section to charge fees for the following additional purposes: (1) initial license applications and (2) license verifications.

The bill specifies that the amounts of fees that the Section is authorized to charge are to be established in rules adopted by the Section. If the Section adopts rules relating to the amounts of the fees the Section may charge for the late renewal of licenses and the review of continuing education activities, the bill prohibits the Section from establishing fees for these services that exceed the actual costs the Section incurs in providing the services.

PUBLIC DEFENDER COMMISSION (PUB)

- Adds to the sources of the Indigent Defense Support Fund by establishing a bail surcharge, increasing additional court costs for criminal offenses, and increasing driver's license reinstatement fees and by requiring that the money collected be credited to the Fund.

- Requires the State Public Defender to provide reimbursement to counties for costs associated with programs governing persons serving as qualified volunteer guardians ad litem and court appointed special advocates, and requires the Ohio Public Defender Commission to adopt rules governing such reimbursement.

- 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.

- 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 charitable public

purposes and requires that 15% of those moneys provide financial assistance to legal aid societies that operate within Ohio and the remaining 85% be distributed to charities selected in the action and approved by the court.

- Requires each defendant from whom the unpaid moneys are due after distribution of the monetary award to the members of the class to remit 15% of any unpaid moneys to the State Treasurer for deposit in the Legal Aid Fund and to notify the Ohio Legal Assistance Foundation (OLAF) of the amount so remitted, the case name and number of the class action, and the court that approved the settlement agreement or rendered the judgment in the class action.

- Prohibits the Ohio Legal Assistance Foundation or any recipient of financial assistance from the Foundation that receives or benefits from the moneys so remitted from bringing or maintaining any class action or from bringing or maintaining any action against the state or political subdivision of the state.

- Makes a corrective change in existing law regarding rules established by OLAF in administering the Fund.

- Requires that an interest-bearing trust account (IOTA) be established and maintained by a title insurance agent or title insurance company for the deposit of all non-directed escrow funds that meet statutory requirements for disbursements from escrow accounts in escrow transactions and that are received by the agent to effect an escrow transaction.

- Generally defines "escrow transaction" for purposes of IOTA accounts 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 to another person, provides a written instrument, money, 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.

- Expands the statutory requirements for disbursements from escrow accounts that currently apply to escrow transactions concerning residential real property to escrow transactions concerning commercial real property.

- Specifies that the provisions described in the three preceding dot points take effect January 1, 2010.

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.

Reimbursement of counties for volunteer guardian ad litem programs

(R.C. 120.03 and 120.04; R.C. 2151.281 (not in the bill))

Current law requires a court to appoint a guardian ad litem to protect the interest of a child in any proceeding concerning an alleged or adjudicated delinquent child or

unruly child when the child has no parent, guardian, or legal custodian; or if the court finds that there is a conflict of interest between the child and the child's parent, guardian, or legal custodian. A guardian ad litem may be an attorney. However, current law specifies that a qualified volunteer or court appointed special advocate must be appointed whenever one is available and the appointment is appropriate.

Current law also requires the State Public Defender to provide reimbursement for expenses incurred by counties for the services of county public defender's offices and for appointed counsel representing indigent persons. Some of the reimbursement provided to counties comes from the Indigent Defense Support Fund that is administered by the State Public Defender.

The bill requires the State Public Defender to provide reimbursement to counties for costs associated with programs governing persons serving as qualified volunteer guardians ad litem and court appointed special advocates. The reimbursement must be provided from money deposited in the Indigent Defense Support Fund and from other moneys appropriated to the Office of the Ohio Public Defender Commission, which oversees the State Public Defender. The Commission must adopt rules governing the reimbursement of counties for costs associated with guardians ad litem and court appointed special advocates, including rules governing costs that are appropriate for reimbursement and standards and guidelines for providing such reimbursement. The reimbursement must be provided by the State Public Defender in accordance with rules adopted by the Commission.

Legal Aid Fund

(R.C. 120.52, 120.53, and 2315.50)

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 charitable public purposes. 15% of those moneys must provide financial assistance to legal aid societies that operate within Ohio. The remaining 85% of those moneys must be distributed to charities, nonprofit organizations, and charitable programs selected in the action and approved by the court. With respect to the moneys for legal aid societies, 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 15% of 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 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. The bill prohibits the Ohio Legal Assistance Foundation or any recipient of financial assistance from the Foundation that receives or benefits from any portion of the moneys so remitted from bringing or maintaining any class action and from bringing or maintaining any action against the state or political subdivision of the state.

Ohio Legal Assistance Foundation; 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 administered by the State Public Defender through the Ohio Legal Assistance Foundation (OLAF). It makes a corrective change in the provision regarding rules established by OLAF in administering the Fund.

Interest-bearing trust accounts (IOTA) in escrow transactions affecting residential and commercial real property

(R.C. 3953.231)

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 specified statutory requirements for disbursements from escrow accounts in escrow transactions described below in "**Conditions for disbursement from escrow account**."

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 that meet the specified statutory requirements for the disbursements from escrow accounts in escrow transactions *and are received by the agent to effect an escrow transaction.* It 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 Ohio 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 instructions by filing that written instrument or document with the appropriate public entity or by direct tender to the appropriate person.

Conditions for disbursement from escrow account

(R.C. 1349.20 and 1349.22)

Current R.C. 1349.21 (not in the bill) prohibits any escrow or closing agent from knowingly making, in an "escrow transaction," a disbursement from an escrow account on behalf of another person, unless the following conditions are met: (1) the cash, funds, money orders, checks, or negotiable instruments necessary for the disbursement have been transferred electronically to or deposited into the escrow account of the escrow or closing agent and are available for withdrawal and disbursement, or have been physically received by the agent prior to disbursement and are intended for deposit no later than the next banking day after the date of disbursement, and (2) those transfers or deposits consist of any of the following: (a) cash or electronically transferred funds, (b) certified checks, cashier's checks, official checks, or money orders that are drawn on an existing account at a federally insured bank, savings and loan association, credit union, or savings bank, (c) a check issued by the United States or Ohio, or by an agency, instrumentality, or political subdivision of the United States or Ohio, (d) a check drawn on the escrow account of a title insurance company or title insurance agent, provided the escrow or closing agent has reasonable and prudent cause to believe that sufficient funds are available for withdrawal in the account upon which the check is drawn at the time of disbursement, or (e) a personal check in an amount not exceeding $1,000. Nothing in this provision prohibits an escrow or closing agent from advancing funds not exceeding $1,000 from an escrow account or otherwise on behalf of a party to an escrow transaction for the purpose of paying incidental fees, such as conveyance and recording fees, in order to effect and close the sale, purchase, exchange, transfer, encumbrance, or lease of *residential real property* that is the subject of the escrow transaction.

Current law defines "escrow transaction" for purposes of the provisions described in the preceding paragraph 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 *residential real property* to another person, provides a written instrument or document, money, negotiable instrument, check, evidence of title to real property, or any other thing 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, when it is to be delivered to a specific person by the agent in compliance with applicable instructions, whether by filing such written instrument or document in the public records or by direct tender to the appropriate person. The bill expands this

definition and the provisions described in the preceding paragraph to apply to *commercial real property*.

Effective date

(Section 812.10)

The bill specifies that the provisions described above in "**Interest-bearing trust accounts (IOTA) in escrow transactions affecting residential and commercial real property**" and "**Conditions for disbursement from escrow account**" take effect January 1, 2010.

DEPARTMENT OF PUBLIC SAFETY (DPS)

- Reclassifies four traffic offenses as unclassified misdemeanors on a first offense, with specified permissive fines and community service.
- 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.
- 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.
- 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.

- Creates the Rehabilitation Employment Fund to be used by the Rehabilitation Services Commission to fund employment-related services and requires each applicant for a "handicapped" removable windshield placard or license plate who is walking-impaired to be asked whether the person wishes to contribute $2 to the fund.

- Requires the Registrar to determine the feasibility of implementing an electronic commercial fleet licensing and management program enabling commercial tractor, trailer, and semitrailer owners to conduct electronic transactions by July 1, 2010, or sooner.

- Provides that the increases in the fees for initial reserve license plates and personalized license plates enacted in the Transportation Appropriations Act apply to each registration renewal with an expiration date on or after October 1, 2009, and to each initial registration application received on or after that date.

- Clarifies (1) that the $1 fee for a replacement certificate of registration must be deposited into the State Bureau of Motor Vehicles Fund and (2) that $5.50 of each fee collected for a set of two replacement license plates, a single replacement license plate, or a replacement validation sticker is to be deposited into the State Highway Safety Fund and that the remaining portion of each such fee is to be deposited into the State Bureau of Motor Vehicles Fund.

- Reduces the $15 fee for each placard the Registrar issues to a dealer that is scheduled to take effect July 1, 2009, which currently is $7, to $2 and does not require any of the $2 fee to be deposited into the State Highway Safety Fund, requires deputy registrars to transmit placard fees to the Registrar at the time and in the same manner as motor vehicle registration fees, and makes the changes effective July 1, 2009.

- Corrects a cross-reference to clarify that payment of the $7.50 fee for a duplicate driver's license does not apply to a disabled veteran who has a service-connected disability rated at 100% by the Veterans Administration (Department of Veterans Affairs) and makes the correction effective July 1, 2009.

- Permits the State Board of Emergency Medical Services to issue a certificate of accreditation for an emergency medical services training program or certificate of approval for an emergency medical services continuing education program for up to five years, rather than for three years; permits a provisional certificate to be issued for the length of time established by the Board, rather than one year; allows the Board to renew provisional certificates; and allows a certificate of accreditation to be for more than one emergency medical services training program.

- Requires the Board to establish certification cycles for the expiration of certificates to teach in an emergency medical services training program or an emergency medical services continuing education program (currently both are valid for two years) and certificates to practice as a first responder (currently valid for three years), and to establish a common expiration date for these certificates and fire service training program certificates.

- Creates the "combat infantryman badge" license plate.

- Provides that no angled parking space that is located on a state route within a municipal corporation is subject to elimination, irrespective of whether there is or is not at least 25 feet of unoccupied roadway width available for free-moving traffic at the location of that angled parking space, unless the municipal corporation approves of the elimination of the angled parking space.

Reclassification of traffic law violations

(R.C. 4507.02, 4510.11, 4510.12, 4510.16, 4513.021, 4513.03, 4513.04, 4513.05, 4513.06, 4513.07, 4513.071, 4513.09, 4513.11, 4513.111, 4513.12, 4513.13, 4513.14, 4513.15, 4513.16, 4513.17, 4513.171, 4513.18, 4513.19, 4513.21, 4513.22, 4513.23, 4513.24, 4513.242, 4513.28, 4513.60, 4513.65, 4513.99, 4549.10, and 4549.12)

Driver's license violations

The bill reclassifies four driver's license violations as unclassified misdemeanors on a first offense, with a permissive fine up to $1,000 and an additional permissive term of community service of up to 500 hours; subsequent offenses are as described below. Also as described below, the bill modifies the penalty for operating a motor vehicle without a valid license if the offender's license was expired and for driving in violation of a license restriction.

Description of offense (R.C. section)	Current penalty	Penalty under the bill
Permitting the operation of a motor vehicle by an unlicensed driver (§ 4507.02)	First degree misdemeanor	Unclassified misdemeanor, with a permissive fine and term of community service on a first or second offense and a first degree misdemeanor with two or more previous offenses within three years
Driving under suspension for failure to pay child support and failure to appear or pay court fines (§ 4510.11(C)(1))	First degree misdemeanor, with a license suspension for a definite period not to exceed one year	Unclassified misdemeanor, with a permissive fine and term of community service on a first or second offense and a first degree misdemeanor with two or more previous offenses within three years; no required license suspension
Driving in violation of a license restriction (§ 4510.11(C)(2))	First degree misdemeanor, with a license suspension for a definite period not to exceed one year	First degree misdemeanor; no required license suspension
Operating a motor vehicle without a valid license if the offender has never held a valid license (§ 4510.12(B)(1))	First degree misdemeanor	Unclassified misdemeanor, with a permissive fine and term of community service
Operating a motor vehicle without a valid license if the offender's license was expired (§ 4510.12(B)(2))	Minor misdemeanor if expired for not more than six months, a fourth degree misdemeanor if expired for more than six months, a third degree misdemeanor if the offender had such a violation in the past three years, a second degree misdemeanor if the offender had two such violations in the past three years, and a first degree misdemeanor if the offender had three or more such violations in the past three years	Minor misdemeanor, but a first degree misdemeanor if the offender had three or more such violations in the past three years
Driving under financial responsibility suspension or cancellation (§ 4510.16)	First degree misdemeanor	Unclassified misdemeanor, with a permissive fine and term of community service on a first or second offense and a first degree misdemeanor with two or more previous offenses within three years

Vehicle equipment and other violations

In addition, the bill reclassifies the following 29 traffic offenses, generally equipment violations, 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

R.C. Section	Description of offense
4513.21	Horns, sirens, and warning devices
4513.22	Muffler requirements
4513.23	Rear view mirrors
4513.24	Windshields and wipers
4513.242	Security decal display
4513.28	Warning devices displayed on disabled vehicles
4513.60	Vehicles on private property without permission (First offense, minor misdemeanor; subsequent offenses, third degree misdemeanor)
4513.65	Willfully leaving a junk motor vehicle uncovered (First offense, minor misdemeanor; second offense, fourth degree misdemeanor; subsequent offenses, third degree misdemeanor)
4549.10	Operating manufacturer vehicle without placard (First offense, minor misdemeanor; subsequent offenses, fourth degree misdemeanor)
4549.12	Resident operating a vehicle with number issued by other state (First offense, minor misdemeanor; subsequent offenses, fourth degree misdemeanor)

Driver's license vision screening fee

(R.C. 4507.24)

Am. Sub. H.B. 2 of the 128th General Assembly increased the fee charged for vision screening of a driver's license applicant by $1.75 (to a total of $2.75). The 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 requires the Registrar to retain not more than $6 of each $31.25 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 $25.25 still must be deposited into the State Recreational Vehicle Fund.

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.

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.

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.

Temporary license placard fees

(R.C. 4503.182)

Current law permits the Registrar of Motor Vehicles to issue to motorized bicycle dealers and motor vehicle dealers temporary license placards, which in turn are issued to purchasers for use on vehicles the dealer sells. The fee for each placard issued by the Registrar to a dealer is $7, of which $5 must be deposited into the existing State Highway Safety Fund.

In addition, since October 1, 2003, when the Registrar or a deputy registrar issues a temporary license placard, the Registrar or deputy registrar also is required to collect an additional $5 fee. The purpose of this fee is to defray the costs the Department of Public Safety incurs in administering and enforcing the state's motor vehicle and traffic laws.

The Transportation Appropriations Act of the 128th General Assembly increased the fee for each placard issued by the Registrar to a dealer from $7 to $15 and required $13 of the $15 to be deposited into the State Highway Safety Fund. This change will take effect July 1, 2009. In addition, the Act increased the additional placard fee from $5 to $13, effective October 1, 2009.

The bill reduces the $15 fee for each placard the Registrar issues to a dealer that is scheduled to take effect July 1, 2009, to $2 and does not require any of the $2 fee to be

deposited into the State Highway Safety Fund. The bill also requires deputy registrars to transmit placard fees to the Registrar at the time and in the same manner as motor vehicle registration fees. The bill makes these changes effective July 1, 2009.

Driver's license fees and disabled veterans

(R.C. 4507.23)

Under current law, a disabled veteran who has a service-connected disability rated at 100% by the Veterans Administration (Department of Veterans Affairs) may apply to the Registrar of Motor Vehicles or a deputy registrar for the issuance to that veteran, without the payment of any fee, of any of the following items:

(1) A temporary instruction permit and examination;

(2) A new, renewal, or duplicate driver's or commercial driver's license;

(3) A motorcycle operator's endorsement;

(4) A motorized bicycle license or duplicate of such a license;

(5) Lamination of a driver's license, motorized bicycle license, or temporary instruction permit identification card.

These provisions are located in current division (I) of Revised Code section 4507.23. The Transportation Appropriations Act of the 128th General Assembly imposed a late fee of $20 for the late issuance of a driver's license or motorcycle endorsement. This late fee was inserted into R.C. 4507.23 as division (H) of that section, and existing divisions (H) and (I) were redesignated in that act as divisions (I) and (J), respectively. Accordingly, a number of cross-references within R.C. 4507.23 to division "(I)" were changed to "(J)." All these changes take effect July 1, 2009.

The Transportation Appropriations Act failed, however, to change from "(I)" to "(J)" the internal cross-reference in the duplicate driver's license provision. Because this cross-reference is incorrect, it could bring into question whether a disabled veteran who has a service-connected disability rated at 100% by the Department of Veterans Affairs still will be exempt from having to pay the $7.50 fee for a duplicate driver's license on and after July 1, 2009. The bill corrects the incorrect cross-reference, thus clarifying that a disabled veteran who has a service-connected disability rated at 100% by the Department of Veterans Affairs indeed remains exempt from having to pay the $7.50 fee for a duplicate driver's license, and makes the clarification effective July 1, 2009.

Certificates of accreditation and certificates of approval

(R.C. 4765.11, 4765.17, 4765.23, and 4765.30)

Under current law, the State Board of Emergency Medical Services issues certificates of accreditation and certificates of approval to applicants who meet the statutory requirements to receive such certificates. The former type of certificate enables the applicant to conduct an emergency medical services training program while the latter enables the applicant to conduct an emergency medical services continuing education program. The Board must grant or deny both types of certificates within 120 days of receipt of the application, and it may issue either such certificate on a provisional basis to an applicant who is of good reputation and is in substantial compliance with the applicable requirements. The bill permits the Board not only to issue either type of certificate on a provisional basis but also to renew both types on a provisional basis.

Current law generally provides that a certificate of accreditation or certificate of approval is valid for three years and may be renewed by the Board pursuant to procedures established in rules the Board has adopted. The bill provides that both types of certificates are valid for up to five years and may be renewed by the Board pursuant to procedures and standards established in the Board's rules.

Under current law, a certificate of accreditation or certificate of approval that is issued on a provisional basis is valid for one year and cannot be renewed by the Board. The bill provides that if either type of certificate is issued on a provisional basis, it is valid for the length of time the Board establishes.

Current law provides that a certificate of accreditation is valid only for the emergency medical services training program for which it is issued, and the operator of an accredited or approved program may offer courses from the program at more than one location. The bill provides that a certificate of accreditation is valid only for the emergency medical services training program or programs for which it is issued. The bill also provides that the holder of a certificate of accreditation may apply to operate additional training programs in accordance with rules the Board may adopt. Any additional training programs expire on the expiration date of the applicant's current certificate. The holder of a certificate of accreditation or certificate of approval may offer courses at more than one location in accordance with rules adopted by the Board.

Under current law, the Board also issues to qualified applicants certificates to teach in an emergency medical services training program or an emergency medical services continuing education program. Such a certificate is valid for two years and may be renewed by the Board pursuant to procedures established in the Board's rules.

The bill provides that a certificate to teach must have a certification cycle established by the Board and may be renewed by the Board pursuant to the Board's rules.

Similarly, current law provides that a certificate to practice as a first responder (emergency medical technician or paramedic) is valid for three years and may be renewed by the Board pursuant to procedures established in the Board's rules. Not later than 60 days prior to the expiration date of an individual's certificate to practice, the Board must notify the individual of the scheduled expiration and furnish the individual with a renewal application.

The bill provides that a certificate to practice as a first responder must have a certification cycle established by the Board and may be renewed by the Board pursuant to the Board's rules. The bill also eliminates the requirement that the Board furnish such a certificate holder with a renewal application.

Consistent with these provisions, the bill requires the Board to adopt rules establishing certification cycles for certificates to teach in an emergency medical services training program or an emergency medical services continuing education program, as well as for certificates that are issued to first responders and to those who teach in fire service training programs.

"Combat infantryman badge" license plate

(R.C. 4503.548)

Under the bill, any person who was awarded the combat infantryman badge may apply to the Registrar of Motor Vehicles for the registration of any passenger car, noncommercial motor vehicle, recreational vehicle, or other vehicle of a class approved by the Registrar of Motor Vehicles that the person owns or leases. The application must be accompanied by such documentary evidence in support of the award of the combat infantryman badge as the Registrar may require by rule, and may be combined with a request for a special reserved license plate provided in current law.

Upon receipt of the completed application and the required taxes and fees, compliance with the bill's requirements, and presentation by the applicant of the required supporting evidence of the award of the combat infantryman badge, the Registrar is required to issue to the applicant the appropriate vehicle registration and a set of license plates with a validation sticker, or a validation sticker alone when required by current law.

In addition to the letters and numbers ordinarily inscribed on license plates, license plates issued to persons who were awarded the combat infantryman badge must be inscribed with the words "combat infantryman badge" and a reproduction of the

combat infantryman badge. License plates must bear county identification stickers that identify the county of registration by name or number.

Combat infantryman badge license plates and validation stickers are to be issued upon payment of the regular taxes prescribed in current law, any applicable local motor vehicle tax, and the applicant's compliance with all other applicable laws relating to the registration of motor vehicles. If the application for the license plate is combined with a request for a special reserved license plate provided in current law, the applicant must also pay the applicable additional special reserved license plate fee.

The bill prohibits any person who is not a recipient of the combat infantryman badge from willfully and falsely representing that the person is a recipient of the combat infantryman badge for the purpose of obtaining the license plate the bill creates. The bill also prohibits any person from owning a motor vehicle bearing the license plate the bill creates unless the person is eligible to be issued the license plate.

Under current law, certain enumerated special license plates and generally all special license plates created since August 21, 1997, are subject to a minimum registration requirement and to termination and revival procedures. Specifically, the Registrar is not required to implement any legislation that creates a new license plate until the Registrar receives written statements from at least 500 persons indicating that they intend to apply for and obtain the special license plate. (R.C. 4503.78, not in the bill.) If, during any calendar year, the total number of new and renewal motor vehicle registrations involving such a special license plate totals less than 500, the issuance of that special license plate may cease as of December 31 of the following year. A special license plate whose issuance is so ended may be revived if certain conditions are met. (R.C. 4503.77, not in the bill.)

The bill exempts combat infantryman badge license plates from both the minimum registration requirement and the termination and revival procedures. This is consistent with the law's treatment of the military-related special license plates that existed at the time of enactment of the special license plate minimum requirement and the military-related special license plates that have been created since the enactment of those provisions.

Angle parking on state routes within municipal corporations

(R.C. 4511.69)

Current law permits local authorities, by ordinance, to permit angle parking on any roadway under their jurisdiction, except that angle parking is not permitted on a state route within a municipal corporation unless an unoccupied roadway of at least 25 feet is available for free-moving traffic. The bill makes this 25-foot angle parking

restriction subject to the following provision: on and after the bill's general effective date, no angled parking space that is located on a state route within a municipal corporation is subject to elimination, irrespective of whether there is or is not at least 25 feet of unoccupied roadway width available for free-moving traffic at the location of that angled parking space, unless the municipal corporation approves of the elimination of the angled parking space. Replacement, repainting, or any other repair performed by or on behalf of the municipal corporation of the lines that indicate the angled parking space does not constitute an intent by the municipal corporation to eliminate the angled parking space.

PUBLIC UTILITIES COMMISSION (PUC)

- Adds both coal-mine methane gas and solid wastes as energy resources that qualify as such advanced energy projects and as resources electric distribution utilities and electric services companies can use to meet alternative energy benchmarks.

- Revises the definition of "alternative energy resource" regarding the alternative energy requirements imposed on EDUs and ESCs to include a renewable energy resource that is eligible to receive a renewable energy credit through a renewable energy certificate pursuant to the laws of any state served by a regional transmission organization that also serves Ohio provided such eligibility occurred on or after January 1, 1998.

- Adds as "advanced energy projects" eligible for funding by OAQDA through bond proceeds or by the Department of Development using money from electric ratepayers any technologies, products, activities, or management practices or strategies that facilitate the generation or use of energy.

- Requires a governmental aggregator of electric or natural gas service to distribute immediately any monetary award it receives as a result of a legal action to the current customers or, if applicable, the current political subdivisions jointly participating in the aggregation, if all the following apply: (1) the governmental aggregator was a party to the action, (2) the action was brought in the interest of the customers or political subdivisions, and (3) the action was initiated before, on, or after the bill's 90-day effective date.

Alternative energy requirements

(R.C. 4928.01 and 4928.64)

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. An alternative energy resource is defined as (1) an advanced energy resource or a renewable energy resource that has a placed-in-service date of January 1, 1998, or after, (2) a renewable energy resource created on or after January 1, 1998, by the modification or retrofit of a generating facility placed in service prior to January 1, 1998,[297] or (3) a mercantile customer-sited advanced energy resource or renewable energy resource, whether new or existing, that the mercantile customer commits for integration into the electric distribution utility's demand-response, energy efficiency, or peak demand reduction programs as provided in the energy efficiency provisions of continuing law. 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.

"Advanced energy resource" definition change

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.

"Alternative energy resource" definition change

The bill revises the definition of "alternative energy resource" to include the following fourth category: a renewable energy resource that is eligible to receive a renewable energy credit through a renewable energy certificate pursuant to the laws of any state served by a regional transmission organization that also serves Ohio provided such eligibility occurred on or after January 1, 1998.

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[297] Am. Sub. H.B. 2 of the 128th General Assembly added this category of possible alternative energy resources. This addition is effective July 1, 2009.

Advanced energy

(R.C. 3706.25 and 4928.01; R.C. 166.01, 166.08, 166.30, 3706.26, 3706.27, 3706.28, 3706.29, 3734.01, and 4928.62 (not in the bill))

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

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

Further, under continuing law, an "advanced energy project" can include advanced energy resources and renewable energy resources. A renewable energy resource can include fuel derived from solid wastes through fractionation, biological decomposition, or another process that does not principally involve combustion. And, an "advanced energy resource" can include solid waste or construction and demolition debris conversion technology that results in measurable greenhouse gas emissions reductions as calculated pursuant to the U.S. Environmental Protection Agency's waste reduction model (WARM). The bill adds solid wastes themselves as a renewable energy resource under both the OAQDA and Development laws. "Solid wastes" is defined as

> such unwanted residual solid or semisolid material as results from industrial, commercial, agricultural, and community operations, excluding earth or material from construction, mining, or demolition operations, or other waste materials of the type that normally would be included in demolition debris, nontoxic fly ash and bottom ash, including at least ash that results from the combustion of coal and ash that results from the combustion of coal in combination with scrap tires where scrap tires comprise not more than fifty per cent of heat input in any month, spent nontoxic foundry sand, and slag and other substances that are not harmful or inimical to public health, and includes,

but is not limited to, garbage, scrap tires, combustible and noncombustible material, street dirt, and debris. "Solid wastes" does not include any material that is an infectious waste or a hazardous waste.

Continuing law also allows an "advanced energy project" to include, as a renewable energy resource, biologically-derived methane gas. The bill adds methane gas emitted from an abandoned coal mine as a renewable energy resource under the OAQDA law and methane gas emitted from an operating or abandoned coal mine as an advanced energy resource under the Development law.

Also, the above-described additions in Development law to what qualify as an advanced energy resource and a renewable energy resource have the effect of adding both coal-mine methane gas and solid wastes to the types of resources that electric distribution utilities and electric services companies can use to meet the alternative energy benchmarks specified in electric restructuring law.

Governmental aggregators

(R.C. 4928.201 and 4929.261)

Continuing law permits a municipal, township, or county government to follow a process to form a "governmental aggregation," under which the local government purchases electricity, or, as the case may be, natural gas, to supply to retail customers within its jurisdiction. The bill newly requires such a governmental aggregator to distribute immediately to the current customers of the aggregation, or any political subdivision jointly participating in the aggregation, any monetary award it receives as a result of a legal action to which it was a party and that meets both of the following requirements: (1) the action was initiated before, on, or after the bill's 90-day effective date, and (2) it was brought in the interest of the customers or, if applicable, in the interest of any jointly participating political subdivision.

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.

- Eliminates statutory grant tables and establishes statutory guidelines for determining grant amounts for the Ohio College Opportunity Grant Program.

- 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.

- Specifies that the criteria the Chancellor uses in awarding grants under the Choose Ohio First Scholarship program include the extent to which a grant proposal will increase the number of women participating in the program.

- Allows the Chancellor to authorize institutions of higher education to award Choose Ohio First Scholarships in 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.

- Requires that the Governor's designation of the single nonprofit education loan secondary market operation for Ohio be made annually and pursuant to competitive selection, and specifies that the current designation expires December 31, 2009.

- Changes allocations of the Nurse Education Assistance Fund to (1) 75% of the funds as loans to registered nurses enrolled in post-licensure education programs (with the intent to become nurse educators) and (2) 25% of the funds as loans to students enrolled in prelicensure registered nurse education programs.

- Requires state institutions of higher education to charge the resident tuition rate to nonresidents who are members of the Ohio National Guard and to their spouses and dependent children.

- Removes the specific dates the board of trustees of Central State University must meet for regular session. (The Board must still meet at least twice a year for regular session.)

- Modifies the current law that permits Rio Grande Community College to contract with the University of Rio Grande for operation of the community college.

- Defines the "University System of Ohio" as the collective group of state institutions of higher education, and "member of the University System of Ohio" as any individual state institution of higher education.

- Replaces the "course applicability system" with an information system the Chancellor selects, contracts for, or develops to assist and advise transfer students at state institutions of higher education.

- 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.

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.[298] 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;

[298] See R.C. 3354.12, 3354.121, 3357.11, 3357.112, and 3358.10, not in the bill.

(2) The Chancellor and the Office of Budget and Management (OBM) have no reason to believe the requesting district or the community or technical college it operates will be unable to pay when due the bond service charges on the obligations for which the request is made;

(3) Any other pertinent conditions established in rules adopted under this portion of the 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.[299] 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,[300] 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.

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[299] 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)).

[300] For the definition of credit enhancement facility, see R.C. 133.01 (not in the bill).

Any amount received by a paying agent or fiscal agent is to be applied only to the payment of bond service charges on the obligations of the district or college or to the reimbursement of the provider of a credit enhancement facility that has paid the bond service charges.

The Chancellor is permitted to make payments to paying agents or fiscal agents during any fiscal biennium of the state *only from and to the extent that* money is appropriated to the Ohio Board of Regents by the General Assembly for distribution during the biennium for the state share of instruction *and only to the extent that* a portion of the state share of instruction has been allocated to the community or technical college district or community or technical college.[301]

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,[302] 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

[301] 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)).

[302] For a definition of those terms, see R.C. 3345.12.

connection with the facilities, the cost of any indemnity and surety bonds and premiums on insurance, all related direct administrative expenses and allocable portions of direct costs of the Authority and of the college or district, cost of engineering, architectural services, design, plans, specifications and surveys, legal fees, fees and expenses of trustees, depositories, bond registrars, and paying agents for the obligations, cost of issuance of the obligations and expenses of financial advisers and consultants in connection with the issuance, and all other expenses necessary or incident to planning or determining feasibility or practicability with respect to the facilities.

The bond service charges, and all other payments required to be made by the trust agreement or indenture securing the obligations, are to be payable solely from available community or technical college receipts pledged to their payment. "Available community or technical college receipts" generally means all money received by a community or technical college or community or technical college district, including income, revenues, and receipts from the operation, ownership, or control of facilities, grants, gifts, donations, and pledges, receipts from fees and charges, the allocated state share of instruction, and the proceeds of the sale of obligations. The available community or technical college receipts pledged and thereafter received by the Authority are immediately subject to the lien of the pledge, which lien is binding against all parties having claims of any kind against the Authority. Every pledge may be extended to the benefit of the owners and holders of the obligations for the further securing of the payment of bond service charges.

The obligations may be issued at one time or from time to time, and each issue is to mature at the time the Authority determines, but not more than 40 years from the date of issue. The Authority must also determine the form of the obligations, fix their denominations, establish their interest rate or rates, and establish a place of payment of bond service charges. The 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. The bill 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 bill, an individual newly receiving a grant could be an Ohio resident student enrolled in an undergraduate or nursing diploma program 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, or (3) for-profit private institution registered with, or exempt from regulation by, the Board of Career Colleges and Schools, but holding a certificate of authorization from the BOR. 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.

Choose Ohio First Scholarships and Ohio Research Scholars Programs

Background

The Ohio Innovation Partnership is a multi-pronged grant program designed to attract students and scholars in the fields of science, technology, engineering, mathematics, and medicine (STEMM) to state universities and the Northeastern Ohio Universities College of Medicine (NEOUCOM). It 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)

Current law lists several criteria for the Chancellor to use in awarding Choose Ohio First 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.

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.

Nonprofit education loan secondary market operation

(R.C. 3351.07)

Federal law authorizes each state, as part of its educational loan efforts, to designate one nonprofit secondary market operation.[303] Ohio law authorizes the Governor to make that designation. Also under Ohio law, the designated nonprofit operation may be awarded state tax-exempt private activity bonds for issuance of student loan notes.[304]

The bill stipulates that the Governor's designation in effect on the provision's effective date expires on December 31, 2009, and that designations after the effective date (1) must be made by competitive selection and (2) are valid for one year. The bill prohibits the Controlling Board from waiving its requirement for competitive selection.

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 (with the intent to become nurse educators);

(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 transfers the 25% allocation to prelicensure licensed practical nurse education programs in (3), to (1), requiring that 75% of the funds be allocated for loans to registered nurses in post-licensure programs (with the intent to become nurse educators) and zero be allocated for prelicensure programs for licensed practical nurses.

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[303] 20 U.S.C. 1085(d).

[304] R.C. 133.021, not in the bill.

Resident tuition rates for members of the Ohio National Guard

(R.C. 3333.42)

Current law requires state institutions of higher education to charge a nonresident student who is a member of the United States Armed Forces and who is stationed in Ohio pursuant to military orders, or who is the spouse or dependent child of such a student, the same rates for tuition and fees as are charged to an Ohio resident. The bill includes members of the Ohio National Guard, and their spouses and children, who are nonresidents under that requirement.

Central State University

(R.C. 3343.04)

Current law requires the board of trustees of Central State University to meet for regular session on the third Thursday in June and the first Thursday in November. The bill removes the specific dates when the Board must meet. However, the Board must still meet at least twice a year for regular session.

Rio Grande Community College

(R.C. 3354.26)

Rio Grande Community College is a public two-year institution of higher education, and the University of Rio Grande is a private nonprofit institution of higher education. The two institutions share facilities. Current law permits the boards of trustees of the community college and the university to enter into a contract providing for the university to operate the community college. In addition, the community college may have its president also serve as president of the university in accordance with the terms of the contract between the two institutions, but the salary, benefits, and other compensation paid to the joint president must be the sole responsibility of the community college.

The bill modifies the authority of the community college board to contract with the university in several ways. First, it specifies that the community college board may enter into one or more contracts with the university for "any services for the operation of the community college," except the services of a treasurer or other fiscal officer. Second, the bill states that, through those contracts, the community college "may acquire the services of the president of the university and other personnel," rather than have the community college president serve as the university president. Third, the bill also adds that the community college board retains exclusive authority to employ and make personnel decisions regarding the college's treasurer or other fiscal officer and

other employees whom the board determines are necessary. Finally, the bill states that the community college board may by a majority vote of its membership terminate any contract with the university, if the community college board determines that the contract is no longer in the best interests of the college. Each contract must include a termination provision.

University System of Ohio

(R.C. 3345.011; 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,[305] 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.

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-

[305] 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.

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[306] 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

[306] 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.

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."

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,[307] 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.

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[307] Line 13343 of the bill appears to require amendment to refer to an "*energy or* water services company."

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 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.

DEPARTMENT OF REHABILITATION AND CORRECTION (DRC)

- Requires DRC to develop, oversee, and evaluate a two-year pilot project for the provision of comprehensive correctional health care services to inmates of state correctional facilities.

Pilot project for the contractual provision of health care services to inmates of state correctional facilities

(Section 375.20)

The bill requires the Department of Rehabilitation and Correction to develop, oversee, and evaluate a pilot project for the provision of comprehensive correctional health care services through private correctional health care contractors to complement the current system for the provision of health care services to inmates of state correctional facilities. Comprehensive correctional health care services are medical, dental, and mental health care services comparable to those provided by the Department to inmates at and outside of state correctional facilities. The bill requires the pilot project to be developed and implemented by January 1, 2010, for a period of two years, conditioned upon a private contractor offering a minimum of 10% savings from the Department's projected costs for comprehensive correctional health care services during the period of the project. The cost comparison must include all on-site and off-site healthcare costs, including all personnel, benefit, administrative, overhead, and transportation costs.

The bill requires proposals to be solicited through a request for proposals. The Department must determine the method for requesting proposals, the form of the request-for-proposal, and criteria for the provision of comprehensive correctional health care services under the pilot project. The Department must determine the award of contracts based upon written criteria prepared by the Department.

The pilot project must include a minimum of 20% of the current inmate population and be designed to include a representative sample of the inmate population in order to promote a realistic comparison of services and costs. The Department must control inmate participation in the pilot project based on current standard operating procedures and the need to maintain the representative sample of the inmate population. The Department must determine the locations for the pilot project and in making that determination must give consideration to the geographic proximity of medical facilities in order to promote economies of scale. The locations must include a representative sample of current facilities, the facilities' missions, and medical acuity. The mix of facilities shall remain consistent throughout the pilot project in order to promote a realistic comparison of costs and services.

REHABILITATION SERVICES COMMISSION (RSC)

- Provides that if the total of all funds from nonfederal sources to support the Rehabilitation Services Commission (RSC) does not comply with federal law or would cause that state to lose federal funding, RSC must solicit additional funds from, and enter into agreements with, private or public entities until the total funds available are sufficient for RSC to receive federal funding at the maximum amount possible.

- Specifies that services provided under an agreement between RSC and an entity providing the solicited additional funds must be provided by a person or government entity that meets accreditation standards established in rules adopted by RSC.

Rehabilitation Services Commission funding

(R.C. 3304 16, 3304.181, and 3304.182)

The Rehabilitation Services Commission (RSC) is the state's designated agency providing vocational rehabilitation services under the federal Rehabilitation Act of 1973. While the majority of funds are provided through the federal government, a state

is required to make expenditures that match the federal funds and meet maintenance of effort (MOE) requirements.[308] Should a state fail to meet its MOE requirement, the state will not receive the entire amount of federal funding allotted to the state and may face penalties. A state may use local government and, if certain conditions are met, private funding in meeting MOE requirements.[309] Federal law provides that, should any state fail to meet its MOE or otherwise fail to make expenditures necessary to receive the state's entire federal vocational rehabilitation services allotment, other states may seek a reallotment of those funds to provide services.[310]

The bill provides that, if the total of all funds available from nonfederal sources to support RSC's activities does not comply with the expenditure requirements of federal law, or would cause the state to lose an allotment of federal funds or a potential reallotment of federal funds, RSC is required to solicit additional funds from private or public entities. RSC must continue to solicit additional funds until the total funding available is sufficient for RSC to receive federal funds at the maximum amount and in the most advantageous proportion possible.[311] When soliciting funds, RSC is to enter into an agreement with the private or public entity providing the funds.[312] The

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[308] 34 C.F.R. 361.60 and 361.62.

[309] 34 C.F.R. 361.60.

[310] 34 C.F.R. 361.65.

[311] RSC established the Pathways II Program in FY 2009. Under the program, RSC enters into contracts with local government agencies for the agencies to provide funds and services and draw down additional federal funding. (Legislative Service Commission, "LSC Redbook: Rehabilitation Services Commission," p. 10.)

[312] Federal law places certain restrictions on a state's use of funds from private entities to meet the requirement to match the federal share of funds provided for vocational rehabilitation services. Specifically, 34 C.F.R. 361.60 provides that private funds may be used if the funds are earmarked for the following:

(1) Meeting in whole or in part the state's share for establishing a community rehabilitation program or constructing a particular facility for community rehabilitation program purposes;

(2) Particular geographic areas within the state for any purpose under the state rehabilitation services plan, in accordance with the following criteria: (a) before funds that are earmarked for a particular geographic area may be used as part of the non-federal share, the state must notify the federal government that the state cannot provide the full non-federal share without using these funds, (b) funds that are earmarked for a particular geographic area do not require a waiver of statewideness under federal law, and (c) all federal funds are used on a statewide basis, unless a waiver of statewideness is obtained;

(3) Any other purpose under the state plan. The expenditures must not benefit in any way the donor of the funds, an individual to whom the donor is related by blood or marriage or with whom the donor has a close personal relationship, or an individual, entity, or organization with whom the donor shares a

agreement may permit RSC to receive a percentage, not greater than 10% of the total funds available under the agreement, for administration expenses. The agreement is to last for a minimum of six months. RSC is to notify the private or public entity at least six months before discontinuing an agreement and may discontinue an agreement only for good cause.

The bill requires that any services provided under an agreement be provided by a person or government entity that meets accreditation standards established by RSC in rules.

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 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 materials to the employee regarding the benefits of deferred compensation and to secure, in writing or by electronic means, the employee's acknowledgement form

financial interest. Federal law does not consider a donor's receipt from the state a grant, subgrant, or contract with such funds allotted to be a benefit if the grant, subgrant, or contract is awarded under the state's regular competitive procedures.

regarding the employee's desire to participate or not participate in the Deferred Compensation Program.

- Requires such an election to be filed with the program not later than 45 days after the employee's employment begins.

- Specifies that the Treasurer of State is the custodian of contributions into the Ohio Public Employees Deferred Compensation Receiving Account, but that the account is not part of the state treasury.

Removal of Unemployment Compensation Advisory Council Members from the Public Employees Retirement System

(R.C. 145.012 and 4141.08; Section 309.50.30)

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[313] or state employing unit[314] to establish a retirement incentive plan if the institution or employing unit proposes to close or to lay

[313] "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).)

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.

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.

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

[314] "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).)

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 to the employee materials provided by the Deferred Compensation Program regarding the benefits of long-term savings through deferred compensation, and (2) secure, in writing or by electronic means, the employee's acknowledgement form provided by the Deferred Compensation Program regarding the employee's desire 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 Deferred Compensation Program and must be filed with the Program. The employer must forward each acknowledgement form to the Deferred Compensation Program not later than 45 days after the date on which the employee's employment begins.

Miscellaneous changes

(R.C. 148.02 and 148.04)

The bill specifies that the Ohio Public Employees Deferred Compensation Receiving Account is in the custody of the Treasurer of State, But is not part of the state treasury.

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 if a school district's tangible personal property valuation made up 20% or more of its total taxable value on August 31, 2005, its three-year "average taxable value" used for computing wealth percentile rankings of school districts for school facilities assistance is only the three-year average of its real property valuation, rather than the three-year average of the sum of its real property valuation and its tangible personal property valuation as otherwise provided under current law.

- Requires the Department of Education to calculate and certify to the School Facilities Commission a new alternate equity list for use in fiscal year 2010 using the bill's definition of "average taxable value."

- Eliminates the provision of current law generally making a school district that is within three fiscal years of eligibility for the Classroom Facilities Assistance Program ineligible to participate in the Exceptional Needs School Facilities Assistance Program.

- Permits the School Facilities Commission to approve one or more projects under the Exceptional Needs Program in fiscal years 2010 through 2012 for any school district that (1) initially applied for the program in fiscal year 2008 and (2) is ranked higher than 360 on the equity list for fiscal year 2009.

- Limits a school district's share of a classroom facilities project under the Extreme Environmental Contamination Program to 50% of the project cost.

- 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.[315]

[315] 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.

The bill grants a five-month extension for passing a levy to certain school districts. Specifically, districts undertaking a CFAP project conditionally approved by the Commission in July 2008 have until December 31, 2009, to pass levies for their local shares before their project approval lapses and the state funds are released. With the extension, these districts will have an additional opportunity to seek passage of levies at the general election in November 2009.

Adjustment of local share for certain CFAP projects

(Section 385.90)

Under 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.

Accounting for reductions in tangible personal property valuation in the calculation of percentile rankings

(R.C. 3318.011 and Section 385.93)

Background

In calculating the annual wealth percentile rankings of school districts for school facilities funding, the Department of Education must determine the adjusted valuation per pupil, and then the three-year average of that adjusted valuation per pupil, of each school district. The "average taxable value" used in that calculation considers the "total" taxable value of each district averaged over three years. That total taxable value is the

sum of both the district's real property tax valuation and its tangible personal property tax valuation.

The tax on tangible personal property is being phased out; therefore, each district's tangible personal property tax valuation is declining over time. All other things being equal, this decline also reduces the district's total valuation per pupil, which for some districts will eventually lower the wealth percentile and increase the amount of state funding available for school facilities projects. But since the valuation is averaged over three years, a sudden reduction in tangible personal property tax valuation from one year to the next may not affect a district's *average* adjusted valuation per pupil and its percentile ranking for some time thereafter. This delayed effect of the tax valuation reduction would impact districts that have or had a relatively higher percentage of tangible personal property tax valuation in their total tax valuation.

The bill

The bill addresses this delayed effect by specifying that, if a school district's tangible personal property valuation made up 20% or more of its total taxable value on August 31, 2005, then its three-year "average taxable value" used in determining the wealth percentiles must include only its real property tax valuation, and not both its real property and tangible personal property tax valuations. For all other districts, the bill continues to require the calculation of average taxable value using both real property and tangible personal property tax valuations.

Since the Department of Education has already certified the equity list for fiscal year 2009 that is used to determine funding under the School Facilities Commission's programs for fiscal year 2010, the bill also requires the Department to calculate and certify a new, alternate equity list for use in fiscal year 2010 using the bill's new definition of "average taxable value," as described above. However, the bill adds that a district that already has been offered assistance for fiscal year 2010 prior to the Commission's receipt of the alternate equity list may not be denied the opportunity for assistance for that fiscal year because of the change in equity rankings on the alternate list. Finally, the bill provides that, for any district offered assistance in fiscal year 2010, the district's share of the cost of its project will be the lesser of its share based on the district's percentile rank on the alternate equity list or its share based on its percentile rank on the original equity list for fiscal year 2009.

Eligibility for Exceptional Needs Program

(R.C. 3318.37; 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. Districts eligible for assistance under the program are those either ranked in the lowest 75 wealth percentiles or with territories greater than 300 square miles. In either case, however, 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.[316] The bill eliminates this general restriction altogether.

Nevertheless, the bill also temporarily permits participation in the Exceptional Needs Program for certain school districts that likely would be disqualified due to their proximity to CFAP eligibility if the general restriction were not eliminated. Under this temporary provision, in fiscal years 2010 through 2012, the School Facilities Commission may approve an Exceptional Needs project or projects for a district that (1) initially applied for the program in fiscal year 2008 and (2) is ranked higher than 360 (about the 58th percentile) 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 50%. Therefore, if a district with a ranking higher than the 50th percentile on the equity list (for example, a district at the 80th percentile) participates in the program, it would pay just 50% 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.

Consideration of school district income tax levies allocated for school facilities projects

(R.C. 3317.021(D) 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

[316] The only current exception is for a district that entered into an agreement under the Expedited Local Partnership Program during the first two years of the program's existence and whose entire classroom facilities plan consists of one building for grades K to 12 (R.C. 3318.37(A)(2)).

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.[317] 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[318] and to determine whether a district has met its obligation to levy at least 20 mills for the current expenses of the district.[319] 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.

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).)

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[317] R.C. 3318.052, not in the bill.

[318] 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).

[319] 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. 3317.01).

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.

- Requires the Secretary of State and the Registrar of Motor Vehicles to enter into an agreement to match voter registration information with motor vehicle records, as required under federal law, and requires the Secretary of State, by July 1 each year, to notify the applicable board of elections of mismatches between voter registration

information and motor vehicle records regarding persons registered to vote in the applicable county.

- Defines a "mismatch" as any of the following data fields that are not identical to one another when the statewide voter registration database is compared to motor vehicle records: driver's license number, Social Security number, or date of birth.

- Requires boards of elections to notify affected voters of a mismatch and provide those voters with the opportunity to verify and correct the mismatched information.

- Requires each board of elections to establish procedures to notify voters of mismatches and provide voters with the chance to verify and correct mismatched information, which rules must conform to the voluntary guidelines for implementing statewide voter registration lists adopted by the United States Election Assistance Commission.

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.

Notification of mismatches between voter registration and motor vehicle records

(R.C. 3503.15(H))

The Help America Vote Act of 2002 (HAVA), 116 Stat. 1666, requires, among other things, that each state maintain a single uniform statewide voter registration database that serves as the single system for storing and managing the official list of registered voters throughout the state. HAVA also requires the chief state election official and the official responsible for the state motor vehicle authority to enter into an agreement to match information in the statewide voter registration database with motor vehicle records for the purpose of verifying the accuracy of the information provided in the database and on voter registration applications. (42 U.S.C. 15483.)

The bill requires the Secretary of State and the Registrar of Motor Vehicles to enter into the required matching agreement on or before the requirement's effective date. Additionally, not later than December 31, 2009, and not later than July 1 of each year thereafter, the Secretary of State is required (1) to identify mismatches between voter registration information and motor vehicle records that the Secretary of State receives through the matching agreement regarding persons registered to vote in the applicable county and (2) to notify the applicable board of elections of the mismatches

not later than 15 days after they are identified. The bill defines a "mismatch" as any of the following data fields that are not identical to one another with respect to a particular individual when information in the statewide voter registration database is compared to motor vehicle records: driver's license number, Social Security number, or date of birth.

Upon notification of mismatches by the Secretary of State, a board of elections is required to notify each affected voter of the mismatch regarding the voter's information. The board must provide the voter with the opportunity to verify and correct the mismatched information. Each board of elections is required to establish, by majority vote, procedures to notify affected voters of mismatches and to provide those voters with the opportunity to verify and correct the mismatched information. The procedures must conform to the Voluntary Guidelines for Implementing Statewide Voter Registration Lists adopted by the United States Election Assistance Commission. A mismatch must not be the sole reason for the removal of a voter from the statewide voter registration database or for rendering the voter ineligible to vote.

BOARD OF TAX APPEALS (BTA)

- Eliminates the requirement that all Board of Tax Appeals decisions be sent by certified mail and instead permits the Board to send its decisions by regular mail.
- Allows a person appealing to the Board of Tax Appeals to request that the Board's decision or order be sent by certified mail at the person's expense.

Board of Tax Appeals notices

(R.C. 5705.341, 5705.37, 5715.251, 5717.03, and 5717.04)

The Board of Tax Appeals hears and determines appeals arising under Ohio's tax law, including appeals from actions of a county budget commission, appeals by a county auditor, appeals from decisions of a county board of revision, appeals from decisions of a municipal board of appeals, and appeals from final determinations by the tax commissioner.

Under 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. However, the bill allows a person appealing to the Board to request that the decision be sent by certified mail at the person's own expense.

DEPARTMENT OF TAXATION (TAX)

I. Property Tax

- Authorizes school districts levying current expense taxes with an aggregate residential/agricultural effective tax rate exceeding 20 mills to suspend future application of the "H.B. 920" tax reduction factor on 20 mills by converting the millage in excess of 20 mills, with voter approval, to a single levy to raise a specified amount of money.

- Requires the state to reimburse a school district levying a conversion tax for tax revenue lost from nonresidential/agricultural real property and public utility personal property due to the conversion.

- Phases out that reimbursement over 13 years or less in increments equal to 50% of the annual inflationary revenue growth from residential/agricultural property resulting from the suspension of the H.B. 920 reduction.

- Requires tangible personal property tax reimbursement for conversion levies to continue until the levy expires.

- Authorizes a conversion tax to be levied for a fixed period up to ten years or for a continuing period of time.

- Authorizes voters to repeal a conversion levy that originally was imposed for a continuing period of time, and terminates conversion levy reimbursement if the levy is repealed.

- Makes permanent the levy loss reimbursement for local taxing units, including school districts, for the phase-out of taxes on business personal property and telecommunications property.

- Individual tax levies that were in effect in 2004 or 2005 (and voted on before September 1, 2005) would be reimbursed at 100% until their expiration.

- Eliminates the phase-down of the existing reimbursement for property tax-related county fees, but retains the scheduled 2017 termination of that reimbursement.

- 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.

- Provides amnesty to a property owner whose property was wrongfully valued according to its current agricultural use value before July 1, 2009, if the owner so informs the county auditor or Tax Commissioner, or if the county auditor or Tax Commissioner discovers the wrongful valuation, during the 2010 fiscal year.

- Authorizes county auditors to publish the list of tax-delinquent real property and related preliminary notice on a web site instead of in a newspaper.

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.

- Exempts from sales and use taxation employment service contracts that last at least one year and provide personnel for the construction, improvement, repair, or maintenance of real property when the personnel are subject to a multi-employer collective bargaining agreement.

- 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.

- Transfers from county auditors to the Tax Commissioner the responsibility for issuing wholesale cigarette licenses.

- Requires late cigarette license fees collected by county auditors to be sent to the Treasurer of State by the last day of the month following the month in which the money was collected, rather than by December 31.

- Specifies that the cigarette and tobacco product licensing provisions take effect January 1, 2010.

- Authorizes a convention facilities authority in a county with a population between 100,000 and 150,000 to levy a lodging tax of up to 3% to finance the construction, operation, and maintenance of a convention, entertainment, or sports facility, subject to approval by the board of county commissioners and referendum petition.

- Extends to natural gas distributors with 70,000 or fewer customers the authority currently held by natural gas distributors with 50,000 or fewer customers to aggregate all of the natural gas distributed by the company in the state when determining the tax rate.

- Expressly and specifically exempts from sales and use taxation machinery and equipment used to pump concrete and concrete-related products.

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 nonrefundable, transferable income tax credit for individuals and pass-through entity owners who invest money in a motion picture production certified by the Director of Development as a tax-credit eligible production before 2014.

- Allows a credit equal to 25% of investments greater than $300,000, adjusted for the fraction of total production expenditures budgeted to be spent in Ohio.

- Limits the amount of credit certificates that may be issued to $100 million per year and $25 million per production.

- Requires production companies (or an affiliate) to reimburse the state for excess credits allowed and claimed.

- Permits a pass-through entity claiming a historic preservation tax credit to allocate the credit among its owners in any proportions elected by the entity.

IV. Commercial Activity Tax

- Requires the Tax Commissioner to notify a taxpayer by certified mail the first time the taxpayer bills or invoices another person for the taxpayer's commercial activity tax liability and requires the Commissioner to impose a $500 fine for each subsequent violation.

- 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.

- Excludes from CAT gross receipts exchanges of products derived from crude oil between licensed motor fuel dealers or licensed permissive motor fuel dealers.

- 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.

- Creates an income tax refund "check-off" contribution that benefits the Ohio Veterans' Home Agency and requires moneys from the check-off to be distributed among residents' benefit funds to be used specifically for advancement of veterans' services and assisting veterans with significant financial need.

- 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.

- Permanently authorizes any county to use money in its Delinquent Tax and Assessment Collection (DTAC) Fund to fund residential mortgage foreclosure prevention efforts and to address foreclosure-related problems.

- Authorizes the Department of Taxation to disclose information to the Department of Job and Family Services, Industrial Commission, and Bureau of Workers' Compensation that is necessary to verify employer compliance with Ohio law administered by those agencies.

- Technical change to include the Department of Taxation as an entity authorized to determine how money in the Department of Taxation Enforcement Fund is to be used for the Department's law enforcement purposes.

I. Property Tax

School district conversion levies

(R.C. 5705.214, 5705.219, 5705.2110, 5705.29, 5751.20, and 5751.21)

The 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. The conversion requires voter approval at a primary or general election.

The conversion is effected by repealing current expense effective millage in excess of 20 mills and re-levying some or all of that millage as a fixed-sum levy. This new conversion levy is for a fixed amount of money each year equal to the money that would be raised from the repealed millage re-levied if that millage were levied on all taxable property, including Class I real property, all other real property ("Class II"), and public utility tangible personal property.

A conversion levy could be levied permanently, or for a specified number of years up to ten years. A conversion levy originally imposed permanently may be reduced or repealed by voter initiative.

H.B. 920 limitation and 20-mill floor

The effect of adopting a conversion levy is to reduce the current expense millage to the 20-mill threshold or "floor" at which the H.B. 920 tax limitation no longer operates. Under continuing law, when a school district's current expense millage is effectively raising no more than the equivalent of 2% of the taxable property value (i.e.,

20 mills per dollar), the H.B. 920 tax reduction factors no longer prevent inflationary increases in property values from causing proportionate increases in tax revenue: the revenue raised equals 2% of whatever the taxable property value happens to be each year, including inflationary appreciation. (R.C. 319.301(E)(2); Article XII, Section 2a(D), Ohio Constitution.)

Some levies are not considered in determining whether a district's current expense millage equals or exceeds the 20-mill threshold even though the revenue may be used for current expenses: so-called "emergency" levies, "substitute" levies, "incremental" levies, and "charge-off" levies (R.C. 5705.194, 5705.199, 5705.213, and 5705.211, respectively). When one of more of these levies is in effect, total current expense millage can exceed 20 mills but the school district is considered to be levying only the minimum 20 mills for the purposes of the H.B. 920 limitation, and therefore revenue from the 20 mills is permitted to increase in response to property value appreciation.

Conversion levies also 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 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.[320]

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

[320] The repeal of existing levies must be applied uniformly across Class I and Class II real property to conform with the constitutional uniformity requirement whereby all real property must be taxed "by uniform rule." Article XII, Section 2, Ohio Constitution. The differing effective rates for Class I and Class II property that exist at any time result from the exception to the uniform rule permitted solely for the purpose of computing separate H.B. 920 tax reduction factors. Article XII, Section 2a, Ohio Constitution.

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 existing law, school districts are compensated for tax losses resulting from a phase-out of business personal property taxes. Losses from fixed-sum levies are reimbursed through 2010, and thereafter reimbursed until the levy expires or, if they are renewed, until the renewal levy expires, but not after fiscal year 2018.

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 (although the bill proposes to eliminate this phase-down of reimbursements--see "**Permanent reimbursement for tangible personal property tax phase-out**," below). Fixed-rate levies expiring after fiscal year 2010, however, are not reimbursed for any year after their expiration. The rate of decline in the reimbursement for fiscal years 2011 and 2012 is 3/17 per year of the computed fixed-rate loss; the rate of decline for fiscal years 2013 through 2018 is 2/17 per year. In fiscal year 2018, the last 1/17 is paid, and no reimbursement is paid thereafter.

Under the bill, a school district adopting a conversion levy will no longer receive fixed-rate levy reimbursement for the millage that was repealed and converted. Instead, the district will receive fixed-sum reimbursement for the conversion levy in the same manner currently provided by law for the reimbursement of fixed-sum levy losses--i.e., the reimbursement will continue in the full amount of the business personal property tax loss until the levy or its renewal expires.

Permanent reimbursement for tangible personal property tax phase-out

(R.C. 5751.20 to 5751.22)

Currently, revenue from the commercial activity tax is earmarked to reimburse school districts and other local taxing units for the phase-out of taxes from business tangible personal property. Initially, revenue from the tax is to be credited to the Commercial Activities Tax Receipts Fund, and thence divided between the GRF and the newly created School District Tangible Property Tax Replacement Fund (SDRF) and Local Government Tangible Property Tax Replacement Fund (LGRF) in specified proportions until the end of fiscal year 2018, as follows:

Division of CAT revenue			
Fiscal Year	**GRF**	**SDRF**	**LGRF**
2006	67.7%	22.6%	9.7%
2007	0%	70.0%	30.0%
2008	0%	70.0%	30.0%
2009	0%	70.0%	30.0%
2010	0%	70.0%	30.0%
2011	0%	70.0%	30.0%
2012	5.3%	70.0%	24.7%
2013	10.6%	70.0%	19.4%
2014	14.1%	70.0%	15.9%
2015	17.6%	70.0%	12.4%
2016	21.1%	70.0%	8.9%
2017	24.6%	70.0%	5.4%
2018	28.1%	70.0%	1.9%
2019 and thereafter	30%	70%	0%

School district reimbursement changes

(R.C. 5751.20 and 5751.21)

Under current law, the 70% of CAT revenue earmarked for school district reimbursement is used initially to reimburse school districts solely on the basis of their individual tax losses from their "qualifying" levies (i.e., levies in effect in 2004 or 2005, so long as the levy was approved before September 1, 2005). As the reimbursement is phased down between FY 2012 and 2018, the portion of that 70% needed to pay

reimbursement declines accordingly. During that phase-down period, the portion of the 70% not needed to reimburse districts on the basis of their individual tax losses is scheduled to be appropriated for as-yet unspecified "school purposes." After the phase-down ends, all of the 70% currently is scheduled to be used for such school purposes. Current law does not specify how the money is to be distributed among school districts.

The bill retains the current 70% earmarking of CAT revenue for school district reimbursement, but eliminates the reimbursement phase-down currently scheduled to begin in FY 2012. Reimbursement would continue for each of a district's qualifying levies until the levy expires at 100% of the district's computed tax loss. Payments would continue to be made thrice annually, in August, October, and May. Until the end of FY 2011, the Director of Budget and Management is authorized to transfer any money not needed for reimbursement to the GRF (as under current law). After FY 2011, no such transfer is authorized.

Local taxing unit reimbursement changes

(R.C. 5751.20 and 5751.22)

Under current law, the portion of CAT revenue earmarked for reimbursing local (nonschool) taxing units begins to decline in FY 2012 as their reimbursement amounts are phased down. The portion of CAT revenue earmarked for the General Revenue Fund increases accordingly. Beginning in FY 2019, no reimbursement is to be paid to local taxing units and the 30% not appropriated for school purposes is to be paid into the GRF.

The bill permanently earmarks 30% of the CAT to permanently reimburse local taxing units for their individual computed tax losses. Payments would continue for each qualifying levy for as long as the levy remains in effect. Payments would continue to be made thrice annually, in August, October, and May. If the 30% of CAT revenue earmarked for local taxing unit reimbursement exceeds the amount required to pay total reimbursements, the Director of Budget and Management is authorized to transfer the excess to the GRF (as under current law).

Reimbursement for county administrative fee losses

(R.C. 5721.23)

Current law compensates county auditors and treasurers for the loss of administrative fees payable on the basis of property tax collections. A percentage of taxing units' reimbursable revenue loss is used to reimburse the county auditors, county treasurers, and real estate assessment funds for the loss of these fees. The percentage is 1.1159% if the county's 2004 tax collections from all tax duplicates (other than the estate

tax list) were $150 million or less, and 0.9659% if the county's 2004 collections were more than $150 million. The fee reimbursement compensation is phased out according to the reimbursement phase-out schedule for local taxing units, and currently is scheduled to end in 2017.

The bill eliminates the phase-out of the county fee reimbursement so that the reimbursement amount each year throughout 2017 does not decline incrementally each year. But reimbursement will end in 2017, as under current law.

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.

Delinquent tax list publication

(R.C. 5721.03)

The bill authorizes county auditors to post the list of tax-delinquent real property on a web site maintained by the auditor that is accessible to the public via the Internet, in lieu of publication of the lists in a newspaper. The bill also authorizes county auditors to post the display notice of the soon-to-be-posted lists on the auditor's web site in lieu of publication in a newspaper. The display notice must be posted not later than two weeks before the date the lists are required to be posted and must continue to be posted until the lists are posted. The lists must be posted within 30 days after the duplicate of the delinquent land list is delivered to the county treasurer and must remain posted for 60 days after such delivery. (The delinquent land duplicate is required to be delivered to the treasurer on or before September 9.)

CAUV amnesty

(Section 757.30)

The bill immunizes a property owner whose property was wrongfully valued according to its current agricultural use value before July 1, 2009, from the tax recoupment charge and civil and criminal penalties to which the owner would otherwise be subject if, on or after July 1, 2009, and before July 1, 2010, the owner informs the county auditor or Tax Commissioner of the wrongful valuation, or the county auditor or Tax Commissioner discovers the wrongful valuation. (Continuing law requires a property owner to apply for agricultural use valuation each year.) Current law would otherwise impose a recoupment charge equal to the tax savings the owner experienced for the three tax years the property was converted from agricultural use plus any tax savings wrongfully received thereafter. The owner also may be guilty of a first degree misdemeanor.

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 October 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.[321] 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.

Taxation of employment services under the sales and use taxes

(R.C. 5739.01(JJ))

Continuing law levies sales and use taxes on all transactions by which employment service is provided. Current law defines "employment service" as providing personnel to perform work under another person's supervision if the personnel receive their compensation from the provider of the personnel or from a third party that supplies the personnel to the employment service provider. Under some circumstances, a personnel-supply transaction is exempted from taxation, including when the personnel are supplied under a contract of at least one year specifying that each employee is assigned to the purchaser on a permanent basis.

[321] Among the separate classes defined by federal law are inpatient hospital services; outpatient hospital services; nursing facility services; physician services; home health care; and services of a Medicaid managed care organization.

The bill extends the existing exemption for employment service contracts lasting at least one year to contracts supplying personnel for work in the construction and building trades industry for the construction, improvement, repair, or maintenance of real property where the personnel are subject to a multi-employer collective bargaining agreement. Under the bill's exemption, the contract need not specify that each employee is assigned on a permanent basis.

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.

The natural gas distribution tax

(R.C. 5727.811; Section 803.50)

Under existing law, there is an excise tax on natural gas distribution companies for the purpose of raising revenue for public education and state and local government operations. The tax is levied on every natural gas distribution company for all natural gas volumes billed by, or on behalf of, the company and distributed through the "meter of an end user in this state."[322] (If there is no meter used to measure the gas, then the tax applies to the estimated quantity of gas distributed to the unmetered location.) Distribution is measured by 1,000 cubic feet of natural gas, or "MCF." For purposes of

[322] The "meter of an end user in this state" is the last meter used to measure the MCF of natural gas distributed by a natural gas distribution company to a location in this state, or the last meter located outside of this state that is used to measure the natural gas consumed at a location in this state.

the MCF tax, a "natural gas distribution company" is a natural gas company or a combined natural gas and electric company that is subject to the natural gas company gross receipts tax and that distributes natural gas through a meter of an end user in this state.

The MCF tax is levied quarterly, at a rate that decreases as more natural gas is distributed. Except for natural gas distribution companies with 50,000 customers or less or "flex" customers, for the first 100 MCF per month distributed to an end user, the rate is $.1593 per MCF; for the next 101 to 2,000 MCF per month, the rate is $.0877; and for 2,001 MCF per month and above, the rate is $.0411.

For a natural gas distribution company with 50,000 customers or less, the rate is lower. Such a company may elect to apply the three rate brackets to the aggregate of the natural gas distributed by the company through the meters of all its customers in this state, and upon that election, this method must be used to determine the amount of tax to be paid by the company.

The bill extends to natural gas distributors with 70,000 or fewer customers the authority to aggregate all of the natural gas distributed by the company in the state when determining the tax rate. The tax rate varies according to the volume distributed to each customer (a lower rate on higher volumes, so aggregating reduces the total tax due).

Lodging tax for convention facilities authority

(R.C. 351.021(B)(2))

The bill authorizes a convention facilities authority (CFA) in a county with a population between 100,000 and 150,000 to levy a lodging tax of up to 3% to finance the construction, operation, and maintenance of a convention, entertainment, or sports facility. The CFA board of directors may adopt a resolution levying the tax only if the board of county commissioners adopts a resolution authorizing the CFA to levy the tax. The CFA's resolution must be adopted on or before November 1, 2009.

The CFA's authority to levy the tax is subject to referendum if a valid petition signed by 10% of county electors is filed within 30 days after the board of county commissioners adopts its resolution authorizing the CFA to proceed with the tax levy. The board of commissioners' resolution authorizing the tax levy is the subject of the referendum. If a referendum is to be held, the CFA may adopt its resolution before the election occurs, but the resolution and the tax does not take effect unless the commissioners' resolution is approved at the referendum election.

Sales and use tax exemption for concrete-pumping equipment

(R.C. 5739.011(B)(14) and 5739.02(B)(42)(g))

Existing law provides that sales where the purchaser uses the "thing transferred" (i.e., the purchased item) primarily in a manufacturing operation to produce tangible personal property for sale are exempt from sales and use taxes.

The bill specifically provides that machinery and equipment, including motor vehicles, used to pump concrete or concrete-related products are "things transferred" and thus are exempt from sales and use taxes when used primarily in manufacturing operation to produce tangible personal property for sale.

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[323]), 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 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.

[323] 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.

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.[324]

The Ohio Department of Development may award a combined maximum of $10 million of tax credits annually (disregarding credit carry-forwards).

Recapture; rule-making

The 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

[324] 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.

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.

(R.C. 122.85, 5747.66, and 5747.98)

The bill authorizes a transferable, nonrefundable income tax credit for an individual who invests money in a motion picture production certified by the Director of Development as a tax credit-eligible production. The certification must be made in or after 2009, but before 2014. The credit is available to individuals who invest directly or who invest indirectly through a pass-through entity owned by the individual. The amount of the credit depends on the amount of the investor's "base investment." The base investment equals the amount invested multiplied by the percentage of the total budgeted expenditures anticipated to be spent by the motion picture production company on "eligible production expenditures." Eligible production expenditures are expenditures made in or after 2009 for goods or services consumed in Ohio directly for the production.[325]

No credit is allowed for an investment of $300,000 or less. For investments greater than $300,000, the credit equals 25% of the base investment. If the investor is a pass-through entity, the entity may allocate the credit among its equity holders in any proportion or manner provided in the instrument governing the entity, and not necessarily in the manner that the entity's income or loss must be allocated under federal tax law.

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[325] At the end of the production, base investments are recalculated using actual expenditure amounts. Overestimated credits allowed and claimed are recaptured from the motion picture production company or an affiliate (see "**Reimbursement of state**").

The credit is nonrefundable, but if it exceeds the income tax otherwise due for the first year it is claimed, the excess may be carried forward for up to ten additional years.

Because the credit is transferable (see "**Transfer of credit**"), the taxpayer claiming the credit must be a "certificate owner" (i.e., must own the credit) on the last day of the taxpayer's taxable year for which the taxpayer must claim the credit. If the certificate owner is the investor, the credit must be claimed for the investor's taxable year that includes the day the investment was made. If the certificate owner is a person other than the investor (such as a credit transferee or an equity holder in a pass-through entity), the credit must be claimed for the certificate owner's taxable year that includes the last day of the investor's taxable year in which the investment was made. A credit may not be claimed unless the certificate owner holds a statement, issued by the transfer agent (see "**Transfer of credit**"), certifying the credit amount and the certificate owner's identity.

Tax credit certificate

(R.C. 122.85(D) and (E))

To receive a credit once an investment in a tax credit-eligible production is made, the investor must submit an application and any required information or documentation to the Director of Development. The Director is required to prescribe the form and manner in which applications for a credit certificate shall be made. The Director must determine the investor's base investment based upon budgeted Ohio and budgeted total expenditures, and issue to the investor a tax credit certificate, which identifies the base investment and credit amount and is marked with a unique identifying number assigned by the Director. The Director must record the certificate in a register devised and maintained by the Director.

If the certificate owner is a pass-through entity, the entity must notify the transfer agent, discussed immediately below, of each equity holder's allocated share of the credit. The equity holders become the certificate owners of their respective shares.

Not more than $100 million in tax credit certificates may be issued per year, and not more than $25 million in tax credit certificates may be issued per tax credit-eligible production.

Transfer of credit

(R.C. 122.85(F) and (G))

An investor may transfer all or part of the credit amount stated on the credit certificate. Any subsequent certificate owner also may transfer all or part of the credit represented by the certificate. All transfers must be made in accordance with rules prescribed by the Director of Development. The rules must require a certificate owner, upon transfer, to provide to the transfer agent the transferee's name, the certificate identification number, and the credit amount transferred. The transfer agent must be either the motion picture production company or a company designated by the production company. It must keep a record of credit certificate owners and credit amounts. Upon request by the certificate owner, the transfer agent must issue the statement certifying the certificate owner's identity and the credit amount. A certificate owner to whom a certificate has been transferred must obtain the statement before claiming the credit. When the transfer agent issues this certification, it must also provide a statement to the Tax Commissioner, in a form prescribed by the Commissioner, identifying the certificate owner and the credit amount.

Tax credit-eligible motion picture productions

Eligible productions

(R.C. 122.85(A) and (B))

The Director of Development may issue a tax credit certificate only for an investment in a motion picture production certified by the Director as a tax credit-eligible production. To be certified as a tax credit-eligible production, the motion picture must have entertainment content created in whole or in part in Ohio. "Motion pictures" include feature-length films, videos, television series, commercials, video games, interactive web sites, and certain other specified productions.

The Director may certify multiple commercial or video productions as a single tax credit-eligible production if the Director determines that the productions are related parts of a distinct advertising, promotional, informational, or entertainment series or undertaking. Not eligible for certification are productions of television coverage of news, weather, financial market reports, sports, and award shows. Also excluded are political advocacy productions, fundraising productions, certain sexually explicit productions, and productions produced by a motion picture company owned, affiliated, or controlled, in whole or in part, by a company or person in default on a loan made or guaranteed by the state.

Application for certification

(R.C. 122.85(C))

The motion picture company must apply for certification of the production on a form and in a manner prescribed by the Director. The application must include, at a minimum, all of the following information:

(1) The name, address, and telephone number of the motion picture production company;

(2) The name and telephone number of the company's contact person;

(3) A list of the scheduled first preproduction date through the scheduled last production date in Ohio;

(4) The total production budget;

(5) The amount expended in Ohio by the company directly for the production and the percentage that amount is of the total production budget;

(6) The total percentage of the motion picture being shot in Ohio;

(7) The level of employment of cast and crew who reside in Ohio;

(8) A synopsis of the script;

(9) A creative elements list that includes the names of the principal cast and crew, and the producer and director.

Reimbursement of state

(R.C. 122.85(B))

For a production to be certified as a tax credit-eligible production, the production company and an affiliate must agree to reimburse the state for tax credits allowed and claimed that are later determined to have been overestimated. (See "**Eligible production expenditure verification**.") As explained above, the credit amount depends on the amount of the base investment, and the base investment amount depends on eligible production expenditures as a percentage of the total production budget. If the eligible production expenditures are over-estimated, the base investment also will be over-estimated, and the credit amount allowed will have been too great. The reimbursement provision obligates the production company or affiliate, instead of the individual claiming the credit, to repay the state for any excess credit claimed on the basis of over-estimated expenditures.

Eligible production expenditure verification

(R.C. 122.85(H) and (I))

CPA certification

To determine whether an excess tax credit has been received on the basis of over-estimated eligible production expenditures, the bill requires the production company to hire, at its own expense, an independent certified public accountant. The CPA must examine the company's production expenditures to determine those 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 production company, and must provide to the Director any additional information required by the Director.

Disallowance of expenditures

Upon receipt of the report, the Director may disallow any expenditure certified by the CPA that the Director determines is not an eligible production expenditure. The Director must issue a written notice to the production company, within 30 days after receiving the CPA's report, indicating any disallowed expenditure, the reason for the disallowance, and the manner in which the production company may appeal. If the Director does not issue the written notice within the time prescribed, the eligible production expenditures indicated in the CPA's report are conclusively determined to be the actual eligible production expenditures for the purpose of determining actual base investment amounts, the related credit amounts that should have been allowed, and the amount of any reimbursement owed to the state by the production company or its affiliate.

Appeal

A production company may appeal the Director's disallowance of expenditures by filing a notice of appeal with the Director within 30 days after the Director issues the written notice. A hearing must be held at which the production company may produce evidence and testimony regarding the disallowed expenditures. Within 30 days after conclusion of the hearing, the Director may revise or affirm the initial notice of disallowance and issue a final notice to the production company stating the revision or affirmation. The Director's final notice may not be appealed.

After the issuance of the final notice, or upon the Director's failure to timely disallow expenditures, a credit may not be disallowed if it is later determined an expenditure does not qualify as an eligible production expenditure.

Administrative rules

(R.C. 122.85(K); Section 701.90)

The Director of Development is required to adopt rules for the administration of the tax credit. The Director is required to consult with the Tax Commissioner when developing rules governing the criteria for determining whether a motion picture production is a tax credit-eligible production.

Use of state's name in credits

(R.C. 122.85(J))

The state reserves the right to refuse the use of the state's name in the credits of any tax credit-eligible motion picture production.

Historic rehabilitation tax credit

(R.C. 5725.151 and 5747.76)

The bill permits companies entitled to claim the historic rehabilitation tax credit to allocate the company's credit among the company's equity owners in amounts or proportions other than their pro rata ownership shares if the company is organized as a partnership or other form of pass-through entity (e.g., limited liability company or S corporation). Generally, a pass-through entity's income items for tax purposes (including credits) are distributed among the entity's owners in proportion to each owner's ownership share unless the owners' entity agreement provides otherwise (see Internal Revenue Code sec. 704).

The rehabilitation tax credit is available for owners of historic buildings that rehabilitate the buildings according to standards prescribed by the U.S. Department of the Interior and whose rehabilitation project is approved for the credit by the Director of Development. (See R.C. 149.311.) The credit equals 25% of the qualifying expenditures. It may be claimed against the income tax, corporation franchise tax, and dealers in intangibles tax.

IV. Commercial Activity Tax

Penalty: billing or invoicing for the tax

(R.C. 5751.06)

Under continuing law, a person subject to the commercial activity tax is expressly prohibited from billing or invoicing another person for the tax under R.C.

5751.02(B), but is explicitly permitted to recover the tax by including the tax in the price of a good or service. Under current law, there is no civil penalty for violating this provision, but violations may be punishable by a criminal fine of up to $500 or imprisonment for up to 30 days (R.C. 5751.99(B)).

The bill requires the Tax Commissioner to notify a taxpayer by certified mail the first time the taxpayer bills or invoices another person for the taxpayer's commercial activity tax liability, and for each subsequent violation the Commissioner is required to impose a $500 civil penalty. The Tax Commissioner may, but is not required to, impose a penalty of up to $500 for the taxpayer's first violation. The penalty is in addition to any criminal fine.

Personal property tax reimbursement

(R.C. 5751.20(E)(2))

Under continuing law, the state is required to reimburse school districts for losses due to the phase-out of business personal property taxes. Losses are divided into two categories: losses for taxes levied at a specified rate ("fixed-rate levy losses") and losses for taxes levied to raise a specific amount of money ("fixed-sum levy losses"). Losses from fixed-sum levies--"emergency" school district levies, for example--are reimbursed through 2010, and thereafter reimbursed until the levy expires or, if they are renewed or otherwise succeeded by another emergency levy, until the successor expires, until 2017. Levies qualifying for reimbursement are those that were levied in tax year 2004, or in 2005 if on the ballot before September 1, 2005. Levies enacted after 2005 are not reimbursed unless they renew such a "qualifying" levy.

Recently, school districts were authorized to levy: a "substitute" levy, which may be levied only to replace an expiring emergency levy.

The bill requires property tax loss reimbursement for a substitute levy replacing an emergency levy that qualified for reimbursement. Reimbursement continues under the same terms as if the substitute levy were a renewal of an expiring emergency levy: i.e., through the earlier of 2017 of the last year of the substitute levy, and only if the substitute levy raises the same amount of revenue as the expiring emergency levy less the 2006 reimbursement for the emergency levy.

Tax Reform System Implementation Fund

(R.C. 5751.20(B))

Under current law, 100% of commercial activity tax revenue is credited to the Commercial Activities Tax Receipts Fund and thereafter credited to funds that

reimburse school districts and local governments for losses due to the phase-out of business personal property taxes. Beginning in 2012, an increasing percentage of Fund money will be credited to the General Revenue Fund as the percentage needed to reimburse local governments is phased down. (The percentage of CAT revenue earmarked for school districts remains at 70% on a permanent basis.)

The bill creates the Tax Reform System Implementation Fund, which will receive 0.85% of commercial activity tax revenue. Money in the fund must be used to defray the costs of administering the CAT and to implement "tax reform measures," which the bill does not further define.

Commercial activity tax

Excluded persons and taxable gross receipts

(R.C. 5751.01 (E) and (F))

The commercial activity tax (CAT) applies to taxable gross receipts, which is the portion of a taxpayer's total gross receipts sitused to Ohio under the CAT situsing provisions. Total gross receipts is defined broadly to include the total amount realized by a person, without deduction for the cost of goods sold or other expenses, that contributes to the production of that person's gross income. It includes the fair market value of any property and any services received and any debt transferred or forgiven as consideration. The CAT law also specifies certain examples of gross receipts.

Current law provides some exclusions from gross receipts, including, among others, proceeds on the account of payments from life insurance policies; gifts or charitable contributions, membership dues, and payments received for educational courses, meetings, meals, or similar payments to a trade, professional, or other similar association; fundraising receipts if excess receipts are donated or used exclusively for charitable purposes; and proceeds received by a nonprofit organization, including those proceeds realized with regard to its unrelated business taxable income.

Under the bill, there is a new exclusion for payroll deductions by an employer to reimburse the employer for advances made on an employee's behalf to a third party. The bill expands the exclusion for insurance policies so that proceeds from any insurance policy are excluded, not just life insurance, unless the insurance reimburses for business revenue losses. The bill also narrows the exclusion for membership dues so that they are excluded only if they are for membership in a trade, professional, homeowners', or condominium association.

The bill creates an exclusion for exchanges of products derived from crude oil (including motor fuel) between licensed motor fuel dealers or licensed permissive

motor fuel dealers. The exclusion applies only if the parties to the exchange agree that no money shall be paid for the exchange and if delivery of the product occurs at a refinery, terminal, pipeline, or marine vessel. The exclusion does not apply to fees for handling, additive injections, or pipeline security or to payments for differences in value due to grade or location. The exclusion also does not apply to purchases within a refinery, terminal, pipeline, or marine vessel if the product is to be resold to another party. The bill applies this exclusion retrospectively to tax periods beginning on or after July 1, 2005 (when the CAT took effect). An uncodified provision authorizes applications for refunds accruing from the exclusion to be filed with the Tax Commissioner within the later of 90 days after the provision's effective date (which is immediate) or the end of the four-year period prescribed for CAT refund claims under existing law.

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.[326] Whether all or some

[326] 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.

part of the assessment must be paid depends on several conditions, including the reason for the assessment, the basis of the taxpayer's objection, and whether a return was filed.

The bill eliminates the various conditions and corresponding payment requirements, and requires payment of the entire amount assessed if 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.

Report

The bill requires the Ohio Historical Society to submit a biennial report on the effectiveness of its 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.

Income tax "check-off" for veterans' services and assisting veterans with significant financial need

(R.C. 5747.113 and 5907.111)

The bill authorizes taxpayers who are due a refund of overpaid Ohio income tax to specify that all or part of the refund be paid to the Ohio Veterans' Home Agency. Contributions are to be credited to the Ohio Veterans' Home Agency Income Tax Contribution Fund, which is created by the bill. Money credited to the fund must be distributed by the Director of Veterans Services among residents' benefit funds and must be used specifically for advancement of veterans' services and assisting veterans with significant financial need. In addition to income tax refund contributions, the fund may accept direct contributions.

Income tax check-offs, generally

(R.C. 5747.113)

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 and the Ohio Veterans' Home Agency 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.

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 associated with an address at the time the Commissioner originally mailed the notice or order if, at that time, the person was residing, receiving legal documents, or conducting business at the address; or if, before that time, the person had conducted business at the address and, when the notice or order was mailed, the person's agent or the person's affiliate was conducting business at the address. A person's affiliate is any other person that, at the time the notice or order was mailed,

owned or controlled at least 20%, as determined by voting rights, of the addressee's business.

If a person elects to protest an assessment certified to the Attorney General for collection, the person must do so within 60 days after the Attorney General's initial contact with the person. Then, the Attorney General can either enter into a compromise with the person under ongoing law authorizing the compromise of tax claims, or send the person's petition for reassessment to the Tax Commissioner for consideration as any other petition for reassessment under the applicable law.

Use of DTAC Fund for Foreclosure Prevention, Nuisance Abatement

(R.C. 321.261)

Under current law, a Delinquent Tax and Assessment Collection (DTAC) Fund is established in each county treasury. The fund receives 5% of collections of delinquent property taxes, manufactured home taxes, and special assessments. In most counties, the fund may be used only to pay the expenses of the county prosecuting attorney and the county treasurer in collecting additional delinquent taxes and assessments. In any county with a 2006 population of more than 100,000, the treasurer and prosecuting attorney may spend any DTAC money not needed for delinquent tax collection to assist townships and municipal corporations to abate "foreclosed residential nuisances;" the prosecuting attorney also may spend excess DTAC money to prosecute violations of "criminal and civil laws governing real estate and related transactions." The total amount spent for purposes other than delinquent tax collection may not exceed $3 million per year. In Cuyahoga County, which is the only county authorized to create a county land reutilization corporation (see R.C. Chapter 1724.), DTAC money may be used to fund the corporation.

The bill authorizes the board of commissioners of any county to use money in the DTAC to fund residential mortgage foreclosure prevention efforts and to address foreclosure-related problems. Specifically, the DTAC money may be used to "provide financial assistance in the form of loans to borrowers in default on their home mortgages, including for the payment of late fees, to clear arrearage balances, and to augment moneys used in the county's foreclosure prevention program. " The amount spent for those purposes in any year may not exceed the amount that would result in the DTAC Fund reserve falling below 20% of the amount spent the preceding year on collecting delinquent taxes. A board of commissioners of any county also may use DTAC money to assist cities, villages, and townships in nuisance abatement of "deteriorated residential buildings in foreclosure" or vacant, abandoned, tax-delinquent, or blighted real property.

The bill prohibits a board of county commissioners of any county from spending DTAC money for "land reutilization" unless the county's investment advisory committee authorizes such spending. (A county investment advisory committee is composed of either two county commissioners and the county treasurer, or three county commissioners, the county treasurer, and the clerk of the court of common pleas.) It is not clear whether "land reutilization" refers to foreclosure prevention and related problems or to some other activity or process.

Disclosure of information: employer compliance

(R.C. 5703.21(B)(12) and 5747.18)

Current law generally prohibits agents and employees of the Department of Taxation from disclosing taxpayer information. There are various exceptions to this general rule, most of which authorize information to be disclosed to other governmental bodies for governmental purposes.

The bill expressly authorizes the Department of Taxation to disclose information to the Department of Job and Family Services, Industrial Commission, and Bureau of Workers' Compensation solely to enable those agencies to identify employers that misclassify employees as independent contractors or that do not properly report and pay employer taxes. The bill expressly limits the release of information to only such information that is necessary to verify employer compliance with Ohio law administered by those agencies.

Forfeiture proceeds of Department of Taxation

(R.C. 2981.13(C)(2))

Sub. H.B. 120 of the 127th General Assembly added references to the Department of Taxation and its Enforcement Division and related funds in the appropriate places in the forfeiture law (R.C. Chapter 2981.). This was done to retain the Department's preexisting authority to obtain forfeiture and use the property or the proceeds, which had been inadvertently omitted in prior legislation.

The 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.

- Creates the Ohio Task Force on Transportation Funding and Fuel Taxes, consisting of six members from the General Assembly, four designees from the executive branch, and ten members representing specified industry groups; requires the Task Force to consider current transportation funding, transportation funding needs, and funding options; and requires a report with recommendations by June 30, 2010.

Ohio Task Force on Transportation Funding and Fuel Taxes

(Section 755.20)

The bill creates the Ohio Task Force on Transportation Funding and Fuel Taxes, consisting of the following 20 members: (1) three members of the Senate appointed by the President of the Senate, one of whom must be appointed based on the recommendation of the Minority Leader of the Senate, (2) three members of the House of Representatives appointed by the Speaker of the House of Representatives, one of whom must be appointed based on the recommendation of the Minority Leader of the House of Representatives, (3) the Director of Transportation or the Director's designee, (4) the Director of Development or the Director's designee, (5) the Director of the Ohio Turnpike Commission or the Director's designee, (6) a representative of the Governor's office with responsibility for energy policy appointed by the Governor, (7) a member representing labor organizations appointed by the Governor, (8) a member representing the Ohio Contractors Association, (9) a member representing the Ohio Aggregates Association, (10) a member representing the Ohio Concrete Association, (11) a member representing the Ohio Petroleum Council, (12) a member representing the Ohio Petroleum Marketers and Convenience Store Association, (13) a member representing the Ohio Convenience Store Association, (14) a member representing the Ohio Council of Retail Merchants, (15) a member representing the Ohio Environmental Council, and (16) a member representing the Ohio Trucking Association. Members representing specific organizations are appointed by the respective organizations. Appointments must be made not later than 45 days after the effective date of the applicable provision of the bill.

The President and Speaker each must designate as co-chairs of the Task Force one of the members they appoint. The bill specifies that members of the Task Force receive no compensation or reimbursement for serving on the Task Force and requires the General Assembly to furnish required staff support.

The Task Force must review the existing transportation revenues, examine areas of expected shortfalls in revenue based on declining gas tax revenue, escalating construction costs, and increasing need, and must explore traditional and innovative options to improve transportation funding. The Task Force is required to formulate such recommendations for transportation funding as it considers advisable and to compile a written report that contains its findings and recommendations. Not later than June 30, 2010, the Task Force must submit its report to the Governor, the President of the Senate, the Minority Leader of the Senate, the Speaker of the House of Representatives, and the Minority Leader of the House of Representatives. At that point, the Task Force ceases to exist.

TUITION TRUST AUTHORITY (TTA)

- Places the Ohio Tuition Trust Authority within the office of the Chancellor of the Board of Regents.

- Renames the 11-member panel that currently constitutes the Authority as the Ohio Tuition Trust Authority Board, limits its powers and duties, and requires the Ohio Tuition Trust Authority within the Chancellor's office to perform all other duties and responsibilities under the College Savings Program Law that the bill does not assign to the new Board.

- Requires the Authority to obtain the Board's advice and consent in the hiring of its executive director, and authorizes the Board to remove the executive director at any time, subject to the advice and consent of the Chancellor.

- Requires the Authority, by December 31, 2009, to conduct a study of guaranteed tuition plans and report recommendations for a new guaranteed tuition plan to the General Assembly and the Governor.

- Authorizes the Authority to establish and administer more than one plan for the sale of tuition units, including plans in which the risks are shared among institutions of higher education, the state, the Authority, and investors.

- Authorizes the Board to contract with any business, entity, or governmental agency to perform the Board's investment powers.

Background

Under section 529 of the Internal Revenue Code, states may establish and maintain a state tuition program under which a person (1) may purchase credit toward tuition on behalf of a designated beneficiary that entitles the beneficiary to the waiver or payment of qualified higher education expenses or (2) may make contributions to an account set up for the purpose of meeting the qualified higher education expenses of a designated beneficiary. These programs receive favorable federal and state tax treatment for their assets and distributions to beneficiaries. In Ohio, the "Ohio Tuition Trust Authority" 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.

Administrative restructuring

(R.C. 3334.03, 3334.08, 3334.11, and 3334.12; Section 733.10)

The bill places the Ohio Tuition Trust Authority "within the office of the Chancellor of the Ohio Board of Regents." It renames the 11-member panel that currently constitutes the Authority as the Ohio Tuition Trust Authority Board, and limits its powers and duties. Accordingly, the powers and duties specified in current law that the bill does not specifically assign to the Board are to be exercised by "the Authority." Presumably, this leaves the Authority's remaining powers and duties to its executive director and staff, with the Chancellor ultimately responsible for oversight of

activities no longer under the Board's purview. But precise lines of responsibility may not be clear.

Ohio Tuition Trust Authority Board

(R.C. 3334.03)

The bill renames the 11-member Ohio Tuition Trust Authority as the Ohio Tuition Trust Authority Board. Currently, this panel consists of six members appointed by the Governor with the advice and consent of the Senate, two state senators appointed by the Senate President, two state representatives appointed by the Speaker of the House, and the Chancellor. The bill keeps the 11-member format but designates the Chancellor as a *nonvoting* member, and permits the Chancellor to designate another to represent the Chancellor on the Board.[327]

This change leaves the Board with an even number of voting members.

Board powers and duties

Employment and dismissal of executive director

(R.C. 3334.03(B)(2) and (3) and 3334.08(A)(11))

Under the bill, the Authority, not the Board, is responsible for employing an executive director and other personnel. Therefore, it may not be clear which state officer is specifically authorized to hire these staff persons. One possible interpretation could be that the Chancellor is responsible for hiring the executive director and the executive director is responsible for hiring other staff. In any event, the bill requires that the official who hires the executive director obtain the advice and consent of the Board, in the form of a majority vote of the Board in favor of the hiring.

The bill permits only the Board to remove the executive director, which it may do "at any time," but subject to the advice and consent of the Chancellor.

[327] 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, two members appointed by the Governor must have experience in the field of banking, investment banking, insurance, or law.

Other powers and duties

(R.C. 3334.03(B)(2))

Under the bill, the Board largely retains its current investment and fiduciary responsibilities pertaining to college savings programs. However:

(1) With respect to college savings bonds, the Authority must exercise administrative responsibilities, including marketing, promoting, and advertising.

(2) With respect to expenditures under both the Guaranteed and Variable savings programs, the Board must consult with the Chancellor prior to changing the order of priority from, first, payments on behalf of beneficiaries; second, refunds; and third, payment of investment fees and costs.

(3) The Board must consult with the Chancellor prior to entering into a contract with a firm to exercise the Board's investment powers (see "**Investment contractors**" below).

(4) The Board must consult with the Chancellor prior to establishing a partnership, trust, limited liability company, corporation, or any other legal entity to transact business.

New guaranteed programs; study

(R.C. 3334.07)

Background--constitutional pledge of state's full faith and credit

Ohio Constitution, Article VI, Section 6, which the voters adopted in 1994, declares it "a public purpose for the state to maintain a program for the sale of tuition credits such that the proceeds of such credits . . . shall be guaranteed to cover a specified amount when applied to the cost of tuition" of an institution of higher education. Section 6 also declares that a college tuition credit program is "backed by the full faith and credit and taxing power of the state," and requires the General Assembly to "appropriate money sufficient to offset any deficiency that occurs in the Ohio Tuition Trust Fund, at any time necessary to make payment of the full amount of any tuition payment or refund that would have been required by a tuition payment contract, except for the contract's limit of payment to money available in the Trust Fund." This pledge appears to apply to any tuition credit program the state might establish, and not merely the current Guaranteed Savings Program.

The bill

The bill authorizes the Authority, not the Board, to establish and administer more than one plan for the sale of tuition credits within the Ohio Tuition Trust Fund. The plans may use "similar principles" specified in current law for the Guaranteed College Savings Program or may be "modeled after a plan that was included in the study" required by the bill (see below). This would appear to permit the Authority to proceed with new guaranteed tuition plans without the need for further legislation. If the Authority establishes and administers more than one plan for the sale of tuition units, the money received under each plan must be segregated within the Ohio Tuition Trust Fund.

Study

The bill requires the Authority, not the Board, to study guaranteed tuition program plans and make recommendations for a new guaranteed tuition plan. Not later than December 31, 2009, the Authority must submit a report to the Speaker of the House, the President of the Senate, and the Governor. The Authority's report must include "consideration of a guaranteed tuition program plan in which the risks of the plan are shared equitably among institutions of higher education, the state, the Ohio Tuition Trust Authority,[328] and the investors in the program."

The extent to which a plan that involves selling tuition credits could partition investment risk may not be clear, given the constitutional pledge of the state's full faith, credit, and taxing power to secure the guarantees of any tuition credit program. A new program might not guarantee that new tuition credits will cover 100% of future tuition, but the constitutional pledge would appear to commit the state to bear all risk of providing at least the level of return that the program does guarantee.

Investment contractors

(R.C. 3334.11(E))

Under current law, the Authority may approve the Public Employees Retirement Board to exercise the Authority's investment powers. The bill revises this provision to permit the Board to enter into an agreement with any business, entity, or governmental agency to perform the Board's investment powers. As under current law, the contractor must exercise these powers in a manner agreed upon by the Board "that maximizes the return on investment and minimizes the administrative expenses."

[328] The intent, if any, for differentiating between "the state" and the Authority may not be clear.

- Makes the Ohio Turnpike Commission responsible for the major maintenance and repair and replacement of grade separations at intersections of any turnpike project with county and township roads, and makes the board of county commissioners or the board of township trustees, as the case may be, responsible for routine maintenance of such a grade separation.

Major maintenance and repair and replacement at grade separations of the Ohio Turnpike and county and township roads

(R.C. 5537.051)

The responsibility for maintaining and repairing those portions of public roads that lead up to and pass over the Ohio Turnpike generally seems to reside with the public entity that has jurisdiction over the public road, whether it be the state, a board of county commissioners, or a board of township trustees. On a number of occasions, however, the Ohio Turnpike Commission previously has paid such costs.

The bill specifically makes the Ohio Turnpike Commission responsible for the major maintenance and repair and replacement of grade separations at intersections of any turnpike project with county and township roads. The board of county commissioners or the board of township trustees, as the case may be, is responsible for routine maintenance of such grade separations.

Under the bill:

(1) "Major maintenance and repair and replacement" relates to all elements constructed as part of or required for a grade separation, including box culverts, bridges, pile, foundations, substructures, abutments, piers, superstructures, approach slabs, slopes, approaches, embankments, railing, guardrails, drainage facilities including headwalls, and underdrains, inlets, catch basins and grates, fences, and appurtenances. Major maintenance and repair includes the painting and the repair of deteriorated or damaged elements to restore the structural integrity of any grade separation including embankments.

(2) "Routine maintenance" includes, without limitation, clearing debris, sweeping, snow and ice removal, wearing surface improvements, marking for traffic control, minor and emergency repairs to railing and appurtenances, and emergency patching.

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.

DEPARTMENT OF YOUTH SERVICES (DYS)

- Modifies the amount of money the Department of Youth Services must withhold from future payments to a county's Felony Delinquent Care and Custody Fund and enacts a mechanism for determining the amount to be so withheld from a county that is linked to the *maximum balance carry-over* (defined in the 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.

- Requires a state agency director to request that the Controlling Board increase the agency's capital appropriations if the director and the Controlling Board determine such an increase is needed for the agency to receive and use funds under the federal American Recovery and Reinvestment Act of 2009.

- Creates the Grants for Grads Program, administered by the Ohio Housing Finance Agency (OHFA), to provide a limited number of grants for the purchase of qualifying first homes to Ohio residents receiving an associate, baccalaureate, master's, doctoral, or other postgraduate degree.

- Awards the grants, through means of a bi-annual lottery conducted by OHFA.

- Creates a lien in the first home and allows for recovery of grant amounts for failure of a grantee to comply with certain program criteria.

- Requires OHFA to internally audit the grant program and to submit an annual report to its Advisory Board.

- Requires OHFA to prepare and submit an annual report to the Governor, Director of Development, Chancellor of the Ohio Board of Regents, President of the Senate, and Speaker of the House of Representatives regarding the number and dollar amount of awards granted and other program activities for the prior calendar year.

- Requires OHFA to adopt rules under R.C. Chapter 119. to run the program.

- Specifies that the Ohio Residential Building Code must include sanitation and plumbing standards.

- 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.

- Prohibits the Board from adopting any rules to update or amend the Ohio Residential Building Code or rules the Board adopts relating to the certification of entities that enforce the Ohio Residential Building Code unless the Board first receives a recommendation from the Committee.

- Makes various changes to the procedure by which the Committee recommends rules to the Board.

- Allows any person to petition the Committee to recommend a rule to the Board regarding the Ohio Residential Building Code or relating to the certification of entities that enforce the Ohio Residential Building Code.

- Adds requirements for the appointment of members to the Committee.

- Fixes an expiration date for the terms of the current members of the Committee serving on the effective date of the bill.

- Adds as members of the Ohio Family and Children First Cabinet Council the Directors of Aging and of Rehabilitation and Correction.

- Modifies the requirements that a newspaper or newspaper of general circulation must comply with for purposes of any legal publication required by law to be made in such a newspaper published in a political subdivision and for purposes of the publication in such a newspaper of tax collection notices, and permits any notice required to be so published to appear on an insert placed in the newspaper.

- Authorizes a board of park commissioners of a park district to create a building department to enforce the state nonresidential building code regarding existing and constructed buildings on park district property, so long as the building department is certified by the Board of Building Standards.

- Prohibits a municipal, township, or county building department that has jurisdiction in the same location as a certified park district building department from exercising its enforcement authority regarding any buildings on the park district's property.

- Authorizes a licensed funeral director who sells preneed funeral contracts and who also sells preneed cemetery merchandise and services contracts to meet the annual preneed cemetery contract reporting requirement by filing the necessary documentation with the Board of Embalmers and Funeral Directors along with or as part of the annual preneed funeral contract report.

- Authorizes a cemetery company or association that sells preneed cemetery merchandise and services contracts and that also sells preneed funeral contracts to meet the annual funeral contract reporting requirement by filing the necessary documentation with the Division of Real Estate of the Department of Commerce along with or as part of the annual preneed cemetery contract report.

- Corrects erroneous cross-references in recently enacted provisions regarding the distribution of results of criminal records checks conducted of persons wishing to be a qualified pharmacy technician.

- Requires the Auditor of State annually to adjust county, township, municipal corporation, and Department of Transportation force account limits.

- Establishes scope of work limits allowing for use of force accounts for certain bridge and culvert construction performed in counties, townships, and nonchartered municipal corporations.

- If a political subdivision violates its scope of work limits, reduces the scope of work limits for a specified period of time.

- Creates the Budget Planning and Management Commission to complete a study and make recommendations designed to provide relief to the state during the current difficult fiscal and economic period.

- Requires the Commission, in developing recommendations, to develop a strategy for managing one-time revenues received and appropriated by the state without raising taxes when those revenues are no longer available and to determine whether to recommend a statutory spending limit for one-time revenues.

- Requires the Commission to submit its written report of recommendations not later than June 30, 2010, after which the Commission ceases to exist.

- Repeals the current small business rule review process that requires a rule-making agency that proposes a rule that affects small business to file the rule and a rule summary and fiscal analysis with the Office of Small Business as part of the formal rule-making process.

- Creates a new small business rule review process that requires a rule-making agency to put a rule that may have an adverse impact on small businesses through the new small business rule review process before the rule is introduced into the formal rule-making process.

- Requires a rule-making agency to conduct a cost-benefit analysis and a regulatory flexibility analysis of a rule that may have an adverse impact on small businesses, to incorporate into the rule features suggested by those analyses, and to prepare reports of the analyses and the incorporations.

- Creates the Small Business Regulatory Review Board.

- Requires the Small Business Ombudsperson (see below) to receive and collate comments on, and the Small Business Regulatory Review Board to evaluate, rules that may have an adverse impact on small businesses.

- Authorizes the Joint Committee on Agency Rule Review to recommend invalidation of a proposed rule if a rule-making agency does not properly comply with the new small business rule review process.

- Renames the Manager of the Office of Small Business as the Small Business Ombudsperson, and gives the Office and Ombudsperson additional duties with regard to evaluating the effect of rules on small businesses and otherwise assisting small businesses in complying with regulatory requirements.

- Declares that it is state policy to improve customer service in state agencies, requires each state agency to emphasize improved customer service, and requires the Director of Administrative Services to develop customer service performance standards for nonelected officers and employees of state agencies.

- Includes investigators of the Bureau of Criminal Identification and Investigation among the protected individuals whose residential and familial information is not a public record for purposes of the Public Records Law.

- Includes investigators of the Bureau of Criminal Identification and Investigation among the protected individuals who may request the county auditor to remove the person's name from the general tax list of real and public utility property and the general duplicate and use the person's initials instead as the name that appears on a deed.

- Requires a county auditor, upon the request of a protected individual, to use the person's initials, not only on the general tax list and duplicate, but also on any record made available to the general public on the Internet or a publicly accessible database.

- Designates August as "Ohio Military Family Month."

- Authorizes conveyance of the state interest in real estate situated in Fairfield in Butler County to Fairfield Village Realty, LLC.

- Authorizes the conveyance of state-owned real estate in Jackson County to the Jackson City Schools Board of Education.

Controlling Board authority to increase capital appropriations

(Section 245.10)

The bill requires a state agency director to request that the Controlling Board increase the amount of the agency's capital appropriations if the director determines such an increase is necessary for the agency to receive and use funds under the federal American Recovery and Reinvestment Act of 2009. The bill authorizes the Board to make such increase up to the exact amount necessary under the federal act if the Board concurs that the increase is necessary.

Creation of the Grants for Grads Program

(R.C. 175.31(A))

The bill creates the Grants for Grads Program, administered by the Ohio Housing Finance Agency (OHFA) using money available to it, to provide grants to Ohio residents who have received an associate, baccalaureate, master's, doctoral, or other postgraduate degree. A grant made pursuant to this program must be used to pay for the down payment or closing costs on the purchase of a first home.

Program grant

(R.C. 175.32(D) and (E))

A grant under the program must be provided as a cash payment to a grantee when the grantee obtains a mortgage loan. The cash payment must be applied in full only to pay (all or a portion of) the closing costs or down payment on the purchase of a grantee's first home. The amount of each grant award must be the following:

- $2,500--for a grantee who received an associate degree.
- $5,000--for a grantee who received a baccalaureate degree.
- $10,000--for a grantee who received a post-graduate degree.

The bill provides that at the time of the closing, the grantee may not receive any cash back. It further provides that the grantee must receive the grant within the award period designated in the notification and use it within 24 months after taking receipt of the grant, after which the grant will expire.

Program eligibility

(R.C. 175.30(A) and (F); 175.31(B), (C), and (E))

Under the bill, a graduate is eligible to participate in the program if the graduate meets all of the following conditions:

(1) The graduate received an associate, baccalaureate, master's, doctoral, or other postgraduate degree from an institution of higher education.

(2) The graduate is able to provide OHFA evidence documenting Ohio residency and graduation from a high school and institution of higher education.

(3) The graduate intends to live and work in Ohio for at least five years after graduation or completion of the degree.

(4) The graduate intends to purchase a first home in Ohio.[329]

Married graduates may both apply for grants under the program, and both individuals will be included in the lottery pool (discussed in "**Lottery selection process**" below).

Ineligible graduates

The bill specifies that a graduate who, at any time during the period from filing the application for a grant until a grant is awarded, has been found by the state to be delinquent in the payment of individual income taxes is not eligible to receive a grant. A graduate who is married to an individual who has previously received a grant under the program is also not eligible to apply. The bill further provides that an individual filing an application for a grant is not eligible to apply for a grant in any other six-month period.

"First home" criteria

Under the bill, a "first home" or "home" is the first residential real property located in Ohio to be purchased by a grantee who has not owned or had an ownership interest in a principal residence in the three years prior to the purchase.

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[329] The bill defines "graduate" as an individual who graduated from an institution of higher education and who is eligible for the program. It defines an "institution of higher education" as a state university or college located in Ohio, a private college or university located in Ohio that possesses a certificate of authorization issued by the Ohio Board of Regents, or an accredited college or university located outside Ohio accredited by an accrediting organization or professional accrediting association recognized by the Board of Regents.

"Ohio resident" criteria

Under the bill, an "Ohio resident" is any of the following: (1) an individual who was a resident of Ohio at the time of the individual's graduation from an Ohio public or nonpublic high school that is approved by the State Board of Education, and who is a resident of Ohio when applying for the program, (2) an individual who was a resident of Ohio at the time of completing, through the 12th grade-level, a home study program approved by the State Board of Education, and who is a resident of this state when applying for the program, (3) an individual whose parent was a resident of Ohio at the time of the individual's graduation from high school, and who graduated from either an out-of-state high school that was accredited by a regional accrediting organization recognized by the U.S. Department of Education and met standards at least equivalent to those adopted by the State Board of Education for approval of nonpublic schools in Ohio or from a high school approved by the U.S. Department of Defense.

Grant application, selection, and award processes

(R.C. 175.31(C) and (D) and 173.32(A) to (C))

The bill requires OHFA to provide for the content and format of the program application. Each application must include the information OHFA determines by rule, but must include evidence that a graduate meets the bill's eligibility requirements.

An eligible graduate must apply for the program with OHFA not later than the 60th day after the date of graduation or of completion of the degree. However, for purposes of the initial lottery conducted under the program, a graduate is eligible to file an application if the graduate's graduation date or date of completion of a degree occurs on or after January 1, 2008. Married graduates that are both eligible must apply separately. The bill requires that after OHFA selects graduates for program participation, it must review each application selected for compliance and accuracy, determine whether a graduate is eligible to receive a grant, and determine the grant's amount based on the application information submitted. If OHFA finds an application insufficient, the graduate may resubmit it within 60 days. If the application is not resubmitted or the resubmitted application is found to be insufficient, the selected graduate shall not receive a grant.

Lottery selection process

The bill establishes a system to select grantees by random lotteries conducted twice a year; each lottery pool includes all applications filed within the six months immediately preceding the date on which the lottery is conducted. The lottery process, which OHFA must conduct by January 31 and July 31 of each year, must randomly

select 150 grantees from the graduates whose applications OHFA has determined meet program eligibility requirements and are timely and complete.

The bill also requires 50 alternate grantees to be selected in each random lottery if additional moneys are available after grants are awarded to the initial 150 grantees selected for that six-month period. Alternative grantees must receive grants in the order they were selected in the lottery until moneys for the six-month period are exhausted. If there are less than 150 applicants in a given six-month period, the lottery must be dispensed with and all applicants the agency determines to be eligible must be awarded grants.

Awarding of grants

The bill requires the awarding of a grant to be evidenced by written notification to the grantee within 60 days after completion of the lottery. The notification must clearly state the amount of the grant and the starting and ending dates of the award period, which must be from the start date through the last day of the 24th month thereafter.

Lien on first home

(R.C. 175.33)

The bill provides that at the time a first home is purchased under the program, OHFA must secure the amount of the grant by a lien on the home for a period of five years. Such a lien attaches, and may be perfected, collected, and enforced in the same manner as a mortgage lien on the home, and must otherwise have the same force and effect as a mortgage lien on the home. However, the bill specifies that the OHFA lien is subordinate to a mortgage lien securing any money loaned by a financial institution for the purchase of the home.

Failure to comply with first home ownership criteria or use of fraudulent information

The bill authorizes enforcement of the lien if OHFA finds that a grantee failed to comply with the first home ownership criteria of the bill or otherwise applied for a grant using fraudulent information.

Failure to reside in first home for at least five years

The bill provides that if a grantee becomes a resident of another state and does not reside at least five years in a first home purchased using grant money, OHFA may collect on the lien. The amount collectable in such a circumstance is a function of the time the grantee resided in the first home. If a grantee has resided in the first home for

less than 12 months, the bill allows collection of 100% of the grant amount. If a grantee has resided in the first home for 12 months and a day to 24 months the bill allows collection of 80% of the grant amount. If a grantee has resided in the first home for 24 months and a day to 36 months, the bill allows collection of 60% of the grant amount. If a grantee has resided in the first home for 36 months and a day to 48 months, the bill allows collection of 40% of the grant amount. And if a grantee has resided in the first home for 48 months and a day to 60 months, the bill allows collection of 20% of the grant amount.[330]

Extinguishing the lien

The bill provides that the five-year lien on the home secured by OHFA in the amount of the grant is extinguished if money is collected pursuant to the lien because a grantee becomes a resident of another state and does not reside at least five years in a first home purchased using grant money. Such a lien is also extinguished if the grantee, within the five-year period, moves to another residence in Ohio.

OHFA authority

(R.C. 175.01, 175.04(H), and 175.34)

Rulemaking

The bill requires OHFA to adopt administrative rules under Chapter 119. of the Revised Code to carry out the program's purposes.

Internal audit

The bill requires OHFA to internally audit the Grants for Grads Program and the Grants for Grads Fund (see discussion below) before the beginning of each calendar year and to prepare and submit an annual report to its Advisory Board. The report must specify the internal audit work completed by the end of that calendar year and report on compliance with the annual internal audit program.

Annual report

The bill requires OHFA to prepare an annual report regarding the program, describing the number and dollar amount of grants awarded and OHFA activities related to the program during the previous calendar year. OHFA must submit the

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[330] The bill uses the construction of "and a day" in demarking the periods of time for which different collectible amount percentages for grant recovery apply. Presumably, for example, the percentage applicable to "24 months and a day" would apply to someone who resided in the home for 24 months and three hours--simply because no other percentage would apply. The bill could be made clearer, however, if "and a day" was replaced where appropriate with "or more."

report to the Governor, Director of Development, Chancellor of the Ohio Board of Regents, President of the Senate, and Speaker of the House of Representatives.

Grants for Grads Fund

(R.C. 175.31(A), 175.32(B), and 175.35)

The bill specifies that program grants must be provided from moneys in the Grants for Grads Fund, which the bill creates in the state treasury. The fund must consist of appropriations, other sources of contributions, and any earnings on investments. The fund must be administered by OHFA to provide program grants and for program implementation and administration. Fund moneys are to be invested by the Treasurer of State in the same manner as General Revenue Fund money. Investment earnings of the fund must also be deposited into the fund.[331]

Background of Ohio Residential Building Code

(R.C. 3781.01 and 3781.10)

Current law requires the Board of Building Standards to adopt a state residential building code that governs one-, two-, and three-family dwellings. The law also provides that the rules governing residential buildings are uniform requirements for residential buildings in any area certified to enforce the Ohio Residential Building Code. No local code or regulation can differ from the Ohio Residential Building Code unless that code or regulation addresses subject matter not addressed by the Ohio Residential Building Code. The bill specifies that the Ohio Residential Building Code adopted by the Board of Building Standards must include sanitation and plumbing standards.

Adoption of the Ohio Residential Building Code

(R.C. 3781.10 and 4740.14)

Current law requires the Residential Construction Advisory Committee to recommend to the Board of Building Standards a building code for residential buildings. The Committee must recommend a code that it models on a residential building code a national model code organization issues, with adaptations necessary to implement the code in Ohio. The Committee must consider all of the following in making its recommendation to the Board:

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[331] Since the bill requires program grants to be provided from money in the Grants for Grads Fund and requires OHFA to administer the program using moneys available to it, it is not clear whether the reference to money available to OHFA that must be used for the program refers to money in the Grants for Grads Fund, other moneys available to the agency, or both.

(1) The impact that the Ohio Residential Building Code may have upon the health, safety, and welfare of the public;

(2) The economic reasonableness of the Ohio Residential Building Code;

(3) The technical feasibility of the Ohio Residential Building Code;

(4) The financial impact that the Ohio Residential Building Code may have on the public's ability to purchase affordable housing.

If the Board decides not to adopt a code the Committee recommends, the Committee must revise the code and resubmit it until the Board adopts a code the Committee recommends as the Ohio Residential Building Code. Correspondingly, the Board is required to adopt rules establishing a code as the Ohio Residential Building Code upon receiving a recommended code from the Committee that is acceptable to the Board.

The bill requires the Committee to provide the Board with any rule the Committee recommends to update or amend the Ohio Residential Building Code or to update or amend rules that the Board adopts that relate to the certification of entities that enforce the Ohio Residential Building Code. The bill permits, instead of requires as provided in current law, the Committee to model the code it recommends as a residential building code on a residential building code that a national model code organization issues. The bill requires the Board, upon receiving a recommendation from the Committee that is acceptable to the Board, to adopt rules in accordance with the Committee's recommendation. The bill prohibits the Board from adopting any rules to update or amend the Ohio Residential Building Code or the rules the Board adopts relating to the certification of entities that enforce the Ohio Residential Building Code unless the Board first receives a recommendation from the Committee.

Under the bill, the Committee must provide the Board with a written report of the Committee's findings for each consideration required under current law, as described above. Additionally, the bill prohibits the Committee from making any recommendation to the Board that relates to the Ohio Residential Building Code, rules that update or amend the Ohio Residential Building Code, certification of building officials who enforce the Ohio Residential Building Code, or the interpretation of the Ohio Residential Building Code until the Committee has considered the matters required under current law described in "**Adoption of the Ohio Residential Building Code**" (above).

Petitions for changes to the Ohio Residential Building Code

(R.C. 3781.12 and 4740.14)

Current law permits any person to petition the Board of Building Standards to adopt, amend, or annul a rule adopted as part of the Ohio Commercial or Residential Building Code and specifies certain procedures to be followed by the petitioner and the Board upon the filing of such a petition. The bill exempts petitions dealing with rules regarding the Ohio Residential Building Code or rules adopted by the Board relating to the certification of entities that enforce the Ohio Residential Building Code from those provisions. Instead, the bill permits any person to petition the Residential Construction Advisory Committee to recommend a rule to the Board that the Board adopts regarding the Ohio Residential Building Code or relating to the certification of entities that enforce the Ohio Residential Building Code. Thereafter, the Committee must provide the Board with any rule the Committee recommends after receiving such a petition and having considered the matters described in "**Adoption of the Ohio Residential Building Code**" (above).

Residential Construction Advisory Committee

(R.C. 4740.14; Section 747.10)

Current law has established the Residential Construction Advisory Committee within the Department of Commerce, to consist of nine persons the Director of Commerce appoints. The Committee consists of the following members:

(1) Three general contractors who have recognized ability and experience in the construction of residential buildings;

(2) Two building officials who have experience administering and enforcing a residential building code;

(3) One certified fire safety inspector from the fire service who has at least ten years of experience enforcing fire or building codes;

(4) One residential contractor who has recognized ability and experience in the remodeling and construction of residential buildings;

(5) One architect registered pursuant to the Architect's Law (R.C. Chapter 4703.), with recognized ability and experience in the architecture of residential buildings;

(6) One mayor of a municipal corporation in which the Ohio Residential Building Code is being enforced in the municipal corporation by a certified building department.

Current law requires the fire safety inspector member described in (3), above, to be chosen from a list of three names the Ohio Fire Chief's Association submits to the Director, and the mayoral member described in (6), above, to be chosen from a list of three names the Ohio Municipal League submits to the Director. The bill adds the requirements that two of the members described in (1) (general contractors), above, be appointed by the Speaker of the House of Representatives, and one of the members described in (1) (general contractors), above, and the member described in (4) (residential contractor), above, be appointed by the President of the Senate. Additionally, the building official members described in (2), above, must be chosen from a list of five names the Ohio Building Officials Association submits, and the architect described in (5), above, must be chosen from a list of three names the Ohio Society of the American Institute of Architects submits to the Director.

The bill provides that the terms of the members of the Committee, currently serving on the effective date of the bill will expire 180 days after the effective date of the section regarding the structure of the Committee. Upon such expiration, the members of the Residential Construction Advisory Committee will be appointed as described above, and such members' terms will expire as follows:

(1) The terms of the fire safety inspector and mayoral members described in (3) and (6), and one of the general contractor members described in (1), above, will expire on January 1, 2012.

(2) The term of the residential contractor member described in (4), one of the general contractor members described in (1), and one of the building official members described in (2), above, will expire on January 1, 2013.

(3) The term of the architect member described in (5), one of the general contractor members described in (1), and one of the building official members described in (2), above, will expire on January 1, 2014.

The Board will determine which of the members appointed when more than one member is of the same classification will serve which term.

The bill requires all successive terms to last for the three-year period stated in current law.

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.

Newspapers qualified for publication of legal notices and publications pertaining to tax collections--requirements

(R.C. 7.12 and 5721.012)

Current law prescribes the requirements for a newspaper or newspaper of general circulation in a political subdivision to qualify for publication of legal notices required by law. In addition to all other requirements, such a newspaper or newspaper of general circulation must be a publication bearing a title or name, regularly issued as frequently as once a week for a definite price or consideration paid for by not less than 50% of those to whom distribution is made, having a second class mailing privilege, being not less than four pages, published continuously during the immediately preceding one-year period, and circulated generally in the political subdivision in which it is published.[332] The publication must be of a type to which the general public resorts for passing events of a political, religious, commercial, and social nature, current happenings, announcements, miscellaneous reading matter, advertisements, and other notices.

With respect to publications pertaining to tax collections, current law requires a newspaper or newspaper of general circulation to be a publication that meets the requirements identical to those described in the preceding paragraph.[333]

The bill removes from the qualifications described above the requirement that a newspaper or newspaper of general circulation be a publication that is regularly issued for a definite price or consideration paid for by not less than 50% of those to whom distribution is made and have a second class mailing privilege. It adds requirements

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[332] Apparently a newspaper is not required to meet these qualifications, yet nevertheless qualifies to publish legal notices, if it is a legal newspaper that publishes court calendars and has done so for at least one year preceding the publication in the newspaper of any other sort of legal notice.

[333] Tax collection publications are required principally by R.C. 5719.04 (publication of delinquent personal property tax list), 5721.03 (publication of delinquent real property tax list), and 5721.31 (advertisement of tax certificate sales).

that the newspaper or newspaper of general circulation have at least 25% editorial, nonadvertising content, exclusive of inserts, measured relative to total publication space, and an audited circulation to at least 50% of the households in the newspaper's retail trade zone as defined by the audit. The bill further provides that any notice required to be published in a newspaper or newspaper of general circulation may appear on an insert placed in such a newspaper. A responsible party who is required to publish such a notice must consider various advertising media to determine which media might reach the intended public most broadly. The responsible party need publish the notice in only one qualified medium to meet the requirements of law.

Parks district establishment of building departments

(R.C. 1545.073)

Under current law, park districts have no authority to create a building department to enforce residential and nonresidential building codes. The bill authorizes a board of park commissioners of a park district to create a building department to enforce nonresidential building codes under Chapter 3781. of the Revised Code regarding existing and newly constructed buildings on park district property as long as the building department is certified by the State Board of Building Standards in the same way that the Board currently approves township, county, and municipal building departments to enforce the state building codes. (R.C. 3781.10.) The bill also prohibits a municipal, township, or county building department that has jurisdiction in the same location as a certified park district building department from exercising its enforcement authority regarding any buildings on the park district's property.

Reporting of preneed cemetery and preneed funeral contracts

(R.C. 1721.211 and 4717.31)

Continuing law requires a person who sells merchandise and services pursuant to a preneed cemetery merchandise and services contract to file an annual affidavit with the Department of Commerce's Division of Real Estate attesting to the amount received under the contract and placed in a requisite fund. The bill authorizes a licensed funeral director who sells funeral goods pursuant to a preneed funeral contract and who also sells merchandise and services under a preneed cemetery merchandise and services contract to meet the annual preneed cemetery contract reporting requirement by filing the necessary documentation with the Board of Embalmers and Funeral Directors along with or as part of the annual preneed funeral contract report.

Likewise, continuing law requires a person who sells funeral goods pursuant to a preneed funeral contract to file an annual report with the Board of Embalmers and

Funeral Directors detailing the sales of all preneed funeral contracts. The bill authorizes a cemetery company or association that sells merchandise and services pursuant to a preneed cemetery merchandise and services contract and that also sells funeral goods pursuant to a preneed funeral contract to meet the annual funeral contract reporting requirement by filing the necessary documentation with the Division of Real Estate along with or as part of the annual preneed cemetery contract report.

Pharmacy technician--cross-reference corrections

(R.C. 4729.99 and 4776.02)

The bill corrects three erroneous cross-references in provisions of recently enacted Am. Sub. H.B. 2 that clarified the distribution of results of criminal records checks conducted of persons wishing to be a qualified pharmacy technician.

Force account limits

(R.C. 117.16, 117.162, 723.52, 723.53, 5517.02, 5543.19, and 5575.01)

In general, "force account" is a term used in regard to the cost of a highway project. Below the amount established for a force account project, a governmental agency may use its own labor force and equipment; above the amount established by law, the governmental agency generally must competitively bid a project. Ohio law establishes force account limits for the Department of Transportation, counties, townships, and municipal corporations, as follows: (1) for ODOT, $25,000 per mile for maintenance or repair of a state highway and $50,000 for bridges, culverts, and traffic control signals, (2) for counties, $30,000 per mile for construction or reconstruction of roads and $100,000 for construction, reconstruction, improvement, maintenance, or repair of bridges or culverts, (3) for townships, $45,000 overall and $15,000 per mile for maintenance and repair of roads, and (4) for municipal corporations, $30,000 for construction, reconstruction, or repair of a street.

The bill requires the Auditor of State, upon the requirement's effective date to adjust upward county, township, municipal, and ODOT force account limits by 25%. Additionally, beginning in 2011, the bill requires the Auditor, not later than January 31 each year, to (1) adjust upward county, township, municipal, and ODOT force account limits by the percentage increase, if any, in the Consumer Price Index[334] over the 12-month period that ended on December 31 of the preceding year, rounded to the nearest one-tenth of one per cent. The Auditor must post the new force account limits

[334] "Consumer Price Index" means the Consumer Price Index prepared by the United States Bureau of Labor Statistics (U.S. city average for urban wage earners and clerical workers: all items 1982-1984=100), or if that Index is no longer published, a generally available comparable index.

on the Auditor's Internet site. Force account limits adjusted to reflect an increase in the Consumer Price Index are effective for the following 12-month period beginning February 1.

Scope of work limits

(R.C. 117.16 and 5579.10)

In lieu of any other Ohio law provisions, the bill provides the following options:

(1) A county, township, or municipal corporation[335] can replace any single span bridge or single cell culvert in its entirety by force account if the width of the roadway over the bridge or culvert, measured between the faces of the guardrail, does not exceed 30 feet and the waterway opening, measured between the faces of the new abutment walls for a bridge does not exceed 30 feet or for a new culvert the maximum width does not exceed 18 feet. The approach roadway work cannot extend more than 25 feet as measured from the back side of the abutment wall or outside edge of the culvert. The length needed for the approach guardrail must be as prescribed by the Ohio Manual on Uniform Traffic Control Devices[336] (OMUTCD) and must not be included in the approach work limitation.

(2) A county, township, or municipal corporation can rehabilitate any bridge by force account on the bridge's existing foundation if the waterway opening, measured between the faces of the abutment walls does not exceed 35 feet. The work cannot extend beyond 12 inches below the point where the bottom of the deck or bottom of the beams or girders, whichever is lower, intersects with the face of the abutment wall. Work on the wing walls is prohibited below that same line, extended. The approach roadway work cannot extend more than 25 feet as measured from the back side of the abutment wall.

(3) A county, township, or municipal corporation can only rehabilitate a culvert of any size by force account by surface patching. Up to 25% of the length of an existing culvert length with a waterway opening of 18 feet or less, measured at its maximum width, can be replaced by force account. Culvert rehabilitation by force account must not include lining of the existing culvert. The length needed for the approach guardrail must be as prescribed by the OMUTCD and must not be included in the approach work limitation.

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[335] "Municipal corporation" generally applies to nonchartered municipal corporations.

[336] http://www.dot.state.oh.us/Divisions/HighwayOps/Traffic/publications2/OhioMUTCD/Pages/default.aspx.

(4) A county, township, or municipal corporation can widen any bridge by force account if the final roadway width, measured between the faces of the guardrail, does not exceed 30 feet and waterway opening measured between the faces of the abutment wall does not exceed 30 feet. The work must not add more than six feet to each side of the existing bridge. Necessary modifications to accommodate this widening to the existing substructure and wing walls are included in the permitted work. Lengthening of any culvert under the roadway must be permitted along with necessary modifications to the wing walls, if the waterway opening of that culvert, measured at its maximum width, does not exceed 18 feet. The amount of lengthening must be limited to that length needed to achieve the clear recovery area as prescribed by the latest edition of the Ohio Department of Transportation's Location and Design Manual.[337] The approach roadway work for bridges or culverts must not extend more than 50 feet, measured from the back side of the abutment walls or outside edge of the culvert. The length needed for the approach guardrail must be as prescribed by the OMUTCD and must not be included in the approach work limitation.

(5) A county, township, or municipal corporation by force account can perform a surface patch paving operation that is limited to 15,000 square feet per lane-mile of roadway length. The paving operation must not apply material to the roadway surface that exceeds one inch in normal thickness. A county, township, or municipal corporation cannot perform a continuous resurfacing operation that exceeds the limitations prescribed in (7) below.

(6) When the construction, reconstruction, improvement, maintenance, or repair of bridges or culverts exceeds the limitations prescribed in (1) through (4) above, the county, township, or municipal corporation must invite and receive competitive bids for furnishing all the labor, materials, and equipment necessary to complete the work, in accordance with the procedures established for the board of county commissioners in the county competitive bidding law.

(7) A county, township, or municipal corporation can perform any construction, reconstruction, or maintenance of a road, exclusive of the activities identified in (1) through (5) above, by force account if that activity does not exceed (1) $43,750 per centerline mile and (2) beginning in calendar year 2011 the lesser of the amount as adjusted by the Auditor of State based on the Consumer Price Index or an increase of 4% of $43,750. Beginning in calendar year 2015, these force account limits remain at the amount determined under (2) for calendar year 2014. When the total estimated cost of the work exceeds these limits, the county, township, or municipal corporation must

[337] http://www.dot.state.oh.us/DIVISIONS/PRODMGT/ROADWAY/ROADWAYSTANDARDS/Pages/locationanddesignmanuals.aspx.

invite and receive competitive bids for furnishing all the labor, materials, and equipment necessary to complete the work in accordance with the procedures established for the board of county commissioners by the county competitive bidding law.

Violation of force account limits

Additionally, current law requires the Auditor of State, if the Auditor finds that a county, township, or municipal corporation has violated the established force account limits, to notify the county, township, or municipal corporation that the force account limits are reduced for one year (first offenses) or two years (second offenses). The bill includes a violation of scope of work limits under this authority and sets forth the following reductions for one year (first offenses) or two years (second offenses):

(1) For a county, the limit is $10,000 per mile for a road and $40,000 for a bridge or culvert and the scope of work limits are restricted to crack sealing operations for pavements and single cell culvert replacement with a waterway opening width not to exceed 12 feet measured at its widest point for structures.

(2) For a township, the limit is $15,000 for maintenance and repair of a road or $5,000 per mile for construction or reconstruction of a township road regardless of scope of work;

(3) For a municipal corporation, the limit is $10,000 for the construction, reconstruction, widening, resurfacing, or repair of a street or other public way regardless of scope of work.

If the Auditor finds that a county, township, or municipal corporation violated scope of work limits a third or subsequent time, the Auditor must certify to the Tax Commissioner an amount the Auditor determines to be 20% of the total cost of the project that is the basis of the violation. The Tax Commissioner then must withhold the certified amount from any funds under the Tax Commissioner's control that are due or payable to that political subdivision.

Budget Planning and Management Commission

(Section 509.10)

The bill creates the Budget Planning and Management Commission consisting of six members. The Speaker of the House of Representatives appoints three members of the House, not more than two of whom may be members of the same political party, and the President of the Senate appoints three members of the Senate, not more than two of whom may be members of the same political party. Initial appointments to the

Commission must be made not later than 90 days after the effective date of this section, and vacancies are filled in the same manner as the original appointments. The Commission must appoint two of its members as co-chairpersons: one must be a member of the majority party of the House, and one must be a member of the majority party of the Senate. The bill specifies that Commission meetings take place at the call of the chairpersons and that the Commission conduct its meetings during the period of July 1, 2009, through June 30, 2010. The bill requires the Legislative Service Commission to provide technical, professional, and clerical support necessary for the Budget Planning and Management Commission to perform its duties.

Under the bill, the Commission must complete a study and make recommendations that are designed to provide relief to the state during the current difficult fiscal and economic period. In developing the recommendations, the Commission must (1) develop a strategy for managing one-time revenues received and appropriated by the state without raising taxes when those revenues are no longer available in fiscal year 2011, and (2) determine whether to recommend establishing a statutory spending limit for one-time revenues at a level equal to a specific percentage of state spending.

The Commission must submit a written report of its recommendations to the Speaker of the House, the President of the Senate, and the Governor not later than June 30, 2010. Upon submission of its report, the Commission ceases to exist.

New small business rule review process

(R.C. 103.0511(A) and (C), 111.15(D), 119.03(H) and (I)(1)(f), and 121.25 to 121.257)

Under current law, if a proposed rule is likely to affect small businesses, the rule-making agency must file the rule and a rule summary and fiscal analysis with the Office of Small Business for purpose of small business review *as part of* the formal rule-making process.[338] The bill repeals the current small business rule review process, and replaces it with a new small business rule review process (R.C. 121.25 to 121.257). Under the bill, if a rule-making agency,[339] on or after January 1, 2010, intends to adopt a rule[340] that may have any adverse impact on small businesses, the rule-making agency must comply

[338] R.C. 121.24 (repealed by the bill).

[339] In the bill and in this analysis, "rule-making agency" refers to any board, commission, department, division, or bureau of state government that is required to submit rules to legislative review by the Joint Committee on Agency Rule Review. "Rule-making agency" does not include the Public Utilities Commission or any state-supported college or university. (R.C. 121.25(B).)

[340] In the bill and in this analysis, "rule" refers to the intended enactment of a new rule or to the intended amendment or rescission of an existing rule (R.C. 121.25(A)).

with the new small business rule review process *before* it begins the formal process of adopting the rule.[341] The new small business rule review process is described below, in the same sequence as the increments of the process occur.

1. The rule-making agency determines whether a rule it intends to adopt may have any adverse impact on small businesses. (A "small business" is an independently owned and operated for-profit or nonprofit business entity, including affiliates, having fewer than 500 employees (R.C. 121.25(C)).) If the rule does not have such an effect, the rule-making agency may introduce the rule into the formal rule-making process without complying with the new small business rule review process. If, however, the rule may have such an effect, the rule-making agency must comply with the new small business rule review process before the rule may be introduced into the formal rule-making process. (R.C. 121.251(A).) The new small business rule review process requires the rule to go through the following steps in the following order. The process culminates in the agency being authorized to introduce the rule into the formal rule-making process.

2. The rule-making agency prepares the full text of the rule (R.C. 121.252 (introductory paragraph)).

3. The rule-making agency conducts a *cost-benefit analysis* and a *regulatory flexibility analysis* of the rule (R.C. 121.252(A) and (B)).

In conducting the cost-benefit analysis, the rule-making agency weighs the following factors to determine whether the effect of the rule on small businesses outweighs the benefits of the rule:

(1) An identification and estimate of the number of small businesses that may be subject to the rule;

(2) The projected reporting, recordkeeping, and other administrative costs required for compliance with the rule, including the type of technical or professional skills necessary for preparation of any report or record required by the rule;

[341] This duty applies not only with regard to the original version of such a rule, but also with regard to each revised version of the rule (R.C. 121.251 (1st paragraph)). The duty does not apply with regard to a rule that is adopted under the emergency rule-making process. But the duty does apply with regard to a nonemergency rule that is to replace an emergency rule. (Under the emergency rule-making process, an emergency rule expires after 90 days have elapsed unless in the meantime it has been re-adopted under the nonemergency rule-making process.) (R.C. 121.251 (2nd paragraph).)

(3) A statement of the rule's probable effect on the identified, impacted small businesses;

(4) A description of any less intrusive or less costly alternative methods of achieving the purpose of the rule; and

(5) Any other information the rule-making agency considers necessary to fully explain its cost-benefit analysis regarding the rule.

In conducting the regulatory flexibility analysis, the rule-making agency analyzes how each of the following methods might reduce any adverse impact the rule may have on small businesses:

(1) The establishment of less stringent compliance or reporting requirements for small businesses.

(2) The establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses.

(3) The consolidation or simplification of compliance or reporting requirements for small businesses.

(4) The establishment of performance standards for small businesses to replace design or operational standards required in the proposed rule.

(5) The exemption of small businesses from any or all of the proposed rule's requirements.

4. The rule-making agency *incorporates* into the rule (1) features the cost-benefit analysis indicates will reduce the cost and increase the benefit of the rule to small businesses and (2) features the regulatory flexibility analysis indicates will reduce any adverse impact the rule may have on small businesses. In both cases, the rule-making agency may incorporate a feature into the rule only if it is feasible to do so, and not if doing so would be contrary to the statutory objectives that are the basis for the rule. (R.C. 121.253(A).)

5. The rule-making agency prepares both of the following reports:

(1) A *cost-benefit report* that describes the results of the cost-benefit analysis, that describes any features that were incorporated into the rule as a result of the cost-benefit analysis, and that explains how those features reduce the cost and increase the benefit of the rule to small businesses.

(2) A *regulatory flexibility report* that describes the results of the regulatory flexibility analysis, that describes any features that were incorporated into the rule as a result of the regulatory flexibility analysis, and that explains how those features reduce any adverse impact the rule may have on small businesses.

The rule-making agency must include any supporting documentation for its cost-benefit or regulatory flexibility analysis in an appendix to its report of that analysis, unless the documentation is otherwise incorporated into the report. (R.C. 121.253(B).)

6. The rule-making agency files the full text of the rule, the cost-benefit report, and the regulatory flexibility report, in electronic form, with the Ohio Small Business Ombudsperson (R.C. 121.254).

7. Within seven days after receiving the filing described in Step 6, the Ombudsperson must cause all of the following to be published in the *Register of Ohio* for a period of 30 days:[342] the full text of the rule, the cost-benefit report, the regulatory flexibility report, and a notice stating that, during the 30-day period, any person may comment to the Ombudsperson concerning any adverse impact the rule may have on small businesses. The notice must explain how persons may communicate comments to the Ombudsperson. (R.C. 121.255(A).) The Ombudsperson must establish and maintain, or participate in, a web site having features that enable persons to comment electronically. And the Ombudsperson must establish a toll-free telephone number persons may call to make comments. The telephone answering point must be equipped to record comments that are called in. (R.C. 121.255(B).)

8. During the period beginning on the day the notice described in Step 7 is first published in the *Register of Ohio* and ending 30 days thereafter, any person may comment to the Ombudsperson concerning any adverse impact the rule may have on small businesses (R.C. 121.255(B)).

9. Not later than three days after the close of the 30-day comment period, the Ombudsperson must collate and review any comments that were received with regard to the rule, and then must compile the comments in an *Ombudsperson's report* that describes in detail the substance of the comments and, in particular, any objections to the rule (R.C. 121.255(C)(1)).

[342] Typically a document is caused to be published in the *Register of Ohio* by transmitting it to the Director of the Legislative Service Commission. The Director, who is responsible for publication of the *Register*, then publishes the document in the *Register*.

10. The Ombudsperson forthwith causes the Ombudsperson's report to be published in the *Register of Ohio*, and files the report in electronic form with the rule-making agency and with the Small Business Regulatory Review Board. As part of the filing with the Board, the Ombudsperson must include the full text of the rule, the cost-benefit report, and the regulatory flexibility report. (R.C. 121.255(C)(2).)

11. Within 30 days after receiving a filing as described in Step 10, the Small Business Regulatory Review Board is authorized but not required to hold a meeting at which it reviews the Ombudsperson's report, the rule, the cost-benefit report, and the regulatory flexibility report, and determines whether the rule-making agency has complied with the analytical, incorporative, reporting, and filing requirements of the new small business rule review process (Steps 3, 4, 5, and 6).

The SBRRB also is authorized but not required to conduct a public hearing on the rule at which any person having an interest in the rule may appear and offer comments on, or objections to, the rule insofar as it may have any adverse impact on small businesses. The Board must cause notice of such a hearing to be published in the *Register of Ohio* at least seven days before the date set for the hearing. In the notice, the Board must state the date and time when, and the place where, the hearing will be held.

12. Within 30 days after the filing described in Step 10, if the Board finds that the agency has complied with the analytical, incorporative, reporting, and filing requirements of the new small business rule review process (Steps 3, 4, 5, and 6), the Board must issue in a writing a *determination of compliance* that states that determination. Or if, within 30 days after the filing described in Step 10, the Board finds that the agency has failed to comply with the analytical, incorporative, reporting, and filing requirements of the new small business rule review process (Steps 3, 4, 5, and 6), the Board must issue in writing a *determination of noncompliance* that states that determination and explains why the rule fails to comply with those requirements. The Board is authorized but not required to include in a determination of noncompliance suggested changes in the rule that will bring the rule into compliance with the analytical, incorporative, and reporting requirements of the new small business rule review process (Steps 3, 4, and 5). (R.C. 121.256(B)(1) and (2).) The Board files the determination of compliance or noncompliance with the rule-making agency in electronic form, and causes the determination of compliance or noncompliance to be published in the *Register of Ohio* (R.C. 121.256(C)(1)).

If, within 30 days after receiving a filing from the Ombudsperson as described in Step 10, the Board does not issue a determination of compliance or noncompliance with regard to the rule, the Board, in electronic form, must return to the agency, the full text of the rule, the cost-benefit report, and the regulatory flexibility report. The Board also

must note on the rule that it has not issued a determination of compliance or noncompliance with regard to the rule. (R.C. 121.256(D).)

13. After all the foregoing steps have been completed, the rule-making agency is authorized but not required to proceed to adopt the rule according to the formal rule-making process. If the Board did not issue a determination of compliance or noncompliance with regard to the rule, and the rule-making agency introduces the rule into the formal rule-making process, the rule that is introduced into the formal rule-making process must be substantially similar to the rule that was filed with the Ombudsperson as described in Step 6 (R.C. 121.256(D)).[343] If the Board issued a determination of compliance or noncompliance with regard to the rule, and the rule-making agency introduces the rule into the formal rule-making process, it must file the full text of the rule, the cost-benefit report, the regulatory flexibility report, the Ombudsperson's report, and the determination of compliance or noncompliance with the Joint Committee on Agency Rule Review (JCARR) when it files the rule for legislative review with the Joint Committee (R.C. 121.256(C)(2)).

JCARR is required promptly to file a notice in electronic form with the Ohio Small Business Ombudsperson when a proposed rule is filed with it in original or revised form that previously was filed with the Ombudsperson as described in Step 6 (R.C. 111.15(D) and 119.03(H)). The Ombudsperson is entitled to appear before JCARR and testify concerning a rule-making agency's compliance with the analytical, incorporative, reporting, and filing requirements of the new small business rule review process (Steps 3, 4, 5, and 6) (R.C. 121.255(C)(3)).

JCARR is authorized to recommend invalidation of a proposed rule if the rule-making agency failed to comply with the analytical, incorporative, reporting, or filing requirements of the new small business rule review process (Steps 3, 4, 5, and 6) (R.C. 119.03(I)(1)(f)).[344]

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[343] In this case, the bill does not require the rule-making agency to file the cost-benefit report, regulatory flexibility report, or Ombudsperson's report with JCARR when the agency files the rule for legislative review with JCARR. The cost-benefit report, regulatory flexibility report, and Ombudsperson's report nevertheless would be available to JCARR through the *Register of Ohio*. And JCARR should be able to identify such a rule because it should carry a notation from the Small Business Regulatory Review Board that the Board did not issue a determination of compliance or noncompliance with regard to the rule.

[344] Under current law, JCARR is required to review an adopted rule if a substantive difference is discovered between the last proposed version and the adopted version of the rule. When this requirement was enacted, rule-making filings were made by means of paper filings. Now, however, rule-making filings are made electronically. And, because of the way the electronic rule filing system works, differences between the last proposed and adopted versions of a rule can no longer occur. The bill therefore repeals the adopted rule review requirement, R.C. 119.031, because it has become obsolete.

Small Business Regulatory Review Board--appointment and operation

(R.C. 121.257; Section 701.95)

The bill founds the Small Business Regulatory Review Board, and requires its nine members to be appointed as follows: five members are appointed by the Governor, two members are appointed by the President of the Senate, and two members are appointed by the Speaker of the House of Representatives. Each member must represent small business. These appointing authorities must make initial appointments to the Board for terms commencing on January 1, 2010. The terms of office of all members of the Board are for three years, beginning on January 1 and ending at the close of business on December 31. A vacancy on the Board is to be filled in the same manner as the initial appointment. Any member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed holds office for the remainder of the term.

Five members of the Board constitute a quorum, and the affirmative vote of five members is necessary for any action taken by the Board.

The Governor designates the chairperson of the Board from among the members appointed by the Governor. The chairperson must appoint a secretary from among the Board's members.

Board members serve without compensation, but are to be reimbursed for their necessary and actual expenses incurred in the performance of their Board duties.

Ohio Small Business Ombudsperson; new duties for Office of Small Business

(R.C. 103.0511, 122.08, and 122.081)

Under current law, the Office of Small Business in the Department of Development is under the supervision of a manager appointed by the Director of Development. The Office performs various duties for the small business community, for example, acting as a liaison between them and state agencies, and generally helping small businesses resolve regulatory and licensing problems with state government.

The bill provides that the Office's manager is to be known as the Ohio Small Business Ombudsperson, who is to assume all of the current Office manager's duties (R.C. 121.08(A)).

The bill adds the following new duties to those that already must be performed by the Office and the Ombudsperson:

(1) Comply with the publication, comment, review, and reporting requirements of the new small business rule review process that apply to the Ombudsperson under the bill;

(2) Maintain and publicize a toll-free telephone number Ohio small businesses may call to reach the Ombudsperson, who must assist those small businesses in complying with state regulatory requirements;

(3) Interface with other agencies to facilitate the resolution of small business regulatory issues;

(4) Provide all necessary staff and support for the Small Business Regulatory Review Board;

(5) Interface with small businesses in an effort to create and retain jobs in Ohio;

(6) Conduct an annual regulatory compliance audit to determine which, if any, rules pertaining to small businesses require duplicative reporting or recordkeeping of the same or substantially similar information for multiple regulatory entities;

(7) Conduct an annual assessment that identifies which rules have any adverse impact on small businesses; and

(8) Prepare an annual report and submit it to the Governor and the General Assembly on or before January 1 each year. The report must contain the results of the annual regulatory compliance audit and must recommend how to minimize any adverse impact on rules identified under the annual assessment. (R.C. 121.08(B).)

Under current law, the Office is authorized but not required, upon the request of a state agency, to assist the state agency with preparing a rule that will affect small businesses. The bill requires the Office to provide this assistance upon the request of a state agency. The bill also requires the Office to train rule-making agency personnel in methods to be used to conduct cost-benefit analyses and regulatory flexibility analyses and to prepare cost-benefit reports and regulatory flexibility reports. (R.C. 121.08(C).)

The bill also has the consequence that the *Small Business Register*, which is published by the Office of Small Business, will publish information with regard to rules that may have an adverse effect on small businesses and that are filed with the Ombudsperson as described in Step 6 of the new small business rule review process (R.C. 122.081(A)). Free subscriptions to the *Small Business Register* no longer will be furnished to the chairpersons of the standing committees of the Senate and House having jurisdiction over small business (R.C. 122.081(B)).

Improve state agencies' customer service

(R.C. 121.021, 124.04(M), and 124.95)

The bill declares that it is the policy of the state to improve customer service in state agencies. Each state agency therefore is to emphasize improved customer service, efficiency, and productivity in employee orientation, personnel training, and employee performance reviews.

The bill requires the Director of Administrative Services, on or before January 1, 2010, to develop and adopt rules under the Director's specific rule-making powers, and thereafter to amend or rescind rules, that establish customer service performance standards for officers and employees of state agencies, excluding officers who are elected. The performance standards must be specific to the various positions in each state agency and must be based on the duties, responsibilities, requirements, and qualifications of the positions. The performance standards are to be applied to and used in conducting each employee's annual performance review.

The Director is required to solicit recommendations concerning improving customer service from human resource professionals, and, before adopting the rules, must consider the recommendations that are submitted.

The state agencies to which these requirements apply are every organized body, office, or agency established by Ohio law for the exercise of any function of state government, but excluding any court or judicial agency, the General Assembly or any legislative agency, or the Controlling Board.

Protected public record status for investigators of the Bureau of Criminal Identification and Investigation

(R.C. 149.43, 149.45, 319.28, and 319.54)

Under Ohio's current public records law, the residential and familial information of specified protected individuals is excluded from the definition of a public record. The individuals afforded this protected status include peace officers, parole officers, prosecuting attorneys, assistant prosecuting attorneys, correctional employees, youth services employees, firefighters, and EMTs. The residential address, social security number, bank information and the like of such a protected individual therefore is not public information. (R.C. 149.43.)

Protected individuals also are authorized to request that a public office other than a county auditor redact the person's address from any record made available to the general public on the Internet. (R.C. 149.45.)

Similarly, protected individuals may submit a written request by affidavit to the county auditor requesting the auditor to remove the name of the protected individual from the general tax list of real and public utility property and the general duplicate and insert the initials of the protected individual instead of the name that appears on a deed. (R.C. 319.28.) The county auditor is prohibited under current law from charging a fee to a protected individual who requests the use of initials. (R.C. 319.54.)

The bill adds investigators of the Bureau of Criminal Identification and Investigation to the class of protected individuals for purposes of the provisions described above. It also requires a county auditor, when requested, to use the initials of a protected individual, not only on the general tax list and duplicate, but also on any record made available by the county auditor to the general public on the Internet or a publicly accessible database.

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record made available by the county auditor to the general public on the Internet or a publicly accessible database.

Designation of August as "Ohio Military Family Month"

(R.C. 5.2265)

The bill designates August as "Ohio Military Family Month."

Conveyance of state land in Butler County

(Section 753.40)

The bill authorizes the Governor to execute a Governor's quitclaim deed[345] in the name of the state conveying to Fairfield Village Realty, LLC ("grantee"), an Ohio limited liability company, and its successors and assigns, all of the state's right, title, and interest in real estate situated in the City of Fairfield in Butler County. The real estate is to be conveyed as an entire tract and not in parcels. Any personal property located on the real estate is to be transferred to the grantee through a bill of sale.

Consideration for conveyance of the real estate is $450,000. As additional consideration, the grantee and Empowering People, Inc. ("EPI"), an Ohio corporation and the licensed operator of the facility on the real estate, have executed and delivered to the Department of Mental Retardation and Developmental Disabilities, a cognovit promissory purchase note,[346] dated June 30, 2008, for $5,000,000. The grantee and EPI are entitled to credits against the note for certain completed improvements and development obligations defined in the "Improvement Plan" in the "Definitive Agreement" dated June 30, 2008, and signed by the grantee and EPI. And the balance of the note is to be forgiven if the grantee and EPI complete all development obligations set forth in the "Definitive Agreement," the "Improvement Plan," and the note.

The deed is to contain restrictions that prohibit, within five years from the date of closing, the grantee from transferring the real estate to a third party, and from assigning its interest in the real estate to a third party, without the prior written approval of the Department of Mental Retardation and Developmental Disabilities. But if a transfer or assignment involves a reduction or termination of the level of services provided to

345 A quitclaim deed issued in the name of the state is a deed that transfers the state's complete interest in the real property described in the deed, whatever it may be. Such a quitclaim deed neither asserts nor warrants that the state's title to the interest conveyed is valid. Black's Law Dictionary 446 (8th ed.)

346 A cognovit promissory note contains a clause that confesses judgment on the note. Such a clause allows a court to enter judgment for payment of the note without prior judicial proceedings to establish liability on the note. Black's Law Dictionary 227 (8th ed.)

individuals with mental retardation and developmental disabilities, the Department is not to approve the transfer or assignment unless the reduction or termination is otherwise required by law, including a judicial proceeding, so long as any such judicial proceeding was not caused by any act or omission of the grantee. Prior approval of a transfer or assignment is not required if the transfer or assignment is due to the death or disability of the grantee's owner.

Before the execution of the deed, possession of the real estate is to be governed by an existing interim lease between the Department of Administrative Services and the grantee, the operating license between the Department of Mental Retardation and Developmental Disabilities and EPI, and the "Definitive Agreement" between the grantee, EPI, and the Department of Mental Retardation and Developmental Disabilities.

The consideration is to be paid by the grantee to the state at the closing, according to an executed Offer to Purchase Real Estate Agreement that was reached between the state, through the Department of Administrative Services, and the grantee.

The Auditor of State, with the assistance of the Attorney General, is to prepare the deed to the real estate. The deed must state the consideration and the restrictions. The Governor is to execute the deed in the name of the State. The deed then is to be countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the grantee. The grantee is to present the deed for recording in the Office of the Butler County Recorder. The grantee is to pay the costs of the conveyance, including the costs of recording the deed.

This conveyance authorization expires two years after its effective date.

Jackson County land conveyance

(Section 753.50)

The bill authorizes the Governor to convey in the name of the state two tracts of land in Franklin Township in Jackson County to the Jackson City Schools Board of Education in exchange for a tract of land in Lick Township in Jackson County. The School Board must pay the costs of the conveyance and, upon the conveyance of the tract from the School Board, the Auditor of State, with the assistance of the Attorney General, must prepare a deed to the two tracts of state land. The deed must state the consideration and be (1) executed by the Governor in the name of the state, (2) countersigned by the Secretary of State, (3) sealed with the Great Seal of the State, (4) presented in the Office of the Auditor of State for recording, and (5) delivered to the

School Board. The School Board must present the deed for recording in the Office of the Jackson County Recorder.

The authority for this land exchange expires one year after the authorization's effective date.

NOTE ON EFFECTIVE DATES

(Sections 809.10 to 812.50)

Section 1d, Article II of the Ohio Constitution states that "[l]aws providing for tax levies [and] appropriations for the current expenses of the state government and state institutions *** shall go into immediate effect," and "shall not be subject to the referendum." R.C. 1.471 implements this provision with respect to appropriations, providing that a codified or uncodified section of law contained in an act that contains an appropriation for current expenses is not subject to the referendum and goes into immediate effect if (1) it is an appropriation for current expenses, (2) it is an earmarking of the whole or part of an appropriation for current expenses, or (3) its implementation depends upon an appropriation for current expenses that is contained in the act. The statute states that the General Assembly is to determine which sections go into immediate effect.

The 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
Reported, S. Finance & Financial Institutions	06-02-09
Passed Senate (20-11)	06-03-09

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