CORRECTED VERSION*

Ohio Legislative Service Commission

Bill Analysis Megan Cummiskey and other LSC staff

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(As Pending in H. Finance and Appropriations − LSC 129 1066-2)

Rep. Amstutz

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This analysis is arranged by state agency, beginning with the Department of Administrative Services and continuing in alphabetical order. Items that do not directly involve an agency are located under the agency that has regulatory authority over the item, or otherwise deals with the subject matter of the item. The analysis includes a Local Government category and a Retirement category and ends with a Miscellaneous category. Note that the bill's criminal sentencing reforms are discussed under the Department of Rehabilitation and Corrections.

Within each category, a summary of the items appears first (in the form of dot points), followed by a discussion of their content and operation. Items generally are presented in the order in which they appear in the Revised Code.

* This version of the analysis includes discussion of the extension of various air and water fees under the Environmental Protection Agency.

DEPARTMENT OF ADMINISTRATIVE SERVICES (DAS)

- Abolishes the School Employees Health Care Board and generally transfers its duties and authority to the Department of Administrative Services.

- Requires the Department to design health care plans for employees of political subdivisions, public school districts (including educational service centers), and state institutions of higher education.

- Once the health care plans the Department is to design are released in final form, all health care benefits provided to persons employed by political subdivisions, public school districts, and state institutions of higher education are to be, and to some degree may be, provided by those plans.

- Specifies, however, that if the health care plans designed by the Department do not address or include any health care benefits provided under current law, the benefits provided under current law continue in effect for those benefits.

- Requires the Department to set employee and employer health care plan premiums for the Department's designed plans.

- Requires the Department to submit a report to the General Assembly on the feasibility of certain health care initiatives regarding health care plans covering persons employed by political subdivisions and state institutions of higher education.

- Abolishes the Public Schools Health Care Advisory Committee.

- Renames the School Employees Health Care Fund the Public Employees Health Care Fund.

- Eliminates the requirement that the multiple-prime contracting method be used.

- Authorizes public authorities, other than the Ohio Turnpike Commission, to enter into public improvement contracts with construction managers at risk (CMARs) and design-build firms (D/B firms), and to enter into public improvement contracts with general contracting firms regardless of the size of the project.

- Permits public authorities to utilize design-assist firms on CMAR and D/B projects.

- Increases, from $50,000 to $200,000, the minimum project cost threshold that requires the preparation of definite and complete specifications of the work to be performed prior to putting a state public improvement project out for bid.

- Requires the Director of Administrative Services to adjust that minimum project cost threshold every five years based on the average rate of inflation.

- Exempts contracts with CMARs and D/B firms from the requirement that definite and complete specifications be prepared prior to putting a project out for bid.

- Permits public authorities to advertise for bids on a public improvement project by electronic means, pursuant to rules adopted by the Director, rather than by publishing notice in a newspaper of general circulation.

- Requires that any request for the release of capital appropriations, which request is submitted to the Director of Budget and Management or the Controlling Board for facilities projects, contain a contingency reserve.

- Makes various other changes to the law governing public improvements.

- Makes changes to civil service law with respect to civil service examinations, special examinations, appointments, veterans bonuses, probationary employees, and promotions.

- Eliminates the requirement that the Director of Administrative Services establish a job classification plan and make certain job classification plan changes "by rule."

- Eliminates the requirement that the Director follow the Administrative Procedure Act rule-making procedures to establish experimental classification plans or an appointment incentive program, and to establish, modify, or rescind a classification plan for county agencies.

- Requires the Office of Information Technology in the Department of Administrative Services to establish, operate, and maintain a state public notice web site where all state agencies and political subdivisions may publish notices that are required by statute or rule.

- Authorizes the Office of Information Technology to operate an information technology (IT) purchase program.

- Requires the State Chief Information Officer to compute revenue attributable to the amortization of certain IT purchases and deposit the revenue into the Information Technology Fund.

- Establishes the Information Technology Governance Fund and Major Information Technology Purchases Fund in the Revised Code.

- Creates the State Employee Child Support Fund for the purpose of collecting all money withheld or deducted from the wages and salaries of state officials and employees pursuant to child support orders.

- Removes the State of Ohio Computer Center from the list of buildings, the non-General Revenue Fund supported state agency tenants of which must reimburse the General Revenue Fund for rent.

- Eliminates the requirement for the Department of Administrative Services to annually make a report to the General Assembly regarding the acquisition and disposal of surplus federal property.

Health care benefits for political subdivision, school district, and institution of higher education employees

Department of Administrative Services designed plans

(R.C. 9.901(A)(2) to (K))

The bill abolishes the School Employees Health Care Board and its duties and authority and generally grants its duties and authority to the Department of Administrative Services with regard to health care benefits for employees of public school districts, and expands these duties and authority to include plans for health care benefits for employees of state institutions of higher education and political subdivisions. The bill also abolishes the Public Schools Health Care Advisory Committee, which made recommendations to the Board related to the Board's accomplishment of its duties.

In conformity with these changes, the bill renames the School Employees Health Care Fund the Public Employees Health Care Fund. The Department must use the fund solely to carry out its health care benefit plan duties for political subdivisions, school districts, and institutions of higher education.

Definitions

The bill defines "public school district" for the purposes of health care benefits to mean a city, local, exempted village, or joint vocational school district, a STEM school, and an educational service center. "Public school district" does not mean a community school or a charter school. "Political subdivision" is defined to mean a municipal corporation, township, county, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state, and agencies and instrumentalities of these entities. (For a discussion of the "home rule" authority of municipal corporations, see "**Home rule**," below.)

"Health care plan" is defined to include group policies, contracts, and agreements that provide hospital, surgical, or medical expense coverage, including self-insured plans. A "health care plan" does not include an individual plan offered to the employees of a political subdivision, public school district, or state institution, or a plan that provides coverage only for specific disease or accidents, or a hospital indemnity, Medicare supplement, or other plan that provides only supplemental benefits, which are paid for by the employees of a political subdivision, public school district, or state institution. A "health plan sponsor" is defined to mean a political subdivision, public school district, a state institution of higher education, a consortium of political subdivisions, public school districts, or state institutions, or a council of governments.

Health care benefit plans

Upon completion of the consultant's report described below, and once the plans are released in final form by the Department, all health care benefits provided to persons employed by political subdivisions, public school districts, and state institutions of higher education may be provided by health care plans designed by the Department. The Department, in consultation with the Superintendent of Insurance, must negotiate with and, in accordance with competitive selection procedures, contract with one or more insurance companies authorized to do business in Ohio for the issuance of the plans.

The bill permits any or all of the health care plans designed by the Department to be self-insured. All self-insured plans must be administered by the Department in accordance with the bill, and must incorporate the best practices adopted by the Department, as described below.

A political subdivision, public school district, or state institution of higher education is not to receive state aid if it is in violation of the bill. However, a political subdivision, public school district, or state institution of higher education cannot "be required to" offer the health care plans designed by the Department until they have been released in final form by the Department.

Independent consultant recommendations

Before the Department's release of the initial health care plans, the bill requires the Department to contract with an independent consultant to analyze costs related to employee health care benefits provided by existing political subdivisions, public school districts, and state institution plans. The consultant must determine the benefits offered by existing plans, the employees' costs, and the cost-sharing arrangements used by political subdivisions, schools, and institutions participating in a consortium. The consultant must determine what strategies are used by the existing plans to manage health care costs and must study the potential benefits of state or regional consortiums of political subdivisions, public schools, and institutions offering multiple health care plans. Based on the findings of the analysis, the consultant must submit written recommendations to the Department for the development and implementation of a successful program for pooling purchasing power for the acquisition of employee health care plans. The consultant's recommendations must address, at a minimum, all of the following issues:

(1) The development of a plan for regional coordination of the health care plans;

(2) The establishment of regions for the provision of health care plans, based on the availability of providers and plans in Ohio at the time;

(3) The viability of voluntary and mandatory participation by political subdivisions, public schools, and institutions of higher education;

(4) The use of regional preferred provider and closed panel plans, health savings accounts, and alternative health care plans, to stabilize both costs and the premiums charged to political subdivisions, school districts, and state institutions and their employees;

(5) The development of a system to obtain eligibility data and data compiled under the Consolidated Omnibus Budget Reconciliation Act (COBRA);

(6) The use of the competitive bidding process for regional health care plans;

(7) The use of information on claims and costs and of information reported by political subdivisions, school districts, and state institutions under COBRA in analyzing administrative and premium costs;

(8) The experience of states that have statewide health care plans for political subdivision, public school district, and state institution employees, including the implementation strategies used by those states;

(9) Recommended strategies for the use of first-year roll-in premiums in the transition from political subdivision, district, and state institution health care plans to department plans;

(10) The option of allowing political subdivisions, public school districts, and state institutions to join an existing regional consortium as an alternative to Department plans;

(11) Mandatory and optional coverages to be offered by the Department's plans;

(12) Potential risks to the state from the use of the Department's plans;

(13) Any legislation needed to ensure the long-term financial solvency and stability of a health care purchasing system;

(14) The potential impacts of any changes to the existing purchasing structure on all of the following: existing health care pooling and consortiums, political subdivision, school district, and state institution employees, and individual political subdivisions, school districts, and state institutions;

(15) Issues that could arise when political subdivisions, school districts, and state institutions transition from the existing purchasing structure to a new purchasing structure;

(16) Strategies available to the Department in the creation of fund reserves and the need for stop-loss insurance coverage for catastrophic losses.

Geographic regions and consortiums

Before soliciting proposals from insurance companies for the issuance of health care plans, the Department must determine what geographic regions exist in Ohio based on the availability of providers, networks, costs, and other factors relating to providing health care benefits. The Department must then determine what health care plans offered by political subdivisions, public school districts, state institutions, and existing consortiums in the region offer the most cost-effective plan.

Thereafter, the Department must develop a request for proposals and solicit bids for the health care plans for political subdivisions, public school districts, and state institutions in a region similar to the existing plans. The Department must also determine the benefits offered by existing health care plans, the employees' costs, and the cost-sharing arrangements used by political subdivisions, schools, and institutions participating in a consortium. The Department must determine what strategies are used by the existing plans to manage health care costs, and must study the potential benefits of state or regional consortiums offering multiple health care plans.

In addition, political subdivisions, school districts, or state institutions offering employee health care benefits through a plan offered by a consortium of two or more political subdivisions, districts, or state institutions, or a consortium of one or more political subdivisions, districts, or state institutions and one or more other political subdivisions, representing 2,500 or more employees, can request permission from the Department to continue offering consortium plans to their employees. Granting the permission is at the Department's discretion.

Additional duties for the Department

The bill requires the Department to do all of the following:

(1) Include disease management and consumer education programs, including wellness plans and other measures, designed to encourage the wise use of medical plan coverage;

(2) Design health care plans for political subdivisions, public school districts, and state institutions of higher education separate from the health care plans for state agencies;

(3) Adopt and release a set of standards that must be considered the best practices for health care plans offered to employees of political subdivisions, public school districts, and state institutions;

(4) Require that the plans the health plan sponsors administer make readily available to the public all cost and design elements of the plan;

(5) Set employee and employer health care plan premiums;

(6) Promote cooperation among all organizations affected by the bill in identifying the elements for successful implementation of the bill;

(7) Promote cost containment measures aligned with patient, plan, and provider management strategies in developing and managing health care plans;

(8) Prepare and disseminate to the public an annual report on the status of health plan sponsors' effectiveness in making progress to reduce the rate of increase in insurance premiums and employee out-of-pocket expenses, as well as progress in improving the health status of political subdivisions, public school districts, and state institution employees and their families.

The Department is authorized to adopt rules for the enforcement of health plan sponsors' compliance with the best practices standards adopted by the Department.

The Department can contract with other state agencies for services as the Department deems necessary for the implementation and operation of the bill, based on demonstrated experience and expertise in administration, management, data handling, actuarial studies, quality assurance, or for other needed services.

The Department must hire staff as necessary to provide administrative support to the Department and the public employee health care program established by the bill.

Nonidentifiable aggregate claim data

Any health care plan providing coverage for the employees of political subdivisions, school districts, or state institutions, or that have provided coverage within two years before the effective date of this amendment, must provide nonidentifiable aggregate claims data for the coverage provided to the Department, without charge, within 30 days after receiving a written request from the Department. The claims data must include data relating to employee group benefit sets, demographics, and claims experience.

Provision of plan information

Not more than 90 days before coverage begins for political subdivisions, public school districts, and state institution employees under health care plans designed by the Department, the governing bodies of those entities must provide detailed information about the health care plans to their employees.

Professional insurance services not prohibited

The bill states that it does not prohibit political subdivisions, public school districts, or state institutions from consulting with and compensating insurance agents and brokers for professional services, or from establishing a self-insurance program, so long as the Department approves that program (see below).

Audits

Under continuing law, the Auditor of State must conduct all necessary and required audits of the Department. The Auditor of State, upon request, also must furnish to the Department copies of audits of political subdivisions, public school districts, or consortia performed by the Auditor of State.

Feasibility report

(Section 701.20)

Within 12 months after the effective date of these provisions, the Department must submit a report to the General Assembly on the feasibility of all of the following regarding health care plans to cover persons employed by political subdivisions and state institutions of higher education:

(1) Designing multiple health care plans that achieve an optimal combination of coverage, cost, choice, and stability, which plans include both state and regional preferred provider plans, set employee and employer premiums, and set employee plan copayments, deductibles, exclusions, limitations, formularies, and other responsibilities;

(2) Maintaining reserves, reinsurance, and other measures to insure the long-term stability and solvency of the health care plans;

(3) Providing appropriate health care information, wellness programs, and other preventive health care measures to health care plan beneficiaries;

(4) Coordinating contracts for services related to the health care plans.

Self-insurance

(R.C. 9.833)

If a self-insurance program is approved by the Department, political subdivisions that provide health care benefits for their officers or employees may establish and maintain an individual self-insurance program with public moneys to provide authorized health care benefits, including, but not limited to, health care, prescription drugs, dental care, and vision care. Only with the approval of the Department, after establishing an individual self-insurance program (1) a political subdivision may agree with other political subdivisions that have established individual self-insurance programs for health care benefits that their programs will be jointly administered or (2) under a written agreement, a political subdivision may join in any combination with other political subdivisions to establish and maintain a joint self-insurance program to provide health care benefits.

Under current law, political subdivisions may establish and maintain a self-insurance program or joint self-insurance program for health care benefits without the approval of the Department.

Home rule

Although the bill confers authority on municipal corporations regarding health care benefits, it is likely municipal corporations already have, and will continue to have, authority to provide health care benefits, including by self-insurance, under their home rule power of local self-government.[1]

Health care plans for school districts and institutions of higher education

(R.C. 9.90 and 9.901(A))

Until the department implements for public school districts the health care plans designed under the bill, all health care benefits provided to persons employed by the public school districts must be provided by health care plans that contain best practices established by the School Employees Health Care Board or the Department.

The bill states that the following applies until the Department implements its healthcare plans. However, if the Department plans do not include or address any benefits listed below, the following provisions continue in effect for those benefits. The board of trustees or other governing body of a state institution of higher education,

[1] Ohio Constitution, Art. XVIII, sec. 3; see *Northern Ohio Patrolmen's Benevolent Ass'n v. Parma* (1980), 61 Ohio St.2d 375.

board of education of a school district, or governing board of an educational service center can:

(1) Contract for, purchase, or otherwise procure from a licensed insurer or insurers for such of its employees as it may determine, life insurance, or sickness, accident, annuity, endowment, health, medical, hospital, dental, or surgical coverage and benefits, or any combination thereof, by insurance plans or other types of coverage, and may pay from available funds under its control all or any portion of the cost, premium, or charge for the insurance, coverage, or benefits. However, the governing board, in addition to or as an alternative to the above, may elect to procure health care coverage for such of its employees as it may determine by means of policies, contracts, certificates, or agreements issued by at least two certified health insuring corporations and can pay from available funds under its control all or any portion of the cost of the coverage.

(2) Make payments to a custodial account for investment in regulated investment company stock for the purpose of providing retirement benefits.

Under current law, the authority outlined above applies to public institutions of higher education and to the board of education of any school district, except in relation to the provision of health care benefits to employees. Health care benefits provided to employees of the public schools are to be provided through health care plans that contain the best practices established by the School Employee's Health Care Board.

Under the bill, however, all health care benefits provided to persons employed by the public schools are to be provided through health care plans that contain the best practices established by the board until the Department implements for public school districts the health care plans it is to design. Once the Department releases in final form the health care plans it is to design, all health care benefits provided to persons employed by state institutions of higher education, school districts, or educational service centers "may be through those plans."

Health care plans for counties

(R.C. 305.171)

The bill specifies that current law regarding health care benefits for county employees applies until the Department implements for counties the health care plans it is to design. However, if the Department's plans do not include or address any benefits provided under current law, the benefits provided under current law continue in effect for those benefits.

Currently, and potentially in the future, the board of county commissioners of any county can contract for, purchase, or otherwise procure and pay all or any part of the cost of group insurance policies that provide health care benefits including, but not limited to, hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, or prescription drugs, and that may provide sickness and accident insurance, group legal services, or group life insurance, or a combination of any of the foregoing types of insurance or coverage, for county officers and employees and their immediate dependents from the funds or budgets from which the county officers or employees are compensated for services, issued by an insurance company.

Health care plans for townships

(R.C. 505.60, 505.601, and 505.603)

The bill specifies that current law regarding health care benefits for township employees applies until the Department implements for townships the health care plans it is to design. However, if the Department's plans do not include or address any benefits provided under current law, the benefits provided under current law continue in effect for those benefits.

Currently, and potentially in the future, a board of township trustees can procure and pay all or any part of the cost of insurance policies that provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, prescription drugs, or sickness and accident insurance, or a combination of any of the foregoing types of insurance for township officers and employees.

If a board of township trustees does not procure an insurance policy or group health care services as described above, then until the Department implements the health care plans it is to design, the board of township trustees can reimburse any township officer or employee for each out-of-pocket premium attributable to the coverage provided for that officer or employee for insurance benefits that the officer or employee otherwise obtains, if certain conditions are met.

The bill specifies that current law regarding health care benefits provided to township officers and employees through a cafeteria plan applies until the Department implements for townships the health care plans it is to design. However, if the Departments plans do not include or address any cafeteria plan benefits provided under current law, the cafeteria plan benefits provided under current law continue in effect for those benefits.

Currently, and potentially in the future, a board of township trustees can offer benefits to officers and employees through a cafeteria plan after first adopting a policy authorizing an officer or employee to receive a cash payment in lieu of a benefit otherwise offered to township officers or employees, but only if the cash payment does not exceed 25% of the cost of premiums or payments that otherwise would be paid by the board for benefits for the officer or employee under an offered policy, contract, or plan.

Health care plans for park districts

(R.C. 1545.071)

The bill specifies that the following applies until the Department implements for park districts the health care plans it is to design. However, if the Department's plans do not include or address any benefits provided under current law, the following provisions continue in effect for those benefits.

Currently, and potentially in the future, the board of park commissioners of any park district can procure and pay all or any part of the cost of group insurance policies that provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, or prescription drugs, or sickness and accident insurance, or a combination of any of the foregoing types of insurance or coverage for park district officers and employees and their immediate dependents.

Health care plans for board of education members

(R.C. 3313.202)

The bill allows any elected or appointed member of the board of education of a school district and the dependent children and spouse of the member to be covered, at the member's option, under any health care plan containing best practices prescribed by the School Employees Health Care Board or the Department or under any health care plan designed by the Department. A member must pay all premiums for coverage in advance, and in a manner prescribed by the Department. Under continuing law, a member is not required to have coverage as just described.

Public construction reform

(R.C. 9.33, 9.331, 9.332, 9.333, 9.334, 9.335, 123.011, 126.141, 153.01, 153.03, 153.07, 153.08, 153.50, 153.501, 153.502, 153.51, 153.52, 153.53, 153.54, 153.55, 153.56, 153.57, 153.581, 153.65, 153.66, 153.67, 153.69, 153.692, 153.693, 153.694, 153.70, 153.71, 153.72, 153.73, 153.80, 3313.46, 3353.04, 3354.16, 3357.16, 4113.61, 5540.03, and 6115.20; Section 701.10)

The bill's public construction law changes apply to "public authorities," which is defined as the state; any state institution of higher education;[2] any county, township, municipal corporation, school district, or other political subdivision; or any public agency, authority, board, commission, instrumentality, or special purpose district of the state or of a political subdivision. "Public authorities" does *not* include the Ohio Turnpike Commission.

Permissible methods of construction delivery

The bill eliminates the requirement that the multiple-prime contracting method be used by public authorities undertaking a public improvement project.[3] Under the bill, a public authority may choose to use multiple-prime contracting on any project *or* may choose to use one of several alternative methods of construction delivery created by the bill. Those alternative methods are as follows:

Construction manager at risk

(R.C. 9.33 to 9.335, 153.03, 153.50 to 153.52, and 153.80)

Construction manager at risk (CMAR) is defined by the bill as a person with substantial discretion and authority to plan, coordinate, manage, direct, and construct all phases of a project for the construction, demolition, alteration, repair, or reconstruction of any public building, structure, or other improvement. A CMAR must provide the public authority with a **guaranteed maximum price** utilizing an open book pricing method, whereby the CMAR makes all books, records, documents, and other data in its possession pertaining to the bidding, pricing, or performance of a construction management contract awarded to it. The guaranteed maximum price represents the total maximum amount to be paid by the public authority to the CMAR for the project. It includes the cost of all the work, the cost of its general conditions, the contingency, and the fee payable to the CMAR.

A public authority, after evaluating proposals submitted by CMARs for a particular project, must select not fewer than three CMARs the public authority considers to be the most qualified to provide the required services.[4] Each CMAR

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[2] "State institution of higher education" has the same meaning as in R.C. 3345.011.

[3] Generally, under the multiple-prime method, if the total cost of the project is $50,000 or more, a public authority must solicit separate bids for, and award separate main contracts for, the following: (1) plumbing and gas fitting, (2) steam and hot-water heating, ventilating apparatus (HVAC), and steam-power plant, (3) electrical equipment, and (4) the remaining trades necessary for completion of the project. These primary contractors may then enter into subcontracts with other contractors as needed to perform the work and provide the necessary materials. (R.C. 153.50, 153.51, and 153.52.)

[4] For the definition of "qualified," see R.C. 9.33(E).

selected must be given (1) a description of the project, including a statement of available design detail, (2) a description of how the guaranteed maximum price is to be determined, (3) the form of the contract, and (4) a request for a pricing proposal. The pricing proposal of each CMAR is to include a list of key personnel for the project, a statement of the general conditions and contingency requirements, and a fee proposal divided into a preconstruction fee, a construction fee, and the portion of the construction fee to be at risk in a guaranteed maximum price.

The public authority is to rank the CMARs based on its evaluation of the value of each pricing proposal, and enter into negotiations with the CMAR whose pricing proposal the public authority determines to be the best value - - considering the proposed cost and qualifications. The Department of Administrative Services is required to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to prescribe the procedures and criteria for determining the best value selection of a CMAR and the form for the contract documents to be used when entering into a contract with a CMAR.[5]

If negotiations fail, the public authority may enter into negotiations with the CMAR the public authority ranked next highest and continue negotiating with the selected CMARs in the order of their ranking until a contract is negotiated. If that does not occur, the public authority may select additional CMARs to provide pricing proposals or may select an alternative delivery method for the project. Additionally, if a public authority and CMAR fail to agree on a guaranteed maximum price, the public authority may allow the CMAR to provide management services that a construction manager is authorized to provide.

Before construction begins pursuant to a contract with a CMAR, the CMAR must provide a surety bond[6] in an amount not less than the combined contract values of any work under contract prior to the establishment of the guaranteed maximum price or in the amount of the guaranteed maximum price as agreed to by the public authority, as the case may be.

A public authority may accept a subcontract awarded by a CMAR, or may reject a subcontract if the public authority determines that the bidder is not responsible. If the CMAR intends and is permitted by the public authority to self-perform a portion of the work, the CMAR must submit a sealed bid for the work prior to accepting and opening any bids for the same work. A CMAR may reduce any bond filed by a subcontractor, or

[5] See also Section 701.10.

[6] See R.C. 153.57.

reduce any funds retained by the CMAR, for partial performance of the contract as is provided under current law for contracting authorities.

Lastly, the bill subjects CMARs to the current drug-free workplace laws by designating them "contractors" for purposes of that law.

Design-build firm

(R.C. 153.03, 153.50 to 153.52, 153.65 to 153.73, and 153.80)

For purposes of this construction delivery method, **design-build (D/B) services** means services that form an integrated delivery system for which a person is responsible to a public authority for both the design *and* the construction, demolition, alteration, repair, or reconstruction of a public improvement. A public authority planning to contract for D/B services must first obtain the services of a criteria architect or engineer[7] by either contracting for the services consistent with how D/B firms are selected or by obtaining the services through an architect or engineer who is an employee of the public authority and notifying the Department of Administrative Services before the services are rendered.

A public authority, in consultation with the criteria architect or engineer, is to evaluate the statements of qualifications[8] submitted by D/B firms for a particular project, including the firm's proposed architect of record,[9] and select not fewer than three D/B firms the public authority considers to be the most qualified to provide the required services. Each D/B firm selected must be given (1) a description of the project and project delivery, (2) the design criteria produced by the criteria architect or engineer, (3) a preliminary project schedule, (4) a description of any preconstruction services and the proposed design services, (5) a description of a guaranteed maximum price, including the estimated level of design on which it is based,[10] (6) the form of the contract, and (7) a request for a pricing proposal. The pricing proposal of each D/B firm

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[7] The criteria architect or engineer is the architect or engineer retained by a public authority to prepare conceptual plans and specifications, to assist the public authority in establishing the design criteria for a D/B project, and, if requested by the public authority, to serve as its representative and provide other design and construction administrative services during the project, including confirming that the design prepared by the D/B firm reflects the original design intent established in the design criteria package (R.C. 153.65(I)).

[8] For the definition of "qualifications," see R.C. 153.65(D).

[9] The architect of record is the architect that serves as the final signatory on the plans and specifications for the D/B project (R.C. 153.65(H)).

[10] For a description of the guaranteed maximum price, see the relevant discussion under "Construction Manager at Risk," above.

must include a list of key personnel and consultants for the project, design concepts adhering to the design criteria produced by the criteria architect or engineer, the firm's statement of the general conditions and estimated contingency requirements, and a preliminary project schedule.

The public authority is to rank the D/B firms based on its evaluation of the value of each pricing proposal, and enter into negotiations with the firm whose pricing proposal the public authority determines to be the best value − considering the proposed cost and qualifications. The Department of Administrative Services is required to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to prescribe the procedures and criteria for determining the best value selection of a D/B firm and the form for the contract documents to be used when entering into a contract with a D/B firm.[11]

If negotiations fail, the public authority may enter into negotiations with the D/B firm the public authority ranked next highest and continue negotiating with the selected D/B firms in the order of their ranking until a contract is negotiated. If that does not occur, the public authority may select additional D/B firms to provide pricing proposals or may select an alternative delivery method for the project. A public authority may provide a stipend for pricing proposals received from D/B firms.

Before construction begins pursuant to a contract for D/B services with a D/B firm, the firm must provide a surety bond[12] in an amount not less than the combined contract values of any work under contract prior to the establishment of the guaranteed maximum price or in the amount of the guaranteed maximum price as agreed to by the public authority, as the case may be. Also, a public authority may require the D/B firm to carry contractor's professional liability insurance and any other insurance the public authority considers appropriate.

A public authority may accept a subcontract awarded by a D/B firm, or may reject a subcontract if the public authority determines that the bidder is not responsible. If the D/B firm intends and is permitted by the public authority to self-perform a portion of the work, the D/B firm must submit a sealed bid for the work prior to accepting and opening any bids for the same work. A D/B firm may reduce any bond filed by that subcontractor, or reduce any funds retained by the firm, for partial performance of the contract as is provided under current law for contracting authorities.

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[11] See also Section 701.10.

[12] See R.C. 153.57.

The bill permits a public authority to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to implement these provisions. It also subjects D/B firms to the current drug-free workplace laws by designating them "contractors" for purposes of that law.

General contracting

(R.C. 153.50 to 153.52)

General contracting means constructing and managing an entire public improvement project under the award of a single aggregate lump sum contract. Unlike under current law, public authorities may enter into a contract with a general contracting firm regardless of the size of the project.[13]

If the public authority is the state, any public institution of the state, or a school district, a contract for general contracting is to be awarded to the lowest responsive and responsible bidder. In the case of a county, township, or municipal corporation, the contract must be awarded to the lowest and best bidder. A public authority may accept a subcontract awarded by a general contracting firm, or may reject a subcontract if the public authority determines that the bidder is not responsible.

Design assist

(R.C. 153.50(A)(2) and (3) and 153.501)

Design-assist means monitoring and assisting in the completion of the plans and specifications and a design-assist firm is a person capable of performing design-assist. Under the bill, a public authority may authorize a CMAR or D/B firm to utilize a design-assist firm on any public improvement project.

State projects requiring complete specifications prior to bid

(R.C. 153.01, 153.53, and 153.55)

The bill increases, from $50,000 to $200,000, the minimum project cost threshold triggering the requirement that all of the following be prepared by a public authority *prior* to putting a state public improvement contract[14] out to bid:

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[13] Currently, the use solely of general contracting is permitted only for projects costing less than $50,000 (R.C. 153.52).

[14] These are public improvements for the state or any institution supported in whole or in part by the state, or on the public works of the state, that are administered by the Director of Administrative Services or by any other state officer or state agency authorized by law to administer a project (R.C. 153.01(A)).

(1) Full and accurate plans, suitable for the use of mechanics and other builders in the construction;

(2) Details to scale and full-sized;

(3) Definite and complete specifications of the work to be performed, together with directions that will enable a mechanic or other builder to carry them out and afford bidders all needed information;

(4) A full and accurate estimate of each item of expense and the aggregate cost of those items;

(5) A life-cycle cost analysis;

(6) Any other data required by the Department of Administrative Services.

The bill removes the current requirement that accurate bills showing the exact quantity of different kinds of material necessary to the construction also be prepared.

In calculating the project cost amount for purposes of the threshold, the following must be included as costs of the project: (1) professional fees and expenses for services associated with the preparation of plans, (2) permit and testing costs and other fees associated with the work, (3) project construction costs, and (4) a contingency reserve fund. Public improvement projects cannot be subdivided into component parts or separate projects in order to avoid the project cost threshold, unless the component parts or separate projects created are conceptually separate and unrelated to each other or encompass independent or unrelated needs.

The Director of Administrative Services, five years after the effective date of this provision and every five years thereafter, is required by the bill to evaluate the project cost threshold and adjust the amount based on the average rate of inflation during each of the previous five years immediately preceding the adjustment.

These detailed plans and specifications do *not* have to be prepared, however, for any work to be performed under a construction management contract with a CMAR or a design-build contract with a D/B firm.

Community college districts; technical college districts

(R.C. 3354.16 and 3357.16)

With respect to the public improvement projects of community college districts and technical college districts, the bill increases, from $50,000 to $200,000, the minimum project cost threshold triggering the requirement that contracts be put out to bid and

awarded to the lowest responsive and responsible bidder. As is required under current law, the Chancellor of the Board of Regents must adjust that monetary threshold every other year according to the average increase or decrease for each of the two immediately preceding years as set forth in the U.S. Department of Commerce, Bureau of Economic Analysis implicit price deflator for gross domestic product, nonresidential structures.

The bill exempts contracts made with a CMAR, a D/B firm, or a general contracting firm from the current requirement that separate proposals be made for furnishing materials or doing work on the improvement for each separate branch or class of work. Existing law does not require a board of trustees to solicit separate proposals, or award separate contracts, for a branch or class of work if the cost of that branch or class of work is less than $5,000. The bill removes this provision.

Methods of advertising for bids

(R.C. 9.331, 153.07, 153.08, and 153.67)

The bill permits public authorities to advertise their intent to contract with a construction manager or CMAR by electronic means, as prescribed by the Director of Administrative Services by rule. This is an alternative to what is currently required − advertising in a newspaper of general circulation.

Public authorities planning to contract for professional design services or D/B services must publicly announce that fact. The announcement is to be sent to any of the following that the public authority considers appropriate:

--D/B firms, including contractors or other entities that seek to perform the work as a D/B firm;

--Architect, landscape architect, engineer, and surveyor associations;

--The news media;

--Any publications or other public media, including electronic media.

Public notice of the time and place when and where bids will be received and a contract will be awarded also may be published by electronic means pursuant to rules prescribed by the Director, rather than in a newspaper of general circulation as is required by current law. The bill permits the broadcasting of public bid openings by electronic means, in accordance with rules of the Director, and recognizes the electronic filing of bids. If a bid and bid guaranty are filed electronically, they must be received electronically before the published deadline. For all bids filed electronically, the

original, unaltered bid guaranty is to be made available to the public authority after the public bid opening.

Contingency reserve

(R.C. 126.141)

The bill mandates that any request made to the Director of Budget and Management or the Controlling Board for the release of capital appropriations for facilities projects contain a contingency reserve for payment of unanticipated project expenses. The amount of the contingency reserve is to be determined by the public authority. Contingency reserve funds are to be used to pay costs resulting from unanticipated job conditions; to comply with rulings regarding building and other codes; to pay costs related to errors, omissions, or other deficiencies in contract documents; to pay costs associated with changes in the scope of work; to pay interest due on late payments; and to pay the costs of settlements and judgments related to the project.

Any funds remaining upon completion of a project may − upon Controlling Board approval − be released for the use of the agency or instrumentality to which the appropriation was made for other capital facilities projects.

Life-cycle cost analysis; energy consumption analysis

(R.C. 123.011)

The bill maintains the current requirement that a life-cycle cost analysis or, if applicable, an energy consumption analysis be prepared in conjunction with the lease or construction of a state-funded facility, but removes the condition that such analyses be secured from the Office of Energy Services within the Department of Administrative Services. It also eliminates the requirement that copies of all pertinent life-cycle cost analyses be submitted whenever any state agency, department, division, bureau, office, unit, board, commission, authority, quasi-governmental entity, or institution requests release of capital improvement funds for any state-funded facility.

The bill defines "life-cycle cost analysis" as a general approach to economic evaluation that takes into account all dollar costs related to owning, operating, maintaining, and ultimately disposing of a project over the appropriate study period. It also modifies the rule-making authority of the Office with respect to what is to be included in a life-cycle cost analysis or an energy consumption analysis, as follows:

--Current law states that a life-cycle cost analysis may demonstrate for each design how the design contributes to energy efficiency and conservation with respect to

certain factors, such as the amount and type of glass to be used. This provision is removed by the bill.

--The bill also removes the requirement that an energy consumption analysis include a comparison of two or more energy consuming system alternatives and a projection of the annual energy consumption of the major energy consuming systems, components, and equipment over the economic life of the facility.

Additionally, the bill exempts state-funded facilities operated by a political subdivision[15] from having to comply with (1) the cost-effective, energy efficiency and conservation standards adopted by the Office by rule and (2) the requirement that the facility be managed by at least one certified building operator. Managers of facilities operated by a political subdivision may not apply for a waiver of compliance with any of the other rules required to be adopted by the Office.

Bid guaranties

(R.C. 153.54)

Under existing law, each person bidding for a public improvement contract with the state or any political subdivision, district, institution, or other agency of the state, other than the Department of Transportation, must also file a bid guaranty. The bid guaranty ensures that the bidder will enter into a proper contract in accordance with the "bid, plans, details, specifications, and bills of material."

The bill removes the reference to "bills of material" in the law governing bid guaranties, and exempts bidders on CMAR or D/B contracts from having to submit bid guaranties.

Prompt payment

(R.C. 4113.61)

The bill specifically includes CMARs and D/B firms in the definition of "contractor" for purposes of the existing "prompt pay" law. Generally, under that law, if a contractor does not pay a subcontractor within a specified period of time, interest is due and a civil action may be filed.

[15] The bill defines "political subdivision" for these purposes as a county, township, municipal corporation, board of education of any school district, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state (R.C. 123.011(A)(6)).

Civil service law

(R.C. 124.09, 124.23, 124.231, 124.25, 124.26, 124.27, and 124.31)

Civil service examinations

The bill requires the Director of Administrative Services to prescribe by rule the notification method that is to be used by an appointing authority to notify the Director that a position in the state classified civil service is to be filled. The bill states, as a general principle, that when a position in the state classified civil service is to be filled, an examination is to be administered. But, the bill authorizes the Director, with sufficient justification from an appointing authority, to allow the appointing authority to fill a position by noncompetitive examination. The Director must establish, by rule adopted under the Administrative Procedure Act (which requires notice and a hearing), standards the Director is to use to determine what serves as sufficient justification from an appointing authority to fill a position by noncompetitive examination.

The bill requires the Director to post notices via electronic media of every examination to be conducted for positions in the state classified civil service. The electronic notice must be posted on the Director's Internet site for a minimum of one week preceding any examination. Under current law, notices must be posted for two weeks in conspicuous public places such as court houses and city halls, and in the office of the Director.

The bill authorizes the Director to delegate the Director's civil service examining authority to a designee.

Special examinations

The bill provides for special examinations to be administered to legally blind persons and legally deaf persons who are applying for any position in the classified civil service. Current law provides that special examinations are to be administered only for original appointments. The bill also removes the Director's express authority to administer equitable programs for the employment of legally blind persons and legally deaf persons.

Appointments

The bill requires an appointing authority that is making an appointment to a position in the classified civil service, to make the appointment in the following manner: each time a selection is made, it must be from one of the names that ranks in the top 25% of the eligible list. But, in the event that ten or fewer names are on the eligible list, the appointing authority may select any of the listed candidates. Current

law generally requires the appointing authority to appoint a person from a list of ten names standing highest on the eligible list, but appointment from that list is not mandatory if less than ten names are on the list.

The bill specifies that an eligible list expires upon the filling or closing of the position for which the eligible list was prepared. An expired eligible list can be used to fill a position in the same classification within the same appointing authority for which the expired eligible list was prepared. But in no event can an expired eligible list be used longer than one year after its expiration date. (Under current law, the Director can fix the term of an eligible list at not less than one nor more than two years.) The bill eliminates the Director's authority under current law to consolidate two or more eligible lists.

Veterans bonus

The bill modifies the bonus, for veterans who receive a passing grade on a civil service examination, from 20% of the veteran's total grade to 20% or an equivalent weight of the veteran's total grade. The individual's ranking on an eligible list must reflect the passing grade plus the additional credit. The bill eliminates the priority in rank on an eligible list that a veteran is currently entitled to when there is a tie score between a veteran and a nonveteran. Under the bill, the time of filing the application will solely determine the order in which the names of persons who receive the same score are ranked on an eligible list. Current law requires a veteran to be ranked above a nonveteran who has the same score, in addition to receiving the 20% bonus.

Probationary employees

The bill requires an appointing authority, upon dismissing a probationary employee, to communicate that fact to the Director. Under current law, the appointing authority must communicate the reason for which the probationary employee was dismissed. All original and promotional appointments are for a probationary period. If a probationary employee's service is unsatisfactory, the employee may be dismissed at any time during the probationary period.

Promotions

Under the bill, the Director's rule for making promotions in the state classified civil service must require that promotions be made on the basis of merit and by conduct and capacity in office. The bill eliminates the requirement that merit for promotion be ascertained by promotional examinations and by seniority in service.

DAS job classification plans and appointment incentive programs not created by rule

(R.C. 124.14, 124.141, and 124.15)

The bill eliminates the requirement that the Director of Administrative Services establish a job classification plan, assign a classification title to each classification, assign each classification to a pay range, and modify a classification or the assignment of classes "by rule." Under continuing law, a job classification plan is for all positions, offices, and employments the salaries of which are paid in whole or in part by the state.

In addition, the bill eliminates the requirement that the Director follow the rule-making requirements of the Administrative Procedure Act (which requires notice and a public hearing)[16] to establish an appointment incentive program that allows an appointing authority to pay to certain categories of officers or employees a salary and benefits package that differs from the package otherwise provided by law for that officer or employee.

The bill also eliminates the requirement that the Director follow the Administrative Procedure Act rule-making procedures to establish experimental classification plans and to establish, modify, or rescind a classification plan for county agencies that elect not to use the services and facilities of a county personnel department.

State public notice web site

(R.C. 7.16 and 125.182)

The bill requires the Office of Information Technology in the Department of Administrative Services to establish, operate, and maintain a state public notice web site where all state agencies and political subdivisions may publish notices required by statute or rule. If the statute or rule requires newspaper notice, the agency or subdivision may choose instead to publish the notice on the state public notice web site. Publication of a notice on the web site is in lieu of newspaper publication that is otherwise required.

However, an agency or political subdivision that publishes a notice on the web site also must publish an abbreviated notice in a newspaper of general circulation providing a brief summary of the complete notice, a reference to the web site address for the state public notice web site where the complete notice may be found, and a telephone number to call for more information.

[16] R.C. Chapter 119.

State agencies or political subdivisions that comply with current statutory or regulatory requirements for publishing notice also may publish the notice on the state public notice web site in addition to publishing the notice as otherwise required.

Users of the state web site must submit a copy of the notice and a request for publication to the Office of Information Technology and must identify the statute or rule under which publication of the notice is required.

The bill specifies criteria that the Office of Information Technology must satisfy in establishing, maintaining, and operating the state public notice web site. The office must:

(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 if they were being published in a newspaper or other publication, as directed in the relevant portion of the statute or rule that requires the notice;

(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 that requires the notice;

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

(7) Enable responsible parties to submit notices and requests for publication through the web site;

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

(9) 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;

(10) Maintain adequate systemic security and backup features for the web site, and develop and maintain a contingency plan for coping with and recovering from

power outages, systemic failures, and other unforeseeable difficulties that may affect the web site; and

(11) 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.

The bill requires the Office to submit a status report to the Secretary of State twice annually that demonstrates compliance with statutory requirements governing publication of notices.

The Office of Information Technology is required to bear the expense of maintaining the state public notice web site domain name.

Duties of the Office of Information Technology and fund creation

The bill makes several changes to the duties of the Office of Information Technology, within the Department of Administrative Services. First, the bill authorizes the Office to operate an information technology (IT) purchase program. Second, the bill requires the State Chief Information Officer to compute certain revenue and deposit the revenue into the Information Technology Fund. Finally, the bill creates two IT funds in permanent law.

Information technology purchase program

(R.C. 125.18(G))

The bill permits the Office of Information Technology to operate a program to make IT purchases for government entities. This provision was included in temporary law in Am. Sub. H.B. 1, the main operating budget enacted by the 128th General Assembly. The Director of Administrative Services may recover the cost of operating the program from all participating government entities by issuing intrastate transfer voucher billings for the purchases or through any pass-through billing method agreed to by the Director of Administrative Services, the Director of Budget and Management, and the participating government entity. If the Director of Administrative Services issues intrastate transfer voucher billings, the participating government entities must process the vouchers to pay for the cost of the IT purchases. Amounts received under this program must be deposited to the credit of the new Information Technology Governance Fund.

Revenue deposits to the Information Technology Fund

(R.C. 125.18(B)(10) and 125.18(H))

The bill requires the State Chief Information Officer to compute the amount of revenue attributable to the amortization of certain IT equipment purchases and capitalized systems that are recovered as part of the information technology services rates the Department of Administrative Services charges and deposits into the Information Technology Fund. The Director of Administrative Services may request the Director of Budget and Management to transfer an amount not to exceed the amount computed under this provision from the Information Technology Fund into the new Major Information Technology Purchases Fund.

Fund creation

(R.C. 125.15 and 125.18(H))

The bill creates two funds in permanent law. These funds currently exist in temporary law enacted in Am. Sub. H.B. 1 of the 128th General Assembly (the main operating budget). The first fund, the Information Technology Governance Fund, is to consist of money paid by agencies to reimburse the Department of Administrative Services for the acquisition services provided to those agencies and amounts received under the Office of Information Technology's IT purchase program. The second fund, the Major Information Technology Purchases Fund, is to consist of transfers from the existing Information Technology Fund.

State Employee Child Support Fund

(R.C. 125.213, 3121.03 (not in the bill), and 3121.19 (not in the bill))

The bill creates the State Employee Child Support Fund, which is required to be in the custody of the Treasurer of State but not a part of the state treasury. The Fund is to consist of all money withheld or deducted from the wages and salaries of state officials and employees pursuant to a child support withholding or deduction notice. Money in the Fund may be used only for the purposes of forwarding it to the Office of Child Support in ODJFS, and paying any direct or indirect costs associated with maintaining the Fund.

Continuing law requires an employer to submit the entire amount withheld from an obligor's income pursuant to a child support withholding or deduction notice to the Office of Child Support in ODJFS immediately, but not later than seven business days, after the withholding or deduction.

State of Ohio Computer Center rent

(R.C. 125.28)

The bill removes the State of Ohio Computer Center from the list of state office buildings, the non-General Revenue Fund supported state agency tenants of which must reimburse the GRF for rent. Under continuing law, any state agency that is supported in whole or in part by non-GRF money, and that occupies space in certain state office buildings, must reimburse the GRF for the cost of occupying the space in a ratio that the occupied space attributable to non-GRF money bears to the total space occupied. The bill relieves tenants of the State of Ohio Computer Center from this obligation.

Report on acquisition and disposal of federal property

(R.C. 125.89)

The bill eliminates the requirement for the Department of Administrative Services to annually make a report to the General Assembly regarding the acquisition and disposal of surplus federal property. Under continuing law, in conformance with the Federal Property and Administrative Services Act of 1949, the Department may enter into contracts, compacts, and cooperative agreements for and on behalf of the state, with the several states or the federal government, in order to provide for the utilization by and exchange between them of property, facilities, personnel, and services of each by the other.

DEPARTMENT OF AGING (AGE)

- Specifies that long-term acute care hospitals are subject to the authority of the Office of the State Long-Term Care Ombudsman.
- Specifies that long-term acute care hospitals are required to pay an annual fee of $6 per bed to fund the regional long-term care ombudsperson programs.
- Authorizes the Ohio Department of Aging (ODA) to adopt rules establishing a fee to be charged for certification of community-based long-term care agencies.
- Authorizes ODA to suspend a community-based long-term care agency's certification or require the agency to submit evidence of compliance with requirements identified by ODA after a hearing when required to do so by rules.

- Specifies the conditions under which ODA is not required to hold a hearing when it imposes a disciplinary sanction against a certified community-based long-term care agency.

- Requires ODA to promote the development of a statewide aging and disabilities resource network to provide older adults, adults with disabilities, and their caregivers with information on available long-term care service options and streamlined access to public and private long-term care services.

- Requires area agencies on aging to establish the network and to collaborate with centers for independent living and other locally funded organizations to establish a cost-effective and consumer-friendly network.

- Specifies that the annual fees that ODA charges long-term care facilities relative to its Ohio Long-Term Care Consumer Guide are being charged for purposes of publishing the Guide, rather than for purposes of the customer satisfaction surveys that are included in the Guide.

- Increases to $600 (from $450) the annual fee that may be charged to a nursing home for purposes of the Guide.

- Permits ODA to include in the Guide information on adult care facilities and providers of home and community-based services.

Long-term acute care hospitals

(R.C. 173.14 and 173.26)

The bill specifies that long-term acute care hospitals are long-term care facilities subject to the authority of the Office of the State Long-Term Care Ombudsman. For purposes of the bill, a long-term acute care hospital has the following characteristics: (1) it provides medical and rehabilitative care to patients who require an average length of stay greater than 25 days, and (2) it is classified by the Centers for Medicare and Medicaid Services as a long-term care hospital.[17]

The bill also specifies that long-term acute care hospitals are required to pay the annual fee of $6 per bed that other long-term care facilities must pay under existing law. These fees fund the regional long-term care ombudsperson programs.

[17] 42 C.F.R. 412.23(e).

Fee for certification of community-based long-term care agencies

(R.C. 173.391(A)(1) and (G))

The bill authorizes the Director of the Ohio Department of Aging (ODA) to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) establishing a fee to be charged for certification of community-based long-term care agencies. Current law refers to such agencies as "service providers."

The bill also specifies that the certification process includes the payment of a fee, if one is established, by persons and government entities seeking certification as community-based long-term care agencies. Law unchanged by the bill requires the certification process to be conducted in accordance with the Administrative Procedure Act, meaning that if ODA seeks to deny or take another negative action with respect to certification, the affected party is entitled to an administrative hearing.

The bill requires that all fees for certification collected by ODA or its designee be deposited in the state treasury to the credit of the Provider Certification Fund created by the bill. Money credited to the fund must be used to pay for community-based long-term care services, administrative costs associated with community-based long-term care agency certification, and administrative costs related to the publication of the Ohio Long-Term Care Consumer Guide.

Suspensions; evidence of compliance

(R.C. 173.391(A)(2)(f))

The bill authorizes ODA to impose two additional disciplinary sanctions after an administrative hearing when required to do so by rules: suspend a community-based long-term care agency's certification or require the agency to submit evidence of compliance with requirements identified by ODA.

Currently, ODA is limited to imposing the following disciplinary sanctions: issuing a written warning, requiring the submission of a plan of correction, suspending referrals, removing clients, imposing a fiscal sanction (such as a civil monetary penalty or an order that unearned funds be repaid), revoking the certification, or imposing another sanction. With respect to this last item, the bill authorizes ODA through rules adopted in accordance with the Administrative Procedure Act to determine what constitutes "another sanction."

Actions that do not require a hearing

(R.C. 173.391(E))

The bill specifies that ODA is not required to hold hearings if any of the following conditions apply:

(1) Rules adopted by the ODA Director require the community-based long-term care agency to be a party to a provider agreement; hold a license, certificate, or permit; or maintain a certification, any of which is required or issued by a state or federal government entity other than ODA, and either of the following is the case: (a) the provider agreement has not been entered into or the license, certificate, permit, or certification has not been obtained or maintained, or (b) the provider agreement, license, certificate, permit, or certification has been denied, revoked, not renewed, suspended, or has otherwise been restricted.

(2) The agency's certification has been denied, suspended, or revoked for any of the following reasons:

(a) A government entity in Ohio, other than ODA, has terminated or refused to renew any of the following held by, or has denied any of the following sought by, a community-based long-term care agency: a provider agreement, license, certificate, permit, or certification. This provision applies regardless of whether the agency has entered into a provider agreement in, or holds a license, certificate, permit, or certification issued by, another state.

(b) The agency or a principal owner or manager of the agency who provides direct care has entered a guilty plea for, or has been convicted of, an offense materially related to the Medicaid program.

(c) The agency or a principal owner or manager of the agency who provides direct care has entered a guilty plea to, or been convicted for, an offense that disqualifies an applicant for employment with a public or private entity that provides home and community-based services to individuals through the Medicaid waiver program known as PASSPORT,[18] but only if none of the personal character standards established by ODA in rules apply.

(d) The U.S. Department of Health and Human Services has taken adverse action against the agency and that action impacts the agency's participation in the Medicaid program.

[18] The many offenses are listed in R.C. 173.394(C)(1)(a).

(e) The agency has failed to enter into or renew a provider agreement with the PASSPORT administrative agency that administers programs on behalf of ODA in the region of Ohio in which the agency is certified to provide services.

(f) The agency has not billed or otherwise submitted a claim to ODA for payment under the Medicaid program in at least two years.

(g) The agency denied or failed to provide ODA or its designee access to the agency's facilities during the agency's normal business hours for purposes of conducting an audit or structural compliance review.

(h) The agency has ceased doing business.

(i) The agency has voluntarily relinquished its certification for any reason.

(3) The agency's Medicaid provider agreement has been suspended.

(4) The agency's Medicaid provider agreement is denied or revoked because the agency or its owner, officer, authorized agent, associate, manager, or employee has been convicted of an offense that caused the provider agreement to be suspended.

Notice

(R.C. 173.391(F))

If ODA does not hold a hearing when any condition, described above, applies, the bill permits ODA to send a notice to the agency describing a decision not to certify the agency or the disciplinary action ODA proposes to take. The notice must be sent to the agency's address that is on record with ODA and may be sent by regular mail.

Aging and disabilities resource network

(R.C. 173.41)

The bill requires ODA to promote the development of a statewide aging and disabilities resource network to provide older adults, adults with disabilities, and their caregivers with information on available long-term care service options and streamlined access to public and private long-term care services.

Area agencies on aging are required to establish the network throughout Ohio. In doing so, the agencies are to collaborate with centers for independent living and other locally funded organizations to establish a cost-effective and consumer-friendly network that builds on existing, local infrastructures of services that support consumers in their communities.

Ohio Long-Term Care Consumer Guide

(R.C. 173.45 to 173.48; Section 209.30)

Fees

The bill specifies that the annual fees ODA is authorized to charge certain long-term care facilities regarding its Ohio Long-Term Care Consumer Guide are being charged for purposes of publishing the Guide, rather than charges for ODA's conduct of the customer satisfaction surveys that are included in the Guide. In addition to the customer satisfaction survey, current law provides for this Guide to include, for each long-term care facility, information on the facility's compliance with state and federal requirements, information from the quality measures developed by the U.S. Centers for Medicare and Medicaid Services, and any other information ODA specifies in rules.

For nursing homes, the annual fee that is to be charged by ODA is increased to $600 (from $450). The fees charged to the other types of long-term care facilities included in the Guide are unchanged.

Information on adult care facilities and home and community-based services

The bill permits ODA to include in the Long-Term Care Consumer Guide information regarding adult care facilities, which serve 3 to 16 residents, and providers of home and community-based services. During fiscal years 2012 and 2013, ODA must identify methods and tools for assessing consumer satisfaction with these facilities and providers. ODA also must consider developing a fee structure to support inclusion of information about the facilities and providers in the Guide.

DEPARTMENT OF AGRICULTURE (AGR)

- Revises specified fees for phytosanitary certificates issued by the Director of Agriculture, including eliminating the $25 fee for collectors or dealers that are licensed under the Nursery Stock and Plant Pests Law and adding a $25 fee for shipments comprised exclusively of nursery stock.

- Allows the Director to contract with individuals or entities to perform gypsy moth trapping in lieu of employing seasonal gypsy moth tenders as authorized in current law.

- Extends through June 30, 2013, the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund.

- Eliminates the requirement that no less than 30% of the money in the Ohio Grape Industries Fund be expended by the existing Ohio Grape Industries Committee for specified purposes, including the marketing of grapes and grape products, but retains a 70% cap on those expenditures.

- Requires a person proposing to operate a commercially used weighing and measuring device that is a livestock scale, vehicle scale, railway scale, vehicle tank meter, bulk rack meter, or LPG meter to obtain a permit for its operation from the Director of Agriculture.

- Specifies that a commercially used weighing and measuring device operation permit may be renewed annually.

- Establishes a permit application fee of $75 for a commercially used weighing and measuring device operation permit and an annual permit renewal fee of the same amount.

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

- Alters the specified provisions of the weights and measures program a violation of which triggers a civil or criminal penalty.

Phytosanitary certificates fees

(R.C. 927.69)

The bill revises the fees for phytosanitary certificates issued by the Director of Agriculture as follows:

(1) Eliminates the $25 fee for collectors or dealers that are licensed under the Nursery Stock and Plant Pests Law;

(2) Adds a $25 fee for shipments comprised exclusively of nursery stock;

(3) Adds a $25 fee for replacement of an issued certificate because of a mistake on the certificate or a change made by the shipper if no additional inspection is required.

Seasonal gypsy moth traptenders

(R.C. 901.09)

The bill allows the Director of Agriculture to contract with individuals or entities to perform gypsy moth trapping in lieu of employing seasonal gypsy moth tenders as authorized in current law.

Grape industries

(R.C. 924.52 and 4301.43)

Wine tax diversion to Ohio Grape Industries Fund

The bill extends through June 30, 2013 the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund. 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 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, 2011.

Expenditures by Ohio Grape Industries Committee

The bill eliminates the requirement that no less than 30% of the money in the Ohio Grape Industries Fund, but retains the requirement that no more than 70% of the money, be expended by the existing Ohio Grape Industries Committee on each of the following:

(1) Conducting research on grapes and grape products, including production, processing, and transportation of grapes and grape products;

(2) Performing specified activities regarding the marketing of grapes and grape products.

Division of Weights and Measures

Commercially used weighing and measuring device permit program

(R.C. 1327.46, 1327.501, and 1327.511)

The bill establishes a new permit requirement as part of the Department of Agriculture's weights and measures program. Under the bill, a person operating

certain commercially used weighing and measuring devices in Ohio must obtain a permit issued by the Director of Agriculture or the Director's designee.

The bill defines "commercially used weighing and measuring device" to mean a device described in the National Institute of Standards and Technology Handbook 44 or its supplements and revisions and any other weighing and measuring device designated by rules adopted under the Weights and Measures Law. "Commercially used weighing and measuring device" includes, but is not limited to, a livestock scale, vehicle scale, railway scale, vehicle tank meter, bulk rack meter, and LPG meter (see below).

The bill limits the devices for which a permit is required to livestock scales, vehicle scales, railway scales, vehicle tank meters, bulk rack meters, and LPG meters. An application for a permit must be submitted to the Director on a form that the Director prescribes and provides. The applicant must include with the application any information that is specified on the application form as well as the application fee established by the bill. Upon receipt of a completed application and the required fee, the Director or the Director's designee must issue or deny the permit.

A permit applicant must pay a $75 application fee. A person who seeks to renew a permit must pay an annual $75 permit renewal fee. If a permit renewal fee is more than 60 days past due, the Director may assess a late penalty.

For purposes of the permit program, the Director must: (1) establish procedures and requirements governing the issuance or denial of permits, and (2) establish late penalties to be assessed for the late payment of a permit renewal fee and fees for the replacement of lost or destroyed permits.

All money collected through the payment of fees and the imposition of penalties must be credited to the renamed Metrology and Scale Certification and Device Permitting Fund, currently the Metrology and Scale Certification Fund. In addition to renaming the Fund, the bill adds to the purposes for which money in the Fund may be used. Under the bill, money may be used for services rendered by the Department of Agriculture in operating the metrology laboratory program, the device permitting program, and the type evaluation program. Under current law, money in the Fund only may be used for the type evaluation program.

The bill includes the following definitions for purposes of the permitting program:

(1) "Livestock scale" means a scale equipped with stock racks and gates that is adapted to weighing livestock standing on the scale platform.

(2) "Vehicle scale" means a scale that is adapted to weighing highway, farm, or other large industrial vehicles other than railroad cars.

(3) "Railway scale" means a rail scale that is designed to weigh railroad cars.

(4) "Vehicle tank meter" means a vehicle mounted device that is designed for the measurement and delivery of liquid products from a tank.

(5) "Bulk rack meter" means a wholesale device, usually mounted on a rack that is designed for the measurement and delivery of liquid products.

(6) "LPG meter" means a system, including a mechanism or machine of the meter type, that is designed to measure and deliver liquefied petroleum gas in the liquid state by a definite quantity whether installed in a permanent location or mounted on a vehicle.

Other changes to the weights and measures program

(R.C. 1327.46, 1327.50, 1327.51, 1327.54, 1327.57, 1327.62, and 1327.99)

The bill alters provisions of the Weights and Measures Law governing civil and criminal penalties. The alterations involve amending the provisions of that Law that trigger a civil or criminal penalty.

The bill allows civil penalties to be levied for a violation of any provision of the Weights and Measures Law and any rule adopted under that Law. Under current law, civil penalties may be levied only regarding violations of provisions related to misrepresentation of prices of items sold by weight or some other measure or related to using incorrect weights and measures and other offenses. Law unchanged by the bill provides that civil penalties must not exceed $500 for a first violation, $2,500 for a second violation, and $10,000 for each subsequent violation that occurs within five years of the second violation.

Additionally, the bill authorizes criminal penalties for violations of the commercially used weighing and measuring device permitting program and for a violation of any rule adopted under the Weights and Measures Law. Current law allows for criminal penalties only regarding violations of provisions related to misrepresentation of prices of items sold by weight or some other measure or related to using incorrect weights and measures and other offenses. Law retained by the bill provides that a criminal violation under the Weights and Measures Law is a second degree misdemeanor on the first offense and a first degree misdemeanor on each subsequent offense that occurs within seven years of the first offense.

- Transfers the Ohio Coal Development Office from within the Ohio Air Quality Development Authority to within the Department of Development.
- As a result of the transfer, removes provisions that require the Office or the Office Director to obtain the affirmative vote of a majority of the members of the Authority to perform certain actions.
- Removes the Director of Development as an ex officio member from the technical advisory committee that assists the Office Director.

Ohio Coal Development Office

(R.C. 1551.311, 1551.32, 1551.33, 1551.35, 1555.02, 1555.03, 1555.04, 1555.05, 1555.06, 1555.08, and 1555.17; Section 515.30)

The bill transfers the Ohio Coal Development Office from within the Ohio Air Quality Development Authority (OAQDA) to within the Department of Development. The Office's purpose is to support research and development in the use of Ohio coal in an environmentally sound and economical manner, including by financing technology and facilities with the proceeds of state general obligation bonds. The bill does not change the Office or its functions and authority, but confers on the Department of Development all of the prior authority of the OAQDA related to the Office, including the duty to appoint the Office Director. As a result of the transfer, the bill eliminates the requirement that the Office or the Office Director obtain the affirmative vote of a majority of the seven OAQDA members to perform certain actions, including making loans and grants, requesting the issuance of general obligations, entering into contracts, and spending money credited to the existing Coal Research and Development Fund.

The bill also removes the Director of Development as an ex officio member from the technical advisory committee that assists the Office. The technical advisory committee consists of 13 members that are appointed by the Director of the Office, the Speaker and the Minority Leader of the House of Representatives, and the President and the Minority Leader of the Senate. The Director of Environmental Protection serves on the committee as an ex officio member.

Finally, the bill establishes transition procedures for the transfer of the Ohio Coal Development Office from the OAQDA to the Department of Development.

- Excludes funds for community alcohol and drug addiction services that the General Assembly appropriates to the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) and are transferred to ODJFS for the Medicaid program from the funds that ODADAS allocates and distributes to the Alcohol, Drug Addiction, and Mental Health Services (ADAMHS) boards for such services.

- Eliminates ODADAS's responsibility for paying the nonfederal share for services provided under a component of the Medicaid program that ODADAS administers.

- Eliminates ADAMHS boards' responsibility for paying for such services on July 1, 2012, and requires ADAMHS boards to use funds ODADAS allocates and distributes to them to make the payments while they remain responsible for the payments.

- Makes ODJFS responsible for paying for such services effective July 1, 2012.

- Requires that the portion of the fee persons pay to have a driver's or commercial driver's license or permit reinstated that is credited to the Statewide Treatment and Prevention Fund be used for purposes identified in ODADAS's comprehensive statewide alcohol and drug addiction services plan rather than to pay the costs of driver treatment and intervention programs.

Medicaid elevation for alcohol and drug addiction services

(R.C. 3793.04, 3793.21, 5111.911, and 5111.913; Sections 120.10 to 120.12)

The bill revises the law governing allocation and distribution of Ohio Department of Alcohol and Drug Addiction Services (ODADAS) money to Alcohol, Drug Addiction, and Mental Health Services (ADAMHS) boards. ODADAS is required by continuing law to develop a comprehensive statewide alcohol and drug addiction services plan. Current law requires that the plan provide for the allocation of state and federal funds for services furnished by alcohol and drug addiction programs under contract with ADAMHS boards and for distribution of the funds to ADAMHS boards. The bill requires ODADAS to provide for the allocation and distribution of funds appropriated to ODADAS by the General Assembly for such services. ODADAS must exclude from the allocation and distribution any funds that are transferred to ODJFS to

pay the nonfederal share of alcohol and drug addiction services covered by the Medicaid program.

Under current law, ODADAS and ADAMHS boards are responsible for paying the nonfederal share of any Medicaid payment for services provided under a component of the Medicaid program that ODADAS administers on ODJFS's behalf. The bill eliminates ODADAS's responsibility when this provision of the bill goes into effect (the 91st day after the bill is filed with the Secretary of State unless it is the subject of a referendum). The bill eliminates ADAMHS boards' responsibility July 1, 2012. While the ADAMHS boards remain responsible, they are to use funds that ODADAS distributes to them pursuant to the comprehensive statewide alcohol and drug addiction services plan. Effective July 1, 2012, ODJFS is to become responsible for the payments. If necessary, the ODJFS Director must submit a Medicaid state plan amendment to the U.S. Secretary of Health and Human Services regarding ODJFS's responsibility.

Statewide Treatment and Prevention Fund

(R.C. 4511.191)

The bill requires that the portion of the fee persons pay to have a driver's or commercial driver's license or permit reinstated that is credited to the Statewide Treatment and Prevention Fund be used for purposes identified in ODADAS's comprehensive statewide alcohol and drug addiction services plan rather than to pay the costs of driver treatment and intervention programs.

AUDITOR OF STATE (AUD)

- Removes the requirement that the Director of Budget and Management approve assessments from the Uniform Accounting Network Fund for the Auditor of State's administrative costs for the Uniform Accounting Network.

- Repeals, for audits of local public offices, authority to recover costs from the GRF for State Auditor employees' vacation and sick leave and, from the state treasury, necessary travel and hotel costs of local deputy inspectors and supervisors.

- Requires the State Auditor to establish cost-recovery rates for local public office audits.

OBM approval of costs assessed to Uniform Accounting Network Fund

(R.C. 117.101)

The bill removes the requirement that the Director of Budget and Management approve assessments from the Uniform Accounting Network Fund for the Auditor of State's administrative costs for the Uniform Accounting Network. The fund consists of user fees charged to participating public offices for goods, materials, supplies, and services received from the Uniform Accounting Network provided by the Auditor of State, and is used by the Auditor of State to pay the costs of establishing and maintaining the network. The network provides certain public offices with efficient and economical access to data processing and management information facilities and expertise. The fund is assessed a proportionate share of the Auditor of State's administrative costs in accordance with procedures prescribed by the Auditor of State.

Cost recovery for audits of local public offices

(R.C. 117.13)

The bill repeals the authority of the State Auditor to recover certain local public office audit costs. The bill eliminate the authority to finance from the GRF the vacation and sick leave costs of assistant auditors performing the audits, employees, and typists. The bill also eliminates the authority to pay travel and hotel expenses of deputy inspectors and supervisors of public offices from the state treasury. The Auditor instead must establish rates by rule to be charged for recovering the costs of audits of local public offices.

Continuing law authorizes the State Auditor to recover certain audit costs from the local public offices being audited. Recoverable costs include the compensation and expenses of assistant auditors of state assigned to perform the audits, the cost of employees assisting them, the cost of experts employed for the audit, and the costs associated with preparing the audit reports.

OFFICE OF BUDGET AND MANAGEMENT (OBM)

- Permits transfers of statewide indirect costs of debt service paid for the enterprise resource planning system (OAKS) to the OAKS Support Organization Fund to support costs of system development and upgrades.

- Changes the funding sources of the OAKS Support Organization Fund to: (1) transfers from statewide indirect costs attributable to debt service paid for the system and (2) agency payroll charge revenues.

- Authorizes the Director of Budget and Management to transfer cash between funds other than the GRF in order to correct an erroneous payment or deposit.

- Eliminates requirements that state agencies submit biennial spending plans to the General Assembly and the Director of Budget and Management, and that the Director of Administrative Services oversee implementation.

- Eliminates an outdated requirement for the submission of state agency spending reduction plans.

- Allows the Director of Budget and Management and state agencies to enter into contracts outsourcing to private sector entities or local or regional public entities the provision of a public service.

- Establishes a proposal selection process that requires the Director to evaluate proposals and proposer qualifications, rank the proposers, and conduct negotiations to procure an outsourcing contract for the provision of public services.

- Exempts from Ohio's Prevailing Wage laws projects involving real or personal property, or both, and related construction and other improvements to them, used to provide a public service.

- Exempts from Ohio's Collective Bargaining laws any employees on a project involving real or personal property, or both, and related construction and other improvements to them, used to provide a public service.

- Makes the Director of Transportation the authorized representative of the Ohio Turnpike Commission to work with the Director of Budget and Management regarding Turnpike-related outsourcing contracts.

- Requires Controlling Board approval of (1) invitations for the submission of qualifications and proposals for outsourcing contracts for the provision of public services, (2) the outsourcing contracts themselves, (3) the transfer of money or funds to support the outsourced public service, and (4) the receipt and deposit of money received under a contract by the Director of Budget and Management.

- Exempts from state and local taxation all (1) projects involving real or personal property, or both, and related construction and other improvements to them, used to provide a public service, (2) outsourcing contracts, and (3) gross receipts and income generated by them.

- Exempts from the sales and use tax any transfer or lease of a project involving real or personal property, or both, and related construction and other improvements to them, used to provide a public service, if the state retains any part of ownership.

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

- Requires the Office of Internal Auditing to monitor, measure, and report on the effectiveness of federal stimulus funds allocated to Ohio under the federal American Recovery and Reinvestment Act of 2009 (ARRA) to certain members of the General Assembly.

- Requires the Office of Budget and Management, with respect to the quarterly reports required to be made to the federal government under the ARRA regarding the effectiveness of allocated funds, to send those same reports to certain members of the General Assembly.

Transfers to and funding sources of the OAKS Support Organization Fund

(R.C. 126.12 and 126.24)

The bill permits the director of OBM to make transfers of statewide indirect costs for debt service for the state's enterprise resource planning system (Ohio Administrative Knowledge System or OAKS) to the OAKS Support Organization Fund to support system development and upgrades. Under the bill, such transfers may be made either directly from the appropriate fund of the state or, if the statewide indirect costs already have been deposited in the GRF, from the GRF. The bill establishes these transfers and designated agency payroll charge revenues as the funding sources of the Fund. The bill eliminates as funding sources cash transfers from the Accounting and Budgeting Fund, the Human Resources Services Fund, and other revenues. Under current law, statewide indirect costs are recovered from any fund of the state and then transferred to the GRF by OBM according to its statewide indirect cost allocation plan.

Transfers of cash between non-GRF funds

(R.C. 126.21)

The bill permits the Director of Budget and Management to transfer cash between funds other than the GRF in order to correct an erroneous payment or deposit – regardless of the fiscal year during which the erroneous payment or deposit occurred.

State agency spending plans and spending reduction plans

(R.C. 126.501, 126.502, and 126.507 (repealed); conforming changes in R.C. 126.50)

The bill eliminates a requirement that state agencies submit biannual spending plans to the General Assembly and the Director of Budget and Management. Specifically, under current law, each such plan must address, for the next two fiscal years, savings, lack of savings, or costs that could result from a number of enumerated strategies for purchasing supplies and services. Examples of the strategies include requiring an agency director's approval for purchases of $1,000 or more, cooperative purchasing with other state agencies, and cancelling certain noncapital-funds contracts. Current law requires the Director of Budget and Management to issue guidance to each agency on which strategies to implement. The Director of Administrative Services is required to oversee implementation, in consultation with the Director of Budget and Management.

The bill also repeals an expired requirement that state agencies submit, by November 1, 2009, to the General Assembly and the Director of Budget and Management, spending plans outlining 30% reductions in spending for supplies and services for FYs 2010 and 2011.

Public services provided by private, local, or regional entities

(R.C. 126.60 to 126.605)

The bill permits the Director of Budget and Management and the representative of a state agency to execute a contract with a private sector entity (such as any type of profit or nonprofit corporation, partnership, joint venture or other similar entity), local or regional public entity or agency, or any combination thereof for the purpose of outsourcing the provision of a public service (that is, a service provided for a public purpose) that is the responsibility of the state agency in order to more efficiently and effectively provide public services, including by generating additional resources in support of those public services and related projects.[19] The Director is authorized to receive and deposit, consistent with Controlling Board approval, any money received under the contract.

Contract details

The contract may be a purchase or sale agreement, lease, service agreement, franchise agreement, concession agreement, or other written agreement for the

[19] A "project" under the bill means real or personal property, or both, and related construction and other improvements to them, used to provide a public service (R.C. 126.60(B) and (C)).

provision of a public service or a related project. It may contain the terms and conditions established by the Director and the state agency and is to be sufficient to effect its purpose, notwithstanding any provision of the Revised Code to the contrary.

Proposal selection process

Public notice

The bill requires the Director of Budget and Management to publish notice of its intent to enter into a contract for the public service and any related project. The notice is to provide interested parties the opportunity to submit their qualifications or proposals, or both, for consideration and must be published at least 30 days prior to the deadline for submitting those qualifications or proposals. The Director also may advertise the information contained in the notice in appropriate trade journals and otherwise notify parties believed to be interested in providing the public service and any related projects. The notice must include a general description of the public service to be provided and any related project the qualifications or proposals being sought, and instructions for obtaining the invitation.

Qualification evaluation

The bill specifies that after inviting qualifications, the Director, in consultation with the state agency, is to evaluate the qualifications submitted and may hold discussions with proposers to further explore their qualifications. Following the evaluation, the Director, in consultation with the state agency, may determine a list of qualified proposers based on criteria in the invitation and invite only those proposers to submit a proposal for the provision of the public service and any related projects.[20]

Proposal evaluation and selection

After inviting proposals, the Director of Budget and Management, in consultation with the state agency, must evaluate the proposals submitted and may hold discussions with the proposers to further explore their proposals, the scope and nature of the public services they would provide, and the various technical approaches they may take regarding the public service and related projects.[21] After the evaluation, the Director, in consultation with the state agency must do the following:

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[20] If the proposer originally submitted a proposal along with qualifications, it is unclear whether the bill would require that proposal to be resubmitted or a new proposal to be submitted, or whether the originally submitted proposal is acceptable for purposes of further evaluation (R.C. 126.602(B)).

[21] If the proposer originally only submitted a proposal, it is unclear what the bill requires the Director and state agency to do regarding the evaluation of a proposer's qualifications, once they finish evaluating the

(1) Select and rank at least the three most qualified proposers, unless fewer are qualified;

(2) Negotiate a contract with the most qualified proposer to provide the public service at a fair and reasonable compensation, and to purchase, lease or otherwise take a legal interest in the project;

(3) Upon failure to negotiate a contract with the most qualified proposer, the Director must inform the proposer of the termination of negotiations and may enter into negotiations with the proposer ranked next most qualified. If negotiations again fail, the same procedure may be followed with each next most qualified proposer selected and ranked, in order of ranking, until a contract is negotiated.

(4) If the Director fails to negotiate a contract with any of the ranked proposers, the Director, in consultation with the state agency, may terminate the process or select and rank additional proposers, based on their qualifications or proposals, and negotiations are to continue as with the proposers selected and ranked initially until a contract is negotiated.

The Director may, after consultation with the state agency, include in any contract any terms the Director deems appropriate, including the following:

- The contract duration (not to exceed 75 years);
- Rates or fees for the public services to be provided or the methods or procedures for determining them;
- Standards for the public services to be provided;
- Responsibilities and standards for operation and maintenance of any related project;
- Required financial assurances;
- Financial and other data reporting requirements;
- Terms regarding contract termination and retaking possession or title of the project;

proposal. The bill appears to only require evaluation of qualifications that have been submitted. (R.C. 126.602(C)).

- Events of default and remedies upon default, including mandamus, actions at law or equity, or any combinations of such remedial actions.[22]

Rejection of qualification or proposal

The bill specifies that the Director may reject any and all submissions of qualifications or proposals.

Exemption from prevailing wage and collective bargaining laws

The bill specifies that prevailing wage laws do not apply to any projects and public employee collective bargaining laws do not apply to any employees working at or on a project to provide a public service.

Director of Transportation to represent Ohio Turnpike Commission

The bill requires the Director of Transportation to be the authorized representative of the Ohio Turnpike Commission for purposes of the bill. The Director is to be authorized to execute any contract for the provision of a public service, notwithstanding any Ohio Turnpike Commission laws to the contrary.

Controlling Board approval

The Controlling Board must approve any invitation for qualifications or for proposals and any related contracts. The Controlling Board may also approve any transfer of moneys and funds necessary to support the public service.

Tax exemption

The bill states that any project or part thereof owned by the state and used for performing a public service pursuant to a contract that would be exempt from taxation or assessments in the absence of the contract is to remain exempt from taxation and assessments levied by the state and its subdivisions. The gross receipts and income of a proposer derived from providing a public service under a contract are to be exempt from taxation levied by the state and its subdivisions. Any transfer or lease between a proposer and the state of a project or part thereof is to be exempt from the sales and use tax if the state is retaining ownership of the project or part thereof that is being transferred or leased.

[22] The Director appears to be given discretionary authority to include these terms in any contract, but the 75-year limitation on the contract duration may imply that at least some of these terms are mandatory.

Contract for consulting services

The bill permits the Director, in consultation with the state agency, to retain or contract for the services of commercial appraisers, engineers, investment bankers, financial advisers, accounting experts, and other consultants to carry out the Director's powers and duties under the bill, including the identification of public services and related projects to be subject to invitations for qualifications or proposals, the development of those invitations and related evaluations criteria, and the evaluation of those invitations, and negotiation of any contract.

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

(Section 521.60)

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

Reports monitoring the effectiveness of federal stimulus funds

(Sections 521.70 and 801.20)

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

Semi-annual reports

The bill requires the Office, in addition to its duties under current law, to (1) monitor and measure the effectiveness of federal stimulus funds allocated to Ohio under the American Recovery and Reinvestment Act of 2009 (ARRA) and (2) review

how funds allocated to each state agency subject to internal audit under current law are spent. In addition to all the reports it must issue under current law, the Office must submit a report of its findings regarding the effectiveness and expenditure of the federal stimulus funds to the President, Senate Minority Leader, Speaker, House Minority Leader, and the Chairs of the House and Senate committees that handle finance and appropriations. The reports are to be issued according to the following schedule and time frames:

Report Date	Report Coverage Period
February 1, 2012	July 1, 2011 – December 31, 2011
August 1, 2012	January 1, 2012 – June 30, 2012
February 1, 2012	July 1, 2011 – December 31, 2011
August 1, 2012	January 1, 2011 – June 30, 2011[23]

Quarterly reports

The bill also requires that, if OBM is required to submit quarterly reports to the federal government regarding the effectiveness of federal stimulus funds allocated under the ARRA for which Ohio is the prime recipient and the reporting requirement has not been delegated to a sub-recipient, then it must submit those reports to the same General Assembly members described above, as well as the ranking members of the House and Senate committees that handle finance and appropriations. The bill requires OBM to continue to submit the quarterly reports to the legislature for as long as the reports are required by the federal government.

DEPARTMENT OF COMMERCE (COM)

- Removes the requirement that a person not organized under Ohio law, not licensed as a foreign corporation, or that does not have a principal place of business in Ohio submit a consent to service of process when filing for an exemption for a security offered or sold in reliance on Regulation D of the Securities Act of 1933.

[23] The second February and August report dates and the periods they cover are incorrect. A technical amendment is needed to change the year of the reports to 2013. The year of the coverage period for the second February report should be 2012; for the second August report – 2013.

- Permits the Division of Securities to waive, in part or in whole, certain license, renewal, and notice filing fees for certain professionals involved in securities investment if the waiver is in the public interest and protects securities investors.

- Increases the maximum annual fee placed on credit union share guaranty corporations from $5,000 to $50,000.

- Removes certain public improvements from the Prevailing Wage Law.

- Prohibits a public authority from applying prevailing wage requirements to a public improvement that is undertaken by, or under contract for, a state institution of higher education, a school district, or an education service center.

- Removes the right of an interested party to sue regarding a violation of the Prevailing Wage Law when the Director of Commerce fails to rule on the merits of an administrative complaint within 60 days after the party files that complaint with the Director.

- Abolishes the Penalty Enforcement Fund.

- Requires the Director of Commerce to deposit moneys received from prevailing wage penalties into the Labor Operating Fund.

- Requires the Director and the Treasurer of State to transfer from the Prevailing Wage Custodial Fund to the Labor Operating Fund funds that the Director determines are not returnable to employees.

- Authorizes revenue resulting from any contracts with the Department pertaining to the responsibilities and operations described in the Liquor Control Law to be credited to the Liquor Control Fund.

- Allows the Director of Budget and Management to transfer money from the General Revenue Fund to the Liquor Control Fund if the Director determines that the amount in the Liquor Control Fund is insufficient.

- Authorizes the state to transfer to JobsOhio all or a portion of the enterprise acquisition project, that is, the spirituous liquor distribution system, for a transfer price payable by JobsOhio to the state, and requires any such transfer to be treated as an absolute conveyance and true sale of the interest in the enterprise acquisition project.

- Defines "enterprise acquisition project" as all or any portion of the capital or other assets of the Liquor Control Commission or the Division of Liquor Control,

including inventory, warehouses, the exclusive right to manage and control spirituous liquor distribution and sales in the state and to sell spirituous liquor in the state, and the assets and liabilities of the existing Facilities Establishment Fund.

- Requires any transfer of the enterprise acquisition project that is a lease or grant of a franchise to be for a term not to exceed 25 years or that is an assignment and sale, conveyance, or other transfer to contain a provision that the state has the option to purchase back the enterprise acquisition project no later than 25 years after the original transfer was authorized.

- States that the proceeds of any transfer may be expended as provided in the transfer agreement for specified purposes.

- Establishes other provisions governing the transfer, including allowing JobsOhio to dispose of real and personal property acquired by JobsOhio and no longer needed for the purposes of the Liquor Control Law or JobsOhio.

Consent to service of process in connection with Regulation D exemption notice filings

(R.C. 1707.11)

The bill removes the requirement that certain parties submit a consent to service of process when filing for an exemption for a security offered or sold in reliance on Regulation D of the Securities Act of 1933.[24] Regulation D provides exemptions that allow companies to offer and sell their securities without registering them with the SEC.[25] Under current law, the following parties are required to consent to service of process when filing for that exemption:

- Each person not organized under the laws of Ohio;

- Those not licensed as a foreign corporation;

- A person that does not have a principle place of business in Ohio.

[24] R.C. 1707.03(X) (not in the bill).

[25] Regulation D Offerings. *Available at* http://www.sec.gov/answers/regd.htm (last visited March 24, 2011).

Waiver of certain license, renewal, and notice filing fees regarding securities investment

(R.C. 1707.17)

The bill permits the Division of Securities to waive, in part or in whole, license, renewal, and notice filing fees for professionals involved in securities investment. This provision applies to salespersons and dealers of securities and to investment advisers, investment adviser representatives, state retirement system investment officers, and the Bureau of Workers' Compensation Chief Investment Officer. The Division may waive these requirements by rule or order. In order for the Division to have the authority to waive these requirements, the waiver must be appropriate in the public interest and protect securities investors.

Increase in annual fee for credit union share guaranty corporations

(R.C. 1761.04)

The bill increases the maximum annual fee placed on credit union guaranty corporations to $50,000. Under current law, the annual fee is $5,000.

The Prevailing Wage Law

Works subject to the Prevailing Wage Law

(R.C. 4115.03, 4115.033, 4115.034, 4115.04, and 4115.10; repealed R.C. 4115.032; R.C. 3345.12, not in the bill)

The bill removes some projects from the Prevailing Wage Law, so that contractors and subcontractors on those public improvement projects do not have to pay workers the prevailing wage rate paid under collective bargaining agreements in the same area for similar work.

First, the bill removes from the Prevailing Wage Law's requirements some construction projects that cost $5 million or less. Currently, any new construction on public improvements that costs $78,258 or less is exempt from the Prevailing Wage Law (the statutory baseline threshold of $50,000 as adjusted pursuant to that Law). Reconstruction costing $23,447 or less is similarly exempt (the statutory baseline threshold of $15,000 as adjusted pursuant to that Law). Construction on public improvements that involve roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction will continue to be subject to the current thresholds, adjusted biennially by the Director of Commerce. All other construction on public improvements will be subject to the new thresholds, which also must be adjusted biennially by the Director.

Second, the bill exempts from the Prevailing Wage Law any public improvement undertaken by or for a state institution of higher education. As such, contractors and subcontractors on projects for the following entities do not have to pay the prevailing wage rate:

(1) Any public institution of higher education that is a body politic and corporate, including each of the following: the 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, Youngstown State University, and Northeastern Ohio Universities College of Medicine and its board of trustees;

(2) A community college district, technical college district, university branch district, or state community college, and the applicable board of trustees or other managing authority.

Third, the bill specifies that "public improvement" does not include an improvement that is neither constructed by a public authority nor constructed for the benefit of a public authority. This exclusion applies even if the improvement uses or receives financing, grants, or in-kind support from a public authority.

Prohibited prevailing wage work

The bill prohibits a public authority from applying the prevailing wage requirements to either of the following public improvements:

(1) A public improvement undertaken by or for a state institution of higher education;

(2) A public improvement undertaken by or for the board of education of any school district or the governing board of any educational service center.

The bill exempts public improvements undertaken by or for a state institution of higher education from the Prevailing Wage Law requirements (see "**Works subject to the Prevailing Wage Law**," above). Public improvements undertaken by or for the board of education of any school district or the governing board of any educational service center are exempt from the Prevailing Wage Law under continuing law.

Interested parties' recourse for violations of the Prevailing Wage Law

(R.C. 4115.03 and 4115.16)

The bill removes an interested party's ability to file an action in court alleging a violation of the Prevailing Wage Law if the Director of Commerce does not timely rule on a prevailing wage complaint. An interested party under the Prevailing Wage Law, with respect to a particular public improvement, means (1) any contractor bidding on the public improvement, (2) any subcontractor of such a person, (3) a labor organization that represents employees of those contractors or subcontractors, and (4) any association having as members any of those contractors or subcontractors. Continuing law allows an interested party to file a complaint with the Director of Commerce alleging a violation of the Prevailing Wage Law, as can a person who is allegedly injured by such a violation. Unlike a person who is allegedly injured by a Prevailing Wage Law violation, an interested party can file a complaint in the appropriate court of common pleas if the Director does not rule on the merits of the complaint within 60 days after the interested party files the original complaint with the Director under current law. The bill removes this course of action.

Prevailing wage funds

(R.C. 4115.10 and 4115.101; Section 512.70)

The bill abolishes the Penalty Enforcement Fund and requires the Director of Budget and Management to transfer any funds remaining in the Penalty Enforcement Fund on July 1, 2011, to the Labor Operating Fund. The Director of Commerce is required, under the bill, to deposit all moneys received from prevailing wage penalties paid into the Labor Operating Fund, instead of the Penalty Enforcement Fund as is required under current law.

The bill requires the Director of Commerce, if the Director determines that any funds in the Prevailing Wage Custodial Fund are not returnable to employees, to certify to the Treasurer of State the amount of the funds that are not returnable. The Treasurer of State is required, upon the receipt of such a certification from the Director, to transfer the certified amount of the funds from the Prevailing Wage Custodial Fund to the Labor Operating Fund.

Liquor Control Fund

(R.C. 4301.12)

The bill authorizes revenue resulting from any contracts with the Department of Commerce pertaining to the responsibilities and operations described in the Liquor

Control Law to be credited to the Liquor Control Fund.[26] In addition, if the Director of Budget and Management determines that the amount in the Fund is insufficient, the Director may transfer money from the General Revenue Fund to the Liquor Control Fund. Currently, the Liquor Control Fund generally consists of money from the sales of spirituous liquor, application fees for liquor licenses, and fines levied under the liquor control laws. Money in the Fund may be used for specified purposes related to those laws.

Transfer of spirituous liquor distribution system to JobsOhio

(R.C. 4313.01 and 4313.02)

Overview

The bill authorizes the state to transfer to JobsOhio all or a portion of the spirituous liquor distribution system for a transfer price payable by JobsOhio to the state. It requires any such transfer to be treated as an absolute conveyance and true sale of the interest in the spirituous liquor distribution system. Any transfer of the enterprise acquisition project that is a lease or grant of a franchise must be for a term not to exceed 25 years or that is an assignment and sale, conveyance, or other transfer must contain a provision that the state has the option to purchase back the project no later than 25 years after the original transfer was authorized. Finally, the bill authorizes the proceeds of any transfer to be expended as provided in the transfer agreement for specified purposes.[27]

Transfer of system

Under the bill, the state may enter into an agreement with JobsOhio to transfer all or a portion of the enterprise acquisition project for a transfer price payable by JobsOhio to the state. "Enterprise acquisition project" means, as applicable, all or any portion of the capital or other assets of the Liquor Control Commission or the Division of Liquor Control, including inventory, real property rights, equipment, furnishings, the spirituous liquor distribution system, the monetary management system, warehouses, contract rights, rights to take assignment of contracts and related receipts and revenues, accounts receivable, the exclusive right to manage and control spirituous liquor distribution and sales and to sell spirituous liquor in the state subject to the control of

[26] It is unclear to what contracts the bill refers in the provision concerning revenue resulting from any contracts with the Department of Commerce pertaining to the responsibilities and operations described in the Liquor Control Law that is to be credited to the Liquor Control Fund.

[27] It is unclear how the bill's provisions regarding the transfer of the spirituous liquor distribution system to JobsOhio coordinate with current law.

the Division of Liquor Control pursuant to the terms of the transfer agreement, and all necessary appurtenances thereto, or leasehold interests therein, and the assets and liabilities of the existing Facilities Establishment Fund. "Transfer" means an assignment and sale, conveyance, granting of a franchise, lease, or transfer.

Any transfer of the enterprise acquisition project must be treated as an absolute conveyance and true sale of the interest in the enterprise acquisition project purported to be conveyed for all purposes, and not as a pledge or other security interest. The characterization of any such transfer as a true sale and absolute conveyance cannot be negated or adversely affected by any of the following:

(1) The acquisition or retention by the state of a residual interest in the enterprise acquisition project;

(2) The participation of any state officer or employee as a member or officer of, or provision of staff support to, JobsOhio;

(3) Any responsibility an officer or employee of the state may have to collect amounts to be received by JobsOhio from the enterprise acquisition project; or

(4) The retention of the state of any legal title to or interest in any portion of the enterprise acquisition project for the purpose of these collection activities, or any characterization of JobsOhio or obligations of JobsOhio under accounting, taxation, or securities regulations, or any other reason whatsoever.

Upon and following the transfer, the state cannot have any right, title, or interest in the enterprise acquisition project other than any residual interest that may be described in the transfer agreement. The fair market value of the enterprise acquisition project in the transfer agreement must be conclusive and binding on the state and JobsOhio.

Any transfer of the enterprise acquisition project that is a lease or grant of a franchise must be for a term not to exceed 25 years. Any transfer of the enterprise acquisition project that is an assignment and sale, conveyance, or other transfer must contain a provision that the state must have the option to purchase back, or have conveyed or transferred back to, the enterprise acquisition project, as it then exists, no later than 25 years after the original transfer authorized in the transfer agreement on such terms as must be provided in the transfer agreement.

Any real or personal property of JobsOhio that is acquired, leased, or subleased under the bill and the purchase and sale of that property must be exempt from value-added, sales, use, and franchise taxes and to zoning, planning, and building regulations and fees to the same extent and in the same manner as if title to that property was in the

name of the Division of Liquor Control. In addition, all income of JobsOhio must be exempt from taxation in Ohio to the same extent and in the same manner as if received by the Division.

Proceeds of transfer

Under the bill, the proceeds of any transfer may be expended as provided in the transfer agreement for any of the following purposes:

(1) Funding, payment, or defeasance of outstanding bonds issued pursuant to the laws governing various state and local capital improvements and economic development and secured by a pledge of spirituous liquor profits. "Spirituous liquor profits" means all receipts of the state representing the gross profit on the sale of spirituous liquor after paying all costs and expenses of JobsOhio and the Division of Liquor Control and providing an adequate working capital reserve for JobsOhio and the Division as provided in current law, but excluding the sum required by the law that was in effect on May 2, 1980, that required $2.25 for each gallon of spirituous liquor sold by the state to be credited to the General Revenue Fund.

(2) Deposit into the General Revenue Fund;

(3) Deposit into all of the following existing funds: Clean Ohio Revitalization Fund, Innovation Ohio Loan Fund, Research and Development Loan Fund, Logistics and Distribution Infrastructure Fund, Advanced Energy Research and Development Fund, and Advanced Energy Research and Development Taxable Fund;

(4) Conveyance to JobsOhio for the purposes for which it was created.

Other provisions

The bill allows the state to covenant, pledge, and agree in the transfer agreement, with and for the benefit of JobsOhio, that it must maintain statutory authority for the enterprise acquisition project and the revenues of the project and not otherwise materially impair any obligations supported by a pledge of revenues of the project. The transfer agreement may provide or authorize the manner for determining material impairment of the security for any such outstanding obligations, including by assessing and evaluating the revenues of the enterprise acquisition project.

The Governor, Director of Development, Director of Commerce, and Director of Budget and Management may take any action and execute any documents, including any transfer agreements, necessary to effect the transfer and the acceptance of the transfer of the enterprise acquisition project. The Director of Budget and Management, Director of Commerce, and Director of Development also, without need for any other

approval, may retain or contract for the services of specified persons such as financial advisers to assist in the transfer agreement. Any transfer agreement may contain terms and conditions established by the state to carry out and effectuate the transfer, including covenants binding the state in favor of JobsOhio. The transfer agreement must be sufficient to effectuate the transfer without regard to any other laws governing other property sales or financial transactions by the state.

Under the bill, the transfer agreement may authorize JobsOhio to sell, lease, release, or otherwise dispose of real and personal property or interests in that property, or any combination of those activities, acquired by JobsOhio and no longer needed for the purposes of the Liquor Control Law or JobsOhio. The transfer agreement also may authorize JobsOhio to grant such easements and other interests and rights in, over, under, or across all or a portion of the enterprise acquisition project as will not interfere with its use of the real and personal property. The sale, lease, release, disposition, or grant may be made without competitive bidding and in a manner and consideration that JobsOhio in its judgment deems appropriate.

The transfer agreement may authorize JobsOhio to fix, alter, and collect rentals and other charges for the use and occupancy of all or any portion of the enterprise acquisition project. The agreement also may authorize JobsOhio to lease all or a portion of the enterprise acquisition project to others, including a contract with, or the granting of an option to, the state or the lessee to purchase the project for either of the following:

(1) A price determined by JobsOhio to be appropriate; or

(2) A price determined in accordance with the terms of the transfer agreement after retirement or redemption, or provision for that retirement or redemption, of all obligations supported by a pledge of spirituous liquor profits.

JobsOhio, the Director of Budget and Management, the Director of Commerce, and the Director of Development also may, without need for any other approval, enter into a contract, which may be part of the transfer agreement, establishing terms and conditions for the assignment of certain duties to, and the provision of advice, services, and other assistance by, the Division of Liquor Control to JobsOhio with respect to the operation of the enterprise acquisition project. The terms and conditions may include providing for the necessary staffing and payment by JobsOhio of appropriate compensation to the Division for the performance of those duties and the provision of such advice, services, and other assistance.

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

- Requires the Counselor, Social Worker, and Marriage and Family Therapist Board to establish fees for issuing a replacement copy of any wall certificate issued by the Board, approving continuing education programs, and approving providers of continuing education programs.

Fees charged by the Board

(R.C. 4757.31)

The bill requires the Counselor, Social Worker, and Marriage and Family Therapist Board to establish fees for (1) approval of continuing education programs, (2) approval of continuing education providers to be authorized to offer continuing education programs without prior approval from the Board for each program offered, and (3) issuance of a replacement copy of any wall certificate issued by the Board. A rule adopted by the Board defines a provider granted approval for the purposes described in (2), above, as "provider status."[28]

Like most of the fees the Board establishes under current law, the fees described above are nonrefundable, must be in amounts sufficient to cover the Board's necessary expenses in administering the statutes and rules governing the persons regulated by the Board, and may be adjusted from time to time.

DEPARTMENT OF DEVELOPMENT (DEV)

- Eliminates the prevailing wage requirements that apply to certain economic development projects.

- Removes the requirement that an applicant have at least 30% funding from one or more financial institutions or other governmental entities as a requisite criterion for receipt of a loan from the Director of Development to minority business enterprises and others.

- Repeals the limit on payments of Third Frontier Commission's administrative expenses from the Biomedical Research and Technology Transfer Trust Fund, but

[28] O.A.C. 4757-9-05(A)(1).

allows payments for award administration expenses through June 30, 2013, for awards made before the bill's effective date.

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

Payment of prevailing wage on economic development projects

(R.C. 122.0818, 122.452, 165.031, 1551.13, 3706.042, 4115.032, and 4981.23 (all repealed); R.C. 166.02, 1551.33, 1728.07, and 4116.01)

The bill removes the prevailing wage requirements that apply to the following:

(1) Projects receiving grants under the Job Ready Site Program administered by the Department of Development (R.C. 122.085 to 122.0820);

(2) Industrial, distribution, commercial, and research projects receiving financial assistance from the Department pursuant to R.C. Chapter 122.;[29]

(3) Projects involving the acquisition, construction, improvement, or equipping of property for industry, commerce, distribution, or research under R.C. Chapter 165.;

(4) Eligible projects receiving economic development assistance from the Department under R.C. Chapter 166.;[30]

(5) Energy resource development projects or facilities supported by the Department pursuant to R.C. Chapter 1551.;

(6) Projects undertaken by community urban redevelopment corporations in conjunction with municipal corporations under R.C. Chapter 1728.;

(7) Air quality projects financed by the Ohio Air Quality Development Authority under R.C. Chapter 3706.; and

[29] The financial assistance for these projects includes loans to minority business enterprises and loan guarantees to small businesses (R.C. 122.80, not in the bill).

[30] Projects eligible for such assistance include innovation projects, research and development projects, advanced energy projects, and logistics and distribution projects.

(8) Rail service projects receiving financial assistance from the Ohio Rail Development Commission pursuant to R.C. 4981.11 to 4981.26.

The existing prohibition against imposing certain labor requirements on contractors or subcontractors awarded public improvement contracts continues to apply to the projects described above. Those unlawful labor requirements include, for example, mandating that the employees of the contractor or subcontractor become members of a labor organization.

Department of Development funding to minority business enterprises and others

(R.C. 122.76)

The Director of Development, with Controlling Board approval, may lend funds to minority business enterprises and other specified entities that meet specified criteria. One criterion is that the value of the project is or, upon completion, will be at least equal to the total amount of the money expended in 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. The bill removes the requirement that an applicant for a loan have at least 30% funding from financial institutions or other governmental entities.

Biomedical Research and Technology Transfer award administration

(R.C. 183.30)

The bill repeals the 5% limit on payments related to the Third Frontier Commission's administration of awards from the Biomedical Research and Technology Transfer Trust Fund. The bill specifies that, for awards made from the Fund before the bill's effective date, payments for award administration expenses may continue through June 30, 2013. The Commission last made an award from the Fund in 2009, and award periods range from three to five years.

Loan guarantees for historic rehabilitation projects

(Section 521.80 and 801.20)

The bill authorizes the Director of Development to try to obtain up to $75 million in federal economic stimulus funds and to make the funds available to secure and guarantee loans made for historic building rehabilitation projects that have been approved for an Ohio historic rehabilitation tax credit (see R.C. 149.311). The federal funds would be any funds available under the federal American Recovery and Reinvestment Act of 2009 or any other federal source of money that may lawfully be

applied to that purpose. Any such funds obtained by the Director must be credited to the Ohio Historic Preservation Tax Credit Fund created by the bill.

If the Director is successful in obtaining federal funds, the Director then must enter into loan guarantee contracts under the same general provisions governing Chapter 166 loan guarantees (R.C. 166.06, as authorized by Section 13, Article VIII, Ohio Constitution), except that the guarantee is secured solely by money in the Ohio Historic Preservation Tax Credit Fund instead of the existing Chapter 166 Loan Guarantee Fund. The loan guarantee amount for any project may not exceed the tax credit amount. Rehabilitation projects approved in the first round of rehabilitation tax credit awards would have first priority for loan guarantees.

DEPARTMENT OF DEVELOPMENTAL DISABILITIES (DMR)

- Repeals a provision that requires funds appropriated for purposes of fulfilling the state's obligations under the consent order filed in *Martin v. Strickland*, which required the state to make a good faith effort to expand home and community-based services for persons with disabilities, to be in an appropriation item that authorizes expenditures only for purposes of fulfilling those obligations.

- Increases to 22 (from 21) the age at which an individual ceases to qualify for programs established by the Director of the Ohio Department of Developmental Disabilities (ODODD) for individuals with intensive behavioral needs.

- Specifies additional purposes for which the ODODD Director may use its funds and requires money in the Community Developmental Disabilities Trust Fund to be used for those purposes.

- Permits the Director to establish priorities for using funds appropriated to ODODD.

- Authorizes the ODODD Director to establish an Interagency Workgroup on Autism.

- Eliminates obsolete laws governing ODODD's former Purchase of Service Program for residential services.

- Permits ODODD to enter into a contract with a person or government agency to provide residential services to individuals with mental retardation or developmental disabilities in need of residential services.

- Permits the ODODD Director to authorize innovative pilot projects that are likely to assist in promoting the objectives of state law governing ODODD and county boards of developmental disabilities (county DD boards).

- Repeals an obsolete law that permitted certain residential facilities for persons with mental retardation and developmental disabilities to obtain a license without providing ODODD a copy of a development plan for the proposed residential facility that had been approved by a county board of developmental disabilities.

- Repeals a provision that requires ODODD to provide or arrange for the provision of residential services for (1) former residents of institutions under ODODD's jurisdiction who ceased to be residents because of an institution's closure or significant reduction in occupancy, and (2) an equal number of individuals, from each county represented by the former residents, who need residential services but are not receiving them.

- Eliminates the statutory requirements governing the waiting lists that county DD boards establish for services and instead requires the ODODD Director to establish the requirements in rules.

- Eliminates a requirement that the ODODD Director's rules regarding programs and services that county DD boards offer include standards for providing (1) environmental modifications and (2) specialized medical, adaptive, and assistive equipment, supplies, and supports.

- Eliminates a requirement that county boards of developmental disabilities annually certify to the Director of Developmental Disabilities the average daily membership in various programs and the number of children enrolled in approved preschool units.

- Removes a requirement that the ODODD Director adopt rules establishing a formula for the distribution of Family Support Services funds to county DD boards of developmental disabilities and instead provides, in temporary law for fiscal years 2012 and 2013, that the Director is to consult with county DD boards to establish the formula.

- Provides that, in fiscal years 2012 and 2013, the ODODD Director may provide funds to county DD boards for the purpose of addressing economic hardships and to promote efficiency of operations.

- Prescribes new formulas for allocating among county DD boards tax equity payments used for the provision of adult services.

Separate appropriation item – funds to fulfill *Martin v. Strickland* consent order

(R.C. 126.04 (repealed))

The bill repeals a provision, enacted by the main appropriations act of the 127th General Assembly (Am. Sub. H.B. 119), that requires funds appropriated for purposes of fulfilling the state's obligations under the consent order filed in *Martin v. Strickland* to be in an appropriation item that authorizes expenditures only for purposes of fulfilling those obligations.

The *Martin v. Strickland* case was brought by persons seeking to give individuals with mental retardation or developmental disabilities the ability to choose community-based, integrated residential services over placement in institutional care, such as a nursing facility. Included in the settlement was a requirement that the Ohio Department of Developmental Disabilities (ODODD) and the Ohio Department of Job and Family Services (ODJFS) request funding for an additional 1,500 slots for the Individual Options Medicaid waiver program in the state budget for fiscal years 2008 and 2009. Another requirement was for the ODODD to conduct surveys of residents of state-run developmental centers and private and county-owned intermediate care facilities for the mentally retarded to determine which residents preferred home and community-based services, if available.

Age limit for intensive behavioral needs programs

(R.C. 5123.0417)

The bill expands eligibility for programs established by the ODODD Director for individuals with intensive behavioral needs by increasing to 22 (from 21) the age at which an individual ceases to qualify for such programs. Currently, the Director must establish one or more programs for such individuals. The programs may do any of the following:

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

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

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

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

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

Additional purposes for using ODODD funds

(R.C. 5123.0418, 5123.352, and 5126.19)

The bill repeals a provision that specifies the reasons for which the ODODD Director is permitted to grant temporary funding from the Community Developmental Disabilities Trust Fund. Instead, the bill generally permits the Director to use funds appropriated to ODODD for any of the following purposes, some of which applied to the Community Developmental Disabilities Trust Fund, in addition to any other purpose authorized under current law:

(1) All of the following to assist persons with mental retardation and developmental disabilities remain in the community and avoid institutionalization: (a) behavioral and short-term interventions, (b) residential services, and (c) supported living;

(2) Emergency respite care services provided under the Family Support Services Program;

(3) Staff training to help the following personnel serve persons with mental retardation and developmental disabilities in the community: (a) employees of, and personnel under contract with, county boards of developmental disabilities (county DD boards), (b) employees of providers of supported living, (c) employees of providers of residential services, and (d) other personnel the Director identifies.

The bill permits the Director to establish priorities for using funds for these purposes, but requires that the funds be used in a manner consistent with the appropriations that authorize the Director to use the funds and all other state and federal laws governing the use of the funds.

Interagency Workgroup on Autism

(R.C. 5123.0419 (primary) and 3323.31)

The bill permits the ODODD Director to establish an Interagency Workgroup on Autism for the purpose of improving the coordination of Ohio's efforts to address the service needs of individuals with autism spectrum disorders and the families of those

individuals. The Director is permitted to enter into interagency agreements that specify any of the following:

(1) The roles and responsibilities of government entities that enter into the agreements;

(2) Procedures regarding the receipt, transfer, and expenditure of funds necessary to achieve the goals of the Workgroup;

(3) The projects to be undertaken and activities to be performed by the government entities that enter into the agreements.

Money received from the participating government entities must be deposited in the Interagency Workgroup on Autism Fund, which the bill creates. Money in the fund must be used by ODODD solely to support the Workgroup's activities.

Purchase of Service Program

(R.C. 5123.18 (primary), 3721.01, 5123.01, 5123.051, 5123.171, 5123.172, 5123.191, 5123.194, 5123.211, and 5126.04)

The bill eliminates the laws governing the Purchase of Service Program that is no longer administered by ODODD. These laws specify the procedures that were to be used in entering into contracts with various types of providers who offered residential services to individuals with mental retardation and developmental disabilities.

ODODD's residential services contracts

(R.C. 5123.18)

The bill permits ODODD to enter into a contract with a person or government agency to provide residential services to individuals with mental retardation or developmental disabilities in need of residential services. The bill specifies that to be eligible to enter into a contract with ODODD, a person or government entity and the home in which the residential services are provided must meet all applicable standards for licensing or certification by the appropriate government entity.

ODODD innovative pilot projects

(R.C. 5123.0420)

The bill permits the ODODD Director to authorize innovative pilot projects that are likely to assist in promoting the objectives of state law governing ODODD and county DD boards. The Director must specify the period of time for which a pilot

project is to be implemented. The period of time must include a reasonable period for an evaluation of the pilot project's effectiveness.

The bill permits a pilot project to be implemented in a manner inconsistent with the laws or rules governing ODODD and county DD boards; however, the bill prohibits the Director from authorizing a pilot project to be implemented in a manner that would cause Ohio to be out of compliance with any requirements for a program funded in whole or in part with federal funds.

Repeal of obsolete residential facility licensure law

(R.C. 5123.193 (repealed), 5111.21, 5111.211, 5123.19, and 5123.45)

The bill repeals an obsolete law enacted by Am. Sub. H.B. 1 of the 128th General Assembly that permitted certain residential facilities for persons with mental retardation and developmental disabilities to obtain a license without providing ODODD a copy of a development plan for the proposed residential facility that had been approved by a county board of developmental disabilities. The law became obsolete because the deadline for submitting the license application occurred in February 2010.

Residential services for former ODODD institution residents and unserved individuals

(R.C. 5123.211 (repealed))

The bill repeals a provision that requires ODODD to provide or arrange for the provision of residential services[31] for both of the following:

(1) Former residents of institutions under ODODD's jurisdiction who ceased to be residents because of (a) the institution's closure, or (b) the institution's population being reduced 40% or more in a period of one year.

(2) An equal number of individuals, from each county represented by the former residents, who need residential services but are not receiving them.

Under the bill, then, former residents of institutions and the other individuals described above, will no longer receive the following residential services provided or arranged for by ODODD.

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[31] "Residential services" are services necessary for an individual with mental retardation or a developmental disability to live in the community, including room and board, clothing, transportation, personal care, habilitation, supervision, and any other services ODODD considers necessary for the individual to live in the community (R.C. 5123.18(A)(3)).

County DD boards' waiting lists

(R.C. 5126.042 (primary), 5111.872, 5126.054, 5126.08, and 5126.41)

The bill requires the ODODD Director to establish in rules the requirements governing the waiting lists for services provided by county DD boards and eliminates the current statutory requirements for the waiting lists. The current statutory requirements specify which individuals may be placed on waiting lists, the types of waiting lists that may be established by the county DD boards, priority that should be given to an individual on a waiting list, and that each county DD board is to submit a biennial report regarding the funding of the services and ways to reduce the waiting lists.

The bill specifies that the Director's rules are to include procedures to be followed to ensure that the due process rights of individuals on a waiting list are not violated. The bill also specifies that both of the following take precedence over the rules adopted by the Director: (1) Medicaid rules and regulations and (2) any specific requirements that may be contained within a Medicaid state plan amendment or waiver program that a county DD board has authority to administer or with respect to which it has authority to provide services. The bill permits the rules to include standards for determining which individuals on a waiting list should have priority for a service for which the waiting list is established.

Elimination of certain ODODD rule-making requirements

(R.C. 5126.08)

The bill eliminates a requirement that the ODODD Director's rules regarding programs and services that county DD boards offer include standards for providing (1) environmental modifications and (2) specialized medical, adaptive, and assistive equipment, supplies, and supports.

County DD boards' average daily membership reports

(R.C. 5126.12 (primary), 3323.09, and 5126.05)

The bill eliminates a requirement that county boards of developmental disabilities annually certify to the ODODD Director (1) the average daily membership in various programs, and (2) the number of children enrolled in approved preschool units. The bill retains a requirement that the boards certify to the Director all of the boards' income and operating expenditures for the immediately preceding calendar year and provide the expenditures in an itemized report prepared and submitted in the format specified by ODODD.

Formula for distributing Family Support Services funds

(R.C. 5126.11 (primary) and 5126.0511; Section 263.10.30)

The bill removes current law's requirement that the ODODD Director adopt rules establishing a formula for the distribution of Family Support Services funds to county DD boards. Under the Family Support Services Program, payments are made to an individual with mental retardation or other developmental disability, or the family of the individual, for the purpose of supporting the individual in the family home rather than in an institutionalized setting. Current law requires the ODODD Director to implement the program, including a formula for distributing to county DD boards the money appropriated for family support services. Current law establishes a set schedule for payment of funds, requires that no more than 7% of the funds be used for administrative costs, and that each county DD board submit reports to ODODD on the payments.

In place of the rulemaking procedures for establishing a distribution formula, the bill provides that, for fiscal years 2012 and 2013, the ODODD Director is to develop the formula in consultation with the county DD boards. County DD boards are still prohibited from using more than 7% of the funds for administrative costs and are still required to submit reports to ODODD on the use of the funds. A schedule for the payments is not specified.

In addition to using the funds for Family Support Services, permits the ODODD Director to distribute the funds to county DD boards for the purpose of addressing economic hardships and to promote efficiency of operation. The Director is to consult with the boards to determine the amount of funds used for these purposes and criteria for distribution.

Tax equity payments

(R.C. 5126.18)

Overview

The bill prescribes new formulas for allocating among county DD boards tax equity payments. The formula specified in current law has not been used for at least the last two biennia.[32]

[32] *See* Section 337.30.70 of Am. Sub. H.B. 1 of the 128th General Assembly and Section 337.30.43 of Am. Sub. H.B. 119 of the 127th General Assembly.

The first new formula is one that is to apply under most circumstances. The other two formulas are ones that are to apply only when certain conditions exist. Therefore, they are the exceptions to the general formula.

Use of payments

(R.C. 5126.18(E))

Generally, the bill restricts county DD boards to using tax equity payments solely to pay the nonfederal share of Medicaid expenditures it is required to pay under current law for (1) home and community-based services and (2) case management services. The bill prohibits tax equity payments from being used to pay any salary or other compensation to county board personnel.

However, on the written request of a county DD board, the ODODD Director may authorize the board to use tax equity payments for infrastructure improvements necessary to support Medicaid waiver administration.

Eligibility for payments

(R.C. 5126.18(C))

The bill requires that beginning on or before May 31, 2011, and on or before May 31 of every second year thereafter, the ODODD Director must determine whether a county is eligible to receive tax equity payments for the ensuing two fiscal years. In determining eligibility, the Director must do both of the following:

(1) Determine the six-month moving average,[33] population,[34] and yield per person[35] of each county in Ohio, based on the most recent information available.

(2) Calculate a tax equity funding threshold by adding the population of the county with the lowest yield per person and the populations of the individual counties in order from lowest yield per person to highest yield per person until the addition of the population of another county would increase the aggregate sum to over 30% of the total state population.

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[33] "Six-year moving average" means the average of the per-mill yields of a county for the most recent six years (R.C. 5126.18(A)(4)).

[34] "Population" of a county means that shown by the federal census for a census year or, for a noncensus year, the population as estimated by the Department of Development (R.C. 5126.18(A)(3)).

[35] "Yield per person" means the quotient obtained by dividing the six-year moving average of a county by the population of that county (R.C. 5126.18(A)(5)).

A county is eligible to receive tax equity payments for the two-year period if its population is included in the calculation of the threshold and the addition of its population does not increase such sum to over 30% of the total state population.

Certification of the taxable value of property

(R.C. 5126.18(B))

At the request of the ODODD Director, the bill requires the Tax Commission to certify to the Director the taxable value of property on each county's most recent tax list of real and public utility property. The Director may request any other tax information necessary for the purposes of implementing the law governing the allocation of tax equity payments.

General formula for allocating payments

(R.C. 5126.18(D))

Except when certain conditions exist, beginning in fiscal year 2012 and each fiscal year thereafter, the ODODD Director must make tax equity payments to each eligible county according to a general formula for determining the allocation of such payments. Under the general formula, the Director must make payments to an eligible county in an amount equal to the population of the county multiplied by the difference between the yield per person of the threshold county and the yield per person of the eligible county. For purposes of this formula, the population and yield per person of a county are equal to the population and yield per person most recently determined for that county.

The payments must be made in quarterly installments of equal amounts not later than September 30, December 31, March 31, and June 30 of each fiscal year.

Exceptions to the general formula

First alternative formula – $20,000 range

The general formula for determining tax equity payments does not apply for fiscal years 2012 through 2014 if, in fiscal year 2012, the amount determined pursuant to the general formula is at least $20,000 greater, or $20,000 less, than the amount of tax equity payments the county received in fiscal year 2011. Instead, the county's tax equity payments for fiscal year 2012 through 2014 equal the following:

- For fiscal year 2012, one-fourth of the amount calculated for the eligible county under the general formula plus three-fourths of the amount of tax equity payments the county received in fiscal year 2011.

- For fiscal year 2013, one-half of the amount calculated for the eligible county under the general formula plus one-half of the amount of tax equity payments the county received in fiscal year 2011.

- For fiscal year 2014, three-fourths of the amount calculated for the eligible county under the general formula plus one-fourth of the amount of tax equity payments the county received in fiscal year 2011.

Second alternative formula – tax equity payments are greater than amount appropriated to ODODD

The general formula or the first alternative formula for determining tax equity payments does not fully apply in any fiscal year if the total amount of tax equity payments for all eligible counties is greater than the amount appropriated to ODODD for the purpose of making such payments in that fiscal year. Instead, the bill requires the ODODD Director to reduce the payments to each eligible county DD board in equal proportion. If the total amount of tax equity payments as determined under the general formula or first alternative formula is less than the amount appropriated to ODODD for that purpose, the Director must determine how to allocate the excess money after consultation with the Ohio Association of County Boards Serving People with Developmental Disabilities.

No payments to regional councils

(R.C. 5126.18(D)(4))

The bill restricts the payment of tax equity payments to eligible county DD boards. No regional council or other entity is to receive such payments.

Audits

The bill authorizes the ODODD Director to audit any county DD board receiving tax equity payments to ensure appropriate use of the payments. If the Director determines that a board is using payments inappropriately, the Director must notify the board in writing of the determination. Within 30 days after receiving the Director's notification, the board must submit a written plan of correction to the Director. The Director may accept or reject the plan.

If the Director rejects the plan, the Director is authorized to require the board to repay all or a portion of the amount of tax equity payments used inappropriately. The Director is required to distribute any tax equity payments returned to other eligible county DD boards in accordance with a plan developed by the Director after consultation with the Ohio Association of County Boards Serving People with Development Disabilities.

COMMISSION ON DISPUTE RESOLUTION & CONFLICT MANAGEMENT (CDR)

- Repeals the Dispute Resolution and Conflict Management Law.
- Abolishes the 12-member Ohio Commission on Dispute Resolution and Conflict Management and terminates the positions of Executive Director and personnel of the Commission.
- Abolishes the Dispute Resolution and Conflict Management Commission Gifts, Grants, and Reimbursements Fund in the state treasury.

Repeal of Dispute Resolution and Conflict Management Law

(R.C. 179.01, 179.02, 179.03, and 179.04)

Abolition of Commission on Dispute Resolution and Conflict Management

The bill repeals the Dispute Resolution and Conflict Management Law. It abolishes the Ohio Commission on Dispute Resolution and Conflict Management, consisting of 12 members. The purpose of the Commission under existing law is to provide, coordinate, fund, and evaluate dispute resolution and conflict management education, training, and research programs in Ohio, and to consult with, educate, train, provide resources for, and otherwise assist and facilitate other persons and public or private agencies, organizations, or entities that are engaged in activities related to dispute resolution and conflict management. The members of the Commission serve without compensation, but each member is reimbursed for actual and necessary expenses incurred in the performance of official duties and actual mileage for each mile necessarily traveled in the performance of official duties.[36]

Among the duties of the Commission under existing law are to adopt rules to govern the application for, and the awarding of, grants made available by the Commission out of the Dispute Resolution and Conflict Management Commission Gifts, Grants, and Reimbursements Fund (see below); to apply for grants to provide for the operation of dispute resolution and conflict management programs (see definition below; hereafter "DRCM programs") and adopt standards for the evaluation of funded DRCM programs; and to provide technical aid and assistance to DRCM programs and

[36] R.C. 179.02.

to public and private agencies and organizations that provide these programs or engage in dispute resolution and conflict management services.[37]

Abolition of Dispute Resolution and Conflict Management Commission Gifts, Grants, and Reimbursements Fund

The bill abolishes the Dispute Resolution and Conflict Management Commission Gifts, Grants, and Reimbursements Fund currently established in the State Treasury. All donations, grants, awards, bequests, gifts, reimbursements, and similar funds received by the Commission are deposited in the Fund under existing law.[38]

Termination of Commission's Executive Director and other personnel positions

The bill terminates the positions of Executive Director appointed by the Commission and all personnel appointed by the Executive Director. Existing law requires the Executive Director to appoint and set the compensation of personnel necessary for the efficient operation of the Commission office, to maintain financial records pertaining to the awarding of grants and contracts, and to report to the Commission on all relevant data pertaining to the operations, costs, and projected needs of the Commission office and on recommendations for legislation or amendments to court rules that may be appropriate to improve DRCM programs.[39]

Definitions under existing law

Existing law defines the following:[40]

"Dispute resolution and conflict management" includes any process that assists persons with a dispute or a conflict to resolve their differences without further litigation, prosecution, civil unrest, economic disruption, or violence.

"Dispute resolution and conflict management program" means any or both of the following:

(1) A program that provides or encourages dispute resolution and conflict management, including, but not limited to, a program that provides or encourages mediation or conciliation, a mini-trial program, a summary jury trial, or nonbinding

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[37] R.C. 179.03(A).

[38] R.C. 179.03(C).

[39] R.C. 179.04(A).

[40] R.C. 179.01.

arbitration. The program may serve the legal community, business community, public sector, private sector, or private individuals, or any combination of them, and its scope may include disputes and conflicts in the domestic context, international context, or both.

(2) A program that provides education or training, in the primary and secondary schools and colleges and universities of Ohio and in other appropriate educational forums, about the elimination, prevention, resolution, and management of disputes and conflicts in the domestic and international context.

DEPARTMENT OF EDUCATION (EDU)

School funding

- Repeals the current school funding model (unofficially known as the "Evidence Based Model" or "EBM"), including its provisions for spending rules and enforcement.

- As a temporary system to fund school districts for fiscal years 2012 and 2013, requires the Department of Education to compute and pay each city, exempted village, and local school district, an amount based on the district's per pupil amount of funding paid for fiscal year 2011, adjusted by its share of a statewide per pupil amount, and indexed by the district's relative tax valuation per pupil.

- Sets the formula amount at $5,653 for transfer payments for students attending community schools, STEM schools, other districts through open enrollment, and colleges and universities through the Post-Secondary Enrollment Options Program.

- Discontinues the practice of using the prior year's October student count unless the current year's October count is 2% greater and, instead, requires use of the current-year October count to derive a district's formula ADM.

- Retains the EBM's feature of counting each kindergarten student as one full-time equivalent student.

- Retains and recodifies the special education funding weights and categories from the EBM.

- For fiscal years 2012 and 2013, requires use of the former weights and categories for computing special education transfer payments to community schools, STEM schools, and other school districts for excess special education cost or for state payments for catastrophic costs.

- Retains and recodifies the current transportation funding formula (enacted at the same time as the EBM), but suspends its operation for fiscal years 2012 and 2013.

- Retains the fiscal year 2009 per pupil level of payments for community schools and STEM schools for special education, vocational education, poverty-based assistance, and parity aid.

- Eliminates the School Funding Advisory Council.

- Eliminates the current prohibition on the distribution of state operating funds to school districts without Controlling Board approval.

- Limits operating payments to an island district to the lesser of its actual cost or 93% of its fiscal year 2011 state payment amount.

- Makes other miscellaneous school funding changes.

School expenditure data

- Requires the Department of Education to develop, by January 1, 2012, and the State Board of Education to adopt, by July 1, 2012, standards for determining the amount of operating expenditures for classroom instruction and for nonclassroom purposes spent by a school district, community school, or STEM school.

- Requires the Department to use the expenditure reporting standards and existing data to rank each district, community school, and STEM school according to percentage of operating expenditures for classroom instruction.

- Requires the Department to denote, within the classroom expenditure rankings, districts and schools that are (1) among the lowest 20% statewide in total operating expenditures per pupil or (2) among the highest 20% statewide in academic performance index or career-technical performance measures.

- Requires the Department, annually, to report each district's, community school's, and STEM school's rank according to (1) performance index score, (2) student performance growth, (3) career-technical performance measures, (4) expenditures per pupil, and (5) percentage of expenditures for classroom instruction.

Community schools

- Eliminates the requirement that a new start-up "brick and mortar" community school, as a condition of opening, must contract with an operator that either manages schools in other states that perform at a level higher than academic watch

or, if the operator already manages Ohio schools, manages at least one Ohio school rated higher than academic watch.

- Repeals the moratorium on the establishment of new Internet- or computer-based community schools (e-schools).

- Specifies that if a community school is in academic watch or academic emergency on the immediate effective date of the bill, the school's sponsor may not sponsor any additional community schools and the school's operator, if it has one, may not operate any additional community schools.

- Repeals outdated provisions of the Community School Law.

- Repeals the requirement that Internet- or computer-based community schools (e-schools) spend a specified minimum amount per pupil on instruction.

- Requires a school district board to offer a right of first refusal to community schools located within the district whenever the board decides to lease out real property suitable for classroom use or other educational purposes.

- Permits a community school to enter into an agreement with one or more school districts or other community schools for the joint operation of an educational program, in the same manner as school districts may do under continuing law.

- Prohibits community schools from charging tuition or fees for their students participating in the joint program (unlike school districts under continuing law).

Scholarship programs

- Increases the number of Educational Choice scholarships from 14,000 to 30,000 for the 2011-2012 school year and 60,000 thereafter.

- Qualifies students who attend, or would otherwise be assigned to, a district-operated school that, for at least two of the three preceding years, ranked in the lowest 10% of all school buildings by performance index score and was not rated excellent or effective in the third year.

- Assigns a lower priority to students who qualify for the Educational Choice scholarship because their district school is ranked in the lowest 10% of all school buildings by performance index score.

- Requires the Department of Education to hold a second, 60-day application period for the 2011-2012 school year to award newly authorized Educational Choice scholarships.

- Reduces the amount deducted from school districts' state aid accounts for an Educational Choice Scholarship, from $5,200, to the actual amount of the scholarship.

- Specifies that the services provided under the Autism Scholarship Program must include an educational component.

Educational service centers

- Requires every city, exempted village, and local school district with a student count of 16,000 or less to enter into an agreement with an educational service center (ESC) for services.

- Permits, but does not require, every school district with a student count greater than 16,000 to enter into an agreement with an ESC for services.

- Permits a school district to terminate its agreement with its current ESC, effective June 30 of any year, by notifying the ESC governing board by January 1.

- If the aggregate student count of the districts that plan to terminate agreements with their current ESC makes up at least 30% of the ESC's "service center ADM," requires those districts, by January 1, to notify all other districts that receive services from the ESC, and permits any of the other districts to notify the ESC governing board, by May 31, that the district is terminating its agreement effective June 30.

- Requires the governing boards of ESCs affected by the termination of a service center agreement or the making of a new agreement by a "local" school district to take the necessary steps for the election of new members and for re-organization of the governing boards to reflect the change of the territories of those service centers caused by the termination or new agreement.

- Repeals the current steps a "local" school district must follow to leave the territory of its current ESC and annex to an adjacent ESC, including approval of the State Board of Education and referendum by petition of the district's voters.

- Authorizes ESCs to enter into service contracts with other political subdivisions, besides school districts.

- Eliminates ESCs' roles regarding local school districts' textbook selection and age and schooling certificates.

Teacher compensation

- Repeals the minimum salary schedule based on training and years of service that applies to teachers employed by school districts, educational service centers (ESCs), and county DD boards.

- Requires each school district, ESC, and county DD board to annually adopt a teachers' salary schedule that establishes a pay range for each of the four levels of teacher licensure: (1) resident or alternative resident educator licenses and temporary, associate, or provisional licenses, (2) professional educator licenses, (3) senior professional educator licenses, and (4) lead professional educator licenses.

- Requires each school district, ESC, and county DD board to determine each teacher's salary within the appropriate range based on evaluations, whether the teacher is "highly qualified" under federal law, and any other factors considered relevant.

- Prohibits increasing the salary of a veteran teacher whose salary is already higher than the maximum salary for the teacher's license, unless the teacher's salary falls below the maximum in the future.

- Permits a school district, ESC, or county DD board to adopt a salary schedule for substitute teachers and certain unlicensed teachers.

- Specifies that the bill's provisions regarding teacher salaries prevail over collective bargaining agreements entered into on or after the provisions' effective date.

Teacher and administrator termination and layoffs

- Eliminates the option for a teacher or administrator employed by a school district or educational service center to request that a hearing on the matter of the employee's termination be held before a referee, rather than the district or service center board.

- Eliminates the prohibition against holding a termination hearing during summer vacation without the teacher's consent.

- Prohibits the employee from both appealing the board's termination decision to the common pleas court *and* invoking the grievance procedure in any applicable collective bargaining agreement, and requires the employee to choose one of those processes.

- Requires school districts and educational service centers to consider quality of performance as the principal factor in determining the order of teacher layoffs.

- Requires a teacher's quality of performance to be measured by (1) the type of educator license held by the teacher, (2) whether the teacher is "highly qualified" under federal law, (3) evaluations, and (4) other criteria established by the employer, and permits consideration of seniority only after these other factors.

- Eliminates the requirement that, in rehiring tenured teachers when positions become available, the order of rehiring be based on seniority.

- Specifies that the provisions regarding teacher layoffs prevail over collective bargaining agreements entered into on or after the provisions' effective date.

Retesting teachers

- Requires the Department of Education annually to rank all school districts and all district-operated schools statewide by their performance index scores (PIS).

- Requires each teacher of a core subject area in a school district that is ranked in the lowest 10% on the PIS ranking to retake all exams needed for licensure in the teacher's subject area and grade level.

- Permits a school district to use the exam results in decisions regarding employment and professional development, but prohibits using the results as the sole factor in employment decisions unless the teacher has failed the same exam three consecutive times.

Restructuring schools

- Specifies that if a school is ranked in the lowest 5% on the PIS ranking for three consecutive years and is in academic watch or academic emergency, the school district must close the school or take one of several other specified actions to restructure the school.

Parent petitions for school reforms

- Specifies that upon petition from the parents of at least 50% of the students enrolled in a school that is ranked in the lowest 5% on the PIS ranking for three or more years, the school district that operates the school must implement the reform requested by the petitioners, except in certain circumstances.

Innovation schools and innovation school zones

- Allows a school district to designate a single school as an "innovation school," or a group of schools as an "innovation school zone," for the purpose of implementing an innovation plan designed to improve student performance.

- Requires the consent of a majority of the teachers and a majority of the administrators in each participating school to apply for the designation.

- Requires the State Board of Education to designate a district that approves an application as a "school district of innovation," which authorizes the implementation of the innovation plan, unless the plan is financially unfeasible or will result in decreased student achievement.

- Requires the State Board, with certain exceptions, to waive any education laws or administrative rules necessary to implement an innovation plan.

- Allows any provisions of a collective bargaining agreement to be waived to implement an innovation plan, if at least 60% of the members of the bargaining unit working in each participating school approve the waiver.

- Requires a school district to review the performance of each innovation school and innovation school zone every three years, and permits the district to revoke the designation if the participating schools are not making sufficient improvements in student achievement.

- Directs the Department of Education to issue an annual report on school districts of innovation.

School district operating standards

- Makes permissive, rather than mandatory, the State Board of Education's adoption of the additional operating standards for school districts.

Governor's recognition program

- Creates the Governor's Effective and Efficient Schools program to annually recognize the top 10% of all public (school districts, community schools, and STEM schools) and chartered nonpublic schools based on student performance and cost effectiveness.

Teacher Incentive Payment Program

- Establishes the Teacher Incentive Payment Program to pay $50 per-student stipends to English language arts and math teachers in grades 4 to 8 who work in a school district, community school, or STEM school and whose students achieve more than a standard year of academic growth.

- Creates the Teacher Incentive Payment Program Fund to consist of appropriations for the program.

Alternative and out-of-state licensure

- Changes the qualifications for obtaining and holding an alternative resident educator license by (1) eliminating the requirement for applicants to complete a pedagogical training institute, (2) prohibiting any requirement that applicants have a college major in the teaching area, and (3) allowing Teach for America participants to satisfy continuing education requirements with professional development provided through that program.

- Requires the State Board of Education, by July 1, 2013, to approve a list of states with licensure standards that are inadequate to ensure that a person with five years of licensure and teaching experience in that state is qualified for a professional educator license in Ohio.

- Directs the State Board to automatically issue a five-year professional educator license to a teacher with at least five years of licensure and teaching experience in a state that is not on the list.

- Requires generally that, until the list is approved, the State Board must issue a one-year provisional educator license to a teacher with at least five years of licensure and teaching experience in another state.

- Prohibits the State Board or Department of Education from having a reciprocity agreement with a state on the list requiring the issuance of a professional educator license to a teacher based on licensure and teaching experience in that state.

Criminal records checks of adult education instructors

- Eliminates the requirement for an adult education instructor to undergo a criminal records check prior to hiring by a school district, community school, STEM school, educational service center, or chartered nonpublic school, if the person had a records check within the previous two years as a condition of being hired for short-term employment with that district, school, or service center.

Repeal of the Evidence-Based Model and related funding provisions

(Repealed R.C. 3306.01, 3306.011, 3306.012, 3306.02, 3306.03, 3306.04, 3306.05, 3306.051, 3306.052, 3306.06, 3306.07, 3306.08, 3306.09, 3306.091, 3306.10, 3306.11, 3306.13, 3306.18, 3306.19, 3306.191, 3306.192, 3306.21, 3306.22, 3306.25, 3306.30, 3306.31, 3306.33, 3306.34, 3306.35, 3306.40, 3317.011, 3317.016, 3317.017, 3317.0216, 3317.04, 3317.17, 3318.312, 3329.16, and 3349.242; R.C. 319.301, 3301.07, 3301.16, 3301.162, 3302.031, 3302.05,

3302.07, 3307.31, 3307.64, 3309.41, 3309.48, 3309.51, 3310.08, 3310.41, 3311.06, 3311.19, 3311.21, 3311.29, 3311.52, 3311.76, 3313.29, 3313.55, 3313.64, 3313.6410, 3313.981,3314.08, 3314.087, 3314.088, 3314.091, 3314.10, 3315.01, 3316.041, 3316.06, 3316.20, 3317.01, 3317.013, 3317.014, 3317.018, 3317.02, 3317.021, 3317.022, 3317.023, 3317.024, 3317.025, 3317.0210, 3317.0211, 3317.0212, 3317.03, 3317.031, 3317.05, 3317.051, 3317.053, 3317.06, 3317.061, 3317.08, 3317.081, 3317.082, 3317.09, 3317.11, 3317.12, 3317.16, 3317.18, 3317.19, 3317.20, 3317.201, 3318.051, 3319.17, 3319.57, 3323.091, 3323.14, 3323.142, 3324.05, 3326.33, 3326.39, 3327.02, 3327.04, 3327.05, 3365.01, 3365.08, 5126.05, 5126.24, 5705.211, 5715.26, 5727.84, and 5751.20)

The bill repeals the current funding model for city, exempted village, and local school districts that was enacted in 2009 in H.B. 1 of the 128th General Assembly, unofficially known as the "Evidence Based Model" or "EBM." In its place, the bill enacts a temporary provision to provide funding to school districts based on a wealth-adjusted portion of their state operating funds for fiscal year 2011 under the EBM (see "**Temporary formula**" below).

Background on EBM

The repealed EBM does not use a per-pupil amount like the prior Building Blocks Model did but, instead, computes an aggregate of various personnel and nonpersonnel components, known as the "adequacy amount." The components of the adequacy amount are (1) instructional services support (including special education), (2) additional services support, (3) administrative services support, (4) operations and maintenance support, (5) gifted education and enrichment support, (6) technology resources support, (7) a professional development factor, and (8) an instructional materials factor.

Similar to the Building Blocks Model, the EBM subtracts a district charge-off from the adequacy amount to determine a district's state share (the amount paid with state funds). For fiscal years 2010 and 2011, the charge-off amount is 22 mills times the sum of either the district's tax valuation or its recognized valuation, if its effective tax rate is 20.1 mills or greater, plus a portion of the value of certain tax exempt property. Under the repealed provisions, the charge-off is scheduled to phase down over two fiscal biennia until it is fixed at 20 mills.[41] (The valuation used to compute a district's charge-off for fiscal year 2011 is used by the bill to determine a district's share of funding adjustments made under the temporary formula for fiscal years 2012 and 2013.)

[41] Repealed R.C. 3306.03 and 3306.13.

The EBM also makes separate payments outside of the state share of the adequacy amount for student transportation and career-technical education.[42]

Like the predecessor model, the EBM derives the components that go into the adequacy amount by first considering each district's student count. The overall cost of the model also is largely driven by a prescribed teacher compensation amount, which is used to compute many of the personnel-related components. That teacher compensation amount is adjusted for each district by its "educational challenge factor," which is a unique multiple, ranging from 0.76 to 1.65, assigned to each district based on the college attainment rate of the district's population, its wealth per pupil, and its concentration of poverty. Higher factors are assigned to districts with lower college attainment rates, lower wealth, and higher poverty. Thus, the amount computed under each component varies widely by district.[43]

As a transition from the Building Blocks Model, the EBM guarantees each district a state payment (before deductions for community schools, STEM schools, open enrollment students, scholarship students, and educational service centers) that is, for fiscal year 2010, at least 99% of its previous year's funding base and, for fiscal year 2011, at least 98% of its previous year's base. On the other hand, it also specifies that no school district for either fiscal year 2010 or 2011 may receive a gain in state funds over the previous year that is greater than 3/4 of 1% of the previous year's base.[44]

Enforcement rules and sanctions under the EBM

The EBM generally does not specify that a district must spend its funding for a particular component to achieve the student-to-personnel ratios used to compute that funding. It does, however, require a district to account for its spending of the amount computed for each component separately and to submit to the Department of Education an annual plan for the deployment of those funds.[45] In addition, the Superintendent of Public Instruction must adopt rules regulating both the reporting and the expenditure of EBM funds so that they "are directed toward the purposes for which they were calculated." The reporting rules could take effect as early as July 1, 2010, but the spending rules may not take effect before July 1, 2011, and both may take effect later. The spending rules must afford districts degrees of flexibility based on their current performance ratings, and districts rated "excellent" must be completely exempt from

[42] Repealed R.C. 3306.052 and 3306.12.

[43] Repealed R.C. 3306.051.

[44] Repealed R.C. 3306.19.

[45] Repealed R.C. 3306.05, 3306.06, 3306.07, 3306.08, 3306.09, 3306.091, 3306.10, and 3306.30.

those rules.[46] The Department is further required to impose graduated sanctions for a district that fails to submit an annual spending plan or to comply with the Superintendent's rules. The state Superintendent may waive compliance for up to five years at a time, upon application of a district, based on standards of the State Board of Education.[47] The EBM also includes specific spending requirements for services for gifted students and operating requirements for "closing the achievement gap" in certain low-performing districts.[48]

Like the EBM's funding components, all of these related enforcement provisions are repealed outright by the bill.[49] See also "**Abolishment of the School Funding Advisory Council**" below.

Temporary formula

(Section 267.30.50)

The bill enacts a temporary formula to fund schools for the biennium in anticipation of a permanent system to replace the EBM. Under that formula, the Department of Education must compute and pay each city, exempted village, and local school district, for fiscal years 2012 and 2013, an amount based on the district's per pupil amount of funding paid for fiscal year 2011 adjusted by its share of a statewide per pupil adjustment amount that is indexed by the district's relative tax valuation per pupil. The statewide per pupil adjustment amount must be determined by the Department so that the state's total formula aid obligation to school districts does not exceed the aggregate appropriated amount. For a complete description of the temporary formula, see the LSC Redbook for the Department of Education, published on the LSC web site at **http://www.lsc.state.oh.us/fiscal/redbooks129/default.htm.**

Formula amount

(R.C. 3317.02)

The former Building Blocks Model relied on a per pupil "formula amount" to compute base-cost funding and some categorical funding. The EBM and the bill's

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[46] Repealed R.C. 3306.25.

[47] Repealed R.C. 3306.33, 3306.34, 3306.35, and 3306.40.

[48] Repealed R.C. 3306.09 and 3306.31.

[49] The enforcement provisions are also repealed, and in some cases modified, by H.B. 30 of the 129th General Assembly. The House concurred in the Senate amendments to that act on March 16, 2011. H.B. 30 does not affect the funding components of the EBM.

temporary formula do not. But the EBM and the bill both prescribe a formula amount to compute transfer payments for students attending community schools, STEM schools, other districts through open enrollment, and colleges and universities through the Post-Secondary Enrollment Options Program. The bill sets the formula amount at $5,653 for both fiscal years 2012 and 2013. The formula amount for fiscal year 2009, under the Building Blocks Model, and for fiscal years 2010 and 2011, under the EBM, was $5,732. The bill continues to use the latter amount for computing additional weighted funding for special education and vocational education transfers to community schools, STEM schools, and other districts.

Student count

(R.C. 3317.02 and 3317.03)

The bill discontinues the practice of using the prior year's October student count to derive most district's formula ADM. Instead, it requires use of the current-year October count to derive the formula ADM for all districts. Each district's formula ADM is used to compute its funding under the bill's temporary formula. It also is used in computing a district's share and priority for funding under the state classroom assistance programs administered by the School Facilities Commission.

Background – current law on student count

Current law requires each school district, in October of each fiscal year, to report the "average daily membership" of students residing in the district and receiving services either from the district or from other specified providers (including community schools, STEM schools, other districts under open enrollment, and colleges and universities under PSEO). Using this data, the Department of Education derives each district's "formula ADM."[50] Under the EBM, a district's formula ADM generally is based on its October report for the *prior* fiscal year, unless its current average daily membership is more than 2% greater than that of the prior year. In the latter case, under the EBM, the Department must use the district's report for the current fiscal year to derive its formula ADM.

Counting of kindergarten students

The bill retains the EBM's feature of counting each kindergarten student as one full-time equivalent (FTE) student regardless of whether the student is in all-day or

[50] Formula ADM includes 20% of a district's career-technical students attending a joint vocational school district and 20% of its career-technical students attending another district under a compact.

half-day kindergarten. Prior school funding models had required that kindergarten students be counted as one-half of one FTE students.[51]

Special education categories and weights

(R.C. 3314.088, 3317.013, 3317.018, and 3326.39)

The bill retains and recodifies the EBM's categories and weights for counting of students with disabilities and for future use in funding special education.[52] However, for fiscal year 2012 and 2013, the bill requires use of the former (fiscal year 2009) Building Blocks weights and categories for computing special education transfer payments to community schools and STEM schools or to other school districts for excess special education cost[53] or for state payments for catastrophic costs.[54]

Background

To fund special education, both the EBM and the former Building Blocks Model rely on a set of six disability categories and accompanying weights (or multiples) to apply in funding students based on their respective disabilities. The categories and weights of the Building Blocks Model are based on 2001 recommendations from the special education community. The EBM categories and weights are slightly different and are based on more recent recommendations from the special education community.

The table below indicates the six disability categories and corresponding weights for both the EBM (retained and recodified by the bill) and Building Blocks Model (used

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[51] Separate law enacted at the same time as the EBM also requires that every school district offer all-day kindergarten to each student enrolled in kindergarten beginning in fiscal year 2011, with provisions for a waiver or delay of implementation. The bill does not affect the all-day kindergarten provisions, but H.B. 30 of the 129th General Assembly, pending approval of the Governor, repeals the all-day kindergarten requirement.

[52] R.C. 3317.013. See also repealed R.C. 3306.02 and 3306.11, neither in the bill.

[53] School districts sometimes contract with other districts to provide special education and related services for students they are unable to serve. Or a student might receive special education and related services from the joint vocational district to which the resident district belongs. In either case, the resident district owes the cost of services in excess of what the other district received in state payments.

[54] R.C. 3314.088, 3317.018, and 3326.39. Federal special education law requires that states provide a mechanism to fund "high need children." Accordingly, the state distributes additional funds to school districts, community schools, and STEM schools to pay their costs for children whose special education and related services costs exceed a prescribed "catastrophic" threshold amount. Under current law, retained by the bill, the threshold amount is $27,375, for a child with a disability in categories two through five, and $32,850, for a child with a category six disability. See R.C. 3314.08(E), 3317.022(C)(3), 3317.16(G), and 3326.34 (not in the bill).

for transfers and catastrophic cost payments under the bill for fiscal year 2012 and 2013).

Category	EBM weight	EBM disabilities	BB weight	BB disabilities
1	0.2906	Speech and language disabled	0.2892	Same as EBM
2	0.7374	Specific learning disabled; developmentally disabled; other health impaired-minor	0.3691	Same as EBM
3	1.7716	Hearing disabled; severe behavior disabled	1.7695	Hearing disabled; severe behavior disabled; vision impaired
4	2.3643	Vision impaired; other health impaired-major	2.3646	Other health impaired – major; orthopedically disabled
5	3.2022	Orthopedically disabled; multiple disabilities	3.1129	Multiple disabilities
6	4.7205	Autistic; traumatic brain injured; both visually and hearing impaired	4.7342	Same as EBM

Both models also prescribe that each of the weights (indicated above) be multiplied by 90% (that is, reduced by 10%).

Transportation formula

(R.C. 3317.0212; conforming change in R.C. 3317.022(D))

The bill retains and recodifies the current formula for transportation funding, enacted at the same time as the EBM, but suspends its use for fiscal years 2012 and 2013. Instead, a district's transportation payment is part of the aggregate payment made under the bill's temporary funding formula.[55]

That formula bases a district's payments on its transportation costs reported for the prior fiscal year and current year ridership counts. Funding consists of a base

[55] When the EBM was enacted in H.B. 1 of the 128th General Assembly, the statutory language of the former transportation formula was not eliminated. The bill strikes through that language (R.C. 3317.022(D)), which has not been used since fiscal year 2006.

payment (adjusted by the district's state share percentage), and additional amounts for districts that transport nontraditional riders (students attending private schools, community schools, or STEM schools), high school students, and students who live between one and two miles from school, and for districts that meet an efficiency target established by the Department of Education. In fiscal years 2010 and 2011, under the EBM, districts were paid only a pro rata portion of the full calculated amount, based on the appropriation. For those years, certain low-wealth, low-rider density districts also could receive an additional payment on top of the pro rata payment. The pro rata payment provision and the additional subsidy are not retained in the formula as it is codified by the bill.

Community school and STEM school payments

(R.C. 3314.08, 3314.088, 3326.33, and 3326.39)

The bill continues the current practice of counting students who enroll in community schools and STEM schools in the average daily memberships of their resident school districts, crediting those districts with state funds for those students, and deducting from those districts and paying to the respective community school or STEM school a per pupil amount attributable to each individual student. For this purpose, as noted above, for both fiscal years 2012 and 2013, the bill sets the per-pupil formula amount for base-cost payments at $5,653, except for deductions and payments for special education and vocational education. For special education and vocational education payments, the bill specifies that deductions and payments be computed by multiplying the respective fiscal year 2009 weight times $5,732.

Additional payments attributable to parity aid and poverty-based assistance, as they would have been determined under the former Building Blocks Model, continue to be paid for students attending community and STEM schools at the fiscal-year-2009 per pupil levels for the students' resident school districts. This includes a poverty-based assistance payment for all-day kindergarten students in community schools if their resident districts would have been eligible for that payment in fiscal year 2009.[56]

Abolishment of the School Funding Advisory Council

(Repealed R.C. 3306.29, 3306.291, and 3306.292)

The bill repeals the sections of law creating the School Funding Advisory Council and its subcommittees, thereby abolishing them.

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[56] R.C. 3314.088 and 3314.13, latter section not in the bill.

Background

H.B. 1 created the 28-member School Funding Advisory Council to recommend biennial updates of the EBM's components. The Council's first report was submitted, as required by law, by December 1, 2010.[57] Thereafter, the Council must submit its subsequent reports by July 1 of each even-numbered year. The Council also must have a subcommittee on school district-community school collaboration and may have other subcommittees. The Department of Education is required to provide staff to assist the Council.

The Council consists of the following members:

(1) The Governor, or the Governor's designee;

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

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

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

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

(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 of education, 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;

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[57] The report is published online at www.education.ohio.gov/GD/Templates/Pages/SFAC/SFACPrimary.aspx?page=760.

(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 is recommended by the House Minority Leader.

The state Superintendent, or the Superintendent's designee on the Council, is the chairperson of the Council.

Miscellaneous funding provisions

The bill makes changes to several other funding provisions as described below.

(1) Reduces from three to one the number of school funding reports the Department of Education annually must submit to the Controlling Board. The report

required under the bill is due sometime in each June and must indicate the Department's year-end distributions to each school district. (R.C. 3317.01.)

(2) Eliminates the current prohibition on the distribution of state operating funds to school districts without Controlling Board approval (R.C. 3317.01).

(3) Eliminates the requirement that the Department of Education submit an annual report to the Office of Budget and Management on the amount of local, state, and federal pass-through special education funds allocated for each school district (R.C. 3317.013).

(4) Eliminates the requirement that the Department of Education submit an annual report to the Governor and the General Assembly on the amount of weighted vocational education funding spent by each school district (R.C. 3317.014).

(5) Limits operating payments to an island district to the lesser of its actual cost or 93% of its fiscal year 2011 state payment amount. Specifies that if an island district did not receive any funding in fiscal year 2011, it may not receive funding in either of fiscal years 2012 or 2013. (R.C. 3317.024(A).)

(6) Eliminates a requirement that the Department of Education publish on its web site a spread sheet showing each district's funding for specified "constituent components of the district's 'building blocks' funds" under the former Building Blocks Model (repealed R.C. 3317.016).

(7) Eliminates authority for the state Superintendent to order certain spending requirements under the Building Blocks Model for academic watch or emergency districts (repealed R.C. 3317.017).

(8) Eliminates the requirement that the Executive Director of the Ohio School Facilities Commission, at the state Superintendent's request, advise the state Superintendent about the impact the EBM spending rules would have on existing classroom facilities (repealed R.C. 3318.312). As noted above, along with its repeal of the EBM's payment provisions, the bill also repeals the authority of the state Superintendent to adopt the EBM spending rules.[58]

(9) Eliminates a provision guaranteeing districts created out of the transfer of territory from one or more other districts, for three successive years, an amount equal to the aggregate paid to the districts prior to the transfer (repealed R.C. 3317.04).

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[58] R.C. 3318.312 is also repealed by H.B. 30 of the 129th General Assembly, pending approval of the Governor.

(10) Eliminates the current statutory authority of the Department of Education to pay special subsidies for the following:

(a) Operation of special classes for children of migrant workers who are unable to be in attendance in an Ohio school during the entire regular school year (R.C. 3317.024(B));

(b) Guidance, testing, and counseling programs (R.C. 3317.024(C));

(c) Purchase of school buses (R.C. 3317.024(D) and 3317.07);

(d) Purchase of school lunch equipment (R.C. 3317.024(H) and 3317.19); and

(e) Establishment of district mentor teacher programs (R.C. 3317.024(K)).

(11) Eliminates a requirement that the state Superintendent withhold operating funds from a school district that has misspent funds specifically appropriated for textbook purchases (repealed R.C. 3329.16). No such subsidy has been authorized since fiscal year 1999.

(12) Eliminates a prohibition on a school district using state operating funds to pay its share of the operation of a municipal university under agreement with the university (repealed R.C. 3349.242). Currently, there are no municipal universities.

(13) Repeals the statute of the former Building Blocks Model that authorizes the payment of "gap aid." That provision paid a supplement to districts whose effective tax rate was less that the presumed 23-mill charge-off, or less than its share of combined special education, vocational education, and transportation funding. (Repealed R.C. 3317.0216.)

Classroom expenditure data

(R.C. 3302.20)

Expenditure standards

The bill requires the Department of Education to develop standards for determining, from the existing data reported under the Education Management Information System (EMIS),[59] the amount of annual operating expenditures for classroom instructional purposes and for nonclassroom purposes for each city, exempted village, local, and joint vocational school district, each community school,

[59] EMIS is an electronic database of district and school operational, financial, and student data maintained by the Department of Education.

and each STEM school. The Department must present the standards to the State Board of Education by January 1, 2012. In developing the standards, the Department must adapt existing standards used by "professional organizations, research organizations, and other state governments."

The State Board must consider the recommended standards and adopt a final set of standards by July 1, 2012.

Ranking of districts and schools based on classroom expenditure

The bill requires the Department to use the expenditure standards adopted by the State Board and its existing data to rank order districts and schools by classroom and nonclassroom expenditures. However, prior to ranking each district and school, it first must group them into respective categories based primarily on the size of their student populations. There must be not less than three nor more than five groups of (1) city, exempted village, and local school districts, (2) joint vocational school districts, and (3) community schools. Since there are so few of them, there must be one group containing all STEM schools.

Then using the standards, existing data, and these categories of districts and schools, the Department must compute, for fiscal years 2008 through 2012 and annually for each fiscal year thereafter, all of the following:

(1) The percentage of each district's, community school's, or STEM school's total operating budget spent for classroom instructional purposes;

(2) The statewide average percentage for all districts, community schools, and STEM schools combined spent for classroom instructional purposes;

(3) The average percentage for each category of district or school spent for classroom instructional purposes; and

(4) The ranking of each district, community school, or STEM school within its respective category according to both of the following:

(a) From highest to lowest percentage spent for classroom instructional purposes;

(b) From lowest to highest percentage spent for noninstructional purposes.

Moreover, the bill requires the Department, in its display of rankings within each category (4)(a) and (b) above, to note whether a city, exempted village, or local school district, community school, or STEM school is (1) among the lowest 20% in operating expenditures per pupil or (2) among the highest 20% in performance index score, as

determined for district and school report cards. Similarly, in its display of rankings within each category of joint vocational school districts, the Department must note whether a district is (1) among the lowest 20% in operating expenditures per pupil or (2) among the highest 20% in the career-technical education performance measures required under federal law. See also "**Data on student performance tied to expenditures**" below.

The bill requires the Department to post the pertinent percentages and rankings in a prominent location on its web site and on each district's or school's annual report card.

Data on student performance tied to expenditures

(R.C. 3302.21)

The bill requires the Department of Education to develop a system to rank order, for a separate annual report, all city, exempted village, local, and joint vocational school districts, community, and STEM schools according to each of the following measures:

(1) Performance index score;

(2) Student performance growth from year to year. In measuring student academic growth, the Department must use the "value-added progress dimension," where it is available, and other measures of student performance growth designated by the state Superintendent for subjects and grades not covered by the value-added progress dimension. The value-added progress dimension is available in subjects and grade levels for which there are state assessments for consecutive years. Thus, the value-added progress dimension is available for grades 4 through 8 in reading and math.[60]

(3) Performance measures required for career-technical education under federal law. As part of its state plan for career-technical education, the Department must report to the U.S. Secretary of Education how it will measure career-technical student performance.[61] The bill also provides that if a school district is a vocational education planning district ("VEPD") or a "lead district," as designated by the Department, the

[60] The value-added progress dimension is a statistical measure of academic gain for a student or group of students over a specific period of time. It is also one of the four performance measures used in ranking districts and schools for the annual report cards. See R.C. 3302.01 and 3302.021, neither in the bill.

[61] 20 U.S.C. 2323.

district's ranking must be based on the performance of career-technical students from that district and all other districts served by that district.[62]

(4) Current operating expenditures per pupil; and

(5) Percentage of total current operating expenditures spent for classroom instruction.

The Department must issue an annual report for each school district, community school, and STEM school showing its rank on each of the five measures.

Elimination of moratoriums on opening new community schools

(Repealed R.C. 3314.013, 3314.014, 3314.016, and 3314.017; conforming changes in R.C. 3314.02, 3314.021, 3314.025, 3314.03, and 3314.05)

The bill eliminates two existing moratoriums on establishing new community schools, thereby allowing for greater expansion of the schools.

"Brick and mortar" schools

(Repealed R.C. 3314.016(A))

First, it repeals the requirement that a new start-up "brick and mortar" community school may be established only if the school contracts with an operator whose other schools meet certain performance standards. An operator is (1) an individual or organization that manages the daily operations of a community school or (2) a nonprofit organization that provides programmatic oversight and support to a community school and retains the right to terminate its affiliation with the school for failure to meet the organization's quality standards. Repealing the operator requirement allows a new "brick and mortar" community school to open without hiring an operator at all or, if the school chooses to have an operator, to hire an operator that does not meet the performance standards specified by current law. (But see "**Restriction on sponsors and operators of under-performing schools**" below.)

Under current law, to qualify for the exception to the moratorium, the community school must contract with an operator that manages other schools in the United States that perform at a level higher than academic watch, as determined by the

[62] The Department has designated VEPDs and lead districts among city, exempted village, local, and joint vocational school districts in the state career-technical plan to assure that all students that desire career-technical education have that opportunity in accordance with federal law.

Department of Education. If the operator already manages other schools in Ohio, at least one of the Ohio schools must be rated higher than academic watch.

E-schools

(Repealed R.C. 3314.013(A)(6))

Second, the bill repeals the outright moratorium on establishing new Internet- or computer-based community schools (e-schools) that has been in place since May 1, 2005. The existing moratorium is in effect until the General Assembly enacts standards governing the operation of e-schools.

Other restrictions retained

While the bill eliminates the statutory moratoriums on new start-up community schools, it retains the following two stipulations of law:

(1) The limitation that start-up community schools may open only in "challenged" school districts, which are: (a) the Big Eight school districts (Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown), (b) school districts located in Lucas County, which is the former community school pilot project area, and (c) districts designated as being under an academic watch or academic emergency;[63] and

(2) The limit on the total number of schools that an entity may sponsor. This limit is based on the number of schools sponsored as of May 1, 2005. An entity that sponsored 50 or fewer schools on that date may not sponsor more than 50 schools. Other entities may sponsor up to 75 schools. But a sponsor's limit is automatically reduced by one for each community school it sponsors that permanently closes.[64]

Repeal of outdated provisions

(Repealed R.C. 3314.013 and 3314.014)

The bill repeals several outdated provisions of the Community School Law that established limits on the number of community schools that could be in operation statewide and that specified exceptions to those limits. The most recent caps expired on June 30, 2007.

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[63] R.C. 3314.02(A)(3) and (C)(1).

[64] R.C. 3314.015(B)(1), not in the bill.

Restriction on sponsors and operators of underperforming schools

(New R.C. 3314.016)

Under the bill, if a community school has a performance rating of academic watch or academic emergency on the provision's immediate effective date, the school's sponsor may not sponsor any additional community schools and the school's operator, if the school has one, may not operate any additional community schools. Since the performance ratings for the 2010-2011 school year will not be released until August, several weeks after the prohibition takes effect, sponsors and operators will be subject to the prohibition based on the ratings of their schools for the 2009-2010 school year. A community school in academic watch or academic emergency may continue to operate with the same sponsor and operator, but the sponsor and operator may not contract with any additional community schools.

If a sponsor or operator subject to the prohibition entered into a contract prior to the prohibition's effective date to sponsor or operate a community school that is scheduled to initially open in the 2011-2012 school year, that contract is nullified by the bill. In the case of a sponsorship contract voided by the bill, the community school may still open at some point in the future, but it first must secure a new sponsor.

It appears that the nullification of a community school's contract with an operator could also prevent the school from opening in the 2011-2012 school year, unless the school is able to hire another operator. Although the bill repeals the requirement that a new start-up community school have an operator in order to open (see "**Elimination of moratoriums on opening new community schools**" above), that repeal has a 90-day effective date and, therefore, will not take effect until the very end of September. Continuing law requires a community school, other than a school that primarily serves dropouts, to open by September 30 each school year. Failure to meet that deadline in the school's initial year of operation voids the school's contract with its sponsor.[65] Once the repeal of the operator requirement is effective, a community school may open without an operator, but it may not open without an operator prior to that date. So, to be operational in the 2011-2012 school year, the school likely must either hire another operator or open in the period (probably only a few days) between the effective date of the repeal of the operator requirement and September 30.

[65] R.C. 3314.03(A)(25).

E-school expenditures for instruction

(Repealed R.C. 3314.085; conforming changes in R.C. 3314.08 and 3314.088)

The bill repeals the statute that (1) establishes a minimum amount that Internet- or computer-based community schools (e-schools) must spend on instruction and (2) prescribes fines for failure to comply.

The law being repealed by the bill requires each e-school to spend for instructional purposes at least the per pupil amount designated for base classroom teachers under the former Building Blocks Model. The amount for fiscal year 2009 was $2,931. That is the last year for which an amount for that factor is specified. Qualifying expenditures include (1) teachers, (2) curriculum, (3) academic materials, (4) computers, (5) software (including filtering software), and (6) other purposes designated by the state Superintendent. E-schools annually must report their expenditures for instruction to the Department of Education. If the Department determines that an e-school has failed to comply with the expenditure or reporting requirements, the e-school must pay a fine equal to 5% of the total state payments to the school in the fiscal year of noncompliance or the amount the school underspent on instruction, whichever is greater.

Lease of school district property

(R.C. 3313.411)

If, on or after the bill's effective date, a school district board of education decides to lease property that it owns that is suitable for classroom space or other educational purposes for one school year at a time or longer, the bill requires the district board first to offer to lease that property to the governing authorities of the community schools located within the school district. The lease price cannot be set higher than the fair market value for the leasehold. If multiple community schools accept the offer, the district board must award the lease to the first school to accept the offer. However, district boards must give highest priority to conversion community schools sponsored by the school district. If no community school governing authority accepts the offer to lease the property within 60 days after the offer is made, the district board may offer the property for lease to any other entity.

The bill specifies that a district board may renew any agreement already in existence with a non-community school entity, and that nothing in the bill is meant to affect leasehold arrangements already entered into between the district board and the other entity.

Community school participation in joint educational programs

(R.C. 3313.842)

The bill permits a community school to enter into an agreement with one or more school districts or other community schools to operate a joint educational program, including any class in the graded course of study or a professional development program, in the same manner as districts may do with each other under continuing law. But, whereas continuing law allows a school district participating in the joint educational program to charge fees or tuition to its students who enroll in the program, the bill explicitly prohibits community schools from charging their students for the program. The only exception is for an all-day kindergarten program, for which certain community schools may charge fees under separate law.[66]

Educational Choice scholarship

(R.C. 3310.02 and 3310.03; Section 733.10)

The bill increases the number of Educational Choice Scholarships that may be awarded annually from 14,000 to 30,000 for the 2011-2012 school year and 60,000 thereafter. Since the application period for Ed Choice scholarships for the 2011-2012 school year ends April 15, 2011,[67] the bill directs the Department of Education to hold a second, 60-day application period for 2011-2012 to award the 16,000 new scholarships authorized for that year. The second application period begins on the immediate effective date of the bill (upon signature of the Governor) and ends on the first business day that is at least 60 days after that date.

The bill requires the Department to mail a notice to each person who applied for a scholarship during the first application period but did not receive a scholarship, announcing the second application period, the opportunity to reapply, and the application deadline. The Department must also post prominently on its web site a list of school district-operated buildings whose students newly qualify for Ed Choice scholarships under the bill (see "**New eligibility**" below).

Students who are already admitted to a chartered nonpublic school for the 2011-2012 school year may receive an Ed Choice scholarship for that year if (1) a timely application was submitted on the student's behalf during the first application period for

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[66] See R.C. 3314.03(A)(11)(d) and also R.C. 3321.01(H), as amended by H.B. 30 of the 129th General Assembly.

[67] www.education.ohio.gov, Click on "School Options." Click on "EdChoice Scholarship Program." Click on "Program Timeline."

2011-2012, (2) the student was denied a scholarship solely because the number of applications exceeded the number of available scholarships, and (3) the student was either enrolled through the last day of classes for the 2010-2011 school year in the district school or community school indicated on the student's first application or is eligible to enroll in kindergarten for the 2011-2012 school year and was not enrolled in kindergarten in a nonpublic school in 2010-2011.

New eligibility

The bill qualifies students whose resident district school building was ranked, in at least two of the three most recent published ratings of school buildings, in the lowest 10% of school buildings according to the performance index scores reported under current law. (The performance index score is a weighted measure of up to 120 points designed to show improvement over time on the state achievement assessments by students scoring at all levels.) The school building cannot have been declared excellent or effective in the most recent published ratings. It may not be clear whether "the lowest 10% of school buildings" means the lowest 10% of *all* public school buildings – including district-operated schools, community schools, and STEM school – or only the lowest 10% of *district-operated* schools.

To be eligible to apply, a student must be either (1) enrolled in a qualifying school building, (2) enrolled in a community school but would otherwise be assigned to a qualifying school building, (3) enrolled in a school building operated by the student's resident district or in a community school and otherwise would be assigned to a qualifying school building in the school year for which the scholarship is sought ("look ahead" eligibility), or (4) eligible to enroll in kindergarten in the school year for which the scholarship is sought in a qualifying school building.

However, students who meet the eligibility standards under current law (see "**Background**" below) have priority for available scholarships over students newly qualified under the bill. Thus, in years when application exceed the number of available scholarships, priority for awarding scholarships is as follows:

First, to eligible students who received them in the previous school year;

Second, to students eligible because their district school building has been in academic watch or emergency for at least two out of three years and whose family incomes are at or below 200% of the federal poverty guidelines;

Third, to all other students eligible because their district school building has been in academic watch or emergency for at least two out of three years;

Fourth, to students made eligible under the bill whose district school has been ranked in the lowest 10% of school buildings based on performance index score for at least two out of three years and whose family incomes are at or below 200% of the federal poverty guidelines; and

Finally, to all other students made eligible under the bill whose district school has been ranked in the lowest 10% of school buildings based on performance index score for at least two out of three years.

If the number of applicants in any of the categories listed above exceeds the amount of available scholarships, scholarships must be awarded on the basis of a lottery.

Deductions

(R.C. 3310.08)

Under current law, for each Ed Choice scholarship awarded, the Department deducts $5,200 from the state aid account of the student's resident school district. The amount of the scholarship, however, is only the lesser of the tuition charged by the chartered nonpublic school the student attends with the scholarship or $4,250, for a student in grades K to 8, or $5,000, for a student in grades 9 to 12. The remainder goes to defray some of the state's cost for scholarships under the Cleveland Scholarship Program. The bill reduces the amount of each Ed Choice deduction to just the amount of the scholarship.

Background

Under current law, the Educational Choice Scholarship Pilot Program provides up to 14,000 scholarships each year to students in lower performing public schools to pay tuition at chartered nonpublic schools. The Ed Choice program is separate from the scholarship program that serves students in the Cleveland Municipal School District. To finance Ed Choice scholarships (and partially to fund scholarships in the Cleveland program), Ed Choice recipients are counted in the enrollments of their resident school districts, and state funds are then deducted from the districts' state funding accounts.

To be eligible for an Ed Choice scholarship, a student must meet one of the following conditions when the student applies for a scholarship:

(1) The student is enrolled in the student's resident school district in a school that (a) has been declared in at least two of three most recent ratings to be in academic watch or academic emergency and (b) has not been declared excellent or effective in the most recent published ratings;

(2) The student is eligible to enroll in kindergarten in the school year for which a scholarship is sought and otherwise would be assigned to a school described in (1) above;

(3) The student is enrolled in a community school but otherwise would be assigned to a school described in (1) above;

(4) The student is enrolled in a school operated by the student's resident district or in a community school and otherwise would be assigned to an eligible school building in the year for which the scholarship is sought. This "look-ahead" provision addresses a situation in which the school a student currently attends does not qualify for scholarships, but the student will be assigned to a different school in the next school year; or

(5) The student is eligible to enroll in kindergarten in the school year for which a scholarship was sought, or was enrolled in a community school, and the student's resident school district (a) has an intradistrict open enrollment policy that does not assign students in kindergarten or the community school student's grade level to a particular school, (b) has been declared in at least two of the three most recent ratings to be in academic emergency, and (c) was not declared excellent or effective in the most recent published ratings. The bill does not affect these qualifications and gives students who qualify under current law priority over those who qualify under the new category of students created by the bill.

Autism Scholarship Program

(R.C. 3310.41)

The Autism Scholarship Program pays scholarships of up to $20,000 to the parents of children with autism in grades pre-kindergarten to 12 to use to pay tuition at alternative public or private providers. The scholarship must be used to implement a child's individualized education program in lieu of receiving those services from the child's resident school district. Those services for a child with autism may frequently include "related services," such as motor skill therapy or other developmental services. The bill requires that the services provided under the program must "include an educational component."

Educational service center agreements

(R.C. 3311.05, 3313.843, 3311.845, and 3319.19; repealed R.C. 3311.059)

Background

Educational service centers (ESCs) are regional public entities that offer a broad spectrum of services, including curriculum development, professional development, purchasing, publishing, human resources, special education services, and counseling services, to school districts and community schools in their regions. Formerly known as "county school districts," ESCs are statutorily required to provide some administrative oversight and other services to all "local" school districts within their service areas. In addition, ESCs provide services to "city" and "exempted village" school districts that enter into agreements for those services. This authorization generally is limited to city and exempted village districts with total student populations of less than 13,000 students. City and exempted village districts that enter into agreements with ESCs on these terms are known as "client districts." For these services, ESCs are eligible to receive per pupil state and school district payments. ESCs also provide other services to all school districts and community schools on a fee-for-service basis. (See also "**ESC payments**" below.)

Each ESC is under the oversight of its own elected governing board. The territory from which the members of an ESC's governing board are elected is the combined territory of the "local" school districts the ESC serves. It does not include the territory of other districts the ESC might serve.

Currently, there are 58 ESCs each serving districts in one or more counties in the state.

Required agreements

The bill requires every school district with a student count of 16,000 or less to enter into an agreement for services with an ESC for which it may receive the statutory per pupil payments. This requirement applies to all city, exempted village, and local school districts. (Under current law, not affected by the bill, local school districts, regardless of size, are already entitled to ESC services.) As noted above, current law also permits, but does not require, city and exempted village districts with less than 13,000 students to arrange for those services. The bill, thus, could significantly increase the number of students served by an ESC and for whom it may receive state and district payments. It also requires city and exempted village school districts that are not currently receiving or paying for ESC services to do so if they have 16,000 or fewer students. It also appears that a district, regardless of whether it is a "city," "exempted

village," or "local" school district, is free to enter in to an agreement with any ESC in the state and is not bound by any territorial limitation.

Permissive agreements

The bill also permits all school districts with student counts greater than 16,000 to enter into agreements for services. Generally, these are large urban "city" school districts, but there are a few "local" school districts in fast-growing, unincorporated areas that have student counts approaching or exceeding 16,000. Since the bill permits, rather than requires, districts with such student counts to arrange for ESC services, it is not clear whether a qualifying "local" school district is free to not receive and not pay for ESC services. Nor does the bill specify whether the supervision of such a "local" school district by an ESC still would be required. That is, it is not clear whether the bill is intended to have the effect of allowing larger "local" school districts to "opt out" of ESC services altogether, or to transfer their territory to another ESC.

Termination of agreements

The bill permits any district to terminate its agreement with its current ESC by notifying the ESC governing board by January 1 of the year of the termination. The termination is effective on June 30. However, if the aggregate student count of the districts that plan to terminate their agreements with an ESC makes up at least 30% of the ESC's "service center ADM" for funding purposes, those districts also must notify all other districts that receive services from the ESC by January 1. And, then, any of the other districts may notify the ESC governing board, by May 31, that the district is terminating its agreement, effective June 30.

Impact of "local" school district changes on an ESC's electoral territory

As noted above, the electoral territory of an ESC is the combined territory of the "local" school districts the ESC serves.[68] The bill does not alter that law. Moreover, election of ESC board members, just like that of school district board members, is held only in odd-numbered years.[69] Annual decisions by local school districts to terminate their agreements could significantly impact the electoral territory of ESCs more frequently than once in an election cycle.

The bill addresses this issue by specifically requiring the governing board of an ESC affected by the termination of an agreement or the making of a new agreement by a "local" school district to take the necessary steps for the election of new members and

[68] R.C. 3311.05.

[69] R.C. 3501.02(D), not in the bill.

for re-organization of the board to reflect changes in the ESC's territory. That is, as an ESC loses or gains local districts, its territory will change. Thus, one or more of its governing board members, who live in a local district that no longer is served by the ESC, will no longer be qualified to hold that office. Under the bill and current law, the board must make plans to elect a new member to replace any sitting member who must vacate that office. In the interim, it appears that an ESC governing board may have to appoint a member pending an election in the nearest up-coming odd-numbered year, as provided for under current law.[70] Since the bill permits annual movement by local districts, some with only one month's notice, it might be difficult for a board to respond to changes in the ESC's electoral territory, especially if those changes are frequent. Also, the bill places no geographical limitation on the selection of an ESC by a local district. It is possible, therefore, that an ESC's territory could become noncontiguous, with its segments separated by some distance.

Repeal of law on "local" district severance from one ESC and annexation to another

Law enacted in 2003 permits a "local" school district to sever its territory from its current ESC and annex its territory to an *adjacent* ESC. The bill repeals the current provision in favor of annual ESC agreements.

This repealed law specifies that a severance and annexation action is subject to both approval of the State Board of Education and referendum by petition of the district's voters. The action may not be effective sooner than one year after the first day of July that follows the later of (1) the date the State Board approves the action or (2) the date voters approve the action at a referendum election, if one is held. If a district severs from its ESC and annexes to another under this provision, it may not do so again for at least five years after the effective date of the prior action.[71]

ESC payments

(Section 267.40.70)

ESCs receive payments from the state and from each school district they serve to pay the cost of providing those services. Payments owed by a school district are deducted from the district's state aid account and paid to the ESC by the Department of Education. Permanent law provides a framework for these payments. While that statutory framework sets specific amounts for state and district payments, biennial budget acts usually limit the state payments to the amount specifically appropriated for

[70] R.C. 3313.11, not in the bill.

[71] Repealed R.C. 3311.059.

those payments and instruct the Department of Education to adjust the state per pupil amounts in some manner.

The bill limits an ESC's state payments, for fiscal year 2012, to 90% of the aggregate amount it received in fiscal year 2011. For fiscal year 2013, the bill limits an ESC's payment to 70% of the amount it received in fiscal year 2012. The limits on payments prescribed by the bill do not appear to account for changes in an ESC's service center ADM that may occur as a result of the bill's other changes regarding service center agreements.

Background on ESC funding

The permanent statutory structure for payments to ESCs is as follows:

(1) $6.50 per pupil from each local and client (city or exempted village) school district.[72]

(2) Either $37 or $40.52 per pupil of direct state funding for each local and client school district. The latter amount applies to ESCs that have formed as a result of a merger of at least three smaller ESCs.[73]

(3) From each local and client school district 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. This funding is to pay the cost of providing a teacher to supervise a district's teachers. A supervisory unit is the sum of the statutorily prescribed minimum salary for the licensed supervisory employee, an amount equal to 15% of that salary, and a statutorily prescribed allowance for necessary travel expenses.[74]

(4) Each ESC may receive a contractually specified amount from each district with which it has a fee-for-service contract.[75]

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[72] R.C. 3317.11(C).

[73] R.C. 3317.11(F).

[74] R.C. 3317.11(B).

[75] R.C. 3313.845 and 3317.11(D).

Educational service center contracts with local entities

(R.C. 307.86, 505.101, and 3313.846)

The bill authorizes ESCs to enter into service contracts with any other political subdivision of the state. It specifies that ESCs may enter into contracts with a board of county commissioners and a board of township trustees without competitively bidding. Because municipal corporations are governed by home rule, the bill is silent on competitive bidding for service contracts with municipal corporations, leaving it, instead, up to each individual municipal corporation's charter or ordinance.

Services provided by the ESC and the amount to be paid for such services must be mutually agreed to by the parties and specified in the contract. Local entities must pay ESCs directly for services, and the board of an ESC must file a copy of each contract entered into with a local entity with the Department of Education by the first day the contract is in effect.

ESCs oversight of local school districts

Textbook selection

(R.C. 3329.08)

The bill repeals the requirement that boards of "local" school districts choose textbooks and electronic textbooks to be used in their schools from a list furnished by their ESCs. Therefore, under the bill, boards of local school districts, like city and exempted village districts, could decide on their own which textbooks and electronic textbooks its schools will use.

Age and schooling certificates

(R.C. 3331.01)

The bill repeals the provision of law that allows the superintendent of an ESC to issue age and schooling certificates on behalf of the superintendent of a local school district.

Under the state minor labor law, an employer generally must require that a person who is under 18 years old and has not received a high school diploma or its equivalent present an age and schooling certificate before hiring that person.[76] These certificates are issued by the superintendent of the school district in which the student resides or the chief administrative officer of the nonpublic school or community school

[76] R.C. Chapter 4109.

the student attends. Current law permits the superintendent of a local school district to designate the superintendent of the ESC to which the school district belongs as the person authorized to issue the certificates for that local district.

Teacher compensation

(New R.C. 3317.14, R.C. 3319.10 and 5126.24, and repealed R.C. 3317.13 and 3317.14; conforming changes in R.C. 3313.42, 3317.01, 3317.018, 3317.023, 3317.11, 3319.08, 3319.088, 3319.11, 3319.14, 3319.18, and 5705.412)

The bill eliminates the requirement that the annual salary schedule for teachers adopted by each school district and educational service center (ESC) be based on years of service and educational training. It also repeals the minimum salary requirements with which those schedules must comply. (See "**Background – minimum salary schedule**" below.)

Instead, beginning with the 2011-2012 school year, the bill requires each district and ESC annually to adopt a salary schedule that establishes salary ranges for each of the following categories of teachers: (1) teachers who have a resident or alternative resident educator license (or the former alternative educator license, which was issued until January 1, 2011) or a temporary, associate, or provisional license, (2) teachers who have a professional educator license (or a professional or permanent teacher's certificate issued under former law), (3) teachers who have a senior professional educator license, and (4) teachers who have a lead professional educator license.

Each school district and ESC annually must designate a salary within the appropriate range for each of its teachers. In determining a teacher's salary, the employer must consider evaluations of the teacher and whether the teacher is "highly qualified" under the federal No Child Left Behind Act. The employer may consider additional factors if it chooses, including whether the teacher teaches in a hard-to-staff school or subject area, teaches larger-than-average class sizes, or teaches at-risk students.

The salary schedule applies to all teachers employed by the district or ESC, except substitute teachers, veterans of the armed forces with previous instructional experience who do not have an educator license,[77] and teachers who are authorized by the State Board of Education to teach for only 12 hours per week.[78] But a district or ESC may adopt a salary schedule with pay ranges for any of these teachers and set their salaries based on the same factors required by the bill for fully licensed teachers.

[77] See R.C. 3319.283, not in the bill.

[78] See R.C. 3319.301, not in the bill.

However, a substitute teacher who has a long-term assignment of more than 60 days must be paid at least the minimum salary specified on the main schedule for teachers with a resident educator license.

As in current law, the Superintendent of Public Instruction must investigate any complaint that a district or ESC has failed or refused to adopt a teachers' salary schedule that complies with the bill's requirements or to pay salaries in accordance with the schedule. If the state Superintendent finds that the allegations in the complaint are true, the Superintendent must order the conditions corrected within ten days. The Department of Education must withhold state funds from the district or ESC until it complies with the Superintendent's order.

Salaries for veteran teachers

(New R.C. 3317.14(C))

Under the bill, if a veteran teacher's salary on the date the new salary schedule takes effect is above the maximum salary established for the teacher's license, the teacher will continue to earn that same salary each year. The teacher will not be eligible for a pay raise, unless the employing school district or ESC increases the maximum salary for the teacher's license in a future school year and the teacher's salary falls within the new salary range. In that case, the employer may raise the teacher's salary to an amount within the new range, upon a determination that the teacher has earned an increase based on the factors described above for setting salaries.

Effect of collective bargaining agreements

(New R.C. 3317.14(F))

The bill's provisions regarding teachers' salary schedules prevail over any conflicting provisions of a collective bargaining agreement entered into on or after the provisions' (immediate) effective date. Teachers will continue to be paid under salary schedules established in existing collective bargaining agreements until those agreements expire.

Applicability to county DD boards

(R.C. 5126.24)

Each county DD board must adopt an annual salary schedule that complies with the bill's requirements for teachers employed by the board. Under current law, county DD boards, like school districts and ESCs, must establish salary schedules based on years of service and training and must comply with the minimum salary schedule for teachers.

Background – minimum salary schedule

(Repealed R.C. 3317.13 and 3317.14)

Current law requires each school district and ESC to annually adopt a teachers' salary schedule that contains provisions for increments based on training and years of service. While a district or ESC may establish its own service requirements and system for granting credit for service in schools not under its control, the law also prescribes a minimum schedule with which all districts and ESCs must comply. In other words, there is a statutory minimum that must be paid to teachers based on years of service and education. Compliance with the minimum salary schedule is a condition of receiving state funding.[79]

Under the current statutory schedule, the base salary is $20,000 for a teacher with zero years of service and a bachelor's degree. All other salaries on the schedule are increments upward (or downward in some cases, if a teacher does not have a bachelor's degree) as a teacher gains experience and education.

Also, under this schedule, a district or ESC must grant credit for a teacher's years of service not only to the district or ESC itself, but also to another public school, to a chartered nonpublic school in Ohio (if the teacher was licensed in the same manner as a school district teacher), and to a chartered school operated by the state or a subdivision or other local government of the state. In addition, a district or ESC must give credit for all of a teacher's years of active military service in the U.S. armed forces up to five years. However, the total service credit a district or ESC grants for service to a school other than one under its control and for military service may not exceed ten years.

Teacher and administrator termination

(R.C. 3319.16 and repealed R.C. 3319.161; conforming change in R.C. 5126.23)

The bill eliminates the option for a teacher or administrator (including a principal, treasurer, business manager, internal auditor, or superintendent) employed by a school district or educational service center (ESC) to request that a hearing on the matter of the employee's termination be held before a referee, rather than the district board of education or ESC governing board. It also prohibits the employee from *both* appealing the board's termination decision to the common pleas court *and* invoking the grievance procedure in a collective bargaining agreement covering the employee. Instead, under the bill, the employee may choose only one of those processes for an appeal. The restriction on the method of appeal overrides any conflicting provision of a

[79] R.C. 3317.01.

collective bargaining agreement entered into on or after the provision's (immediate) effective date.

The bill also repeals the prohibition against a termination hearing before the employing board taking place during summer vacation without the teacher's consent.

Background − current law

Under current law, a school district or ESC may terminate its employment contract with a person licensed by the State Board of Education for good and just cause. An educator's contract also may be terminated for willfully belonging to an organization that advocates overthrow of the U.S. or state government by force or violence,[80] falsification of a sick or assault leave statement,[81] assisting a student in cheating on a statewide achievement assessment,[82] or sexual conduct with a student.

Current law also sets out specific contract termination procedures requiring prior notice, chance for a hearing, and the right of appeal. Under these provisions, upon notice that the district or ESC board is considering termination, the employee may request a hearing before the board or a referee. If a referee is requested, the Superintendent of Public Instruction must designate three candidates from a list solicited from the Ohio State Bar Association and the employee and board must make a mutually agreeable selection. After the hearing, the referee must file a report with the board, which may, by a majority vote, accept or reject the referee's recommendation regarding the employee's termination.

The employee may appeal the board's termination decision to the common pleas court. Either the employee or the 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.

Teacher reductions in force

(R.C. 3319.17; conforming change in R.C. 3319.18)

Under the bill, when a school district or educational service center (ESC) reduces the number of teachers it employs, it must consider relative quality of performance as the principal factor in determining the order of layoffs. (Current law requires that preference in retention be given first to teachers with continuing contracts (tenure) and

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

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

[82] R.C. 3319.151, not in the bill.

then to teachers with greater seniority.) A teacher's quality of performance must be measured by (1) the type of license the teacher holds, (2) whether the teacher is "highly qualified" under the federal No Child Left Behind Act, (3) evaluations of the teacher, and (4) any other criteria established by the employer. The employer may consider a teacher's seniority as well, but only after considering these other factors. As in current law, the district or ESC must lay off employees in accordance with recommendations of the superintendent.

Although the bill retains current law giving tenured teachers the right of restoration to a continuing contract when teaching positions become available again, it eliminates the requirement that the order of restoration be based on seniority. Presumably, then, quality of performance must also be a factor in the teacher's rehiring.

The bill specifies that these requirements prevail over conflicting provisions of a collective bargaining agreement entered into on or after the provisions' (immediate) effective date. Also, unless a district or ESC has a separate layoff policy for administrators, the requirement to consider quality of performance as the main factor in retention will also apply to reductions in force affecting those employees.[83]

Annual ranking of districts and schools by performance index scores

(R.C. 3302.12(A), 3302.042(A), and 3319.58(B))

Under the bill, the Department of Education annually must rank all school districts (other than joint vocational districts) and all district-operated schools statewide in order by their performance index scores. These rankings are used to identify low-performing districts and schools, which are subject to certain sanctions under the bill (see below). The performance index score is a weighted measure of up to 120 points designed to show improvement over time on the state achievement assessments by students scoring at all levels. It appears that the school rankings, at least, must be completed by September 1 each year.

The performance index score applies to all school districts. But for individual schools to which the performance index score does not apply, because the school does not offer any grades for which an achievement assessment is given (a K to 2 school, for example), the Department must develop another measure of student academic performance to enable those schools to be included in the school rankings.

[83] See R.C. 3319.171, not in the bill.

Retesting teachers

(R.C. 3319.58)

Under the bill, in any year in which a school district is ranked in the lowest 10% of all districts based on its performance index score, the district's classroom teachers must retake all exams required by the State Board of Education for licensure to teach the subject area and grade level taught by the teacher. This requirement applies to all teachers of reading and English language arts, math, science, foreign language, government, economics, fine arts, history, or geography. Presumably, the teacher must pay the cost of retaking the necessary exams.

The school district may use the exam results in deciding whether to continue to employ a teacher and in creating professional development plans for the teacher. However, the bill prohibits a district from using the results as the sole factor in employment decisions, unless the teacher has failed to pass the same licensure exam three consecutive times.

Restructuring schools

(R.C. 3302.12)

If a school is ranked in the lowest 5% of all district-operated schools based on its performance index score for three consecutive years, and the school also has a performance rating of academic watch or academic emergency, the bill requires the school district to restructure the school. The district must choose one of the following restructuring actions:

(1) Close the school and reassign the school's students to other schools with higher academic achievement;

(2) Contract with another school district or a nonprofit or for-profit entity with a record of effectiveness to operate the school;

(3) Replace the school's principal and teaching staff, exempt the school from any specified district regulations regarding curriculum and instruction at the request of the new principal, and allocate at least the per-pupil amount of all district revenues to the school for each of its students; or

(4) Reopen the school as a conversion community school.

Since the performance index scores and 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 the bill's provisions. Rather than requiring

restructuring of the school immediately, the bill grants the school an additional year of operation before it must be restructured. It is not clear under the bill whether there must be a "look back" at a school's performance index scores prior to the 2011-2012 school year to determine if the school must be restructured. If there is a "look back" period, underperforming schools could face restructuring at the end of the 2011-2012 school year.

Continuing law requires all school districts to maintain grades K to 12.[84] A district's restructuring action, such as closing a school or reopening a school as a community school, may cause the 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 missing 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.[85] If the resident district fails to enter into or maintain the contract, the State Board of Education must proceed to dissolve the entire district.

Parent petitions for school reforms

(R.C. 3302.042)

The bill allows parents to petition a school district to make reforms in a school that, for three or more consecutive years, has been ranked in the lowest 5% of all district-operated schools statewide based on its performance index score. Parents may file a petition requesting the district to do one of the following: (1) reopen the failing school as a community school, (2) replace at least 70% of the school's personnel who are related to the school's poor academic performance, or retain no more than 30% of the staff members, (3) contract with another school district or a nonprofit or for-profit entity with a record of effectiveness to operate the school, (4) turn operation of the school over to the Department of Education, or (5) any other major restructuring that makes fundamental reforms in the school's staffing or governance.

To compel the district to make the requested reform, the parents of at least 50% of the school's students must sign the petition. Alternatively, a petition may be submitted by the parents of at least 50% of the total number of students enrolled in the underperforming school and the feeder schools whose students typically matriculate into that school.

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[84] R.C. 3311.29.

[85] R.C. 3317.08, 3327.04, and 3327.06 (last section not in the bill).

The district must implement the requested reform in the next school year, except in certain circumstances (see below). However, if parents submit a petition to reform a school that is also subject to restructuring by the school district (see "**Restructuring schools**" above), and the district chooses a different restructuring reform than requested in the petition, it is not clear which reform would prevail.

When implementation of reform is prohibited

(R.C. 3302.042(E))

The bill explicitly prohibits the district from implementing the reform requested by the petitioners if:

(1) The board of education determines that the petitioners' request is for reasons other than improving student achievement or safety;

(2) The Superintendent of Public Instruction determines that the reform would not comply with the Department of Education's Model of Differentiated Accountability, which establishes sanctions for chronically underperforming districts and schools as required by the federal No Child Left Behind Act;

(3) The requested reform is to have the Department take over the school's operation and the Department has not agreed to do so; or

(4) The school board has (a) held a public hearing on the matter and issued a statement explaining why it cannot implement the reform and agreeing to implement another of the reforms described above, (b) submitted evidence to the state showing how the alternative reform will improve the school's performance, and (c) had the alternative reform approved by the Superintendent of Public Instruction and the State Board of Education.

Petition validation

(R.C. 3302.042(D))

Parent petitions must be filed with the school district treasurer. Within 30 days after receipt of a petition, the treasurer must verify that the signatures are valid and sufficient in number to require implementation of the requested reform. If the treasurer finds that there are not enough valid signatures, any person who signed the petition, within ten days, may appeal the treasurer's finding to the county auditor. The county auditor then has 30 days to conduct an independent verification of the signatures.

Innovation schools and innovation school zones

(R.C. 3302.06, 3302.061, 3302.062, 3302.063, 3302.064, 3302.065, 3302.066, 3302.067, and 3302.068)

Under the bill, a school district may designate a single school as an "innovation school," or a group of similar schools as an "innovation school zone," for the purpose of implementing an innovation plan designed to improve student academic performance. Schools must apply to the district board of education for the designation. A majority of the teachers and a majority of the administrators in each applicant school must consent to seeking the designation. If the district approves the application, the district then must apply to the State Board of Education for designation as a "school district of innovation." Upon receipt of the designation from the State Board, the participating schools may proceed to implement their innovation plans.

The State Board, with certain exceptions, must waive education laws and administrative rules that prevent implementation of an innovation plan. Furthermore, a participating school may be exempt from specific provisions of a collective bargaining agreement, upon approval of the members of the bargaining unit working in the school.

Applying for designation as an innovation school or innovation school zone

(R.C. 3302.06)

When a school applies to the school board to be designated as an innovation school, the application must include an innovation plan that contains the following:

(1) A statement of the school's mission and an explanation of how the designation would enhance the school's ability to fulfill that mission;

(2) A description of the innovations the school would implement;

(3) An explanation of how those innovations would affect the school's programs and policies, including (a) the school's educational program, (b) the length of the school day and school year, (c) the student promotion policy, (d) the assessment of students, (e) the school's budget, and (f) the school's staffing levels;

(4) A description of the improvements in student academic performance that the school expects to achieve with the innovations;

(5) An estimate of the cost savings and increased efficiencies, if any, that the school expects to achieve with the innovations;

(6) A description of any education laws, State Board of Education rules, district requirements, or provisions of a collective bargaining agreement that would need to be waived to implement the innovations; and

(7) Evidence that a majority of the teachers and a majority of the administrators assigned to the school consent to seeking the designation and a statement of the level of support for seeking the designation from other school personnel, students, parents, and members of the community in which the school is located.

Two or more schools in the same district may apply for designation as an innovation school zone, if the schools share common interests, such as geographical proximity or similar educational programs, or if the schools serve the same students as they progress to higher grades (an elementary school that feeds into a middle school, for example, could jointly apply). The application must contain the same information as above for each participating school, plus (1) a description of how innovations in the participating schools would be integrated to achieve results that would be less likely to be achieved by each school alone and (2) an estimate of economies of scale that would be realized by joint implementation of the innovations.

Review of applications by district

(R.C. 3302.061)

The school board must approve or disapprove an application for designation as an innovation school or an innovation school zone within 60 days. If the board disapproves an application, it must provide a written explanation for its decision. The applicants may reapply for the designation at any time.

In evaluating applications, the school board must give preference to those that propose innovations in one or more of the following areas:

(1) Curriculum;

(2) Student assessments, other than the state achievement assessments;

(3) Class scheduling;

(4) Accountability measures, including innovations that expand the measures used in order to collect more complete data about student performance. For this purpose, schools may consider use of such measures as end-of-course exams, portfolios of student work, nationally or internationally normed assessments, the percentage of students enrolling in higher education, or the percentage of students simultaneously obtaining a diploma and an associate's degree or industry certification.

(5) Provision of student services, including services for students who are disabled, gifted, limited English proficient, at risk of academic failure or dropping out, or at risk of suspension or expulsion;

(6) Provision of health, counseling, or other social services to students;

(7) Preparation of students for higher education or the workforce;

(8) Teacher recruitment, employment, and evaluation;

(9) Compensation for school personnel;

(10) Professional development;

(11) School governance and the roles and responsibilities of principals; or

(12) Use of financial or other resources.

The bill explicitly authorizes a school board to approve an application that allows a participating school to determine the compensation of school employees. In that case, the school is not required to comply with the salary schedule for teachers adopted by the board (see "**Teacher compensation**"). However, the school must set salaries so that the total compensation for all school employees does not exceed the funds allocated to the school by the district. Similarly, the school board may approve an application that permits a participating school to remove employees from the school, but the board retains the ultimate responsibility for terminating an employee's contract.

Finally, the school board, of its own accord and in the absence of an application from a school, may designate an innovation school or an innovation school zone. If it exercises this authority, the board must create an innovation plan and offer the schools it has designated an opportunity to participate in the plan's development.

Designation as district of innovation

(R.C. 3302.062, 3302.066, and 3302.067)

Once a school board has designated an innovation school or innovation school zone within the district, it must submit the innovation plan of the participating schools to the State Board of Education. Within 60 days after receipt of the plan, the State Board must designate the district as a school district of innovation. However, the State Board must deny the designation if it determines the plan is not financially feasible or will likely result in decreased academic achievement.

A school board may request the State Board to make a preliminary assessment of an innovation plan prior to formally applying for designation as a school district of innovation. The State Board must review the plan and, within 60 days, recommend changes that would improve the plan.

Designation as a school district of innovation grants the participating schools permission to implement the innovation plan. The school board or a participating school may accept donations to support the plan's implementation. At any time, the school board, in collaboration with the participating schools, may revise the innovation plan to further improve student performance. A majority of the teachers and a majority of the administrators in each participating school must consent to the revisions.

Waiver of education laws and rules

(R.C. 3302.063)

The bill requires the State Board of Education, in most cases, to waive education laws or administrative rules necessary to implement an innovation plan. A waiver applies only to the schools participating in the innovation plan. But the bill prohibits the State Board from waiving any law or rule regarding:

(1) School district funding;

(2) Provision of services to students with disabilities and gifted students;

(3) Requirements related to career-technical education that are necessary to comply with federal law;

(4) Administration of the state achievement assessments and diagnostic assessments (and end-of-course exams and a nationally standardized test required as part of the new high school assessment system to be developed by the State Board and the Chancellor of the Board of Regents[86]);

(5) Issuance of the annual school district and building report cards;

(6) Implementation of the Department of Education's Model of Differentiated Accountability, which specifies sanctions for underperforming schools as required by the federal No Child Left Behind Act;

(7) Reporting of education data to the Department;

(8) Criminal records checks of school employees; and

[86] See R.C. 3301.0712, not in the bill.

(9) State retirement systems for teachers and other school employees.

Waiver of collective bargaining agreement

(R.C. 3302.064)

The bill also permits the waiver of specific provisions of a collective bargaining agreement to implement an innovation plan. To obtain a waiver, at least 60% of the members of the bargaining unit covered by the agreement who work in a participating school must vote, by secret ballot, to approve the waiver. In the case of an innovation school zone, this 60% threshold applies to each participating school individually. If a participating school does not meet this threshold, the school board may remove the school from the innovation school zone.

A member of the bargaining unit who works at a participating school (and presumably did not vote for the waiver) may request a transfer to another district school. The school board must make every reasonable effort to accommodate the request.

Once a waiver is approved, it remains in effect relative to any substantially similar provision in future collective bargaining agreements. Each collective bargaining agreement entered into by a school district on or after the bill's effective date must allow for the waiver of its provisions in order to implement an innovation plan.

Regular performance reviews

(R.C. 3302.065; conforming changes in R.C. 3302.063, and 3302.064(D))

Every three years, the school board must review the performance of each innovation school and innovation school zone to determine if it is achieving, or making sufficient progress toward achieving, the improvements in student performance described in its innovation plan. If the board finds that a school has not demonstrated sufficient progress, it may revoke the school's designation as an innovation school or remove the school from the innovation school zone. The board also may revoke the designation of all participating schools as an innovation school zone. If a school's designation is revoked or the school is removed from an innovation school zone, the school again becomes subject to all laws, rules, and provisions of a collective bargaining agreement that had been waived to implement the innovation plan.

Annual report

(R.C. 3302.068)

By July 1 each year, the Department of Education must issue a report on school districts of innovation. This report must include data on the number of innovation schools and innovation school zones and how many students are served by them. In addition, it must contain (1) an overview of the innovations implemented in districts of innovation, (2) data on student performance, including a comparison of performance before and after a district's designation, and (3) legislative recommendations.

School district operating standards

(R.C. 3301.07; repealed R.C. 3306.33)

H.B. 1 of the 128th General Assembly required the State Board of Education to adopt additional operating standards for school districts in relation to that act's establishment of the EBM and other reforms. The bill makes adoption of those new standards optional and conforms some of the statutory language to the bill's repeal of the EBM. The new standards, when adopted, would cover the following:

(1) Effective and efficient organization, administration, and supervision of each district and building;

(2) Establishment of business advisory councils and family and civic engagement teams;[87]

(3) "Job-embedded professional development and professional mentoring and coaching," release time for planning and professional development, and reasonable access to classrooms by administrators for observation and professional development experiences; and

(4) Creation of a school leadership team for each building.

Governor's Effective and Efficient Schools Recognition program

(R.C. 3301.22)

The bill creates the Governor's Effective and Efficient Schools Recognition program, under which the Governor must annually recognize the top 10% of schools in the state. The manner by which such schools are to be recognized is at the discretion of

[87] Am. Sub. H.B. 30 of the 129th General Assembly, pending approval of the Governor, generally repeals the requirement that school districts establish family and civic engagement teams.

the Governor. Schools to be recognized include public (schools operated by school districts, community ("charter") schools, and STEM schools) or chartered nonpublic schools.

The bill directs the Department of Education to establish standards by which to determine the top 10% of schools. These standards must include, but need not be limited to, (1) student performance, measured with factors including, but not limited to, performance indicators required under current law, report cards issued by the Department, and any other statewide or national assessment or student performance recognition program the Department selects to use and (2) fiscal performance, including cost-effective measures taken by the school.

Teacher Incentive Payment Program

(R.C. 3302.23 and 3302.24)

The bill establishes the Teacher Incentive Payment Program to provide stipends of $50 per student to certain English language arts and math teachers in grades 4 to 8 who teach in a school district, community (charter) school, or STEM school. These stipends are available annually, beginning with student performance in the 2011-2012 school year, and are to be paid by the Department of Education. A teacher is eligible for a stipend based on value-added data, which shows the amount of academic growth attributable to a particular teacher and is used to determine whether a student is achieving a standard year of growth.

The program is designed to reward teachers with a payment when more than a standard year of growth is achieved in English language arts or math. But it is not clear if a teacher is eligible for the $50 per-student payment based on the performance of the teacher's class as a whole or based only on individual student performance. In other words, it is not clear if the teacher is paid $50 for each student in the class when the class, on average, achieves more than a standard year of academic growth, or if the teacher is paid $50 only for each individual student who shows more than a standard year of academic growth.

Only $50 per student is paid under the program, even when the standard year of academic growth is exceeded in both English language arts and math. In the early elementary grades when both subjects are likely to be taught by the same teacher, that teacher would retain the entire stipend. In middle school grades, though, when students often have different teachers for English language arts and math, the $50 would be divided between those teachers. Similarly, in a team teaching arrangement, where two or more teachers teach the same students in a single subject area, the stipend would be divided among the team of teachers.

The bill creates the Teacher Incentive Payment Program Fund, consisting of appropriations by the General Assembly to be used to pay the stipends. It also directs the State Board of Education, in consultation with the Governor's office, to adopt rules for the program.

Alternative resident educator license

(R.C. 3319.26)

The bill makes several changes to the qualifications for obtaining and holding an alternative resident educator license, as shown in the table below. This four-year license 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. It is 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. An intervention specialist works with disabled, gifted, and other students with individualized instructional needs that require use of particularized teaching practices.

	Current law	The bill
Qualifications for obtaining license	Under current statute and State Board of Education licensure rules,[88] the qualifications for an alternative resident license are: (1) A bachelor's degree; (2) A major with a grade point average (GPA) of at least 2.5 in the subject area to be taught, extensive work experience related to that subject area, or a master's degree with a GPA of at least 2.5 in that subject area; (3) Completion of an intensive pedagogical training institute developed by the Superintendent of Public Instruction and the Chancellor of the Board of Regents. The instruction must cover such topics as student development and learning,	Under the bill, the minimum qualifications for the alternative resident license are: (1) A bachelor's degree; and (2) Passage of the Praxis II subject area assessment. The State Board may adopt additional qualifications for the license, but the bill prohibits requiring applicants to have completed a college major in the subject area to be taught.

[88] See Ohio Administrative Code 3301-24-19 and 3301-24-21.

	Current law	The bill
	assessment procedures, curriculum development, classroom management, and teaching methodology. (4) Passage of the Praxis II subject area assessment.	
Conditions of holding license	(1) Participate in the Ohio Teacher Residency Program, which is a four-year, entry-level mentoring program for classroom teachers;[89] (2) Show satisfactory progress in taking and completing at least 12 additional semester hours of college coursework in the principles and practices of teaching; and (3) Take the Praxis II assessment of professional knowledge in the second year of teaching under the license.	(1) Participate in the Ohio Teacher Residency Program; (2) Show satisfactory progress in taking and completing one of the following: (a) At least 12 additional semester hours of college coursework in the principles and practices of teaching; or (b) Professional development provided to participants of a teacher preparation program that is operated by a nonprofit organization and has been approved by the Chancellor. The bill directs the Chancellor to approve any program that requires participants to (i) have a bachelor's degree, (ii) have an undergraduate GPA of 2.5, and (iii) complete a summer training institute. These are essentially the program requirements of Teach for America. (3) Take the Praxis II assessment of professional knowledge in the second year of teaching under the license.

[89] See R.C. 3319.223.

Licensure of out-of-state teachers

(R.C. 3319.227)

The bill creates a process for the State Board of Education to establish a list of states with inadequate teacher licensure standards, for the purpose of enabling certain veteran teachers from states *not* on the list (and, therefore, have satisfactory licensure standards) to obtain automatic licensure in Ohio. To qualify for the automatic licensure, an out-of-state teacher, in addition to being from a state with acceptable licensure standards, must:

(1) Have a bachelor's degree;

(2) Have been licensed and employed as a teacher in the other state for each of the preceding 5 years;

(3) Have been initially licensed as a teacher within the prior 15 years; and

(4) Have not had a teacher's license suspended or revoked in any state.

The bill does not prohibit a teacher from a state on the State Board's list from ever obtaining a teaching license in Ohio, but presumably the teacher would need to meet additional qualifications.

Establishing the list

(R.C. 3319.227(B))

By July 1, 2012, the Superintendent of Public Instruction must develop a list of states that the Superintendent considers to have teacher licensure standards that are inadequate to ensure that a person who meets the criteria in (1) to (4) above and who was most recently licensed to teach in that state is qualified for a professional educator license, which is the standard teaching license in Ohio. The Superintendent then must convene a panel of experts, each of whom must be approved by the State Board of Education, to evaluate the adequacy of the teacher licensure standards of the states on the list. In evaluating the list, the panel must provide an opportunity for representatives of the Education department of each state on the list to refute the state's inclusion.

By April 1, 2013, the panel must recommend to the State Board either that the list be approved without changes or that specified states be removed from the list prior to approval. The State Board must approve a final list by July 1, 2013.

Licensure of teachers until list is approved

(R.C. 3319.227(C) and (E))

Until the final list is approved, the State Board must issue a one-year provisional educator license to any out-of-state teacher who meets the criteria described in (1) to (4) above. However, between July 1, 2012, when the Superintendent of Public Instruction's preliminary list is completed, and the date of the final list's approval, the State Board must issue the teacher a five-year professional educator license, if the teacher is from a state *not* on the preliminary list. Upon approval of the final list, the State Board must issue a professional educator license to any teacher who meets the specified criteria and is from a state not on the list.

In the case of a teacher who is issued a provisional license prior to the final list's approval, under certain conditions, the teacher may obtain a professional license when the provisional license expires. To qualify for the professional license, the teacher must have been issued the provisional license before the completion of the preliminary list by the state Superintendent and, prior to teaching in Ohio, have been most recently licensed to teach by a state not on the preliminary list or, if the final list has been approved, not on that list. However, if the teacher was most recently licensed by a state that is on the list, the teacher can still obtain a professional license if (1) the teacher was employed under the provisional license by a public school in Ohio or an entity contracted by the school to provide online instruction and (2) the school certifies to the State Board that the teaching was satisfactory.

Reciprocity agreements

(R.C. 3319.227(C))

Once the State Board has approved a final list of states with inadequate licensure standards, neither the State Board or the Department of Education may be party to any reciprocity agreement with a state on the list that requires the issuance of any type of professional educator license to a teacher based on licensure and teaching experience in that state.

Criminal records checks of adult education instructors

(R.C. 3319.39)

The bill eliminates the requirement for an adult education instructor to undergo a criminal records check prior to hiring by a school district, community school, STEM school, educational service center, or chartered nonpublic school, if the person had a records check within the previous two years as a condition of being hired for short-term

employment with that same district, school, or service center.[90] The exemption from the records check applies only if the duties of the position for which the person is applying do not involve routine interaction with a child or, during any period of time in which the position does involve routine interaction, another employee will be present in the same room with the child or, if outdoors, will be within a 30-yard radius of the child or have visual contact with the child.

Background − current law

Under current law, all school employees are subject to pre-employment criminal records checks conducted by the Bureau of Criminal Identification and Investigation. Each records check must include records of the Federal Bureau of Investigation (FBI), except 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 or have been subject to an FBI check during that period.

BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND SURVEYORS (ENG)

- Requires that the State Board of Registration for Professional Engineers and Surveyors renew registrations biennially rather than annually, and accordingly changes the renewal fee from $20 to $40, to be paid biennially.

- Allows professional engineers and surveyors to complete continuing professional development hours during a two-year period, rather than annually, but doubles the 15 annual hours required to 30 hours for the two-year period.

- Increases from three to four the number of years records that demonstrate completion of the continuing professional development requirements must be retained.

[90] See also R.C. 3314.03(A)(11)(d) and 3326.11 (latter section not in the bill).

Biennial registration for professional engineers and surveyors

(R.C. 4733.15 and 4733.151)

The bill requires that professional engineers and professional surveyors renew their registrations with the State Board of Registration for Professional Engineers and Surveyors biennially, rather than annually, beginning for renewals after December 31, 2011. Accordingly, the bill changes the renewal fee from $20 to $40, to be paid biennially. Under current law, registrations expire annually on the last day of December and become invalid on that date unless they are renewed by paying the annual renewal fee of $20.

The bill allows professional engineers and surveyors to complete their continuing professional development hours during a two-year period, rather than annually, but doubles the 15 annual hours required to 30 hours for the two-year period. Under current law, to renew an annual registration, professional engineers and surveyors must prove they have completed 15 hours of continuing professional development. Under the bill, each registrant must complete at least 30 hours of continuing professional development during the two-year period immediately preceding the biennial renewal expiration date. A registrant who completes more than 30 hours of approved coursework in a biennial renewal period (compared to 15 hours in a calendar year under existing law) may carry forward to the next biennial renewal period a maximum of 15 hours of the excess hours, which is the same carryover for the annual renewal period.

The bill increases from three to four years the number of years a registrant must retain records that demonstrate completion of the continuing professional development requirements.

ENVIRONMENTAL PROTECTION AGENCY (EPA)

- Increases from $750,000 to $1.5 million the cap on the amount of money credited to the Air Pollution Control Administration Fund that the Director of Environmental Protection may spend in any fiscal year for the administration and enforcement of the Air Pollution Control Law.

- Authorizes the extension of the motor vehicle inspection and maintenance program (E-Check), which is operated in the Cleveland-Akron area, through June 30, 2014.

- Authorizes the Director to exempt a person generating, collecting, storing, treating, disposing of, or transporting infectious wastes from requirements of the Solid, Hazardous, and Infectious Wastes Law under specified circumstances.

- Extends the time period for conducting a public meeting regarding an application for a permit for a new or modified solid waste facility from 35 to 45 days after the submission of the application.

- Amends the license fee schedule for solid waste compost facilities by establishing additional fee categories based on authorized maximum annual daily waste receipts.

- Eliminates the requirement that hazardous waste disposal and treatment fees be deposited into minority banks as defined in state law.

- Authorizes the Environmental Protection Agency to make expenditures from the Hazardous Waste Facility Management Fund without Controlling Board approval.

- Authorizes the use of money in the Fund specifically for the investigation and cleanup of contaminated properties by the Director of Environmental Protection and for grants for the cleanup of such properties.

- Requires natural resource damage assessment costs recovered by the state under federal law to be credited to the existing Hazardous Waste Clean-Up Fund, thus distinguishing the assessment costs from other money collected for natural resources damages that must be credited to the Natural Resource Damages Fund.

- Extends from June 30, 2012, to June 30, 2014, the expiration date of the following fees on the transfer or disposal of solid wastes:

  --$1 per ton the proceeds of which must be divided equally between the Hazardous Waste Facility Management Fund and the Hazardous Waste Clean-Up Fund, which are used for purposes of Ohio's hazardous waste management program;

  --$1 per ton the proceeds of which must be credited to the Solid Waste Fund, which is used for the solid and infectious waste and construction and demolition debris management programs; and

  --$2.50 per ton the proceeds of which must be credited to the Environmental Protection Fund, which is used for administering and enforcing environmental protection programs.

- Exempts from state and local solid waste disposal fees coal combustion wastes regardless of whether the disposal facility is located on the premises where the wastes were generated rather than specifying as in current law that the wastes must be disposed of at facilities that exclusively dispose of coal combustion wastes and that are owned by the generator.

- Eliminates the requirement that the Director contract only with owners or operators of scrap tire storage, monocell, monofill, or recovery facilities for the storage, disposal, or processing of scrap tires removed through removal operations.

- Eliminates the requirement that the Director give preference to owners or operators of scrap tire recovery facilities when entering into such contracts.

- Extends for two years the sunset of the 50¢ per-tire fee on the sale of tires the proceeds of which are used to fund the scrap tire management program.

- Extends for two years the sunset of an additional 50¢ per-tire fee on the sale of tires, and requires all money from the fee to continue to be credited to the Soil and Water Conservation District Assistance Fund.

- Extends all of the following for two years:

  --The sunset of the annual emissions fees for synthetic minor facilities;

  --The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for plan approvals for wastewater treatment works under the Water Pollution Control Law;

  --The sunset of the annual discharge fees for holders of NPDES permits issued under the Water Pollution Control Law;

  --The sunset of license fees for public water system licenses issued under the Safe Drinking Water Law;

  --A higher cap on the total fee due for plan approval for a public water supply system under the Safe Drinking Water Law and the decrease of that cap at the end of the two years;

  --The levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law;

  --The levying of higher fees, and the decrease of those fees at the end of the two years, for applications and examinations for certification as operators of water

supply systems or wastewater systems under the Safe Drinking Water Law or the Water Pollution Control Law, as applicable; and

--The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for permits, variances, and plan approvals under the Water Pollution Control Law and the Safe Drinking Water Law.

- Revises the definition of "population served" for purposes of license fees for public water systems that are not community water systems and that serve nontransient populations to mean the total number of individuals having access to, rather than receiving water from, the water supply during a 24-hour period for at least 60 days during a calendar year.

- Provides that license fees for public water systems that are not community water systems and that serve transient populations are based on the number of wells or sources, other than surface water, supplying such a system rather than just wells.

- Establishes a $200 application fee for coverage under an NPDES general permit for a household sewage treatment system that discharges off the site where the system is located and a $100 fee for a renewal of permit coverage.

- Authorizes voluntary actions with respect to class C releases from underground storage tank systems to be conducted under the Voluntary Action Program Law.

- Defines "class C release" to mean a release of petroleum from an underground storage tank system for which the responsible person for the release is specifically determined by the Fire Marshal not to be a viable person capable of undertaking or completing corrective actions for the release and to include any release so designated in rules by the Fire Marshal.

- Creates the Federally Supported Cleanup and Response Fund to support the investigation and remediation of contaminated property, and requires the Agency to use money in the Fund for those purposes.

- Allows money in the Surface Water Protection Fund to be used to meet state matching requirements that are necessary to obtain federal grants by removing a statutory prohibition against that use.

Air Pollution Control Administration Fund

(R.C. 3704.06)

The bill increases from $750,000 to $1.5 million the cap on the amount of money credited to the Air Pollution Control Administration Fund that the Director of Environmental Protection may spend in any fiscal year for the administration and enforcement of the Air Pollution Control Law. Existing law requires 50% of the money collected as civil penalties for violations of certain provisions of that Law to be credited to the Fund. The Director must use the money in the Fund for the administration and enforcement of that Law.

Extension of E-Check

(R.C. 3704.14)

The bill authorizes the extension of the motor vehicle inspection and maintenance program (E-Check) through June 30, 2014. Under the bill, the Director of Environmental Protection may request the Director of Administrative Services to extend the current contract to conduct E-Check with the contractor that currently operates the program. Upon receiving the request, the Director of Administrative Services must extend the current contract for a period not to exceed 12 months beginning on July 1, 2011. Prior to the expiration of the contract extension, the Director of Environmental Protection may request the Director of Administrative Services to enter into a contract with a vendor to operate E-Check in each county where it is federally mandated through June 30, 2014. The bill retains a requirement under which the Director of Administrative Services must use a competitive selection process when entering into a new contract with a vendor. The bill also retains all other current requirements related to the E-Check program.

Current law provides authority for the current E-Check contract until June 30, 2011, with an option for Ohio to extend the contract through June 30, 2012. Under the current contract, E-Check operates in seven counties in the Cleveland-Akron area.

Exemptions from infectious waste requirements

(R.C. 3734.02)

The bill authorizes the Director of Environmental Protection to exempt any person generating, collecting, storing, treating, disposing of, or transporting infectious waste from any requirement to obtain a registration certificate, permit, or license or comply with other requirements of the Solid, Hazardous, and Infectious Wastes Law. The Director must determine that the exemption is unlikely to adversely affect the

public health or safety or the environment. Under current law, the Director only has the authority to provide such an exemption to persons generating, collecting, storing, treating, disposing of, or transporting solid or hazardous waste.

Time period for solid waste facility permit application meeting

(R.C. 3734.05)

The bill extends the time period for conducting a public meeting regarding an application for a permit for a new or modified solid waste facility. Under the bill, an applicant must conduct the public meeting not later than 45 days after submitting the application. Current law requires the public meeting to take place not later than 35 days after submission of the application.

Solid waste compost facility license fee

(R.C. 3734.06; R.C. 3734.05 for cross-reference purposes)

The bill amends the fee schedule for solid waste compost facility licenses as follows:

Authorized maximum annual daily waste receipt in tons (current law)	Annual license fee (current law)	Authorized maximum annual daily waste receipt in tons (the bill)	Annual license fee (the bill)
12 or less	$300	12 or less	$300
13 to 25	$600	13 to 25	$600
26 to 50	$1,200	26 to 50	$1,200
51 to 75	$1,800	51 to 75	$1,800
76 to 100	$2,500	76 to 100	$2,500
101 to 200	$6,250	101 to 150	$3,750
201 to 500	$15,000	151 to 200	$5,000
501 or more	$30,000	201 to 250	$6,250
		251 to 300	$7,500
		301 to 400	$10,000
		401 to 500	$12,500
		501 or more	$30,000

Hazardous Waste Facility Management Fund

(R.C. 3734.18, 3734.19, 3734.20, 3734.21, 3734.22, 3734.23, 3734.24, 3734.25, 3734.26, and 3734.27)

Deposit of fees into minority banks

Current law generally requires the Director of Environmental Protection to deposit hazardous waste disposal and treatment fees to the credit of the Hazardous Waste Facility Management Fund. The bill eliminates the requirement that the fees be deposited into one or more minority banks to the credit of the Fund. A minority bank is a bank that is owned or controlled by one or more socially or economically disadvantaged persons, which include, but are not limited to, Afro-Americans, Puerto Ricans, Spanish-speaking Americans, and American Indians.

Controlling Board approval of expenditures

The bill authorizes the Environmental Protection Agency (EPA) to make expenditures from the Fund without Controlling Board approval. It does so by removing a provision in current law that requires the Controlling Board to approve an expenditure from the Fund before the EPA makes an expenditure other than for repayment of and interest on any loan made by the Ohio Water Development Authority.

Uses of money

The bill authorizes the EPA to use money in the Fund specifically for all of the following:

(1) Conducting investigations at locations or facilities that are potentially contaminated with hazardous waste;

(2) Abating or preventing air or water pollution or soil contamination at facilities or locations where hazardous waste was treated, stored, or disposed of;

(3) Closure of hazardous waste facilities or solid waste facilities containing significant quantities of hazardous waste, construction of suitable hazardous waste facilities that are needed as a result of closure, and related abatement of air or water pollution or soil contamination, and protection of public health or safety;

(4) Acquiring facilities that threaten public health or safety or result in air or water pollution or soil contamination because of the presence of significant quantities of hazardous waste; and

(5) Making grants to political subdivisions, and to owners of facilities who are not responsible for the contamination at the facilities, for closure of facilities or abatement of pollution. Before making grants, the Director must consider each project application submitted and establish priorities for awarding the grants. The priorities must be based on the feasibility, cost, and public benefits of restoring the particular land and the availability of federal or other financial assistance for restoration.

Current law authorizes the Environmental Protection Agency to use money in the Hazardous Waste Facility Management Fund for the administration of the hazardous waste program.

Reimbursements, payments, and sales

The bill requires the following to be credited to the Fund: (1) money from the reimbursement of the costs of cleanup of contaminated land to the state, (2) recovery of costs of investigations and measures performed, and (3) money recovered from liens enforced.

Natural resource damage assessment costs

(R.C. 3734.28 and 3734.282)

The bill distinguishes natural resource damage assessment costs recovered by the state under federal law from other money collected by the state under federal law for natural resources damages. The bill accomplishes that by requiring recovered natural resource damage assessment costs to be credited to the existing Hazardous Waste Clean-Up Fund. In addition, the bill specifies that natural resource damage assessment costs may be recovered under any of the following: (1) the Comprehensive Environmental Response, Compensation, and Liability Act, (2) the Oil Pollution Act, (3) the Federal Water Pollution Control Act, and (4) any other applicable federal or state law. All other money collected by the state for natural resources damages under those federal acts, or any other applicable federal or state law must be credited to the existing Natural Resource Damages Fund.

Current law does not make a distinction regarding the money collected for natural resources damages by the state under federal law. Instead, current law requires all money that is collected by the state for natural resources damages under the above specified federal acts or any other applicable federal or state law to be credited to the Natural Resource Damages Fund.

Extension of solid waste transfer and disposal fees

(R.C. 3734.57; cross reference changes to R.C. 1515.14 and 3745.015)

The bill extends, from June 30, 2012, to June 30, 2014, the expiration date of three fees levied on the transfer or disposal of solid waste that are used to fund programs administered by the Environmental Protection Agency (EPA). The first fee is a $1 per-ton fee, of which one-half of the proceeds must be credited to the Hazardous Waste Facility Management Fund and one-half of the proceeds must be credited to the Hazardous Waste Clean-up Fund. Those funds are used for purposes of the hazardous waste management program. The second fee is another $1 per-ton fee that is credited to 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 $2.50 per-ton fee the proceeds of which must be credited to the Environmental Protection Fund, which is used to pay the EPA's costs associated with administering and enforcing environmental protection programs. The solid waste transfer and disposal fees are collected by the owners and operators of solid waste disposal and transfer facilities as trustees for the state.

Under existing law, there is a fourth 25¢ per-ton fee on the transfer or disposal of solid waste the proceeds of which must be credited to the Soil and Water Conservation District Assistance Fund. That fee expires on June 30, 2012.

Exemption from solid waste fees for coal wastes

(R.C. 3734.57)

The bill alters the current exemption from state and local solid waste disposal fees that is applicable to certain wastes derived from coal combustion. The primary change made by the bill allows the wastes to be disposed of at any solid waste disposal facility rather than only at premises owned by the generator of the wastes.

The specific language of the bill provides that solid waste that is generated from the combustion of coal, or from the combustion of primarily coal in combination with scrap tires, is exempt from all state and local solid waste disposal fees. The exemption applies regardless of whether the disposal facility is located on the premises where the wastes are generated.

Under current law, the exemption applies to solid waste that is disposed of at facilities that exclusively dispose of wastes that are generated from the combustion of coal, or from the combustion of primarily coal in combination with scrap tires, that is not combined in any way with garbage at one or more premises owned by the generator.

Contracts for storage, disposal, or processing of certain scrap tires

(R.C. 3734.85)

The bill removes restrictions governing with whom the Director of Environmental Protection may enter into contracts for the storage, disposal, or processing of scrap tires removed through removal operations. It does so by eliminating the existing requirement that the contracts be entered into with owners or operators of scrap tire storage, monocell, monofill, or recovery facilities. It also removes the current requirement that the Director give preference to owners or operators of scrap tire recovery facilities when entering into such contracts.

Sale of tires fees

(R.C. 3734.901)

The bill extends until June 30, 2013, the sunset of the 50¢ per-tire fee on the sale of tires the proceeds of which are used to fund the scrap tire management program. The fee is scheduled to expire on June 30, 2011.

The bill extends until June 30, 2013, the sunset of an additional 50¢ per-tire fee on the sale of tires. The money from the additional fee must continue to be credited to the existing Soil and Water Conservation District Assistance Fund, which is used to provide money to soil and water conservation districts. Current law requires the additional fee to be collected and so credited until June 30, 2011.

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, 2012. The bill extends the fee through June 30, 2014.

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, 2012, 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, 2012. Under the bill, the first tier fee is extended through June 30, 2014, and the second tier applies to applications submitted on or after July 1, 2014.

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, 2010, and January 30, 2011. The bill extends payment of the fees and the fee schedules to January 30, 2012, and January 30, 2013.

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, 2010, and January 30, 2011. The bill continues the surcharge and requires it to be paid annually by January 30, 2012, and January 30, 2013.

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, 2010, and January 30, 2011. The bill continues the fee and requires it to be paid annually by January 30, 2012, and January 30, 2013.

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, 2012, and has to be paid annually prior to January 31, 2012. The bill extends the initial license and license renewal fee through June 30, 2014, and requires the fee to be paid annually prior to January 31, 2014.

Under current law, the fee schedule for licenses of public water systems that are not community water systems and that serve nontransient populations is based on population served. The bill revises the definition of "population served" to mean the total number of individuals having access to, rather than receiving water from, the water supply during a 24-hour period for at least 60 days during any calendar year.

Similarly, the fee schedule in current law for licenses of public water systems that are not community water systems and that serve transient populations is based on the number of wells supplying the system. The bill revises the basis of the fee schedule so that it is instead based on the number of wells or sources, other than surface water, supplying the system. In addition, the bill makes necessary conforming changes.

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, 2012, and $15,000 on and after July 1, 2012. The bill specifies that the $20,000 limit applies to persons applying for plan approval through June 30, 2014, and the $15,000 limit applies to persons applying for plan approval on and after July 1, 2014.

Current law establishes two schedules of fees that the Environmental Protection Agency (EPA) 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, 2012, and a schedule with lower fees is applicable on and after July 1, 2012. The bill continues the higher fee schedule through June 30, 2014, and applies the lower fee schedule to evaluations conducted on or after July 1, 2014. The bill continues through June 30, 2014, 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, 2012, and a $25 application fee on and after December 1, 2012. The bill continues the higher application fee through November 30, 2014, and applies the lower fee on and after December 1, 2014. 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, 2012, and a lower schedule applies on and after December 1, 2012. The bill extends the higher fee schedule through November 30, 2014, and applies the lower fee schedule beginning December 1, 2014.

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, 2012, and a nonrefundable fee of $15 if the application is submitted on or after July 1, 2012. The bill extends the $100 fee through June 30, 2014, and applies the $15 fee on and after July 1, 2014.

Similarly, under existing law, a person applying for an NPDES permit through June 30, 2012, must pay a nonrefundable fee of $200 at the time of application. On and after July 1, 2012, the nonrefundable application fee is $15. The bill extends the $200 fee through June 30, 2014, and applies the $15 fee on and after July 1, 2014.

Fee for household sewage treatment system general NPDES permit

(R.C. 3745.11(S))

The bill establishes the following fees applicable to a person applying for coverage under an NPDES general permit for a household sewage treatment system that discharges off the site where the system is located:

(1) A nonrefundable fee of $200 at the time of application for initial permit coverage; and

(2) A nonrefundable fee of $100 at the time of application for a renewal of permit coverage.

The EPA issues general NPDES permits and administers the NPDES program. Most household sewage treatment systems do not discharge pollutants into a river or stream and, thus, do not require an individual NPDES permit or coverage under a general NPDES permit. However, certain household sewage treatment systems, known as off-lot systems, do discharge. Off-lot systems are often required when a household sewage treatment system is not capable of effectively dispersing and treating wastewater at the site where the system is located. Off-lot systems are not only required to be covered by a general NPDES permit issued by EPA, but also must be in

compliance with all applicable requirements of the Household and Small Flow On-Site Sewage Treatment Systems Law. That Law is administered by the Department of Health and local health departments.

Class C underground storage tank releases and voluntary actions

(R.C. 3737.87, 3737.88, and 3746.02)

The bill generally authorizes a voluntary action to be conducted with respect to class C releases from underground storage tanks. Current law precludes voluntary actions regarding releases of petroleum from underground storage tanks, which are regulated by the state Fire Marshal. The bill instead provides that a person who is not responsible for a class C release may conduct a voluntary action under the Voluntary Action Program Law. The Director of Environmental Protection may issue a covenant not to sue to any person who properly completes a voluntary action with respect to a class C release under that Law and rules adopted under it. In order to allow for the voluntary actions, the bill excepts class C releases from the Fire Marshal's exclusive jurisdiction to regulate corrective actions undertaken in response to releases of petroleum from underground storage tank systems.

The bill defines "class C release" to mean a release of petroleum from an underground storage tank system for which the responsible person for the release is specifically determined by the Fire Marshal not to be a viable person capable of undertaking or completing corrective actions for the release and to include any release so designated in rules by the Fire Marshal.

The voluntary action program, which is administered by the Environmental Protection Agency, provides a mechanism by which a person may investigate possible environmental contamination, clean it up if necessary, and receive a promise from the state that no more cleanup is needed. The promise is referred to in law as a covenant not to sue. That covenant generally protects the person from possible legal action by Ohio after a voluntary action is completed.

Additional language changes

The bill makes additional changes to the law governing underground storage tanks. The bill refers to releases of petroleum from underground storage tanks. Current law refers to releases from underground petroleum storage tanks. The bill refers to releases of petroleum from underground storage tank systems. Current law refers only to releases of petroleum.

Federally Supported Cleanup and Response Fund

(R.C. 3745.016)

The bill creates the Federally Supported Cleanup and Response Fund consisting of money credited to the Fund from federal grants, gifts, and contributions to support the investigation and remediation of contaminated property. The Environmental Protection Agency must use money in the Fund for those purposes.

Surface Water Protection Fund

(R.C. 6111.038)

The bill allows money in the Surface Water Protection Fund to be used to meet state matching requirements that are necessary to obtain federal grants by removing a statutory prohibition against that use. Current law requires the Director to use money in the Fund solely for the administration and implementation of surface water protection programs.

eTECH OHIO COMMISSION (ETC)

- Creates the Information Technology Service Fund, consisting of money paid to the eTech Ohio Commission for the provision of information technology services to support initiatives to align education from preschool through college.

Information Technology Service Fund

(R.C. 3353.15)

The bill creates the Information Technology Service Fund, consisting of money paid by educational entities to the eTech Ohio Commission for the provision of information technology services to support initiatives to align education from preschool through college. The fund's proceeds must be used to provide these services, including (1) implementation of an electronic clearinghouse for transferring student transcripts and (2) development of a longitudinal student data system, which is authorized by continuing law.[91]

[91] See R.C. 3301.94, not in the bill.

ETHICS COMMISSION (ETH)

- Requires the Ohio Ethics Commission to deposit funds received as a result of court orders into the Ohio Ethics Commission Fund.

Court-ordered costs

(R.C. 102.02(G)(2))

The bill requires the Ohio Ethics Commission to deposit investigative or other fees, costs, or other funds it receives as a result of court orders into the Ohio Ethics Commission Fund, which is used to pay for Commission operations. In 2007, an Ohio Court of Appeals found the Ethics Commission was not authorized by Ohio statutory law in effect at that time to receive court-ordered reimbursement for the cost of its investigations.[92]

DEPARTMENT OF HEALTH (DOH)

- Authorizes the Ohio Department of Health (ODH) to establish a rebate program for its Bureau for Children with Medical Handicaps (BCMH) under which manufacturers of drugs or nutritional formulas are required to enter into rebate agreements with ODH as a condition of having the drugs or formulas covered by BCMH programs.

- Specifies, in addition to the Help Me Grow Program's existing purpose of encouraging prenatal and well-baby care, that the Program's purposes are to (1) provide parenting education to promote the comprehensive health and development of children and (2) provide early intervention services in accordance with federal law.

- Provides that home visiting services under the Help Me Grow Program are provided to eligible families with a pregnant woman or a child under age three (rather than newborn infants and their families).

- Eliminates a requirement that a request for home visiting services be made by a parent of an eligible infant before the services can be provided by ODH.

[92] *State v. Perz* (2007) 173 Ohio App.3d 99, 105 (Ct. App. Lucas Cty.).

- Eliminates a requirement that the Help Me Grow Program include distributing subsidies to counties to provide Program services.

- Permits the ODH Director to (1) enter into interagency agreements with state agencies to implement the Help Me Grow Program and (2) distribute Program funds through contracts, grants, or subsidies to entities providing Program services.

- Requires, to the extent funds are available, that ODH establish a system of payment to providers of Help Me Grow Program services.

- Specifies that a family currently enrolled in the At Risk Program will remain eligible for at-risk services until December 31, 2013, or until the eligible child reaches three years of age, whichever occurs first.

- Specifies certain rules that must be adopted to implement the Help Me Grow Program, including rules regarding eligibility for services, providers of services, complaint procedures, and criteria for payment.

- Reduces to $3 (from $4) the portion of the $12 minimum fee for a certified copy of a vital record or certification of birth that must be transferred from a local board of health to the State Office of Vital Statistics and used to support public health systems.

BCMH rebate agreements for drugs and nutritional formulas

(R.C. 3701.021 and 3701.023)

The bill authorizes the Ohio Department of Health (ODH) to establish a rebate program for its Bureau for Children with Medical Handicaps (BCMH) under which a manufacturer of a drug or nutritional formula is required to enter into a rebate agreement with ODH as a condition of having the drug or nutritional formula covered by the programs administered by the BCMH. When entering into a rebate agreement, the manufacturer and ODH must negotiate the amount of the rebate – a refund of a portion of the price of a drug or nutritional formula. If ODH implements the rebate program, the bill requires the Public Health Council to adopt rules regarding the procedures for administering the program, including criteria and other requirements for manufacturer participation in the program.

Help Me Grow

(R.C. 3701.61)

The Help Me Grow Program provides early childhood services to children under age three. The Program is directed by ODH and coordinated at the county level by family and children first councils. In addition to the Program's existing purpose of encouraging prenatal and well-baby care, the bill specifies that the Program's purposes are to provide parenting education to promote the comprehensive health and development of children and provide early intervention services in accordance with Part C of the federal Individuals with Disabilities Education Act.[93]

The Help Me Grow Program includes home visiting and early intervention services. The bill provides that home visiting services are provided to eligible families with a pregnant woman or a child under age three (rather than newborn infants and their families). The bill eliminates a requirement that a request for home visiting services be made by a parent of an eligible infant before the services can be provided by ODH. It also eliminates a requirement that the Program include distributing subsidies to counties to provide Program services.

The At Risk Program, which is a component of the Help Me Grow Program, provides services to children under age three who are at risk for a developmental delay or disability. The bill specifies that a family currently enrolled in the At Risk Program will remain eligible for at-risk services until December 31, 2013, or until the eligible child reaches three years of age, whichever occurs first.

The ODH Director is authorized under the bill to enter into interagency agreements with state agencies to implement the Help Me Grow Program and distribute Program funds through contracts, grants, or subsidies to entities providing Program services. To the extent funds are available, ODH must establish a system of payment to providers of Program services.

The bill requires the ODH Director (rather than ODH) to adopt rules to implement the Program. The rules must specify all of the following:

(1) Eligibility requirements for home visiting services and Part C early intervention services;

(2) Eligibility requirements for providers of home visiting services and providers of Part C early intervention services;

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[93] 20 U.S.C. 1431 *et seq.*

(3) Standards and procedures for the provision of Program services, including data collection, program monitoring, and Program evaluation;

(4) Procedures for appealing the denial of an application for Program services or the termination of services;

(5) Procedures for appealing the denial of an application to become a provider of Program services or the termination of ODH's approval of a provider;

(6) Procedures for addressing complaints;

(7) Criteria for payment of approved providers of Program services;

(8) Any other rules necessary to implement the Program.

Vital statistics fees – portion transferred to State Office of Vital Statistics

(R.C. 3705.24)

The bill reduces to $3 (from $4) the portion of the minimum total fee for a certified copy of a vital record or a certification of birth that a local board of health must transfer to the State Office of Vital Statistics not later than 30 days after the end of each calendar quarter. The minimum total fee for a certified copy of a vital record or certification of birth was increased to $12 (from $7) by the main appropriations act of the 128th General Assembly (Am. Sub. H.B. 1).

Under law unchanged by the bill, the amount transferred must be used to support public health systems. Therefore, under the bill, less money will be available to the State Office of Vital Statistics for this purpose.

DEPARTMENT OF INSURANCE (INS)

- Abolishes the Health Care Coverage and Quality Council.

Health Care Coverage and Quality Council

(R.C. 3923.90 and 3923.91 (repealed); R.C. 185.01, 185.03, 185.06, 185.10, 3319.71, 3924.10, and 4113.11)

The bill abolishes the Health Care Coverage and Quality Council. Under current law, the Council has the following duties:

- Advising the Governor and General Assembly on strategies to improve health care programs and health insurance policies and benefit plans;

- Monitoring and evaluating implementation of strategies for improving access to health insurance coverage and improving the quality of Ohio's health care system;

- Cataloging existing health care data reporting efforts and making recommendations to improve data reporting in a manner that increases transparency and consistency in the health care and insurance coverage systems;

- Studying health care financing alternatives that will increase access to health insurance coverage, promote disease prevention and injury prevention, contain costs, and improve quality;

- Evaluating the systems that individuals use to obtain or otherwise become connected with health insurance and recommending improvements to those systems or the use of alternative systems;

- Recommending minimum coverage standards for basic and standard health insurance plans offered by insurance carriers in the small group market;

- Recommending strategies to assist individuals in being able to afford health insurance coverage;

- Recommending strategies to implement health information technology to support improved access and quality and reduced costs in Ohio's health care system;

- Studying alternative care management options for Medicaid recipients who are not required to participate in the care management system;

- Reviewing the medical home model of care concept, proposing the characteristics of a patient centered medical home model of care, pursuing appropriate funding opportunities for the development of a patient centered medical home model of care, and proposing payment reforms that encourage implementation of a patient centered medical home model of care;

- Collaborating with the Chancellor of the Ohio Board of Regents or any other entity the Council considers appropriate to review issues that may

cause limitations on the use of a patient centered medical home model of care;

- Recommending reporting requirements for any physician practice or advanced practice nurse primary care practice using a patient centered medical home model of care;

- Making recommendations to the Superintendent of Insurance concerning cafeteria plans that continuing law requires employers to provide.

The Council also must perform any other duties the Superintendent specifies in rules.

The bill allows the Superintendent to appoint an individual to the Patient Centered Medical Home Education Advisory Group in lieu of the Council member who is a voting member under current law. The bill also makes other conforming changes including removing a requirement that a physician practice or advanced practice nurse primary care practice comply with reporting requirements recommended by the Council in order to be eligible for inclusion in the Patient Centered Medical Home Education Pilot Project.

DEPARTMENT OF JOB AND FAMILY SERVICES (JFS)

I. General

- Authorizes the Ohio Department of Job and Family Services (ODJFS), a county department of job and family services (CDJFS), or a child support enforcement agency (CSEA) to conduct audits (in addition to investigations) as necessary in furtherance of their duties.

- Specifies that until an audit report is formally released by ODJFS, the audit report and any related documents or records are not public records.

- Authorizes the ODJFS Director to adopt internal management rules, without an administrative hearing, as necessary to implement the law governing ODJFS, CDJFS, and CSEA audits and investigations.

- Specifies that an audit conference conducted by the audit staff of ODJFS with the officials of the public office that is the subject of the audit is not a public meeting for the purpose of the Open Meetings Law.

- Authorizes the transfer of money from the Public Assistance Fund to the Children Services Fund, as long as the money may be spent for the purposes of the Children Services Fund.

- Reduces to 105% (from 110%) the maximum amount that a county may be required to pay, in comparison to the amount paid in the preceding fiscal year, for its share of public assistance expenditures.

- Expands to CSEAs the authority to recover costs of services provided to persons who secured them through fraud or misrepresentation or who intentionally diverted services to ineligible persons.

- Permits county family services agencies to recover (1) costs of benefits secured through fraud or misrepresentation or that were intentionally diverted to ineligible persons and (2) any other costs of benefits and services provided by the agencies if recovery is required or permitted by federal law.

- Permits ODJFS to take either or both of the following actions to collect excess amounts from a county entity performing family services duties: (1) require the county entity to enter into an agreement to repay the amount of the excess plus, at ODJFS's discretion, interest and (2) certify a claim to the Attorney General for collection.

- Specifies that the actions may be taken in addition to or instead of the actions authorized by current law regarding the recovery of excess amounts from the county entity.

- Replaces the 14% limit on the amount of a local agency's Title XX appropriation that may be used for administrative costs with a requirement that each state department establish the maximum percentage by rule that complies with federal law.

II. Child Care

- Eliminates provisions under which CDJFSs may contract with and reimburse providers of publicly funded child care.

- Permits ODJFS, when it determines that expenditures for publicly funded child care will exceed available federal and state funds, to change the schedule of fees to be paid by eligible caretaker parents and the rate of payment to providers of publicly funded child care.

III. Child Support

- Requires ODJFS's Office of Child Support to administer a fund for the deposit of support payments it receives.

IV. Child Welfare and Adoption

- Requires each public children services agency (PCSA) to prepare and maintain a case plan or family service plan in lieu of a case plan for any child that is receiving in-home services from the agency pursuant to a family assessment response.

- Requires ODJFS to adopt rules requiring PCSAs to maintain case plans or family service case plans in lieu of case plans for children and their families who are receiving services in their homes.

- Requires a court to journalize a case plan for a child if the court issued an order for protective supervision by a PCSA for a child who is adjudicated an unruly child or a delinquent child.

- Allows the court, at its discretion, to incorporate as part of its dispositional order the existing family service plan in the journalized case plan if the child is receiving in-home services through a family service plan.

- Requires that the differential response approach pursued by a public children services agency include the investigative response pathway and the family assessment response pathway.

- Requires the PCSA to use the response that stresses the safety of the child and builds on the strengths of the family through collaborative efforts between the agency and the family.

- Details when the agency must use the investigative assessment response.

- Permits the Children's Trust Fund Board to request that ODJFS adopt rules the Board considers necessary to carry out its responsibilities.

- Permits ODJFS to adopt the requested rules or any other rules to assist the Board in carrying out its duties.

- 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.

V. Health Programs (including Medicaid)

- Creates the Health Care Special Activities Fund and requires ODJFS to deposit all funds it receives pursuant to the administration of the Medicaid program into the Fund.

- Requires ODJFS to use the money in the Health Care Special Activities Fund to pay for Medicaid-related expenses.

- Permits ODJFS to enter into agreements with other state agencies, local government entities, or political subdivisions to accept applications and make eligibility determinations on ODJFS's behalf for Medicaid and CHIP.

- Specifies that a provision governing how a trust must be treated for purposes of determining Medicaid eligibility may be used only for an initial Medicaid eligibility determination or an appeal of an initial Medicaid eligibility determination.

- Prohibits a court from using the provision described above to determine a trust's effect on an individual's initial Medicaid eligibility determination.

- Replaces the terms "countable resource" and "countable income" for purposes of the provision governing how a trust must be treated in making Medicaid eligibility determinations.

- Restricts the contents of a pooled trust to the assets of a Medicaid applicant or recipient who is less than 65 years of age.

- Except as otherwise authorized by the U.S. Secretary of Health and Human Services, requires ODJFS to comply with the federal maintenance of effort requirement regarding Medicaid eligibility standards, methodologies, and procedures while the requirement is in effect.

- Permits ODJFS, on receipt of any necessary federal approval, to reduce the complexity of the eligibility determination processes for the Medicaid program caused by the different income and resource standards for the numerous Medicaid eligibility categories.

- Repeals a provision that requires the State Auditor to determine whether overpayments were made on behalf of every medical assistance recipient and replaces it with one authorizing the State Auditor to conduct an audit of an individual medical assistance recipient on the request of the ODJFS Director.

- Requires the State Auditor to enter into an interagency agreement with ODJFS governing the confidentiality of information the Auditor receives from ODJFS pursuant to an audit of a medical assistance recipient.

- For purposes of determining overpayments to public assistance recipients (other than medical assistance recipients), authorizes (rather than requires) the ODJFS Director to (1) furnish quarterly the name and social security number of each public assistance recipient to the Director of Administrative Services, the Administrator of the Bureau of Workers' Compensation, and each of the state's retirement boards, and (2) furnish semiannually the name and social security number of each public assistant recipient to the Tax Commissioner.

- Associated with the authority to audit medical assistance recipients, eliminates the State Auditor's authority to enter into a reciprocal agreement with the ODJFS Director or comparable officer of any other state for the exchange of names, addresses, or social security numbers of medical assistance recipients, and instead requires the Auditor and Attorney General to comply with the bill's provisions governing the disclosure of information about medical assistance recipients.

- Replaces provisions governing the disclosure of information about medical assistance recipients.

- Eliminates the authority of ODJFS or a CDJFS to request from a law enforcement agency information regarding a medical assistance recipient that ODJFS or the CDJFS can use for purposes of determining whether the recipient or a member of the recipient's assistance group is a fugitive felon or is violating a condition of probation, a community control sanction, parole, or a post-release control sanction.

- Eliminates a provision explicitly authorizing ODJFS, a CDJFS, and their employees to report to a PCSA or other appropriate agency information on known or suspected physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment, of a child receiving medical assistance.

- Extends from three to six years after the date of service (1) the time period in which a third party must respond to an inquiry by ODJFS regarding a Medicaid claim, and (2) the time period in which a third party cannot deny a Medicaid claim 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 at the time of service.

- Prohibits a third party from charging ODJFS or any of its authorized agents a fee for determining whether a Medicaid claim should be paid or processing a Medicaid claim if the claim was submitted not later than six years after the date of service.

- Requires ODJFS and the Department of Health (ODH) to work together on the issue of achieving efficiencies in the delivery of medical assistance provided under Medicaid to families and children.

- Requires ODJFS and ODH to develop a proposal for coordinating medical assistance provided to families and children under Medicaid while they wait to be enrolled in Medicaid managed care.

- Permits ODJFS to seek federal approval to authorize payment for Medicaid-reimbursable targeted case management services that are provided in connection with ODH's Help Me Grow program.

- Authorizes implementation of the federal Medicaid option of providing coordinated care through "health homes" to Medicaid recipients with chronic conditions.

- Permits, rather than requires, implementation of a program under which Medicaid recipients are enrolled in group health plans when doing so is cost-effective.

- Authorizes ODJFS, if any necessary federal Medicaid waiver is granted, to designate aged, blind, or disabled Medicaid recipients who are individuals under age 21, nursing facility residents, recipients of Medicaid waiver home and community-based services, and individuals dually eligible for Medicaid and Medicare as those who are permitted or required to participate in the Medicaid managed care system.

- Permits ODJFS to develop a system for providing care management services to aged, blind, or disabled children who are included in the Medicaid managed care system.

- Authorizes ODJFS to provide for the care management services by doing either or both of the following: (1) entering into contracts with pediatric care organizations or (2) requiring Medicaid managed care organizations to enter into subcontracts with entities to provide the care management services.

- Requires ODJFS to adopt rules establishing criteria to receive a contract or subcontract to provide the care management services.

- Provides that, if ODJFS does not adopt rules establishing contracting or subcontracting criteria by July 1, 2012, Medicaid managed care organizations must contract with an entity to provide the services, the entity must accept fee-for-service

rates as payment for the services, and the rate that the Medicaid managed care organization receives from ODJFS for administrative expenses is reduced by 1%.

- Modifies a provision of existing law specifying that a hospital not under contract with a Medicaid managed care organization must provide services to Medicaid recipients enrolled in the organization and accept from the organization, as payment in full, the amount that would have been paid under the fee-for-service reimbursement system.

- Extends the modified provision to any health care provider, including physicians, that is employed, owned, leased, managed, or otherwise controlled by a hospital system.

- Requires ODJFS, not later than October 1, 2011, to enter into new contracts or amend existing contracts with health insuring corporations to require them to include coverage of prescription drugs under the Medicaid managed care system.

- Specifies that, ODJFS or its actuary is to base the hospital inpatient capital payment portion of the payment made to Medicaid managed care organizations on data for services provided to all Medicaid recipients enrolled in the organization as reported by hospitals.

- Requires ODJFS to establish a Medicaid Managed Care Performance Payment Program to make payments to managed care organizations that meet performance standards established by ODJFS.

- Requires ODJFS to withhold a percentage amount established by ODJFS, from each premium payment made to a managed care organization and requires the Director of the Office of Budget and Management (OBM) to make quarterly transfers of amounts to the bill's Managed Care Performance Payment Fund.

- Requires the ODJFS Director to implement, for fiscal years 2012 and 2013, purchasing strategies that result with Medicaid expenditures being at least 2% less than Medicaid expenditures for fiscal year 2011.

- Excludes nursing facility and intermediate care facility for the mentally retarded (ICF/MR) services from the requirement regarding purchasing strategies.

- Permits ODJFS, the Ohio Department of Health (ODH), and the Ohio Department of Mental Health (ODMH) in conjunction with the Governor's Office of Health Transformation, to seek assistance from, and work with, the BEACON Council and hospital and other provider groups to identify specific targets and initiatives to

reduce the cost, and improve the quality, of medical assistance provided under Medicaid to children.

- Prohibits ODJFS from knowingly making a Medicaid payment for a provider-preventable condition for which federal financial participation is prohibited.

- Authorizes ODJFS to establish an incentive payment program, as authorized by federal law, to encourage the use of electronic health record technology by certain Medicaid providers.

- Specifies procedures for appealing ODJFS's determination regarding the amount or denial of an incentive payment.

- Requires certain Medicaid providers, no later than January 13, 2013, to submit all Medicaid reimbursement claims through an electronic claims submission process and to arrange for receipt of Medicaid reimbursement by electronic funds transfer.

- Excludes the following from the electronic claims submission requirement: nursing facilities, ICFs/MR, Medicaid managed care organizations, and any other providers designated by the ODJFS Director.

- Permits the ODJFS Director to implement a system under which payments for services provided under the Medicaid program are made to an organization on behalf of the providers.

- Requires ODJFS to charge an application fee to a provider seeking to enter into or renew a Medicaid provider agreement unless the provider is exempt under a federal regulation.

- Provides for the amount of the fee to be set in rules but prohibits the fee from exceeding the amount that is necessary to pay for the expense of implementing provider screening requirements established by federal regulations.

- Enacts in Ohio law a requirement, established by the federal health care reform law, that ODJFS generally suspend a Medicaid provider agreement and terminate the provider's Medicaid reimbursement, without a hearing but subject to a notice containing certain information, on determining that a "creditable allegation of fraud" against the provider exists.

- Authorizes a Medicaid provider affected by a suspension to request reconsideration of the suspension and associated termination of reimbursement.

- Authorizes ODJFS to take any of several disciplinary actions, without a hearing, against an existing Medicaid provider agreement or an application for a provider agreement when the action is based on a disciplinary action taken by another state's Medicaid agency or for other reasons specified under the federal health care reform law.

- Requires the ODJFS Director, as necessary to comply with federal law, to give public notice in the Register of Ohio of any change to a method or standard used to determine the Medicaid reimbursement rate for a service.

- Prohibits the Medicaid reimbursement rate to a hospital, nursing facility, or ICF/MR from exceeding limits established in federal Medicaid regulations.

- Eliminates authority for the Medicaid reimbursement rate to a provider not described above to exceed the authorized Medicare reimbursement limit for the same service.

- Requires ODJFS to reduce, not later than October 1, 2011, the Medicaid program's first-hour-unit price for aide and nursing services in a manner that reflects, at a minimum, labor market data that shows the non-Medicaid reimbursement rates for such or similar services.

- Requires ODJFS to strive to adjust the Medicaid reimbursement rates paid on and after July 1, 2012, for aide and nursing services provided as home care and requires that the adjustment reflect, at a minimum, labor market data, education and licensure status, home health agency and non-agency provider status, and length of service visit.

- Prohibits the Medicaid payment for a drug that is subject to a federal upper reimbursement limit from exceeding, in the aggregate, the federal limit for the drug.

- Continues to set the Medicaid dispensing fee for noncompounded drugs at $1.80 for the period beginning January 1, 2011, and ending on the effective date of a rule changing the amount of the fee.

- Continues the Hospital Care Assurance Program (HCAP) for two additional years.

- Provides for the assessments imposed on hospitals for the purpose of the Medicaid program to be imposed for two additional years.

- Requires ODJFS to establish the hospital assessment rate in rules.

- Permits the assessment rate to vary for different hospitals if ODJFS obtains any necessary federal waiver.

- Provides for ODJFS to impose a 10% penalty on overdue hospital assessments.

- Permits ODJFS to offset the amount of a hospital's unpaid penalty imposed under HCAP or the law governing hospital assessments from one or more payments due the hospital under the Medicaid program.

- Sets the base rate for the franchise permit fee charged nursing homes and hospital long-term care units at $11.38 for fiscal year 2012 and $11.60 for fiscal year 2013 and thereafter.

- Provides for the percentage that is used in determining whether the franchise permit fee must be reduced in order for the fee to comply with federal restrictions to change in accordance with the federal restrictions.

- Abolishes the Home- and Community-Based Services for the Aged Fund.

- Renames the Nursing Facility Stabilization Fund the Nursing Home Franchise Permit Fee Fund.

- Provides for all money raised by the franchise permit fee and associated penalties to be deposited into the Nursing Home Franchise Permit Fee Fund, provides for the money in the fund to be used to make Medicaid payments to providers of home and community-based services as well as providers of nursing facility services, and permits the money in the fund to also be used for the Residential State Supplement program.

- Abolishes the PASSPORT Fund.

- Provides for the money raised by horse-racing-related taxes that is currently deposited into the PASSPORT Fund to be instead deposited into the Nursing Home Franchise Permit Fee Fund but continues to require that the money be used for the PASSPORT Program.

- For purposes of calculating nursing facilities' Medicaid reimbursement rates for direct care costs, (1) alters the methodology for determining a peer group's cost per case-mix unit by adding $1.88 to such costs determined for the nursing facility in the peer group that is at the 25th percentile of such costs rather than calculating the amount that is 7% above such costs for that nursing facility and (2) eliminates the $1.88 adjustment when ODJFS first rebases nursing facilities' direct care costs.

- For purposes of calculating nursing facilities' Medicaid reimbursement rates for ancillary and support costs, eliminates the 3% adjustment applied to such costs of the nursing facility in each peer group that is at the 25th percentile of the rate for such costs.

- For purposes of calculating nursing facilities' Medicaid reimbursement rates for capital costs, (1) provides that a peer group's rate for capital costs is to be the capital costs for the nursing facility in the peer group that is at the 25th percentile of the rate for capital costs rather than the peer group's median rate, (2) eliminates a requirement that ODJFS use information about construction costs obtained from the Dodge Building Cost Indexes when calculating adjustments used in determining the rate for capital costs, and (3) prohibits ODJFS from redetermining a peer group's rate for capital costs based on additional information that it receives after the rate is determined and provides for ODJFS to make a redetermination only if ODJFS made an error in determining the rate based on information available to ODJFS at the time of the original determination.

- For purposes of calculating nursing facilities' quality incentive payments under the Medicaid program, (1) requires ODJFS to cease using the current accountability measures in determining quality incentive payments on the earlier of the effective date of rules establishing new accountability measures and July 1, 2012, (2) provides that, while the current accountability measures are used, a nursing facility is to be awarded quality incentive points for resident and family satisfaction only if a satisfaction survey was conducted for the nursing facility in calendar year 2010, (3) requires ODJFS to strive to have rules in effect not later than July 1, 2012, establishing the new accountability measures, and (4) provides that, if the rules establishing the new accountability measures are not in effect by July 1, 2012, no quality incentive payments are to made beginning on that date and ending on the date the rules go into effect.

- Eliminates the franchise permit fee price center.

- In determining nursing facilities' Medicaid reimbursement rates for fiscal years 2012 and 2013, requires ODJFS to increase the cost per case mix-unit, rate for ancillary and support costs, rate for tax costs, and rate for capital costs by 5.08%.

- In determining nursing facilities' quality incentive payments for fiscal year 2012, requires ODJFS to provide for the mean payment to be $14.41 per Medicaid day.

- In determining nursing facilities' quality incentive payments for fiscal year 2013, requires ODJFS to provide for the mean payment to be $14.63 per Medicaid day unless no quality incentive payment is made for that fiscal year.

- Specifies that a nursing facility is not to be paid more than 100%, rather than 109%, of the nursing facility's Medicaid per diem rate for services provided on or after January 1, 2012, to a dual eligible individual (i.e., an individual eligible for Medicaid and Medicare) who is eligible for nursing facility services under the Medicaid program and post-hospital extended care services under Medicare Part A.

- Permits the ODJFS Director to seek a federal waiver to create the Centers of Excellence program, the purpose of which is to increase the efficiency and quality of nursing facility services provided to Medicaid recipients with complex nursing facility service needs.

- Permits the ODJFS Director to adopt rules governing the Centers of Excellence program, including rules that establish a method of determining the Medicaid reimbursement rates for nursing facilities serving Medicaid recipients participating in the program.

- Repeals a provision that requires ODJFS to prepare an annual report containing recommendations on the methodology that should be used to transition paying nursing facilities the Medicaid reimbursement rate for one fiscal year to the next fiscal year.

- Permits ODJFS, if it determines that a nursing facility is experiencing or is likely to experience a serious financial loss or failure that jeopardizes or is likely to jeopardize the health, safety, and welfare of its residents, to (1) appoint, subject to the provider's consent, a temporary fiscal emergency manager or (2) apply to a common pleas court for a temporary restraining order, preliminary injunction, appointment of a temporary fiscal emergency manager, or other injunctive or equitable relief.

- Sets the rate for the franchise permit fee charged ICFs/MR at $17.99 for fiscal year 2012 and $18.32 for fiscal year 2013 and thereafter.

- Provides for the percentage that is used in determining whether the franchise permit fee must be reduced in order for the fee to comply with federal restrictions to change in accordance with the federal restrictions.

- Specifies that 81.77% of the money raised by the franchise permit fee and associated penalties for fiscal years 2012 and 82.2% of such money raised for fiscal year 2013 and thereafter is to be deposited into the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund.

- Continues to provide for the money raised by the franchise permit fee and associated penalties that is not deposited into the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund to be

deposited into the Ohio Department of Developmental Disabilities (ODODD) Operating and Services Fund.

- Provides for ODJFS, when determining inflation rates used in calculating Medicaid reimbursement rates for the direct care, indirect care, and other protected costs of ICFs/MR, to use a successoral index if the index specified in statute ceases to be published.

- Eliminates a requirement that an ICF/MR refund to ODJFS the amount of excess depreciation paid to the ICF/MR under Medicaid if the ICF/MR is sold.

- Requires ODJFS, if the mean total per diem Medicaid reimbursement rate for all ICFs/MR in Ohio for fiscal year 2012 exceeds $279.81, to reduce (1) the total per diem rate for each continuing ICF/MR by a percentage that is equal to the percentage by which the mean total per diem rate exceeds $279.81 and (2) the rate otherwise calculated for a new ICF/MR by the same percentage that the rate for a continuing ICF/MR is reduced.

- Unless a new formula for determining Medicaid reimbursement rates for ICFs/MR is in effect for fiscal year 2013, requires ODJFS, if the mean total per diem rate for all ICFs/MR in Ohio for fiscal year 2013 exceeds $280.14, to reduce (1) the total per diem rate for each continuing ICF/MR by a percentage that is equal to the percentage by which the mean total per diem rate exceeds $280.14 and (2) the rate otherwise calculated for a new ICF/MR by the same percentage that the rate for a continuing ICF/MR is reduced.

- Requires ODJFS and ODODD to work together to establish a new formula for determining Medicaid reimbursement rates for ICF/MR services.

- Requires ODJFS and ODODD, as part of the process in establishing the new reimbursement formula for ICFs/MR, to immediately convene an advisory group to evaluate and recommend changes to the existing formula.

- Prohibits the new reimbursement formula for ICFs/MR from being implemented before July 1, 2012.

- Requires ODJFS to contract with ODODD for ODODD to assume ODJFS's powers and duties regarding the Medicaid program's coverage of ICF/MR services.

- Specifies that the maximum period for which Medicaid payments may be made to reserve a bed in a nursing facility is not to exceed 30 days in calendar year 2011 and 15 days in calendar year 2012 and thereafter.

- Specifies that the maximum period for which Medicaid payments may be made to reserve a bed in an ICF/MR for any calendar year is not to exceed the number of days specified in ODJFS rules.

- Provides that the Medicaid reimbursement rate to reserve a bed in a nursing facility, for a day in calendar 2011, is not to exceed 50% of the nursing facility's regular per diem rate for that day and, for a day in calendar year 2012 and thereafter, is not to exceed 25% of the nursing facility's regular per diem rate for that day.

- Provides that the Medicaid reimbursement rate to reserve a bed in an ICF/MR, for a day in any calendar year, is to be a percentage specified in ODJFS rules of the ICF/MR's regular per diem rate for that day.

- Prohibits a nursing facility or ICF/MR from amending a Medicaid cost report if ODJFS has notified the facility that an audit of the cost report or a cost report for a subsequent cost reporting period is to be conducted, but permits the facility to provide ODJFS information that affects the costs included in the cost report.

- Provides that ODJFS is permitted, rather than required, to base a determination of whether to conduct an audit of the Medicaid cost report of a nursing facility or ICF/MR on the facility's prior performance.

- Requires ODJFS to revise certain requirements included in its manual for field audits.

- Requires ODJFS to fine a nursing facility if an audit report regarding a Medicaid cost report includes (1) adverse findings that exceed 3% of the total amount of Medicaid-reimbursable costs reported in the cost report or (2) adverse findings that exceed 20% of Medicaid-reimbursable costs for a particular cost center reported in the cost report.

- Specifies that a nursing facility or ICF/MR is not considered to undergo a facility closure for the purpose of Medicaid debt-collecting requirements if the building that houses the facility converts to a different use, any necessary approval needed for that use is obtained, and one or more of the facility's residents remain in the facility to receive services under the new use.

- Requires nursing facilities and ICFs/MR that undergo a change of operator, close, or voluntarily cease to participate in Medicaid to use a method ODJFS specifies in rules when submitting certain notices, forms, and documents.

- Revises the list of information that a written notice of a change of operator must include.

- Revises the criteria used to determine when a Medicaid provider agreement with an entering operator following a change of operator goes into effect.

- Applies the Medicaid debt-collection process to nursing facilities and ICFs/MR that undergo an involuntary termination from Medicaid.

- Requires ODJFS, ODODD, and the Ohio Department of Aging (ODA) to strive to have, by June 30, 2013, at least 50% of Medicaid recipients who are at least age 60 and need long-term services utilize non-institutionally-based long-term services and at least 60% of Medicaid recipients who are under age 60 and have cognitive or physical disabilities for which long-term services are needed utilize non-institutionally-based long-term services.

- Permits ODJFS to apply to participate in the federal Balancing Incentive Payments Program.

- Requires that any funds Ohio receives under the Balancing Incentive Payments Program be deposited into the Balancing Incentive Payments Program Fund, which is created in the state treasury.

- Removes the Ohio Access Success Project eligibility requirement under which an applicant for Project benefits must need a nursing facility level of care.

- Specifies that an applicant must be able to remain in the community as a result of receiving the Project's benefits, when the Project is being administered as a non-Medicaid program.

- Requires the ODJFS Director to assess an applicant's eligibility for participation in the Project regardless of how long the applicant has been a recipient of Medicaid-funded nursing facility services.

- Creates state-funded, non-Medicaid components of the PASSPORT and Assisted Living programs.

- Provides for individuals who have applications pending for the Medicaid-funded components of the PASSPORT and Assisted Living programs and meet other requirements to qualify for the state-funded components for up to three months.

- Provides that certain other individuals qualify for the state-funded component of the PASSPORT program for an unlimited number of months.

- Provides that the Home First processes for the PASSPORT and Assisted Living programs apply only to the Medicaid components of those programs.

- Eliminates the eligibility requirement for the Medicaid-funded component of the Assisted Living program under which an applicant must first be a nursing home resident, residential care facility resident, or participant of the PASSPORT program, Choices program, or an ODJFS-administered Medicaid waiver program.

- Provides for ODA to administer the Assisted Living program without the condition that the OBM Director must have approved the contract between ODA and ODJFS regarding ODA's administration of the program.

- Provides that a requirement for ODA to establish a unified waiting list for the PASSPORT, Choices, Assisted Living, and PACE programs applies if ODA determines that there are insufficient funds to enroll all individuals who have applied and been determined eligible for the programs.

- Eliminates a requirement that an individual be on ODA's unified waiting list to qualify for the PASSPORT, Assisted Living, or PACE program through the Home First process.

- Eliminates a requirement for ODA to make quarterly certifications to the OBM Director regarding the estimated increase in the costs of the PASSPORT, Assisted Living, and PACE programs resulting from enrollment of individuals through the Home First process.

- Permits the ODA Director, in consultation with the ODJFS Director, to expand the PACE program to new regions of Ohio under certain circumstances.

- Requires the ODA Director to contract with Miami University's Scripps Gerontology Center for an evaluation of the PACE program.

- Codifies the Ohio Home Care and Ohio Transitions II Aging Carve-Out programs.

- Modifies the ODJFS Director's rulemaking authority regarding prioritizing and approving enrollment in Medicaid waivers for home and community-based services.

- Eliminates a requirement that ODJFS seek federal approval to obtain a federal Medicaid waiver to consolidate the PASSPORT, Choices, and Assisted Living programs into one Medicaid waiver program.

- Requires ODJFS, working with ODA, to seek federal approval for a unified long-term services and support Medicaid waiver program to provide home and community-based services to eligible individuals of any age who require the level of care provided by nursing facilities.

- Requires ODJFS and ODA to work together to determine, on an individual program basis, whether the PASSPORT, Choices, Assisted Living, Ohio Home Care, and Ohio Transitions II Aging Carve-Out programs should continue to operate as separate Medicaid waiver programs or be terminated if the unified long-term services and support Medicaid waiver program is created and it covers all individuals who qualify for the programs to be terminated.

- Repeals the requirement to create a pilot program for providing up to 200 Medicaid recipients with spending authority to pay for the cost of home and community-based services.

- Requires ODJFS to adopt rules establishing the amount of reimbursement or methods by which reimbursement is to be determined, in place of the existing statewide fee schedule, for home and community-based services provided to individuals with mental retardation and developmental disabilities through Medicaid waivers administered by ODODD.

- Permits an operator of an ICF/MR to convert some of the beds in the facility from providing ICF/MR services to providing home and community-based services, rather than requiring that all of the beds be converted.

- Increases to 200 (from 100) the number of slots for home and community-based services for which ODJFS may seek a federal Medicaid waiver.

- Requires ODJFS to contract with ODODD for ODODD to administer the Transitions Developmental Disabilities Medicaid Waiver.

- Provides that current law regarding home and community-based services provided under Medicaid waiver programs that ODODD administers applies to the Transitions Developmental Disabilities Medicaid Waiver program only to the extent, if any, provided in the contract.

- Creates the Money Follows the Person Enhanced Reimbursement Fund into which the Director of Budget and Management is to deposit the federal grant Ohio receives under the Money Follows the Person Demonstration Program.

- Permits the ODJFS Director to seek federal approval to implement a demonstration project to test and evaluate the integration of the care that dual eligible individuals receive under the Medicare and Medicaid programs.

- Creates the Integrated Care Delivery Systems Fund in the state treasury to receive amounts that the demonstration project saves the Medicare program if the terms of the project provide for the state to receive such amounts.

- Requires ODJFS to use the money in the Integrated Care Delivery Systems Fund to further develop integrated delivery systems and improved care coordination for dual eligible individuals.

- Abolishes the Children's Buy-In Program.

- Establishes the following timeframes for concluding the Program's affairs: (1) suspends new enrollments immediately, (2) repeals the Program statutes on October 1, 2011, and (3) permits persons enrolled in the Program when it is repealed to continue receiving services through December 31, 2011.

VI. Unemployment Compensation

- Eliminates the authority of the Unemployment Compensation Council with respect to the Unemployment Compensation Special Administrative Fund.

I. General

Audit authority and confidentiality of audit reports

(R.C. 5101.37)

The bill authorizes the Ohio Department of Job and Family Services (ODJFS), a county department of job and family services (CDJFS), or a child support enforcement agency (CSEA) to conduct audits as necessary in furtherance of their duties. Associated with this authority, the bill requires ODJFS and each CDJFS to keep a record of their audits. Under current law, ODJFS, a CDJFS, or a CSEA may make only investigations that are necessary.

The bill specifies that until an audit report is formally released by ODJFS, the audit report or any working paper or other document or record prepared by ODJFS and related to the audit that is the subject of the audit report is not a public record. This means that ODJFS must not make the audit report available for inspection or copying until it is formally released.

The bill authorizes the ODJFS Director to adopt rules as necessary to implement the bill's provisions discussed above. The rules must be adopted in accordance with R.C. 111.15 as if they were internal management rules. Internal management rules are not filed by ODJFS with the Joint Committee on Agency Rule Review (JCARR); therefore, they are not subject to an administrative hearing. ODJFS must, however, file

internal management rules with the Legislative Service Commission and the Secretary of State.[94]

ODJFS audit conferences

(R.C. 121.22)

The bill adds to the list of exceptions from the Open Meetings (Sunshine) Law. An audit conference conducted by the audit staff of ODJFS with officials of the public office that is the subject of the audit is not required to be conducted in an open meeting.

The Open Meetings Law generally requires public officials to take official action and to conduct deliberations upon official business only in open meetings. However, existing law establishes various exceptions to the Open Meetings Law, which permit certain meetings, such as meetings of a grand jury or audit conferences conducted by the Auditor of State, to be closed to the public.

Transfer of money from Public Assistance Fund to Children Services Fund

(R.C. 5101.144 (not in the bill), 5101.161 (not in the bill), and 5705.14)

Current law prohibits the transfer of money from one county fund to another county fund except in specified circumstances. The Public Assistance Fund consists of funds appropriated by a board of county commissioners and money received from ODJFS for the state and federal share of the county's public assistance expenditures. The Children Services Fund consists of appropriations made by the board of county commissioners or any other source for the purpose of providing children services. The bill permits the transfer of money from the Public Assistance Fund to the Children Services Fund, as long as the money to be transferred may be spent for the purposes of the Children Services Fund.

County share of public assistance expenditures

(R.C. 5101.16)

Current law requires that each board of county commissioners pay a percentage of the costs of certain public assistance programs, including Ohio Works First and Medicaid. The amount that a board of county commissioners must pay for a state fiscal year cannot exceed 110% of the county's share for such costs for the immediately preceding state fiscal year.

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[94] Joint Committee on Agency Rule Review, *Procedures Manual* (revised Feb. 2011), available at <https://www.jcarr.state.oh.us/images/stories/manual.pdf>.

The bill reduces to 105% the maximum amount that a county is required to pay, in comparison to the amount paid in the preceding fiscal year, for its share of public assistance expenditures.

Recovery of costs by county family service agencies

(R.C. 5101.183)

Under current law, the ODJFS Director is authorized to adopt rules under which CDJFSs and public children services agencies (PCSAs) are required to take action to recover the costs of services provided to (1) persons who were not eligible to receive the services but who secured them through fraud or misrepresentation and (2) persons who were eligible for the services but who intentionally diverted them to other persons who were not eligible to receive them. A CDJFS or PCSA may bring a civil action against a recipient to recover those costs. The CDJFS or PCSA must retain any money it recovers and use it for the provision of social services, unless federal law requires ODJFS to return any of the money to the federal government.

The bill expands to all county family service agencies ODJFS's authority adopt rules requiring that agencies take action to recover the cost of services provided to persons who secured them through fraud or misrepresentation or intentionally diverted services to ineligible persons. This means that child support enforcement agencies (CSEAs), in addition to CDJFSs and PCSAs, are subject to those rules.

The bill expands ODJFS's rulemaking authority to recovering the cost of benefits, in addition to services, that are secured through fraud or misrepresentation or that were intentionally diverted to ineligible persons. ODJFS also may adopt rules requiring a county family service agency to take action to recover the cost of any benefits or services provided by the agency if recovery is required or permitted by federal law for the federal program administered by the agency. Any money recovered by the agency must be used to meet a family service duty, unless federal law requires ODJFS to return a portion of the money to the federal government.

Recovering excess payments to counties

(R.C. 5101.244)

The bill expands the actions ODJFS may take if it determines that a grant awarded to a county grantee in a grant agreement, an allocation, advance, or reimbursement ODJFS makes to a county family services agency, or a cash draw a county family services agency makes exceeds the allowable amount. Currently, ODJFS may adjust, offset, withhold, or reduce an allocation, cash draw, advance,

reimbursement, or other financial assistance to the county grantee or county family services agency as necessary to recover the excess amount.

In addition to or instead of the actions permitted under current law, the bill permits ODJFS to take either or both of the following actions to collect the excess amount: (1) require the county entity to enter into an agreement to repay the amount of the excess plus, at ODJFS's discretion, interest and (2) certify a claim to the Attorney General for collection.

Use of Title XX funds for respective local agency's administrative costs

(R.C. 5101.46)

The bill replaces the 14% limit on the amount of a local agency's Title XX funds that may be used for administrative costs with a requirement that each state department establish the maximum percentage by adopted rules in the manner provided for internal management rules (R.C. 111.15). The percentage established by rule must comply with federal law. Currently, ODJFS, the Ohio Department of Mental Health (ODMH), and the Ohio Department of Developmental Disabilities (ODODD), with their respective local agencies, provide the social services funded by Title XX.

II. Child Care

Payment for publicly funded child care

(R.C. 5104.32, 5104.341, 5104.35, 5104.37, 5104.38, 5104.39, 5104.42, and 5104.43)

State contracts in place of county contracts

Under current law, all purchases of publicly funded child care are to be made under contracts between the child care provider and the CDJFS. A contract must specify that the provider agrees to be paid at the lowest of the rate customarily charged for children enrolled for child care, the reimbursement ceiling ODJFS establishes by rule, or a rate the CDJFS negotiates with the provider.

The bill eliminates provisions under which CDJFSs may contract with and reimburse providers of publicly funded child care. The bill provides that purchases of publicly funded child care are made pursuant to contracts between the provider and ODJFS. A contract must specify that the provider agrees to be paid at the lower of the rate customarily charged for children enrolled for child care or the reimbursement ceiling ODJFS establishes by rule.

The bill repeals related provisions that require a CDJFS to provide monthly reports to ODJFS and the Director of Budget and Management regarding expenditures for publicly funded child care and that permit a CDJFS to do the following:

(1) Request a waiver of the reimbursement ceiling for the purpose of paying a higher rate based upon the special needs of the child;

(2) Pay deposits or other advance payments customarily charged by a child care provider;

(3) Withhold any money due and recover any money erroneously paid for publicly funded child care if there is evidence of less than full compliance with the laws or rules governing the program.

The bill eliminates a provision requiring ODJFS to provide sufficient funds to the CDJFS to pay child care providers pursuant to its contracts, if ODJFS fails to notify the CDJFS and to implement the reallocation priorities specified in an administrative order.

Child care during pre-work activities; rates for special needs children

To the extent permitted by federal law, the bill requires that ODJFS adopt a rule under which ODJFS, rather than a CDJFS, may pay for child care for up to 30 days for a child whose parent is seeking employment, participating in orientation activities, or taking part in other activities in anticipation of enrollment or attendance in an education or training program. Additionally, if the ODJFS Director establishes a different reimbursement ceiling for child care provided to special needs children, ODJFS must adopt rules establishing standards and procedures for determining the amount of the higher payment. This is in place of a CDJFS's current authority to request a waiver of the reimbursement ceiling in the case of a special needs child.

Under current law, the ODJFS Director is required to establish a procedure for monitoring expenditures to ensure that expenditures do not exceed the available federal and state funds for publicly funded child care. When ODJFS determines that anticipated future expenditures for publicly funded child care will exceed available federal and state funds, it must issue an administrative order that specifies priorities for spending the remaining funds and instructions and procedures to be used by the CDJFS. The order may also suspend enrollment of new participants, limit enrollment of new participants to those with incomes at or below a specified percentage of the federal poverty guidelines, or disenroll existing participants with income above a specified percentage of the federal poverty guidelines.

The bill retains these procedures in the context of ODJFS's administration of the program. In addition, it provides that the order may do the following:

(1) Change the schedule of fees paid by eligible caretaker parents;

(2) Change the rate of payment to providers.

III. Child Support

Child Support Custodial Fund

(R.C. 3121.03 (not in the bill), 3121.19 (not in the bill), and 3121.48)

Payors and financial institutions that withhold or deduct money pursuant to a child support order are required to forward that money to the Office of Child Support in ODJFS within seven business days. Current law requires the Office of Child Support to maintain a separate account for the deposit of support payments it receives as trustee for persons entitled to receive the support payments. The bill requires instead that the Office of Child Support administer a fund for the deposit of those payments. The Treasurer of State is the custodian of the fund, but the fund is not to be part of the state treasury.

IV. Child Welfare and Adoption

Case plan or family service plan for child receiving in-home services from a PCSA

(R.C. 2151.011(A)(16) and 2151.412(B) and (C)(1))

The bill requires each public children services agency (PCSA) to prepare and maintain a case plan or a family service plan in lieu of a case plan for any child that is receiving in-home services from the agency pursuant to a family assessment response. A "family assessment response" is a PCSA's response to an accepted report of child abuse or neglect that encourages family engagement and involves a comprehensive evaluation of child safety, risk of subsequent harm, and family strengths and needs. It does not include a determination as to whether child abuse or neglect has occurred. The bill also requires the ODJFS Director to adopt rules pursuant to R.C. Ch. 119. requiring PCSAs to maintain case plans or family service plans in lieu of case plans for children and their families who are receiving services in their homes from the agencies pursuant to a family assessment response and for whom case plans are not otherwise required. PCSAs must maintain case plans or family service plans in lieu of case plans as required by those rules; however, the case plans or family service plans in lieu of case plans are not subject to any other provision of the law regarding case plans except as specifically required by the rules.

Journalization of case plan

(R.C. 2151.412(K))

The bill states that if a court issued an order for protective supervision by a PCSA for a child who is adjudicated an unruly child or a delinquent child, the court must journalize a case plan for the child. If the child is receiving in-home services through a family service plan, the court may, at its discretion, incorporate as part of its dispositional order the existing family service plan, in whole or in part, in the journalized case plan.

Use of the investigative assessment response and the family assessment response

(R.C. 2151.011(A)(15) and (20) and 2151.429)

Under the bill, the differential response approach pursued by a PCSA must include the investigative response pathway and the family assessment response pathway. The ODJFS Director must adopt rules pursuant to R.C. Ch. 119. setting forth the procedures and criteria for PCSAs to assign and reassign response pathways.

In all cases, the PCSA must use the response that stresses the safety of the child and, to the extent possible, builds on the strengths of the family through collaborative efforts between the PCSA and the family. The family assessment response is the preferred response for those cases that do not require an investigative assessment response due to a serious or immediate risk to a child's safety and well-being. The PCSA must use the investigative assessment response for the following types of accepted reports: (1) physical abuse resulting in serious injury or that creates a serious and immediate risk to a child's health and safety, (2) sexual abuse, (3) child fatality, (4) reports requiring a specialized assessment as identified by rule adopted by ODJFS, and (5) reports requiring a third party investigation procedure as identified by rule adopted by ODJFS.

For all other accepted child abuse and neglect reports, the PCSA must determine whether a family assessment response or an investigative assessment response is appropriate, in accordance with rules adopted by ODJFS.

"Differential response approach" means an approach that a PCSA may use to respond to accepted reports of child abuse or neglect with either a family assessment response or an investigative assessment response. "Investigative assessment response" means a PCSA response to an accepted report of child abuse or neglect that involves engagement of the family in a comprehensive evaluation of the child's current and

future safety needs and a fact-finding process to determine whether child abuse or neglect occurred and the circumstances surrounding the alleged harm or risk of harm.

Investigations by a PCSA

(R.C. 2151.421)

Existing law generally requires a PCSA to investigate, within 24 hours, each report of child abuse or child neglect that is known or reasonably suspected or believed to have occurred and of a threat of child abuse or child neglect that is known or reasonably suspected or believed to exist that is referred to in R.C. 2151.421 to determine the circumstances surrounding the injuries, abuse, or neglect, the cause of the injuries, abuse, neglect, or threat, and the person or persons responsible. The investigation is made in cooperation with the law enforcement agency and in accordance with the prepared memorandum of understanding. The bill defines "investigation" as the PCSA's response to an accepted report of child abuse or neglect through either a family assessment response or an investigative assessment response.

Cross-references

(R.C. 2151.424 and 2152.72)

The bill makes cross-reference changes in R.C. 2151.424 and 2152.72.

Children's Trust Fund rulemaking

(R.C. 3109.14 (not in the bill), 3109.15 (not in the bill), and 3109.16)

Current law generally requires certain additional fees collected (1) for copies of birth records, birth certificates, and death certificates, and (2) upon filing a divorce decree to be forwarded to the Children's Trust Fund, a fund in the state treasury. This money is used by the Children's Trust Fund Board to develop and carry out a biennial state plan for comprehensive child abuse and child neglect prevention. ODJFS may adopt administrative rules for the purpose of providing budgetary, procurement, accounting, and other related management functions for the Board.

The bill permits the Board to request that ODJFS adopt rules the Board considers necessary for the purpose of carrying out the Board's responsibilities. It also authorizes ODJFS to adopt any other rules to assist the Board in carrying out its responsibilities.

Alternative Response pilot program

(Section 309.50.10)

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.[95] The pilot program must be implemented in not more than ten counties that are selected by ODJFS and that agree to participate in the pilot program. The pilot program will last 18 months, not including time expended in preparation for the implementation of the pilot program and any post-pilot program evaluation activity. After the 18-month period, the ten sites may continue to administer the Alternative Response approach uninterrupted, unless ODJFS determines otherwise.

ODJFS is required to assure that the Alternative Response pilot program is independently evaluated with respect to outcomes for children and families, costs, worker satisfaction, and any other criteria ODJFS determines will be useful in the consideration of statewide implementation of an Alternative Response approach to child protection. The measure associated with the 18-month pilot program will, for the purposes of the evaluation, be compared with those same measures in the pilot counties during the 18-month period immediately preceding the beginning of the pilot program period. If the independent evaluation of the pilot program recommends statewide implementation of an Alternative Response approach to child protection, ODJFS may expand the Alternative Response approach statewide through a schedule determined by ODJFS. Prior to statewide implementation, ODJFS must adopt rules, in accordance with the Administrative Procedure Act, as necessary to carry out the purposes of the Alternative Response program. Until that time, ODJFS may adopt rules, as if they were internal management rules, as necessary to carry out the purposes of the Alternative Response pilot program.

V. Health Programs (including Medicaid)

Health Care Special Activities Fund

(R.C. 5111.945)

The bill creates in the state treasury the Health Care Special Activities Fund. ODJFS is required to deposit all funds it receives pursuant to the administration of the Medicaid program into the Fund, other than any funds that are required by law to be deposited into another fund. ODJFS must use the money in the Fund to pay for

[95] This same provision was enacted as part of the biennial budget act for the 128th General Assembly, Am. Sub. H.B. 1.

expenses related to services provided under, and the administration of, the Medicaid program.

Eligibility determinations for Medicaid and CHIP

(R.C. 5101.47 and 5111.012)

Current law generally authorizes ODJFS to accept applications and determine eligibility for Medicaid and the Children's Health Insurance Program (CHIP).[96] County departments of job and family services establish Medicaid eligibility for persons living in the county.

The bill permits ODJFS, to the extent permitted by federal law, to enter into agreements with one or more other state agencies, local government entities, or political subdivisions to accept applications, determine and redetermine eligibility, and perform related administrative functions regarding Medicaid and CHIP. If ODJFS enters into such an agreement with a county department of job and family services, the county department is permitted to establish Medicaid eligibility only if authorized under the agreement.

Treatment of trusts for Medicaid eligibility determinations

When provision may be applied

(R.C. 5111.151(A))

The bill specifies that a provision of existing law governing how a trust must be treated for purposes of determining Medicaid eligibility may be used only for either of the following: (1) an initial eligibility determination for Medicaid made by ODJFS or a CDJFS, or (2) an appeal from an initial eligibility determination made by ODJFS or a CDJFS. The bill expressly prohibits a court from using the provision to determine the effect of a trust on an individual's initial eligibility for Medicaid, but specifies that this prohibition does not apply when the court considers an appeal from an initial eligibility determination.

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[96] CHIP is a health-care program for uninsured, low-income children under age 19. 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 has chosen to implement CHIP as part of the Medicaid program. State law provides for CHIP to have three parts. Part I covers children with family incomes not exceeding 150% of the federal poverty guidelines. CHIP Part II covers children with family incomes above 150% but not exceeding 200% of the federal poverty guidelines. CHIP Part III, which has not been implemented, is to cover children with family incomes above 200% but not exceeding 300% of the federal poverty guidelines.

Resources and income available under a trust

(R.C. 5111.151(C); conforming changes in 5111.151(D), (F), and (G))

When a Medicaid applicant or recipient is a recipient of a trust, law unchanged by the bill requires a CDJFS to determine what type of trust it is and to treat the trust in accordance with the provision governing how trusts must be treated for purposes of determining Medicaid eligibility. Relative to this responsibility, the bill requires the CDJFS to determine that the trust or a portion of it (1) is a resource available to the applicant or recipient, (2) contains income available to the applicant or recipient, (3) constitutes both a resource available to the applicant or recipient or contains income available to the applicant or recipient, or (4) neither is a resource available to the applicant or recipient nor contains income available to the applicant or recipient. Current law refers to a resource available to the applicant or recipient as a "countable resource" and a trust that contains income available to the applicant or recipient as "countable income."

The bill expressly requires that a trust or a portion of a trust that is a resource available to the applicant or recipient or that contains income available to the applicant or recipient must be counted for purposes of determining Medicaid eligibility. This requirement does not, however, apply to principal or income from any of the following which meet certain requirements generally unchanged from current law:

- A special needs trust – a trust to benefit an individual with a mental or physical disability who has not reached the age of 65. The trust must contain assets of the beneficiary and may contain the assets of others. The trust must provide that on the beneficiary's death, the state will receive amounts remaining in the trust up to the total amount of Medicaid paid on the beneficiary's behalf.

- A qualifying income trust – a trust that is composed only of pension, social security, and other income to the beneficiary. Income from the trust must be received by the beneficiary and the right to receive the income cannot be assigned or transferred to the trust. The trust must provide that on the beneficiary's death, the state will receive amounts remaining in the trust up to the total amount of Medicaid paid on the beneficiary's behalf.

- A pooled trust – a special arrangement with a nonprofit organization that serves as the trustee to manage assets belonging to many disabled individuals (with investments being pooled), but with separate trust "accounts" being maintained for each disabled individual. The trust must contain assets of the Medicaid applicant or recipient. The trust must

provide that on the beneficiary's death, an amount that does not exceed the total amount of Medicaid paid on the beneficiary's behalf, and that is not retained by the trust, must be paid to the state.

- A supplemental services trust – a trust to benefit individuals with a mental or physical disability who are eligible to receive services through the Ohio Department of Developmental Disabilities, a county board of developmental disabilities, the Ohio Department of Mental Health, or a board of alcohol, drug addiction, and mental health services. The trust must provide that (1) the beneficiary does not have the authority to compel the trustee under any circumstances to furnish the beneficiary with minimal or other maintenance or support, (2) the trust assets can be used only to provide supplemental services, and (3) at least 50% of the assets remaining on the beneficiary's death must go to the state. In 2011, such a trust cannot contain more than $234,000 in principal.

Pooled trusts

(R.C. 5111.151(F)(3)(a))

The bill restricts the contents of a pooled trust to the assets of a Medicaid applicant or recipient who is less than 65 years of age. Under current law, a pooled trust may contain the assets of an applicant or recipient of any age. As discussed above, a pooled trust is a special arrangement with a nonprofit organization that serves as the trustee to manage assets belonging to many disabled individuals (with investments being pooled), but with separate trust "accounts" being maintained for each disabled individual.

Compliance with federal maintenance of effort requirement

(R.C. 5111.0122)

Except to the extent, if any, otherwise authorized by the U.S. Secretary of Health and Human Services, ODJFS is required by the bill to comply with the federal maintenance of effort (MOE) requirement regarding Medicaid eligibility standards, methodologies, and procedures while the requirement is in effect. The MOE requirement is part of the Patient Protection and Affordable Care Act (federal health care reform).[97] Generally, a state violates the MOE requirement if it has eligibility standards, methodologies, or procedures under its Medicaid state plan or a Medicaid waiver that are more restrictive than the eligibility standards, methodologies, or

[97] Section 2001(b) of the Patient Protection and Affordable Care Act (Public Law 111-148).

procedures in effect on March 23, 2010. The MOE requirement for adults continues until the U.S. Secretary determines that the state's American Health Benefit Exchange is fully operational.[98] January 1, 2014, is the deadline for states to establish such exchanges. The MOE requirement for children continues until October 1, 2019. A state that violates the MOE requirement is to lose all federal funds for the state's Medicaid program for the duration of the MOE requirement.

Reduction of complexity in Medicaid eligibility determination processes

(R.C. 5111.0123)

The bill permits the ODJFS Director to adopt rules to reduce the complexity of the eligibility determination processes for the Medicaid program caused by the different income and resource standards for the numerous Medicaid eligibility categories. Before implementing a revision to an eligibility determination process, the ODJFS Director must obtain, to the extent necessary, the approval of the U.S. Secretary of Health and Human Services in the form of a federal Medicaid waiver, Medicaid state plan amendment, or demonstration grant. ODJFS must comply with the bill's requirement regarding the federal maintenance of effort requirement in implementing any revisions. (See "**Compliance with federal maintenance of effort requirement**," above.)

Medicaid recipient audits

(R.C. 5101.181 and 5101.82; conforming changes in R.C. 145.27, 742.41, 3307.20, 3309.22, 4123.27, and 5505.04)

The bill repeals a provision that requires the State Auditor to determine whether overpayments were made on behalf of every medical assistance recipient and replaces it with one authorizing the Auditor, on the request of the ODJFS Director, to conduct an audit of an individual who receives medical assistance.[99] If the Auditor decides to conduct an audit of a medical assistance recipient, the bill requires the Auditor to enter into an interagency agreement with ODJFS that specifies that the Auditor agrees to comply with a new provision the bill enacts governing the confidentiality of medical assistance recipient information (see "**Disclosure of information regarding medical assistance recipients**," below).

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[98] An American Health Benefit Exchange is to be a governmental agency or nonprofit entity established by a state to make qualified health plans available to qualified individuals and qualified employers (Section 1311 of the Patient Protection and Affordable Care Act).

[99] The bill defines "medical assistance" to mean medical assistance provided pursuant to, or under programs established by, the Refugee Act of 1980, the Children's Health Insurance Program (CHIP), the Medicaid Program, or any other provision of Ohio law (R.C. 5101.181(A)(2)).

The bill does not similarly authorize the Auditor to conduct an audit of an individual public assistance recipient[100] on the ODJFS Director's request. Rather, the bill generally maintains current law provisions that require the Auditor to determine overpayments to public assistance recipients. The only change relative to investigating overpayments to public assistance recipients is that the bill authorizes (rather than requires) the ODJFS Director to (1) furnish quarterly the name and social security number of each public assistance recipient to the Director of Administrative Services, the Administrator of the Bureau of Workers' Compensation, and each of the state's retirement boards, and (2) furnish semiannually the name and social security number of each public assistant recipient to the Tax Commissioner.

Disclosure of information regarding medical assistance recipients

When disclosure is prohibited versus permitted

(R.C. 5101.26, new 5101.271, and 5101.273)

The bill repeals provisions governing ODJFS's or a CDJFS's use or disclosure of information about a medical assistance recipient and replaces them with new provisions.

Under the new provisions, ODJFS or a CDJFS is generally prohibited from using or disclosing information regarding a medical assistance recipient for any purpose not directly connected with the administration of the medical assistance program (this provision is substantially similar to one in current law). The bill specifies that both of the following *are* considered to be purposes directly connected with the administration of the medical assistance program: (1) treatment, payment, or other operations or activities authorized by federal regulations, and (2) any administrative function or duty ODJFS performs alone or jointly with a federal government entity, another state government entity, or a local government entity implementing a provision of federal law.

The bill provides for exceptions to the general prohibition on the use and disclosure of medical assistance recipient information. First, ODJFS may disclose information regarding a medical assistance recipient to any of the following persons:

(1) The recipient or the recipient's authorized representative;

(2) The recipient's legal guardian;

[100] The bill defines "public assistance" to mean Ohio Works First; Prevention, Retention, and Contingency; disability financial assistance; and general assistance provided prior to July 17, 1995, under former R.C. Chapter 5113.

(3) The recipient's attorney, if ODJFS or a CDJFS has obtained authorization from the recipient, the recipient's authorized representative, or the recipient's legal guardian that meets all requirements of the Health Insurance Portability and Accountability Act (HIPAA), regulations promulgated to implement HIPAA, the bill's requirements governing authorization (see "**Authorization form**," below), and rules the bill requires the ODJFS Director to adopt;

(4) A health information or health records management entity, if the entity has executed with ODJFS a business associate agreement required by a provision of the HIPAA Privacy Rule[101] and has been authorized by the recipient, the recipient's authorized representative, or the recipient's legal guardian to receive the recipient's electronic health records in accordance with rules the bill requires the ODJFS Director to adopt (see "**Rules**," below);

(5) A court, if pursuant to a written order of the court.

Second, ODJFS may disclose information regarding a medical assistance recipient for any of the following purposes:

(1) To the extent necessary to participate as an active member in the Public Assistance Reporting Information System (PARIS), a computer system operated under the auspices of the Administration for Children and Families in the U.S. Department of Health and Human Services that matches public recipients' social security numbers against various federal databases and participating states' databases;

(2) When permitted by rules the bill requires the ODJFS Director to adopt (see "**Rules**," below);

(3) When required by federal law.

Authorization form

(new R.C. 5101.272)

The written authorization that a medical assistance recipient, the recipient's authorized representative, or the recipient's legal guardian must make to give the recipient's attorney access to the recipient's information must be on a form that contains the same components required under current law governing authorization for the release of public assistance recipient information. The form must use language understandable to the average person.

[101] The provision is codified in 45 C.F.R. 164.502(e)(2).

The bill, however, permits authorization forms for the release of medical assistance recipient information to also include a provision specifically authorizing the release of the recipient's electronic health records, if any, to the recipient's attorney in accordance with rules the ODJFS Director must adopt under the bill (see "**Rules**," below).

Sharing information regarding medical assistance recipients with law enforcement agencies

(R.C. 5101.28)

The bill eliminates the authority of ODJFS or a CDJFS to request from a law enforcement agency information regarding a medical assistance recipient that ODJFS or the CDJFS can use to determine whether a recipient or a member of the recipient's assistance group is (1) a fugitive felon, or (2) violating a condition of probation, a community control sanction, parole, or a post-release control sanction imposed under state or federal law.

The bill also eliminates a provision that explicitly authorizes ODJFS, CDJFSs, and employees of those departments to report to a PCSA or other appropriate agency information, to the extent permitted by federal law, on known or suspected physical or mental injury, sexual abuse or exploitation, or negligent treatment or maltreatment, of a child receiving medical assistance. Although this provision is eliminated by the bill, it would appear that under another provision of Ohio law governing who has a duty to report child abuse or neglect (R.C. 2151.421), an ODJFS or CDJFS employee who is a person specified in that other law (*e.g.*, an attorney, health care professional, etc.) would remain obligated to report to a PCSA a known or suspected case of child abuse or neglect regarding a child receiving medical assistance.

Rules

(R.C. 5101.30)

The bill authorizes the ODJFS Director to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) implementing provisions governing the disclosure (in addition to custody, use, and preservation) of information generated or received by ODJFS, CDJFSs, other state and county entities, contractors, grantees, private entities, or officials participating in the administration of public assistance and medical assistance programs.

The rules the ODJFS Director is authorized to adopt, for the purposes described above, may define the "authorized representatives" who (1) must be given access to information regarding a public assistance recipient and (2) may be given access to

information regarding a medical assistance recipient in accordance with the bill's provisions.

Medicaid right of recovery against liable third parties

(R.C. 5101.573)

Federal regulations require states to have plans to identify Medicaid recipients' other sources of health coverage, determine the extent of the liability of third parties, and avoid payment of third party claims.[102] To enhance states' ability to identify and obtain payments from liable third parties, the Deficit Reduction Act of 2005 made several changes to these federal provisions.[103] One change was a requirement that third parties provide states with the coverage, eligibility, and claims data they need to identify potentially liable third parties.[104] Consistent with this requirement, the General Assembly enacted provisions in the main appropriations act of the 127th General Assembly (Am. Sub. H.B. 119) to do both of the following, among other things: (1) require a third party to respond to an inquiry by ODJFS regarding a Medicaid claim not later than three years after the date of service, and (2) prohibit a third party from denying a claim solely on the basis of the date of submission, type or format of the claim form, or a failure of the Medicaid recipient to present proper documentation at the time of service if the claim was submitted to ODJFS not later than three years after the date of service.[105]

The bill extends the time periods described above from three to six years. The bill does not modify a provision in current law that specifies that the time periods apply only to submissions of claims to, and payments of claims by, a health insurer that the Deficit Reduction Act requires be subjected to the requirements. These include self-insured plans, group health plans, service benefit plans, managed care organizations, and other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service.

With respect to a Medicaid claim submitted within the six-year time period, the bill also prohibits a third party from charging fees for determining whether the claim should be paid and processing the claim.

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[102] 42 C.F.R. Part 433, subpart D (2005).

[103] 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>.

[104] 42 U.S.C. 1396a(a)(25).

[105] R.C. 5101.573(A)(2) and (4)(a).

Care coordination for families and children pending managed care enrollment

(Section 309.30.40)

The bill requires ODJFS and the Ohio Department of Health (ODH) to work together on the issue of achieving efficiencies in the delivery of medical assistance provided under Medicaid to families and children.

Development of proposal for coordinating medical assistance

As part of their work, ODJFS and ODH must develop a proposal for coordinating medical assistance provided to families and children under Medicaid while they wait to be enrolled in Medicaid managed care. For purposes of developing the proposal, the Departments may do the following:

(1) Conduct research on the status of families and children waiting to be enrolled, including research on the reasons for the wait and the utilization of medical assistance during the waiting period;

(2) Conduct a review of ways to help families and children receive medical assistance in the most appropriate setting while they wait to be enrolled;

(3) Develop recommendations for a coordinated, cost-effective system of helping the families and children find the medical assistance they need during the waiting period;

(4) Develop recommendations for improving the enrollment processes.

Help Me Grow targeted case management services

As part of its work with ODH, ODJFS may seek federal approval to authorize payment for Medicaid-reimbursable targeted case management services that are provided in connection with the ODH's Help Me Grow program. The federal approval must be in the form of a Medicaid state plan amendment. On a quarterly basis during fiscal years 2012 and 2013 following federal approval of the state plan amendment, ODJFS is required to certify to the Director of Budget and Management the state and federal shares of the amount ODJFS has expended that quarter for services. On receipt of the quarterly certifications, the Medicaid appropriation is increased by an amount equal to the state and federal share of the certified expenditures and the Help Me Grow appropriation is correspondingly reduced.

Medicaid health homes

(R.C. 5111.14)

The bill authorizes the ODJFS Director to implement within the Medicaid program a system under which Medicaid recipients with chronic conditions are provided with coordinated care through health homes. Federal approval of a Medicaid state plan amendment must be obtained. The ODJFS Director may adopt rules to implement the system.

"Health homes" are authorized under the federal Patient Protection and Affordable Care Act (PPACA). An eligible Medicaid recipient may select a designated health care provider, a team of health care professionals, or a health team as the recipient's health home for the purpose of providing to the recipient health home services for chronic conditions. Chronic conditions under the PPACA include (1) a mental health condition, (2) a substance abuse problem, (3) asthma, (4) diabetes, (5) heart disease, and (6) being overweight (as evidenced by having a body mass index over 25). Health home services include care management, care coordination, health promotion, transitional care, patient and family support, and, if appropriate, referral to support services and the use of health information technology.[106]

Enrollment of Medicaid recipients in group health plans

(R.C. 5111.13)

The bill permits implementation of a program under which Medicaid recipients are enrolled in group health plans when the ODJFS determines that it is cost-effective. Under current law, implementation of such a program is required. The bill removes this requirement as well as all provisions specifying how ODJFS must operate the program.

The bill allows ODJFS to submit a Medicaid state plan amendment to the United States Secretary of Health and Human Services for the purpose of implementing the program. The bill also allows the ODJFS Director to adopt rules as necessary to implement the program.

[106] 42 U.S.C. 1396w-4.

Medicaid managed care for the aged, blind, or disabled

(R.C. 5111.16)

The bill expands those who may be required or permitted by ODJFS to participate in the Medicaid care management system. The expansion applies to individuals who receive Medicaid on the basis of being aged, blind, or disabled.

Current law requires ODJFS to establish a care management system as part of the Medicaid program and to designate the Medicaid recipients who are required or permitted to participate. Individuals who are eligible for Medicaid on the basis of being aged, blind, or disabled are among the required participants; however, current law prohibits ODJFS from including any such individual who is also (1) under 21, (2) institutionalized, (3) became eligible for Medicaid by spending down income, (4) dually eligible for Medicaid and Medicare, or (5) receiving Medicaid services through a Medicaid waiver program.

The bill permits ODJFS, if any necessary waiver of federal Medicaid requirements is granted, to designate any of the following individuals who receive Medicaid on the basis of being aged, blind, or disabled as individuals who are permitted or required to participate in the care management system:

(1) Individuals under age 21;

(2) Individuals who reside in a nursing facility;

(3) Individuals who, as an alternative to receiving nursing facility services, are participating in a home and community-based Medicaid waiver program;

(4) Individuals who are dually eligible for Medicaid and Medicare.

Pediatric accountable care organizations

(R.C. 5111.161)

As discussed above, ODJFS may designate who is permitted or required to participate in the Medicaid care management system. The group consisting of children under 21 who receive Medicaid on the basis of being blind or disabled may be included if ODJFS receives the federal waiver that the bill authorizes it to seek. If ODJFS is granted the waiver, the Department is to develop a system for the provision of care management services to these children. ODJFS is permitted to do one or both of the following to develop the system:

(1) Directly enter into contracts with entities to service as pediatric accountable care organizations.

For the purpose of this option, ODJFS is required to adopt rules that specify the minimum criteria that an entity must meet to qualify for a contract with the Department as a pediatric accountable care organization. The criteria, at a minimum, is required to incorporate pediatric accountable care organization criteria as established by federal law.[107] If ODJFS implements this option and an entity seeks a contract, ODJFS is permitted to contract with the entity to provide the care management services. ODJFS's determination of whether to enter into the contract is to be based on evidence or other documentation submitted by the entity and as required by ODJFS. ODJFS's determination may not be appealed. If ODJFS denies an entity a contract, the entity may seek another contract, but not earlier than six months after the most recent contract denial.

(2) Require that a Medicaid managed care organization enter into a subcontract with an entity to provide the care management services.

For purposes of this option, ODJFS is required to adopt rules specifying the minimum criteria that an entity must meet to qualify for a subcontract with a Medicaid managed care organization to provide the care management services.

If ODJFS does not adopt rules by July 1, 2012, that establish criteria necessary to implement the two above options, an alternate system to provide the care management services for children under age 21 who are blind or disabled is to be implemented until the rules are adopted. Under the alternate system, each Medicaid managed care organization is required to subcontract with an entity the organization selects to provide care management services to the specified individuals. The entities under contract with the organization are required to accept, as payment in full for providing the care management services, the same amount that ODJFS would reimburse a provider for providing the care management services to a Medicaid recipient who is not enrolled in a Medicaid managed care organization. Under this system, ODJFS is required to reduce the rate it pays to the Medicaid managed care organization for administrative expenses by 1%.

[107] The Patient Protection and Affordable Care Act established a demonstration project under which pediatric accountable care organizations that meet certain criteria could be provided with performance payments. The project is to be conducted from January 1, 2012 to December 31, 2016. (Public Law 111-148, Title II, Subtitle I, § 2706.)

Medicaid managed care reimbursement rate for non-contracting hospitals

(R.C. 5111.162)

Under existing law, when a Medicaid recipient enrolled in a Medicaid managed care organization is referred by the organization to a Medicaid participating hospital that is not under contract with the organization, the hospital must provide services, other than emergency services, to the Medicaid recipient and accept from the organization, as payment in full, the amount derived by using the fee-for-service reimbursement rate that otherwise applies under the Medicaid program.[108] Certain hospitals that contracted with Medicaid-participating health insuring corporations before January 1, 2006, are not subject to this payment requirement if they remain under contract with the Medicaid-participating health insuring corporation.

The bill modifies the existing law regarding payments to a hospital not under contract with a particular Medicaid managed care organization, as follows:

(1) Requires the hospital to provide to an individual the service or services authorized by the organization, including inpatient and outpatient services, as long as the service or services are medically necessary and covered by Medicaid.

(2) Extends the fee-for-service reimbursement provisions to a "hospital system provider,"[109] including physicians and any others that may be specified in rules adopted by the ODJFS Director.

(3) Eliminates the exemption from the fee-for-service reimbursement provisions for a hospital that was under contract with at least one Medicaid managed care organization before January 1, 2006, and has retained at least one such contract. (Under the bill, no exemptions from the fee-for-service reimbursement provisions will exist.)

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[108] A provider of "emergency services" is required to accept, as payment in full, the amounts that the provider could collect if the participant received Medicaid other than through enrollment in a managed care organization (R.C. 5111.163, not in the bill).

[109] The bill defines a "hospital system" as one or more hospitals owned or controlled by the same organization for the purposes of coordinating and delivering health services with a geographic area selected by the organization.

"Hospital system provider" is defined as a health care provider that is employed, owned, leased, managed, or otherwise controlled by a hospital system, including a physician, a business entity under which one or more physicians practice, a provider of ancillary health services, and any other type of provider specified in rules adopted by the ODJFS Director.

(4) Eliminates a requirement that the ODJFS Director adopt rules specifying circumstances under which a Medicaid managed care organization is permitted to refer a participant to a hospital not under contract with the organization.

Medicaid managed care coverage of prescription drugs

(Section 309.37.50)

The bill requires that the Medicaid program's coverage of prescription drugs be included in the managed care system for the period of October 1, 2011-June 30, 2013. The requirement does not replace the existing statutory provision under which inclusion of the coverage in managed care is permissive. The bill requires ODJFS to enter into new contracts or amend existing contracts with health insuring corporations as it considers necessary to implement the coverage.

Medicaid managed care capital payments

(R.C. 5111.17)

The bill requires ODJFS or its actuary to base the hospital inpatient capital payment portion of the payment made to Medicaid managed care organizations on data for services provided to all recipients enrolled in managed care organizations under contract with ODJFS. The hospital inpatient capital payment portion is one part of the calculation used by ODJFS to determine the payments to Medicaid managed care organization. Data reported by hospitals on relevant cost reports is to be used in determining the payment.

Medicaid Managed Care Performance Payment Program

(R.C. 5111.179; Section 309.30.40)

The bill requires ODJFS to establish a Managed Care Performance Payment Program under which ODJFS is permitted to provide payments to managed care organizations that meet performance standards established by ODJFS. The Department is permitted to specify in the contract with the managed care organization the standards that must be met to receive the payments. When an organization meets the performance standards, ODJFS is required to make payments to the organization. The schedule of making payments is to be established by ODJFS. The Department is to discontinue payments if the organization no longer meets the performance standards.

ODJFS is to establish a percentage amount that is to be withheld from each premium payment made to a Medicaid managed care organization. The amount is to be the same for each organization and the organization must agree to the withholding

as a condition of receiving or maintaining its Medicaid provider agreement with ODJFS. The amounts withheld, and deposited into the Managed Care Performance Payment Fund created by the bill, are to be used for purposes of the program.

Reduction of Medicaid expenditures for fiscal years 2012 and 2013

(Section 309.30.30)

The bill requires the ODJFS Director to implement, for fiscal years 2012 and 2013, purchasing strategies that result with Medicaid expenditures being at least 2% less than Medicaid expenditures for fiscal year 2011. The requirement does not apply to Medicaid expenditures for nursing facility and intermediate care facilities for the mentally retarded (ICF/MR) services.

When implementing the purchasing strategies, the ODJFS Director must consider both of the following:

(1) Modernizing hospital inpatient and outpatient reimbursement methodologies by (a) modifying the inpatient hospital capital reimbursement methodology, (b) implementing relative weights for diagnosis-related groups or establishing new diagnosis-related groups, and (c) implementing other changes the Director considers appropriate.

(2) Establishing selective contracting and prior authorization requirements for types of medical assistance identified by the Director.

The Director must adopt rules under the Administrative Procedure Act as necessary to implement these requirements.

Beacon Quality Improvement Initiatives

(Section 309.33.40)

The bill permits ODH, ODMH, and ODJFS, in conjunction with the Governor's Office of Health Transformation, to seek assistance from, and work with, the Best Evidence for Advancing Child Health in Ohio NOW! (BEACON) Council and hospital and other provider groups to identify specific targets and initiatives to reduce the cost, and improve the quality, of medical assistance provided under Medicaid to children. The targets and initiatives must focus on reducing (1) avoidable hospitalizations, (2) inappropriate emergency room utilization, (3) use of multiple medications when not medically indicated, (4) the state's rate of premature births, and (5) the state's rate of elective, preterm births.

If ODH, ODMH, and ODJFS identify initiatives as described above, the Departments must make the initiatives available on their web sites, along with a list of hospitals and other provider groups involved in the initiatives.

No Medicaid payments for provider-preventable conditions

(R.C. 5111.0214)

The bill prohibits ODJFS from knowingly making a Medicaid payment for a provider-preventable condition for which federal financial participation is prohibited under the Patient Protection and Affordable Care Act (federal health care reform).[110] The ODJFS Director is required to adopt rules as necessary to implement this provision.

Medicaid electronic health record incentive payment program

(R.C. 5111.0215)

The bill authorizes ODJFS to establish an incentive payment program to encourage the use of electronic health record technology by Medicaid providers who are physicians, dentists, nurse practitioners, nurse-midwives, and physician assistants. This incentive program is authorized by the 2009 federal Health Information Technology and Economic Clinical Health Act.[111] ODJFS may adopt rules to implement the program.

The bill requires ODJFS to notify the provider of its determination regarding the amount or denial of an incentive payment. Not later than 15 days after receiving the notification, the provider may make a written request that ODJFS reconsider its determination. After receiving the request, ODJFS is required to reconsider its determination and may uphold, reverse, or modify its original determination. ODJFS must then mail by certified mail a written notice of the reconsideration decision. Not later than 15 days after the decision is mailed, the provider may appeal the reconsideration decision to the Court of Common Pleas of Franklin County.

Electronic claims submission process

(R.C. 5111.052)

The bill requires certain Medicaid providers to use only an electronic claims submission process to submit Medicaid reimbursement claims to ODJFS. The providers are also required to arrange to receive Medicaid reimbursement from ODJFS by means

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[110] 42 U.S.C. 1396b-1.

[111] 42 U.S.C. 1396b(a)(3)(F) and 1396b(t).

of electronic funds transfer. ODJFS is not to process a Medicaid claim submitted on or after January 1, 2013, unless the claim is submitted through an electronic claims submission process. The bill permits the ODJFS Director to adopt rules under the Administrative Procedure Act to implement the process.

The electronic claims submission process and the requirement to be reimbursed by means of electronic funds transfer do not apply to the following:

(1) Nursing facilities;

(2) ICFs/MR;

(3) Medicaid managed care organizations;

(4) Any other provider or type of provider designated by the ODJFS Director.

Medicaid payments to organization on behalf of providers

(R.C. 5111.051)

The bill authorizes the ODJFS Director to submit a state plan amendment or to request a waiver of federal requirements to implement, at the ODJFS Director's discretion, a system under which payments for Medicaid services are made to an organization on behalf of the providers of the services. The system is prohibited from providing to an organization an amount that exceeds the amount ODJFS would have paid directly to the providers for providing the services.

Application fees for Medicaid provider agreements

(R.C. 5111.063 (primary), 5111.06, and 5111.94; Section 309.37.10)

The bill imposes fees on certain applicants for new or renewed Medicaid provider agreements for the purpose of implementing Medicaid provider screening procedures required by federal law.

Federal regulations require that each state implement a screening program for the purpose of increasing the Medicaid program's integrity.[112] States are required to assess an application fee, unless the applicant is (1) an individual physician or other practitioner, (2) a provider who is enrolled in Medicare or another state's Medicaid or

[112] 42 C.F.R. Part 455; 42 C.F.R. 455.450.

CHIP program, or (3) a provider who has paid the application fee to a Medicare contractor or another state.[113]

The bill requires the ODJFS Director to charge an application fee to a provider seeking to enter into or renew a Medicaid provider agreement who is not exempt from the fee under federal regulations. The fees are to be deposited into the existing Health Care Services Administration Fund. The bill prohibits the ODJFS Director from establishing an application fee that is more than necessary to pay for the expenses of implementing the provider screening requirements.

Automatic suspension of Medicaid provider agreements

(R.C. 5111.06, 5111.031, and 5111.035)

Overview

To participate in the Medicaid program, a health care provider must enter into a contract with ODJFS known as a "provider agreement." By signing the agreement, the provider agrees to comply with the terms of the agreement and all applicable state and federal laws. Medicaid reimbursement for providing health care services is contingent on a valid provider agreement being in effect when the services are provided.[114]

The bill generally requires ODJFS to do both of the following when ODJFS determines there is a "creditable allegation of fraud"[115] against a Medicaid provider[116] for which an investigation is pending under the Medicaid program: (1) suspend the provider's Medicaid provider agreement and (2) terminate reimbursement to the provider for services rendered to Medicaid recipients.

The bill also authorizes ODJFS to take any of several types of disciplinary action, without a hearing, against an existing Medicaid provider agreement when the action is

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[113] 42 C.F.R. 455.460.

[114] O.A.C. 5101:3-1-17 and 5101:3-1-172.

[115] The bill generally defines "creditable allegation of fraud" consistent with the definition of this term in a federal regulation. Under that definition, modified to conform to Ohio law, a creditable allegation of fraud may be an allegation, which has been verified by ODJFS, from any source, including but not limited to, fraud hotline complaints, claims data mining, and patterns identified through provider audits, false claims cases, and law enforcement investigations. The federal regulation specifies that allegations are considered to be credible when they have indicia of reliability and ODJFS has reviewed all allegations, facts, and evidence carefully and acts judiciously on a case-by-case basis. (42 C.F.R. 455.2.)

[116] A "provider" is any person, institution, or entity that has a Medicaid provider agreement with ODJFS (R.C. 5111.035(A)(2)).

based on a disciplinary action taken by another state's Medicaid agency or for reasons specified in regulations promulgated under the federal Patient Protection and Affordable Care Act.

The bill's provisions governing suspension of Medicaid provider agreements, as summarized above, are consistent with federal regulations governing state Medicaid fraud detection and investigation programs.[117]

Suspensions based on creditable allegations of fraud

(R.C. 5111.035(B))

In general, the bill requires ODJFS, on determining if there is a creditable allegation of fraud for which an investigation is pending under the Medicaid program against a Medicaid provider, to do both of the following: (1) suspend the provider agreement held by the provider, and (2) terminate reimbursement to the provider for services rendered to Medicaid recipients.

Exceptions – when suspension does not occur

(R.C. 5111.035(C))

Under the bill, ODJFS is prohibited from suspending a Medicaid provider agreement or terminating Medicaid reimbursement based on a creditable allegation of fraud when prescribed by rules adopted by ODJFS or when the provider or owner can demonstrate through the submission of written evidence that the provider or owner did not directly or indirectly sanction the action of its authorized agent, associate, manager, or employee that resulted in the creditable allegation of fraud.

Duration of suspension

(R.C. 5111.035(B)(2))

The bill requires the suspension of a Medicaid provider agreement based on a creditable allegation of fraud to continue in effect until any of the following, as applicable, is the case:

(1) ODJFS or a prosecuting authority determines there is insufficient evidence of fraud by the provider.

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[117] *See* 42 C.F.R. Part 455.

(2) The proceedings in any related criminal case are completed through dismissal of the indictment or through conviction, entry of a guilty plea, or finding of not guilty.

(3) ODJFS concludes the process to terminate the provider's agreement, if ODJFS has commenced a process to terminate the suspended agreement.

Prohibition on owning or providing services to other Medicaid provider or risk contractor

(R.C. 5111.035(B)(4))

When a Medicaid provider is subject to a suspension based on a creditable allegation of fraud, a provider, owner,[118] officer, authorized agent, associate, manager, or employee of the provider is prohibited from doing any of the following:

(1) Owning or providing services to any other Medicaid provider or risk contractor;

(2) Arranging for, rendering, or ordering services to any other Medicaid provider or risk contractor;

(3) Arranging for, rendering, or ordering services for Medicaid recipients during the period of suspension;

(4) Receiving reimbursement in the form of direct payments from ODJFS or indirect payments of Medicaid funds in the form of salary, shared fees, contracts, kickbacks, or rebates from or through any participating provider or risk contractor.

Termination of reimbursements

(R.C. 5111.035(D))

The bill specifies that termination of Medicaid reimbursement based on a creditable allegation of fraud applies only to payments for Medicaid services rendered by a provider subsequent to the date on which a notice required by the bill (see "**Notice**," below) is sent. Claims for Medicaid reimbursement rendered by the provider prior to issuance of the notice may be subject to prepayment review procedures whereby ODJFS reviews claims to determine whether they are supported by sufficient documentation, are in compliance with state and federal statutes and rules, and are otherwise complete.

[118] An "owner" is any person having at least 5% ownership in a noninstitutional Medicaid provider (R.C. 5111.035(A)(3)).

Notice

(R.C. 5111.035(E), (F), and (G))

Timing

After suspending a provider agreement based on a creditable allegation of fraud, the bill requires ODJFS, consistent with federal regulations governing state Medicaid fraud detection and investigation programs,[119] to send notice of the suspension to the affected provider or owner in accordance with the following timeframes:

(1) Not later than five days after the suspension, unless a law enforcement agency makes a written request to temporarily delay the notice;

(2) Not later than 30 days after the suspension occurs, if a law enforcement agency makes a written request to temporarily delay the notice. The written request may be renewed in writing by a law enforcement agency not more than two times except that under no circumstances may the notice be issued more than 90 days after the suspension occurs.

Content

The notice the bill requires ODJFS to send to suspended providers must do all of the following:

(1) State that payments are being suspended based on creditable allegations of fraud and the federal regulation governing such suspensions (42 C.F.R. 455.23);

(2) Set forth the general allegations related to the nature of the conduct leading to suspension, except that it is not necessary for the notice to disclose any specific information concerning an ongoing investigation;

(3) State that the suspension continues to be in effect until either of the following is the case: (a) ODJFS or a prosecuting authority determines there is insufficient evidence of fraud by the provider, or (b) the proceedings in any related criminal case are completed through dismissal of the indictment or through conviction, entry of a guilty plea, or finding of not guilty and, if ODJFS commences a process to terminate the suspended provider agreement, until the termination process is concluded;

(4) Specify, if applicable, the type or types of Medicaid claims or business units of the provider that are affected by the suspension;

[119] Specifically, 42 C.F.R. 455.23(b).

(5) Inform the provider or owner of the opportunity to submit to ODJFS, not later than 30 days after receiving the notice, a request for reconsideration of the suspension.

Reconsideration process

(R.C. 5111.035(H) and (I))

Timing of request for reconsideration

The bill authorizes a provider or owner subject to a suspension based on a creditable allegation of fraud to request a reconsideration of the suspension. The request must be made not later than 30 days after receipt of a notice required by the bill. The reconsideration is not subject to a hearing conducted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

Content of request for reconsideration

In requesting reconsideration of a suspension, the bill requires an affected provider or owner to submit written information and documents to ODJFS. The information and documents may pertain to any of the following issues:

(1) Whether the determination to suspend the provider agreement was based on a mistake of fact, other than the validity of an indictment in a related criminal case;

(2) If there has been an indictment in a related criminal case, whether any offense charged in the indictment resulted from an act that would be a felony or misdemeanor under Ohio law and the act relates to or results from (a) furnishing or billing for medical care, services, or supplies under the Medicaid program, or (b) participating in the performance of related management or administrative services;

(3) Whether the affected provider or owner can demonstrate that the provider or owner did not directly or indirectly sanction the action of its authorized agent, associate, manager, or employee that resulted in the suspension for a creditable allegation of fraud or an indictment in a related criminal case.

Review of request for reconsideration

The bill requires ODJFS to review the information and documents submitted by the affected provider. After the review, the suspension may be affirmed, reversed, or modified, in whole or in part. ODJFS is required to notify the affected provider or owner of the results of the review. The review and notification of its results must be completed not later than 45 days after receiving information and documents submitted in a reconsideration request.

Rules

(R.C. 5111.035(J))

The bill authorizes ODJFS to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to implement the bill's provisions regarding automatic suspensions of a Medicaid provider agreement based on a creditable allegation of fraud. The rules may specify circumstances under which ODJFS would not suspend a provider agreement based on such an allegation.

Disciplinary actions based on other states' actions

(R.C. 5111.06(D)(5))

Without conducting a hearing, the bill authorizes ODJFS to deny, terminate, or not renew a Medicaid provider agreement when ODJFS's action is based on the provider's termination, suspension, or exclusion from another state's Medicaid program. In such cases, the out-of-state termination, suspension, or exclusion is binding on the provider's participation in the Ohio Medicaid program.

Disciplinary actions for reasons specified by other federal provisions

(R.C. 5111.06(D)(12))

Without conducting a hearing, the bill authorizes ODJFS to suspend or terminate an existing provider agreement or deny an application for enrollment or re-enrollment for any of the following reasons authorized or required by regulations promulgated pursuant to the federal Patient Protection and Affordable Care Act:

- The provider did not fully and accurately make a disclosure required by a regulation governing disclosure of information on owners or agents convicted of offenses related to involvement with programs established under Medicaid, Medicare, or the federal Title XX Social Services Block Grant.[120]

- There has been determined to be a creditable allegation of fraud for which an investigation is pending under the Medicaid program and ODJFS has not determined there to be good cause to not suspend the provider's payments.[121]

[120] 42 C.F.R. 455.106(c).

[121] 42 C.F.R. 455.23

- A person with a 5% or greater direct or indirect ownership interest in the provider:

  --Did not submit timely and accurate information and cooperate with any screening methods required by federal regulations;[122]

  --Has been convicted of a criminal offense related to that person's involvement with Medicare, Medicaid, or a Children's Health Insurance Program (CHIP) in the last ten years, unless ODJFS determined that denial or termination of enrollment was not in the best interests of the Medicaid program and ODJFS documented that determination in writing.[123]

- The provider's agreement to participate in Medicare, Medicaid, or the CHIP program of any state was terminated on or after January 1, 2011.[124]

- The provider or a person with an ownership or control interest or who is an agent or managing employee of the provider failed to submit timely or accurate information, unless ODJFS determined that termination or denial of enrollment was not in the best interests of the Medicaid program and ODJFS documented that determination in writing.[125]

- The provider or a person with a 5% or greater direct or indirect ownership interest in the provider failed to submit sets of fingerprints in the form and manner determined by ODJFS within 30 days of a Centers for Medicare & Medicaid Services (CMS) or ODJFS request, unless ODJFS determined that termination or denial of enrollment was not in the best interests of the Medicaid program and ODJFS documented that determination in writing.[126]

- The provider failed to permit access to provider locations for any site visits required by federal regulations,[127] unless ODJFS determined that

[122] 42 C.F.R. 416(a).

[123] 42 C.F.R. 416(b).

[124] 42 C.F.R. 455.416(c).

[125] 42 C.F.R. 455.416(d).

[126] 42 C.F.R. 455.416(e).

[127] 42 C.F.R. 455.432.

termination or denial of enrollment was not in the best interests of the Medicaid program and ODJFS documents that determination in writing.[128]

- CMS or ODJFS (1) determined that the provider falsified any information provided on the application, or (2) cannot verify the identity of any provider applicant.[129]

- Failure to submit to a criminal background check as a condition of enrolling to be a Medicaid provider, as specified in federal regulations.[130]

- Failure to meet screening requirements for Medicaid providers specified in federal regulations.[131]

Public notice of proposed changes to Medicaid rates

(R.C. 5111.0212)

As necessary to comply with federal law, the bill requires the ODJFS Director to give public notice in the Register of Ohio of any change to a method or standard used to determine the Medicaid reimbursement rate for Medicaid providers. Current federal law requires that the public notice provide information on the methodologies underlining the rates and an opportunity for the public to review and comment on the proposed rates.[132]

Maximum Medicaid reimbursement rate

(R.C. 5111.021)

The bill eliminates the discretion of ODJFS to pay Medicaid providers an amount that exceeds that authorized under the Medicare program and specifies that payments to certain providers is not to exceed the amount allowed under federal Medicaid regulations.

Current law provides that, in reimbursing any Medicaid provider, ODJFS, except as permitted by federal law and at the discretion of ODJFS, is to reimburse the provider no more than the amount authorized for the same service under the Medicare program.

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[128] 42 C.F.R. 455.416(f).

[129] 42 C.F.R. 455.416(g).

[130] 42 C.F.R. 455.434.

[131] 42 C.F.R. 455.450.

[132] 42 U.S.C. 1396(a)(13)(A).

The bill instead prohibits Medicaid reimbursement rates to hospitals, nursing facilities, or ICF/MR from exceeding the limits established in federal regulations. For all other providers, ODJFS is prohibited from providing a Medicaid reimbursement rate in an amount that exceeds the authorized Medicare reimbursement limit for the same service.

Medicaid rates for aide and nursing services

(R.C. 5111.0213)

The bill requires ODJFS to reduce the Medicaid program's first-hour-unit price for aide and nursing services provided as home care.[133] This reduction is required to be made in a manner that reflects, at a minimum, labor market data that shows the Medicaid and non-Medicaid reimbursement rates for such or similar services. The reduction must occur no later than October 1, 2011.

The bill also requires ODJFS to adjust the Medicaid reimbursement rates paid for aide and nursing services provided as home care. This adjustment must reflect, at a minimum, labor market data, education and licensure status, home health agency and non-agency provider status, and length of service visit. The bill requires ODJFS to strive to have the adjustment go into effect on July 1, 2012, which is the earliest date that the bill permits the adjustment to take effect.

Under the bill, the reduction of the first-hour-unit price for aide and nursing services must remain in effect until the adjustment of the Medicaid reimbursement rates for those services becomes effective.

The ODJFS Director must adopt rules under the Administrative Procedure Act (R.C. Chapter 119.) as necessary to implement these requirements.

Federal upper limit for drugs

(R.C. 5111.085)

The bill prohibits ODJFS from making a Medicaid payment for a drug subject to a federal upper reimbursement limit that exceeds, in the aggregate, the federal upper

[133] For purposes of the bill, "aide services" includes home health aide services available under the federal Medicaid home health services benefit and home care attendant and personal care aide services under a home and community-based services Medicaid waiver component. "Home nursing services" includes nursing services under the federal Medicaid home health services benefit, private duty nursing services, and nursing services available under a home and community-based services Medicaid waiver component. (R.C. 5111.0213.)

reimbursement limit for the drug.[134] The ODJFS Director is to adopt rules as necessary to implement the bill's provision.

Drugs subject to a federal upper limit are those generally referred to as "generic drugs" (*i.e.*, multiple source drugs for which there are three or more therapeutically equivalent drug products).[135] States generally base their Medicaid reimbursements to a retail pharmacy for a covered outpatient drug on the *lowest* of the following:[136]

(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, if one applies;

(4) The state's maximum allowable cost (MAC) for the drug, if one applies. (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. Generally, state MAC lists include more drugs, and establish lower reimbursement prices, than the federal upper limit list.)

The bill's prohibition does not affect ODJFS's authority to pay an amount lower than the federal upper limit; it only places a ceiling on the amount of the payment.

Medicaid dispensing fee for noncompounded drugs

(Section 309.33.70)

The bill continues to set the Medicaid dispensing fee for each noncompounded drug covered by the Medicaid program at $1.80 for the period beginning January 1, 2011, and ending on the effective date of an ODJFS rule changing the amount of the fee.

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[134] The bill defines "federal upper reimbursement limit" to mean the limit established pursuant to federal law governing payments for outpatient drugs covered by Medicaid (42 U.S.C. 1396r-8(e)).

[135] 42 U.S.C. 1396r-8(e)(4).

[136] 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).

Hospital Care Assurance Program

(Sections 690.10 and 690.11)

The bill continues the Hospital Care Assurance Program (HCAP) for two additional years. HCAP is currently scheduled to end October 16, 2011, but under the bill will continue until October 16, 2013. Under 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.

Hospital assessments

(R.C. 5112.40, 5112.41, 5112.46, and 5112.99; Sections 620.10 to 620.13 and 612.20)

The bill continues the assessment imposed on hospitals for two additional years, ending October 1, 2013, rather than October 1, 2011. The assessment is in addition to HCAP. But like HCAP, the assessment raises money to help pay for the Medicaid program.

A hospital's assessment is based on its total facility costs. The bill requires ODJFS to adopt rules specifying the percentage of hospitals' total facility costs that hospitals are to be assessed for the next two years. The percentage may vary for different hospitals. However, ODJFS must obtain a federal waiver before establishing varied percentages if varied percentages would cause the assessment to not be imposed uniformly as required by federal law.

A hospital's total facility costs are derived from cost-reporting data submitted to ODJFS for purposes of HCAP. The bill provides that a hospital's total facility costs are to be derived from other financial statements that the hospital is to provide ODJFS if the hospital has not submitted the HCAP cost-reporting data. The financial statements are subject to the same type of adjustments made to the HCAP cost-reporting data.

Continuing law establishes a schedule by which hospitals are to pay their assessments. ODJFS is permitted, however, to establish a different payment schedule in rules. The bill provides that the purpose of a different payment schedule is to reduce hospitals' cash flow difficulties.

The bill requires ODJFS to impose a penalty of 10% of the amount due on any hospital that fails to pay its assessment by the due date.

Offsets of penalties under HCAP and hospital assessments

(R.C. 5112.991; Section 309.35.90)

The bill permits ODJFS to collect unpaid penalties regarding HCAP and the assessment on hospitals in the form of offsets. When collecting an unpaid penalty through an offset, ODJFS may reduce the amount of one or more payments due a hospital under the Medicaid program by an amount not exceeding the amount of the unpaid penalty.

Nursing home and hospital long-term care unit franchise permit fees

(R.C. 3721.50, 3721.51, 3721.56 (repealed), 3721.561 (renumbered 3721.56), 3721.58, 3721.56, 3769.08, 3769.20, and 3769.26; Section 512.80)

The bill revises the law governing the franchise permit fee that is imposed on nursing homes and hospital long-term care units. The fee is used to generate revenue to help fund Medicaid, including the PASSPORT program, and the Residential State Supplement program.

The bill sets the franchise permit fee's base rate at $11.38 for fiscal year 2012 and $11.60 for each fiscal year thereafter. In doing so, the bill eliminates the formula that was used to calculate the base rate for prior fiscal years. The bill maintains current law that provides for adjustments in the amount of the franchise permit fee due to a federal waiver that exempts certain nursing homes from the fee.

Under current law, the amount assessed under the franchise permit fee for a fiscal year cannot exceed 5.5% of the actual net patient revenues for all nursing homes and hospital long-term care units for that fiscal year. If the rate used in the assessment results with a higher assessment, ODJFS must recalculate the assessment using a rate equal to 5.5% of actual net patient revenues for all nursing homes and hospital long-term care units for that fiscal year. This is done to address a restriction in federal Medicaid law applicable to the franchise permit fee. The law governing the federal restriction changes on October 1, 2011, in a manner that permits the amount assessed under the fee to be as high as 6% of the actual net patient revenues for all nursing homes and hospital long-term care units for a fiscal year. The bill addresses the change in federal law by providing for ODJFS to recalculate the assessment for a fiscal year if the total amount assessed exceeds the indirect guarantee percentage of the actual net patient revenues for all nursing homes and hospital long-term care units for that fiscal year. The indirect guarantee percentage is the maximum percentage of actual net

patient revenues that the federal law permits the fee to assess (i.e., 5.5% until October 1, 2011, and 6% thereafter).

The bill abolishes one of the two funds into which money raised by the franchise permit fee is deposited. The fund that is abolished is the Home- and Community-Based Services for the Aged Fund. All of the money raised by the franchise permit fee is to be deposited into the remaining fund, the Nursing Facility Stabilization Fund which is renamed the Nursing Home Franchise Permit Fee Fund. Whereas current law requires ODJFS to use money in that fund to make Medicaid payments only to nursing facilities, the bill requires that ODJFS use the money to make Medicaid payments to providers of home and community-based services as well as providers of nursing facility services. Additionally, the bill permits money in the Nursing Home Franchise Permit Fee Fund to be used for the Residential State Supplement program. Current law governing the fund being abolished, the Home- and Community-Based Services for the Aged Fund, requires ODJFS and the Ohio Department of Aging (ODA) to use money in that fund for the Medicaid program, including the PASSPORT program, and the Residential State Supplement program.

Current law provides for only the first dollar of the franchise permit fee to be deposited into the Home- and Community-Based Services for the Aged Fund and for the Nursing Facility Stabilization Fund to receive the remainder. Because the bill requires all of the money raised by the franchise permit fee to be deposited into the renamed Nursing Facility Stabilization Fund and provides for the money in that fund to be used for home and community-based services and the Residential State Supplement program rather than just nursing facilities, it is possible that more of the money raised by the franchise permit fee will be used for home and community-based services and the Residential State Supplement program than under current law.

The bill abolishes the PASSPORT Fund. Money raised by horse-racing-related taxes that is currently deposited into the PASSPORT Fund is required to be instead deposited into the Nursing Home Franchise Permit Fee Fund. The bill continues to require that the money be used for the PASSPORT Program.

Medicaid reimbursement rates for nursing facilities

The bill revises the formula used in determining nursing facilities' Medicaid reimbursement rates. The formula is established in the Revised Code and is comprised of various price centers and a quality incentive payment.

Direct care costs

(R.C. 5111.231)

Direct care costs are one of the price centers used in determining nursing facilities' Medicaid reimbursement rates. A nursing facility's Medicaid reimbursement rate for direct care costs is based in part on the cost per case-mix unit determined for the nursing facility's peer group. Under current law, one of the steps in determining a peer group's cost per case-mix unit is to calculate the amount that is 7% above the cost per case-mix unit determined for the nursing facility in the peer group that is at the 25th percentile of the cost per case-mix units. The bill replaces that step with a step under which $1.88 is added to the cost per case-mix unit determined for the nursing facility at the 25th percentile. Whereas the 7% calculation made under current law occurs before an inflation adjustment is applied, the $1.88 increase is to be made after the inflation adjustment is made. ODJFS is to cease to make the $1.88 increase when it first rebases nursing facilities' rates for direct care costs. ODJFS is not required to rebase more than once every ten years. Rebasing is the process under which ODJFS redetermines nursing facilities' rates using information from Medicaid cost reports for a calendar year that is later than the calendar year used for the previous determination.

Ancillary and support costs

(R.C. 5111.24)

Ancillary and support costs are another price center. Nursing facilities' Medicaid reimbursement rates for ancillary and support costs is based on the ancillary and support costs of the nursing facility in a peer group that is at the 25th percentile of the rate for such costs. Under current law, a 3% adjustment is applied to that nursing facility's ancillary and support costs when determining the peer group's rate. The bill eliminates the 3% adjustment.

Capital costs

(R.C. 5111.25 (primary), 5111.222, and 5111.254)

Another price center is capital costs. Under current law, a nursing facility's Medicaid reimbursement rate for capital costs is the median rate for capital costs for the nursing facilities in the nursing facility's peer group. Under the bill, a peer group's rate for capital costs is to be the rate for capital costs determined for the nursing facility in the peer group that is at the 25th percentile of the rate for capital costs. The bill prohibits ODJFS from redetermining a peer group's rate for capital costs based on additional information that it receives after the rate is determined and provides for

ODJFS to make a redetermination only if ODJFS made an error in determining the rate based on information available to ODJFS at the time of the original determination.

In determining a nursing facility's capital costs, adjustments are sometimes made to certain of the nursing facility's capital costs. Under current law, an adjustment is based on the lesser of (1) one-half of the change in construction costs as calculated by ODJFS using the Dodge Building Cost Indexes, Northeastern and North Central states, published by Marshall and Swift and (2) one-half of the change in the Consumer Price Index for all items for all urban consumers, as published by the U.S. Bureau of Labor Statistics. The bill provides for the adjustment to be based only on one-half of the change in the Consumer Price Index rather than the lesser of that amount and the amount determined using the Dodge Building Cost Indexes.

Franchise permit fee costs

(R.C. 5111.243 (repealed) and 5111.222)

Under current law, a franchise permit fee rate is one of the price centers that make up a nursing facility's total Medicaid reimbursement rate. The bill eliminates the franchise permit fee rate price center.

Quality incentive payments

(R.C. 5111.244 (primary), 5111.222, and 5111.254)

A quality incentive payment is added to a nursing facility's Medicaid reimbursement rate. The amount of a nursing facility's quality incentive payment depends on how many points the nursing facility earns for meeting accountability measures.

The accountability measures are specified in current law. The bill requires ODJFS to cease using the current accountability measures on the earlier of the effective date of rules ODJFS is to adopt establishing new accountability measures and July 1, 2012. While the current accountability measures are used, a nursing facility is to be awarded quality incentive points for resident and family satisfaction only if a satisfaction survey was conducted for the nursing facility in calendar year 2010.

ODJFS is required to strive to have the rules establishing the new accountability measures in effect not later than July 1, 2012. If the effective date of the rules is after July 1, 2012, ODJFS is prohibited from awarding any quality incentive points, and therefore no quality incentive payments will be paid, for the period beginning July 1, 2012, and ending on the effective date of the rules. In adopting the rules, ODJFS must collaborate with persons interested in the issue of Medicaid coverage of nursing facility

services. The new accountability measures must include measures relating to the quality of care that nursing facilities provide their residents and the residents' quality of life.

FY 2012 and FY 2013 Medicaid reimbursement rates for nursing facilities

(Sections 309.30.60 and 309.30.70)

As was done for several prior fiscal years, the bill requires ODJFS to adjust certain price centers and the quality incentive payment when determining nursing facilities' Medicaid reimbursement rates for fiscal years 2012 and 2013. For both fiscal years, ODJFS must increase the cost per case-mix unit, rate for ancillary and support costs, rate for tax costs, and rate for capital costs by 5.08%. For fiscal year 2012, ODJFS is required to provide for the mean quality incentive payment to be $14.41 per Medicaid day. For fiscal year 2013, ODJFS must provide for the mean quality incentive payment to be $14.63 per Medicaid day unless no quality incentive payment is made for that fiscal year. The total Medicaid reimbursement rate determined for nursing facilities for either year is to be reduced if the nursing home franchise permit fee is required to be reduced or eliminated that fiscal year to comply with federal law. The amount of the reduction is to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

Maximum payment for nursing facility services to dual eligible individuals

(R.C. 5111.227)

A dual eligible individual is an individual who is eligible for Medicaid and is entitled to, or enrolled in, Medicare Part A (which covers inpatient hospital services and some post-hospital extended care services such as skilled nursing care) or enrolled in Medicare Part B (which covers services such as physician services, outpatient care, and certain other medical services). When a service covered by both Medicaid and Medicare is provided to a dual eligible individual, Medicare is the primary payer but Medicaid may pay the difference between the charge for the service and the Medicare payment limit, up to the Medicaid payment limit.[137]

The bill requires ODJFS to pay a nursing facility the lesser of the following for services provided on or after January 1, 2012, to a dual eligible individual:

(1) The coinsurance amount for the services as provided under federal law governing Medicare Part A;

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[137] U.S. Centers for Medicare and Medicaid Services, "Third Party Liability: Overview." https://www.cms.gov/DualEligible/ (accessed 03/27/2011).

(2) 100% of the nursing facility's per diem rate for the day of service, less the amount that Medicare Part A pays for the services.

This causes the maximum reimbursement rate to be reduced, effective January 1, 2012, from 109% to 100% of a nursing facility's Medicaid per diem rate because a current ODJFS rule sets the maximum reimbursement rate at 109%.

Centers of Excellence

(R.C. 5111.259 (primary) and 5111.258)

The bill permits the ODJFS Director to submit a request for a federal Medicaid waiver to create a Medicaid program to be known as Centers of Excellence. The purpose of the Centers of Excellence program is to increase the efficiency and quality of nursing facility services provided to Medicaid recipients with complex nursing facility service needs. If federal approval is obtained and the ODJFS Director creates the Centers of Excellence program, the ODJFS Director may adopt rules governing the program, including rules that establish a method of determining the Medicaid reimbursement rates for nursing facility services provided to Medicaid recipients participating in the program. The rules may specify the extent to which, if any, continuing law governing the rates paid for nursing facility services provided to individuals with diagnoses or special care needs that are considered outliers is to apply to the Centers of Excellence program.

Report on nursing facility Medicaid-rate methodology

(R.C. 5111.20 and 5111.34 (repealed))

The bill repeals a provision that requires (1) ODJFS to prepare an annual report containing recommendations on the methodology that should be used to transition paying nursing facilities the Medicaid reimbursement rate for one fiscal year to the next fiscal year, and (2) the ODJFS Director to submit a copy of the report to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives by October 1 each year.

Nursing facility fiscal emergency

(R.C. 5111.511 (primary), 5111.35, 5111.52, 5111.54, and 5111.62)

ODJFS's options

The bill authorizes ODJFS, if it determines that a nursing facility is experiencing or is likely to experience a serious financial loss or failure that jeopardizes or is likely to jeopardize the health, safety, and welfare of its residents, to do either of the following:

(1) Temporary Fiscal Emergency Manager – appoint, subject to the provider's consent, a "temporary fiscal emergency manager" to take actions ODJFS determines are appropriate to ensure the health, safety, and welfare of residents.

(2) Injunctive or Equitable Relief – apply to the court of common pleas of the county in which the nursing facility is located for a temporary restraining order, preliminary injunction, appointment of a temporary fiscal emergency manager, or such other injunctive or equitable relief as is necessary to take actions ODJFS determines are appropriate to ensure the health, safety, and welfare of the residents.

Temporary fiscal emergency manager's authority and qualifications

The bill specifies that a temporary fiscal emergency manager that ODJFS appoints is vested with the authority necessary to take actions that ODJFS determines are appropriate to ensure the health, safety, and welfare of the relevant nursing facility's residents. The manager is authorized to use any of the following funds to pay for costs the manager incurs on behalf of the nursing facility:

(1) Medicaid payments made in accordance with the nursing facility's Medicaid provider agreement.

(2) Funds from the Residents Protection Fund that ODJFS provides the manager under current law (R.C. 5111.62) (see "**Residents Protection Fund**") if such use of the funds is consistent with (a) the appropriations that authorize the use of the funds, and (b) all other state and federal laws governing the use of the funds.

The bill specifies that a provision of current law governing, among other things, the authority of "temporary managers of nursing facilities" (R.C. 5111.54) does not apply to temporary fiscal emergency managers. Therefore, a person's status as a temporary fiscal emergency manager does not automatically authorize that person to engage in the same activities as a temporary manager of a nursing facility.

Similarly, the bill specifies that a provision of current law governing, among other things, qualifications of "temporary managers of nursing facilities" (R.C. 5111.54) does not apply. Consequently, temporary fiscal emergency managers do not have to meet the qualifications applicable to temporary managers of nursing facilities. Rather, the fiscal managers must meet qualifications, if any, established in rules the ODJFS Director adopts (see "**Rules**," below).

Provider's liability for payments made by ODJFS

The bill specifies that the nursing facility provider[138] is liable to ODJFS for the amount of any payments ODJFS makes to the temporary fiscal emergency manager, other than Medicaid payments made in accordance with the nursing facility's Medicaid provider agreement. ODJFS is authorized to recover the amount the provider owes ODJFS by doing any of the following:

(1) Offsetting Medicaid payments;

(2) Placing a lien on any of the provider's real and personal property;

(3) Initiating other collection actions.

Final decision

The bill specifies that no action ODJFS takes under the bill's provisions described above are subject to an appeal under the Administrative Procedure Act (R.C. Chapter 119.).

Rules

In rules the ODJFS Director is authorized to adopt under current law governing nursing facility deficiencies (R.C. 5111.36), the Director may establish all of the following regarding temporary fiscal emergency managers:

(1) Qualifications persons must meet to be appointed;

(2) Procedures for maintaining a list of qualified appointees;

(3) Procedures for paying for their services;

(4) Accounting and reporting requirements for the managers;

(5) Other procedures and requirements the Director determines are necessary to implement the provisions described above.

Residents Protection Fund

The bill specifies that money in the Residents Protection Fund created by current law (R.C. 5111.62) may be used to make payments to temporary fiscal emergency managers. The Fund consists of proceeds of all fines, including interest, collected

[138] A "provider" is a person, institution, or entity that furnishes nursing facility services under a medical assistance provider agreement (R.C. 5111.35(K)).

pursuant to law governing nursing facility deficiencies. Currently, money in the Fund is used only for the protection of the health or property of residents of nursing facilities in which ODH finds deficiencies.

ICF/MR franchise permit fee

(R.C. 5112.30, 5112.31, 5112.37, 5112.371, and 5112.39)

The bill sets the ICF/MR franchise permit fee rate at $17.99 for fiscal year 2012 and $18.32 for fiscal year 2013 and thereafter. The rate for future fiscal years is no longer to be the rate for the immediately preceding fiscal year as adjusted in accordance with a composite inflation factor established in rules.

Under current law, the amount assessed under the ICF/MR franchise permit fee cannot exceed 5.5% of the actual net patient revenues for all ICFs/MR for that fiscal year. If the rate used in the assessment results with a higher assessment, ODJFS must recalculate the assessment using a rate equal to 5.5% of actual net patient revenues for all ICFs/MR for that fiscal year. This is done to address a restriction in federal Medicaid law applicable to the ICF/MR franchise permit fee. The law governing the federal restriction changes on October 1, 2011, in a manner that permits the amount assessed under the fee to be as high as 6% of the actual net patient revenues for all ICFs/MR for a fiscal year. The bill addresses the change in federal law by providing for ODJFS to recalculate the assessment for a fiscal year if the total amount assessed exceeds the indirect guarantee percentage of the actual net patient revenues for all ICFs/MR for that fiscal year. The indirect guarantee percentage is the maximum percentage of actual net patient revenues that the federal law permits the fee to assess (i.e., 5.5% until October 1, 2011, and 6% thereafter).

Money raised by the ICF/MR franchise permit fee is deposited into two funds: the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund and the ODODD Operating and Services Fund. The bill revises the percentages used to determine how much of the money each fund gets. In fiscal year 2012, 81.77% of the money is to be deposited into the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund. In fiscal year 2013 and thereafter, that fund is to get 82.2% of the money. For each fiscal year, the ODODD Operating and Services Fund is to get the remainder of the money. The bill does not revise the purposes for which money in the funds must be used. ODJFS and ODODD must 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. Money in the ODODD Operating and

Services Fund must be used for the expenses of the programs that ODODD administers and ODODD's administrative expenses.

Medicaid reimbursement rates for ICFs/MR

The bill makes revisions to the law governing Medicaid reimbursements rates for ICFs/MR.

Index used in calculating inflation factors in ICF/MR rates

(R.C. 5111.23, 5111.235, and 5111.241)

The formulas used to determine the direct care, indirect care, and other protected costs of ICFs/MR include provisions regarding inflation adjustments. The bill specifies what is to be done if an index used in calculating an inflation adjustment ceases to be published.

In determining the inflation adjustment for direct care costs, ODJFS is required by current law to use the Employment Cost Index for Total Compensation, Health Services Component, as published by the U.S. Bureau of Labor Statistics. The bill specifies that if that index ceases to be published, ODJFS is to use the index that is subsequently published by the U.S. Bureau and covers nursing facilities' staff costs.

In calculating the inflation adjustments for indirect care costs, ODJFS must use the Consumer Price Index for all items for all urban consumers of the North Central region, as published by the U.S. Bureau of Labor Statistics. Under the bill, if that index ceases to be published, a comparable index that the U.S. Bureau publishes and that ODJFS determines is appropriate is to be used instead.

In the case of other protected costs, ODJFS is required to make the inflation adjustment using the Consumer Price Index for all urban consumers for nonprescription drugs and medical supplies, as published by the U.S. Bureau of Labor Statistics. The bill specifies that, if that index ceases to be published, the index that the U.S. Bureau subsequently publishes and covers nonprescription drugs and medical supplies is to be used.

ICF/MR refund of excess depreciation

(R.C. 5111.251)

The bill eliminates a requirement that an ICF/MR, after the date on which a transaction of sale is closed, refund to ODJFS the amount of excess depreciation that ODJFS paid to the facility for each year it operated under a Medicaid provider agreement. Current law specifies that the amount of the refund is to be prorated

according to the number of Medicaid patient days for which the ICF/MR received payment. "Excess depreciation" is defined as an ICF/MR's depreciated basis, which is the ICF/MR's cost less accumulated depreciation, subtracted from the purchase price but not exceeding the amount paid to the ICF/MR for cost of ownership less any amount paid for interest costs.

FY 2012 Medicaid reimbursement rates for ICFs/MR

(Section 309.30.90)

The bill requires ODJFS to reduce the Medicaid reimbursement rates paid ICFs/MR in fiscal year 2012 if the mean total per diem rate for all ICFs/MR in Ohio for that fiscal year, weighted by May 2011 Medicaid days and calculated as of July 1, 2011, exceeds $279.81. If that is the case, the rates are to be reduced by the percentage that is equal to the percentage by which the mean total per diem rate exceeds $279.81. This applies to ICFs/MR that participated in the Medicaid program in fiscal year 2011 and continue to participate in fiscal year 2012 and to ICFs/MR that begin to participate in fiscal year 2012. Rates so reduced are not subject to any adjustments otherwise authorized by the law governing the formula used to calculate the pre-reduced rates. However, if the franchise permit fee charged ICFs/MR must be reduced or eliminated to comply with federal law, ODJFS must further reduce the rates as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

Contingent FY 2013 Medicaid reimbursement rates for ICFs/MR

(Section 309.33.10)

The bill requires ODJFS to reduce the Medicaid reimbursement rates paid ICFs/MR in fiscal year 2013 in a manner similar to the reductions required in fiscal year 2012. The reduction must be made if the mean total per diem rate for all ICFs/MR in Ohio for fiscal year 2013, weighted by May 2012 Medicaid days and calculated as of July 1, 2012, exceeds $280.14. If that is the case, the rates for continuing and new ICFs/MR are to be reduced by the percentage that is equal to the percentage by which the mean total per diem rate exceeds $280.14. Rates so reduced are not subject to any adjustments otherwise authorized by the law governing the formula used to calculate the pre-reduced rates. However, if the franchise permit fee charged ICFs/MR must be reduced or eliminated to comply with federal law, ODJFS must further reduce the rates as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

The requirement to make the rate reductions for fiscal year 2013 does not apply, though, if a new formula for calculating Medicaid reimbursement rates for ICFs/MR is in effect for that fiscal year.

New Medicaid reimbursement formula for ICF/MR services

(R.C. 5111.225 (primary) and 5111.224; Section 309.30.80)

The bill requires that ODJFS and ODODD work together to establish a new formula for determining Medicaid reimbursement rates for ICFs/MR. The new formula may not be implemented before July 1, 2012. The new formula is to be established in rules adopted by the ODJFS Director or ODODD Director. If necessary to comply with a federal requirement, the ODJFS Director is to adopt rules that authorize the ODODD Director to adopt the rules. Once the rules are in effect, the Medicaid reimbursement rates for ICFs/MR are to be determined in accordance with the new formula. However, continuing law governing the rates paid for ICF/MR services provided to individuals with diagnoses or special care needs that are considered outliers are not to be determined under the new formula. Neither are the rates to be paid ICFs/MR operated by ODODD or ODMH.

As part of the process of establishing the new formula, the ODJFS and ODODD Directors must immediately convene an advisory group to evaluate and recommend changes to the existing formula. The Directors are required to include on the advisory group individuals who are interested in the issue of ICF/MR services. Except to the extent that serving on the advisory group is part of a member's regular employment duties, no member of the advisory group is to be paid for their service on the advisory group. And, members are not to be reimbursed for their expenses incurred in serving on the advisory group. The advisory group is to cease to exist on the earlier of July 1, 2012, and the date that public notice of the first of any rules governing the new formula is published in the *Register of Ohio*.

Transfer of ICF/MR services to ODODD

(R.C. 5111.226 (primary) and 5111.211; Section 309.33.20)

The bill requires that ODJFS enter into an interagency agreement with ODODD that provides for ODODD to assume the powers and duties of ODJFS with regard to the Medicaid program's coverage of ICF/MR services. The interagency agreement is subject to the approval of the U.S. Secretary of Health and Human Services if such approval is needed. The interagency agreement must include a schedule for ODODD's assumption of the powers and duties. No provision of the interagency agreement may violate a federal law or regulation governing the Medicaid program, unless otherwise authorized by the U.S. Secretary. Once the interagency agreement goes into effect and to the extent

necessary to implement the terms of the interagency agreement, ODODD is to be considered ODJFS, and the ODODD Director is to be considered the ODJFS Director, for purposes of state law that gives ODJFS and the ODJFS Director powers and duties regarding ICFs/MR.

Medicaid payments to reserve beds in long-term care facilities

(R.C. 5111.33)

The bill permits ODJFS to make payments to a nursing facility or ICF/MR to reserve a bed for a Medicaid recipient during a temporary absence under conditions prescribed by ODJFS. Under current law, Medicaid reimbursement to a nursing facility or ICF/MR must include a payment to reserve a bed for a recipient during such a temporary absence.

Under the bill, the maximum period for which a payment may be made to reserve a bed in a nursing facility during calendar year 2011 remains at the current maximum: 30 days. For calendar year 2012 and thereafter, however, the maximum number of days for nursing facilities is reduced to 15.

The maximum period in any calendar year for which a payment may be made to reserve a bed in an ICF/MR is to be a number of days specified in ODJFS rules. The bill eliminates current law that requires ODJFS to adopt rules establishing conditions under which an individual who has been identified by ODJFS as requiring an ICF/MR level of care may obtain prior authorization from ODJFS for payments to reserve a bed for more days than is otherwise permitted.

The bill sets the maximum amounts that ODJFS may pay to reserve a bed in a nursing facility. The amounts are currently established in an ODJFS rule. Under the bill, the per diem rate for calendar year 2015 *is not to exceed* 50% of the per diem rate the nursing facility would be paid if the recipient were not absent from the nursing facility that day. ODJFS's rule sets the payment rate to reserve a bed at 50% of the nursing facility's per diem rate.[139] The bill requires ODJFS to pay a lower rate than that set by rule beginning in calendar year 2012 when the per diem rate is not to exceed 25% of the per diem rate the nursing facility would be paid if the recipient were not absent from the nursing facility.

[139] O.A.C. 5101:3-3-16.4(D)(2).

The bill does not require ODJFS to change the payment rate for reserving a bed in an ICF/MR. A current ODJFS rule sets the payment rate at 100% of the regular per diem rate.[140]

Nursing facility and ICF/MR audits and fines

The bill revises the law governing audits of Medicaid cost reports that nursing facilities and ICFs/MR must annually file with ODJFS. Cost reports are used to determine Medicaid reimbursement rates.

Audit-related restriction on amending Medicaid cost report

(R.C. 5111.261, 5111.263, and 5111.28)

The bill creates an audit-related exception to the right of nursing facilities and ICFs/MR to amend Medicaid cost reports. Under the bill, a cost report cannot be amended if ODJFS has notified the nursing facility or ICF/MR that an audit of the cost report or a cost report for a subsequent cost reporting period is to be conducted. The nursing facility or ICF/MR may, however, provide ODJFS information that affects the costs included in the cost report. Such information is not to be provided after the adjudication of the final settlement of the cost report.

Determining whether to conduct an audit

(R.C. 5111.27)

Under the bill, ODJFS is no longer required, but is instead permitted, to base a decision on whether to audit, and the scope of an audit of, a Medicaid cost report on the prior performance of a nursing facility or ICF/MR.

Requirements in ODJFS manual for field audits

(R.C. 5111.27)

The bill requires ODJFS to revise certain requirements included in its manual for field audits. Under current law, the manual must require an auditor to include a written summary as to whether the costs included in a Medicaid cost report examined during the audit are presented fairly in accordance with generally accepted accounting principles and ODJFS rules. Under the bill, the manual must require an auditor to include a written summary as to whether the included costs are presented in accordance with state and federal laws and regulations. Current law requires the manual to provide for field audits to be conducted by auditors who are otherwise

[140] O.A.C. 5101:3-3-16.8(D)(2).

independent as determined by the standards of independence established by the American Institute of Certified Public Accountants. The bill requires instead that standards of independence included in government auditing standards produced by the U.S. Government Accountability Office be used to determine an auditor's independence.

Nursing facility fines for adverse findings in audits

(R.C. 5111.271 (primary) and 5111.27)

ODJFS is required to fine a nursing facility if an audit report includes adverse findings exceeding (1) 3% of the total amount of Medicaid-reimbursable costs reported in the Medicaid cost report that was audited or (2) 20% of such costs for a particular cost center reported in that cost report. The audit report must include notice of the fine. However, no fine may be issued until all appeal rights relating to the audit report are exhausted.

An audit-related fine is to equal the following:

(1) If the adverse findings exceed 3% but do not exceed 10% of the total amount of Medicaid-reimbursable costs reported in the cost report, the greater of 3% of those reported costs or $10,000;

(2) If the adverse findings exceed 10% but do not exceed 20% of the total amount of Medicaid-reimbursable costs reported in the cost report, the greater of 6% of those reported costs or $25,000;

(3) If the adverse findings exceed 20% of the total amount of Medicaid-reimbursable costs reported in the cost report, the greater of 10% of those reported costs or $50,000;

(4) If the adverse findings exceed 20% but do not exceed 25% of Medicaid-reimbursable costs for a particular cost center reported in the cost report, the greater of 3% of those reported costs or $10,000;

(5) If the adverse findings exceed 25% but do not exceed 30% of Medicaid-reimbursable costs for a particular cost center reported in the cost report, the greater of 6% of those reported costs or $25,000;

(6) If the adverse findings exceed 30% of Medicaid-reimbursable costs for a particular cost center reported in the cost report, the greater of 10% of those reported costs or $50,000.

ODJFS must transmit the fines to the Treasurer of State for deposit in the General Revenue Fund.

Collection of long-term care facilities' Medicaid debts

(R.C. 5111.65, 5111.66, 5111.67, 5111.671, 5111.672, 5111.68, 5111.681, 5111.687, and 5111.689)

The bill revises the law that establishes requirements for a nursing facility or ICF/MR that undergoes a change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation. The requirements concern the state's collection of debts a nursing facility or ICF/MR owes under the Medicaid program.

A change of operator occurs when an entering (new) operator becomes the operator of a nursing facility or ICF/MR in the place of an exiting (former) operator. 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. 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. 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.

Facility closure

(R.C. 5111.65(J))

The bill specifies that a nursing facility or ICF/MR is not considered to undergo a facility closure if the building, or part of the building, that houses the facility converts to a different use, any necessary license or other approval needed for that use is obtained, and one or more of the facility's residents remain in the facility to receive services under the new use.

Notices

(R.C. 5111.66, 5111.67, 5111.687, and 5111.689)

The Medicaid debt-collection process begins when ODJFS is notified of a change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation. The bill requires that the notice, and any notice regarding a postponement or cancellation, be provided in accordance with a method ODJFS is to specify in rules.

The bill revises the information that must be included in a written notice of a change of operator. The notice must include the exiting operator's seven-digit Medicaid legacy number and ten-digit national provider identifier number rather than the exiting operator's Medicaid provider agreement number. The notice is to include two additional items. The first additional item is the name and address of each person to whom ODJFS should send initial correspondence regarding the change of operator. The second additional item applies when a nursing facility also participates in the Medicare program. In that case, the notice must also include notification of whether the entering operator intends to accept assignment of the exiting operator's Medicare provider agreement. Under the bill, an entering operator is no longer required to include a completed application for a Medicaid provider agreement, accompanied by certain financial documents, with a written notice of a change of operator.

The bill requires an exiting operator or owner and entering operator to provide ODJFS written notice of any changes to the information included in the notice of the change of operator. The notice of the changes is to be provided in accordance with a method ODJFS is to specify in rules.

Effective date of an entering operator's Medicaid provider agreement

(R.C. 5111.67, 5111.671, and 5111.672)

The bill revises the law governing when an entering operator's Medicaid provider agreement for a nursing facility or ICF/MR undergoing a change of operator goes into effect.

Under current law, one of the conditions that must be met for the provider agreement to go into effect at 12:01 a.m. on the effective date of the change of operator is that the entering operator must furnish to ODJFS copies of all fully executed leases, management agreements, merger agreements and supporting documents, and sales contracts and supporting documents relating to the change of operator not later than ten days after the effective date of the change of operator. The bill requires instead that ODJFS must receive both of the following in accordance with a method specified in rules not later than ten days after the effective date of the change of operator:

(1) From the entering operator, a completed application for a provider agreement and all other forms and documents specified in rules;

(2) From the exiting operator or owner, all forms and documents specified in rules.

An entering operator seeking a Medicaid provider agreement for a nursing facility or ICF/MR undergoing a change of operator must provide ODJFS with copies of

certain documents relating to the change of operator. Under current law, the following are the documents: fully executed leases, management agreements, merger agreements and support documents, and sales contracts and supporting documents. The bill requires that ODJFS specify in rules which documents an entering operator must include with a Medicaid provider agreement application. The rules must provide for the documents to include all fully executed leases, management agreements, merger agreements and supporting documents, and fully executed sales contracts and other supporting documents culminating in the change of operator. The bill also requires that the exiting operator or owner provide ODJFS with documents to be specified in rules.

The date on which an entering operator's Medicaid provider agreement goes into effect depends on certain factors. The provider agreement may go into effect at 12:01 a.m. on the effective date of the change of operator if ODJFS receives the notice of the change of operator by the statutorily prescribed time and the required documents not later than ten days after the effective date of the change of operator. If those deadlines are not met, ODJFS is to determine when the provider agreement goes into effect. The bill eliminates a factor that is part of ODJFS's determination of the provider agreement's effective date. Under the bill, the effective date is not required to be set at a time that gives ODJFS sufficient time to withhold a final Medicaid payment to the exiting operator under the debt collection process until 180 days after the date that the exiting operator submits to ODJFS a properly completed cost report or the date ODJFS waives the requirement for the cost report.

Involuntary termination

(R.C. 5111.65, 5111.68, and 5111.681)

The bill provides for the Medicaid debt collection requirements to apply in a new situation: an involuntary termination. An involuntary termination occurs when ODJFS terminates, or refuses to renew, the provider agreement of a nursing facility or ICF/MR and such action is not taken at the facility's request.

In the case of an involuntary termination, the debt collection process is to begin on the effective date of the involuntary termination. An involuntary termination's effective date is the date ODJFS terminates the provider agreement or the last day that the provider agreement is in effect when ODJFS refuses to renew it. The debt collection process begins with ODJFS estimating the amount of exiting operator's Medicaid debt. After the estimation is made, ODJFS, subject to a successor liability agreement, may withhold from payment due the exiting operator under the Medicaid program the total amount of the estimated debt. A successor liability agreement is an agreement made by the exiting operator, the entering operator, or an affiliated operator to assume all or part of the exiting operator's Medicaid debt. The bill permits the exiting operator, entering

operator, or affiliated operator to enter into a successor liability agreement under the same conditions that continuing law permits such individuals to enter into a successor liability agreement when a change of operator occurs, except that, in the case of an involuntary termination, a successor liability agreement is subject to ODJFS's approval.

Rebalancing long-term care

(Section 309.35.10)

The bill requires ODJFS, ODA, and ODODD to continue efforts to achieve a sustainable and balanced delivery system for long-term services and supports. In working to achieve such a delivery system, the departments are to strive to meet, by June 30, 2013, certain goals regarding the utilization of non-institutionally-based long-term services and supports. The goals are to have at least 50% of Medicaid recipients who are at least age 60 and need long-term services and supports utilize non-institutionally-based long-term services and supports and to have at least 60% of Medicaid recipients who are less than age 60 and have cognitive or physical disabilities for which long-term services and supports are needed utilize non-institutionally-based long-term services and supports. "Non-institutionally-based long-term services and supports" is a federal term that means services not provided in an institution, including (1) home and community-based services, (2) home health care services, (3) personal care services, (4) PACE program services, and (5) self-directed personal assistance services.

ODJFS is permitted, if it determines that participating in the Balancing Incentives Payments Program will assist in achieving the goals regarding long-term services, to apply to participate in program. The Balancing Incentives Payments Program was created as part of the federal health care reform act to encourage states to increase the use of non-institutional care provided under their Medicaid programs. A state participating in the program receives a larger federal match for non-institutionally-based long-term services and supports provided under its Medicaid program.[141] The bill requires that any funds Ohio receives as the result of the larger federal match be deposited into the Balancing Incentive Payments Program Fund, which the bill creates in the state treasury. ODJFS is required to use money in the fund in accordance with federal requirements governing the use of the money. This means that ODJFS must use the money only for purposes of providing new or expanded offerings of non-institutionally-based long-term services and supports under the Medicaid program.

[141] Section 10202 of the Patient Protection and Affordable Care Act (Public Law 111-148).

Ohio Access Success Project

(R.C. 5111.97)

Current law permits the ODJFS Director to establish the Ohio Access Success Project to help Medicaid recipients transition from residing in a nursing facility to residing in a community setting.

Eligibility assessment

The bill requires the ODJFS Director to assess an applicant's eligibility for participation in the Ohio Access Success Project regardless of how long the applicant has been a recipient of Medicaid-funded nursing facility services. Currently, the Director is to assess the applicant's eligibility only if the application is received before the applicant has been a recipient of Medicaid-funded nursing facility services for six months.

Benefits eligibility

The bill eliminates the Ohio Access Success Project eligibility requirement under which the Medicaid recipient applying for Project benefits must need a nursing facility level of care in order to receive Project benefits.

With respect to the eligibility requirement applicable when the Project is being administered as a non-Medicaid program, the bill specifies that an applicant must be able to remain in the community as a result of receiving the Project's benefits. The bill retains the specification that the cost of the benefits provided when the Project is administered as a non-Medicaid program is not to exceed 80% of the average monthly cost of a Medicaid recipient in a nursing facility.

ODJFS and ODA Medicaid home and community-based services

The bill revises the law governing various Medicaid programs that provide home and community-based services. Two of the programs (Ohio Home Care and Ohio Transitions II Aging Carve-Out) are administered by ODJFS. Four of the programs (PASSPORT, Assisted Living, Choices, and PACE) are administered by ODA through an interagency agreement with ODJFS. All but PACE are authorized by federal Medicaid waivers. PACE is part of the state's Medicaid plan. Home First processes are established in statute for the PASSPORT, Assisted Living, and PACE programs. ODJFS has rule-making authority to establish similar processes for other Medicaid waiver programs. Home First processes enable individuals meeting certain requirements to be enrolled in the PASSPORT, Assisted Living, or PACE program ahead of others.

State-funded components of PASSPORT and Assisted Living

(R.C. 173.40, 173.401, 173.404, 173.42, 3721.56, 5111.85, 5111.89, 5111.891, 5111.892, 5111.893 (currently 5111.892), 5111.894, and 5111.971)

The bill establishes state-funded components of the PASSPORT and Assisted Living programs. A more limited state-funded component of the PASSPORT program has been authorized by uncodified law for many years.[142] The state-funded components of the PASSPORT and Assisted Living programs are not to be part of the Medicaid program. ODA is to administer the state-funded components independently rather than, as is the case with the Medicaid-funded components of the programs, through an interagency agreement with ODJFS.

PASSPORT

For an individual to be eligible for the state-funded component of the PASSPORT program, the individual must be in one of three categories and meet additional eligibility requirements to be established in rules. The three categories are (1) "grandparented" individuals, (2) former recipients, and (3) presumptively eligible individuals. To be in the category for grandparented individuals, an individual must have been enrolled in the state-funded component on September 1, 1991, (as the state-funded component was authorized by uncodified law in effect at that time) and have had one or more applications for enrollment in the Medicaid-funded component (or a replacement Medicaid waiver program) denied. To be in the category for former recipients, an individual's enrollment in the Medicaid-funded component (or a replacement Medicaid waiver program) must have been terminated and the individual must still need the home and community-based services provided under the PASSPORT program to protect the individual's health and safety. To be in the category for presumptively eligible individuals, the individual must have an application for the Medicaid-funded component (or a replacement Medicaid waiver program) pending and ODA or ODA's designee must have determined that the individual meets the nonfinancial eligibility requirements of the Medicaid-funded component (or a replacement Medicaid waiver program) and not have reason to doubt that the individual meets the financial eligibility requirements of the Medicaid-funded component (or a replacement Medicaid waiver program). Eligibility for the state-funded component is limited to a maximum of three months for presumptively eligible individuals.

[142] For example, see Section 209.20 of Am. Sub. H.B. 1 of the 128th General Assembly.

Assisted Living

To be eligible for the state-funded component of the Assisted Living program, an individual must meet some of the requirements that also apply to the Medicaid-funded component. The individual must need an intermediate level of care and, while participating in the program, reside in a residential care facility (popularly known as an assisted living facility). Additionally, however, an individual must be presumptively-eligible for the Medicaid-funded component (or a replacement Medicaid waiver program) and meet additional eligibility requirements to be established in ODA rules. To be presumptively eligible for the Medicaid-funded component, an individual must have an application for that component (or a replacement Medicaid waiver program) pending and ODA or ODA's designee must have determined that the individual meets the nonfinancial eligibility requirements of that component (or a replacement Medicaid waiver program) and not have reason to doubt that the individual meets the financial eligibility requirements for that component (or a replacement Medicaid waiver program). Eligibility for the state-funded component is limited to a maximum of three months.

Rules

The ODA Director is required by the bill to adopt rules to implement the state-funded components of the PASSPORT and Assisted Living programs. The additional eligibility requirements established in the rules for the PASSPORT program may vary for the different eligibility categories.

Home First processes

The bill provides that the Home First processes for the PASSPORT and Assisted Living programs apply only to the Medicaid-funded components of the programs.

Eligibility requirements for the Assisted Living program

(R.C. 5111.891)

The bill eliminates certain eligibility requirements for the Medicaid-funded component of the Assisted Living program. Under the bill, an individual no longer needs to be one of the following at the time the individual applies for the component:

(1) A nursing facility resident who is seeking to move to an assisted living facility and would remain in a nursing facility for long-term care if not for the Assisted Living program;

(2) A participant of the PASSPORT program, Choices program, or an ODJFS-administered Medicaid waiver program who would move to a nursing facility if not for the Assisted Living program;

(3) A resident of an assisted living facility who has resided in an assisted living facility for at least six months immediately before the date the individual applies for the Assisted Living program.

Administration of the Assisted Living program

(R.C. 5111.89 and 5111.894)

The bill eliminates a requirement that the Director of the Office of Budget and Management (OBM) must have approved the interagency agreement between ODA and ODJFS regarding the administration of the Assisted Living program for ODA to be able to administer the program. ODA is currently administering the Assisted Living program.

ODA unified waiting list

(R.C. 5111.404)

The bill provides that the requirement for ODA to establish a unified waiting list for the PASSPORT, Choices, Assisted Living, and PACE programs applies if ODA determines that there are insufficient funds to enroll all individuals who have applied and been determined eligible for the programs. Under current law, ODA must establish a unified waiting list regardless of whether such a determination is made.

Home First processes

(R.C. 173.401, 173.404, 173.501, and 5111.894)

Under the bill, an individual may be enrolled in the PASSPORT, Assisted Living, or PACE program through a Home First process without being placed on a unified waiting list established by ODA. In addition to eliminating a requirement that an individual be on the unified waiting list to be enrolled in the PASSPORT, Assisted Living, or PACE program through a Home First process, the bill requires that an individual have been determined to be eligible, rather than just be eligible, for the PASSPORT, Assisted Living, or PACE program to qualify for enrollment through a Home First process.

The bill eliminates a requirement that ODA quarterly certify to the OBM Director the estimated increase in the costs of the PASSPORT, Assisted Living, and PACE programs because of enrollments into those programs through Home First processes.

Expansion and evaluation of PACE program

(Section 309.33.50)

Currently, there are two PACE providers in Ohio, TriHealth Senior Link and McGregor PACE Center for Senior Independence. 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 McGregor PACE. ODA is required to carry out the day-to-day administration of the PACE program pursuant to an agreement with ODJFS, which administers Ohio's Medicaid program.

The bill requires the ODA Director to contract with Miami University's Scripps Gerontology Center for an evaluation of the PACE program.

The bill permits the ODA Director, in consultation with the ODJFS Director, to expand the PACE program to additional regions of Ohio if all of the following apply: (1) funding is available for the expansion, (2) the Directors mutually determine, based on the results of the evaluation described above, that the PACE program is a cost effective alternative to nursing home care, and (3) the U.S. Centers for Medicare and Medicaid Services agrees to share with Ohio any savings to Medicare resulting from the expansion.

In implementing the expansion, the ODA Director is prohibited from decreasing the number of persons participating in the PACE program in the existing PACE sites to below the number of participants in those areas who were enrolled in the program on July 1, 2008.

Obsolete evaluation requirement repealed

(R.C. 5111.893 (repealed))

The bill repeals an obsolete law that required the ODA Director to contract with a person or government entity to evaluate the cost effectiveness of the Assisted Living program and provide the results of the evaluation to the Governor, President and Minority Leader of the Senate, and Speaker and Minority Leader of the House of Representatives not later than June 30, 2007.

Ohio Home Care and Ohio Transitions II Aging Carve-Out programs codified

(R.C. 5111.861, 5111.862, and 5111.88)

The bill creates the Ohio Home Care and Ohio Transitions II Aging Carve-Out programs in statute (i.e., codifies the programs). Current law includes a reference to the programs, but the programs are not currently created in statute.

Rules for enrollment in Medicaid home and community-based waivers

(R.C. 5111.85)

The bill modifies the ODJFS Director's rulemaking authority regarding Medicaid waivers for home and community-based services by doing the following:

(1) Creating a general requirement that the rules establish procedures for prioritizing and approving enrollment of eligible individuals who choose to be enrolled;

(2) Eliminating a requirement that the rules establish procedures for identifying and approving enrollment of individuals on waiting lists who are receiving inpatient hospital services or residing in a nursing facility or ICF/MR.

Unified long-term services and support Medicaid waiver program

(R.C. 5111.863 (primary), 173.40, 173.401, 173.403, 5111.861 (repealed and new enactment), 5111.862, 5111.89, and 5111.894)

The bill requires the ODJFS Director to seek federal permission to create a unified long-term services and support Medicaid waiver program to provide home and community-based services to eligible individuals of any age who require the level of care provided by nursing facilities. This requirement replaces an existing requirement that the ODJFS Director seek federal permission for a federal Medicaid waiver to consolidate the PASSPORT, Choices, and Assisted Living programs into one Medicaid waiver program.

In seeking federal approval for the unified long-term services and support Medicaid waiver program, the ODJFS Director must work with the ODA Director. The ODJFS Director is also to work with the ODA Director in creating and implementing the program, including adopting rules, if federal approval is approved. The rules may authorize the ODA Director to adopt rules governing aspects of the program.

ODJFS and ODA are required by the bill to work together to determine, on an individual program basis, whether the PASSPORT, Choices, Assisted Living, Ohio Home Care, and Ohio Transitions II Aging Carve-Out programs should continue to

operate as separate Medicaid waiver programs or be terminated if the unified long-term services and support Medicaid waiver program is created and it covers all individuals who qualify for the programs to be terminated. If they determine that a program should be terminated, the program is to cease to exist on a date ODJFS and ODA must specify.

Pilot program for self-directed home and community-based care

(R.C. 5111.97 and 5111.971 (repealed))

The bill repeals the requirement that the ODJFS Director create a pilot program for providing up to 200 eligible Medicaid recipients with spending authority to pay for the cost of medically necessary home and community-based services. Currently, the spending authorization is not to exceed 70% of the average cost for providing nursing facility services to an individual under Medicaid.

In addition to providing spending authority for medically necessary home and community-based services, the pilot program must ensure each participant receive necessary support services, including fiscal intermediary and other case management services. To be eligible for these services, the recipient must meet certain requirements established in rule, including (1) needing an intermediate or skilled level of care, and (2) being either a nursing facility resident who would remain in a nursing facility if not for the pilot program or a participant of any long-term care Medicaid waiver component who would move to a nursing facility if not for the pilot program.

ODODD Medicaid home and community-based services

Reimbursement for services

(R.C. 5111.873)

Current law authorizes the ODJFS Director to apply to the United States Secretary of Health and Human Services for one or more Medicaid waivers under which home and community-based services are provided to individuals with mental retardation and developmental disabilities as an alternative to placement in an ICF/MR. The Director is required to adopt rules establishing statewide fee schedules for these home and community-based services.

The bill requires, instead of establishing fee schedules, that the Director adopt rules establishing the amount of reimbursement or the methods by which amounts of reimbursement are to be determined. Conforming changes require that the rules do all of the following:

(1) Establish procedures for ODODD to follow in arranging for the initial and ongoing collection of cost information from a comprehensive, statistically valid sample of private and public entities providing the services at the time the information is obtained;

(2) Establish procedures for the collection of consumer-specific information through an assessment instrument ODODD is required to provide to ODJFS;

(3) With the above information, an analysis of that information, and other information the Director determines relevant, establish reimbursement standards that (a) assure that the reimbursement is consistent with efficiency, economy, and quality of care, (b) consider the intensity of consumer resource need, (c) recognize variations in different geographic areas regarding the resources necessary to assure the health and welfare of consumers, and (d) recognize variations in environmental supports available to consumers.

The Directors of ODJFS and ODODD must review the rules at times they determine are necessary to ensure that the amount of reimbursement or the methods by which amounts of reimbursement are to be determined continue to meet the reimbursement standards described above.

Conversion of ICF/MR beds

(R.C. 5111.874)

An operator of an ICF/MR that is licensed by ODODD as a residential facility may convert all of the beds in the facility from providing ICF/MR services to providing ODODD-administered home and community-based services if all of the following requirements are met:

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

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

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

provider of the services that is willing and able to provide the services to the resident, if the resident is eligible for the services and a slot for the services is available.

(4) The operator meets the requirements for providing ODODD-administered home and community-based services, including such requirements applicable to a residential facility if the operator maintains the residential facility license or such requirements applicable to a facility that is not licensed as a residential facility if the operator surrenders the residential facility license.

(5) The ODODD Director approves the conversion.

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

The bill permits an operator of an ICF/MR that is licensed by ODODD as a residential facility to convert ***some or*** all of the beds in the facility from providing ICF/MR services to providing ODODD-administered home and community-based services, if the operator meets the requirements described above. The operator must specify whether some or all of the beds are to be converted. If only some of the beds are to be converted, the operator must specify how many of the facility's beds are to be converted and how many are to continue to provide ICF/MR services. In addition, if the operator intends to convert some but not all of the facility's beds, it must notify the residents that they may (1) continue to receive ICF/MR services from any provider willing and able to accept the resident if the resident continues to qualify for ICF/MR services or (2) begin to receive ODODD-administered home and community-based services from any provider of the services that is willing and able to provide the services to the resident, if the resident is eligible for the services and a slot for the services is available.

The bill requires that the conversion be approved by both the Directors of ODODD and ODJFS. A decision by the directors to approve or refuse to approve a proposed conversion is final. In making a decision, the directors must consider (1) the fiscal impact on the facility if some but not all of the beds are converted, (2) the fiscal impact on the Medicaid program, and (3) the availability of home and community-based services.

If the conversion is approved, the Directors of Health and ODJFS must take the action described above. In addition, if only some of the beds are to be converted, the Director of Health must reduce the facility's certified capacity by the number of beds being converted, and the ODJFS Director must amend the operator's Medicaid provider agreement to reflect the facility's reduced certified capacity.

Maximum number of slots

(R.C. 5111.877)

Currently, the maximum number of slots available for home and community-based services provided under a Medicaid waiver administered by ODODD is 100. The bill increases to 200 the maximum number of slots available.

Transfer of Transitions Developmental Disabilities Medicaid waiver program

(R.C. 5111.871, 5111.872, 5111.873, 5123.01, and 5126.01; Section 309.33.20)

In addition to transferring the powers and duties regarding ICFs/MR to ODODD, the bill requires ODJFS to transfer administration of the Transitions Developmental Disabilities Medicaid waiver program to ODODD. The transfer is to be part of an interagency agreement that, under current law, provides for ODODD to administer certain other Medicaid waiver programs that provide home and community-based services to individuals with mental retardation or other developmental disability as an alternative to placement in an ICF/MR. This transfer is also subject to the approval of the U.S. Secretary of Health and Human Services if such approval is needed. The interagency agreement is to include a schedule for the transfer. The bill specifies that laws governing the Medicaid waiver programs that ODODD administers are to apply to the Transitions Developmental Disabilities Medicaid waiver program only to the extent, if any, provided in the interagency agreement.

Money Follows the Person Enhanced Reimbursement Fund

(Section 309.33.80)

The bill provides for the Money Follows the Person Enhanced Reimbursement Fund to continue to exist in the state treasury for fiscal years 2012 and 2013. The Fund was created by Am. Sub. H.B. 562 of the 127th General Assembly. The federal payments made to Ohio under federal law governing Money Follows the Person demonstration projects are to be deposited in the Fund. ODJFS is required to use the money in the Fund for system reform activities related to the demonstration project.

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.[143] The projects are to be designed to achieve the following objectives with respect to institutional and home and community-based long-term care services under a state's Medicaid program:

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

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

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

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

The Deficit Reduction Act includes federal appropriations for 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.

Dual eligible integrated care demonstration project

(R.C. 5111.981 (primary) and 5111.944; Section 309.35.30)

The bill permits the ODJFS Director to seek federal approval to implement a demonstration project to test and evaluate the integration of the care that dual eligible individuals[144] receive under the Medicare and Medicaid programs. The federal approval must be from the United States Secretary of Health and Human Services in the form of a federal Medicaid waiver, Medicaid state plan amendment, or demonstration grant. If approval is granted, the demonstration project must be implemented in accordance with the approval's terms, including those terms regarding the project's duration. The demonstration project is not subject to any provision of the Ohio's

[143] Section 6071 of the Deficit Reduction Act of 2005, Public Law No. 109-171.

[144] A "dual eligible individual" is an individual who is entitled to, or enrolled for, benefits under Medicare Part A or enrolled for benefits under Medicare Part B, and is eligible for medical assistance under the state Medicaid Plan or under a waiver of the Plan (42 U.S.C. 1396n(h)(2)(B)).

human services laws (Title 51 of the Revised Code) that implements or incorporates a provision of federal Medicaid law that does not apply to the demonstration project.

The bill also creates the Integrated Care Delivery Systems Fund in the state treasury. This fund is to receive amounts that the demonstration project saves the Medicare program if the terms of the project provide for Ohio to receive those amounts. ODJFS must use the money in the fund to further develop integrated delivery systems and improved care coordination for dual eligible individuals. The Director may seek Controlling Board approval to make expenditures from the fund.

Children's Buy-In Program

(R.C. 5101.5211 to 5101.5216 (repealed); conforming changes to R.C. 9.231, 9.24, 127.16, 1751.01, 1751.04, 1751.11, 1751.111, 1751.12, 1751.13, 1751.15, 1751.17, 1751.20, 1751.31, 1751.34, 1751.60, 1751.89, 2744.05, 3111.04, 3113.06, 3119.54, 3901.3814, 3923.281, 3963.01, 4731.65, 4731.71, 5101.26, 5101.571, 5101.58, 5111.0112, and 5111.941)

The bill abolishes the Children's Buy-In Program as of October 1, 2011. The Program, administered by ODJFS, was established by Am. Sub. H.B. 119 of the 127th General Assembly as a health care program for uninsured individuals under age 19 who have family incomes over 300% of the federal poverty limit and meet other eligibility criteria. The Program is state-funded. Participants are required to pay a monthly premium and co-payments.

To conclude the Program's affairs, the bill does all of the following:

- Suspends new enrollments as of the bill's earliest effective date;
- Repeals the Program-authorizing statutes on October 1, 2011;
- Permits persons enrolled in the Program when it is repealed to continue receiving services through December 31, 2011;
- Requires ODJFS to take steps as necessary to transition persons enrolled in the Program to other health coverage options and otherwise conclude Program operations;
- Permits ODJFS to use appropriated funds to satisfy any claims or contingent claims for services rendered prior to October 1, 2011, and to eligible persons who receive services through December 31, 2011;
- Exempts ODJFS from liability for reimbursing any provider or other person for services rendered on or after January 1, 2012.

VI. Unemployment Compensation

Unemployment Compensation Special Administrative Fund

(R.C. 4141.08 and 4141.11)

The bill eliminates the authority of the Unemployment Compensation Council with respect to the Unemployment Compensation Special Administrative Fund. The ODJFS Director is required to request the OBM Director to transfer to the Unemployment Compensation Fund any amount in the Unemployment Compensation Special Administrative Fund considered to be excessive by the ODJFS Director, instead of by the Council as under current law. Under the bill, the balance in the Unemployment Compensation Special Administrative Fund is no longer continuously available to the Council for expenditures.

The ODJFS Director, under the bill, is no longer required to obtain the approval of the Council before using funds in the Unemployment Compensation Special Administrative Fund whenever it appears that the use is necessary for:

(1) The proper administration of the Unemployment Compensation Law (R.C. Chapter 4141.) and no federal funds are available for the specific purpose for which the expenditure is to be made, provided the moneys are not substituted for appropriations from federal funds, which in the absence of such moneys would be available;

(2) The proper administration of the Unemployment Compensation Law for which purpose appropriations from federal funds have been requested and approved but not received, provided the fund would be reimbursed upon receipt of the federal appropriation;

(3) To the extent possible, the repayment to the Unemployment Compensation Administration Fund of moneys found by the proper agency of the United States to have been lost or expended for purposes other than, or an amount in excess of, those found necessary by the proper agency of the United States for the administration of the Unemployment Compensation Law.

The ODJFS Director is required to pay the operating expenses of the Council from moneys in the Unemployment Compensation Special Administrative Fund, but, under the bill, the ODJFS Director no longer has to pay those expenses as determined by the Council.

- Changes the designation under current law of "stenographic reporter" or "shorthand reporter" as appointed by the court of common pleas, a probate judge, a court of appeals, or the Clerk of the Court of Claims simply to "reporter."

- Repeals the section authorizing the appointment of assistant shorthand reporters by a court of common pleas, relocates some of the provisions in the repealed section to the section pertaining to the appointment of reporters by the court of common pleas, and changes the designation to "assistant reporters."

- Requires all civil and criminal actions in the court of common pleas to be recorded, requires the reporter to take accurate notes of or electronically record oral testimony, and applies existing law requirements for the filing and preservation of notes to the filing and preservation of the electronic records.

- Requires a reporter to provide transcripts of an electronic recording upon request by the court or either party to the action under the same procedure as the furnishing of transcripts of notes and provides that copies of transcripts be provided at cost and electronic copies be provided free of charge.

- Requires that transcripts requested by an indigent defendant in a criminal case be paid from the county treasury and taxed and collected as costs.

- Permits the official reporter of the county or a designated reporter to electronically record testimony before a grand jury under the same procedure as the taking of notes.

- Changes the references from "official court shorthand reporter" to "official court reporter" for purposes of certain provisions governing appeals to the Oil and Gas Commission, the Director of Natural Resources, and the Environmental Review Appeals Commission and provides for the provision of an electronic record or stenographic record (current law) of the evidence upon a party's request.

- Permits a party in a civil action to subpoena a coroner or deputy coroner to give expert testimony at a trial, hearing, or deposition only upon filing with the court a notice with specified information, and prohibits a party that fails to provide such notice, unless good cause is shown, from having the coroner or deputy coroner called to give expert testimony.

- Authorizes a court for good cause shown to permit a coroner or deputy coroner who has not been served with such a subpoena to give expert testimony in a civil action.

- Requires a party that obtains the expert testimony to pay to the county treasury a "deposition fee" or a "testimonial fee," both as defined in the bill, and provides a procedure for determining such fees.

- Provides a procedure for the court to resolve a dispute as to the contents of the above notice or whether the testimony sought or given is "expert testimony" or "fact testimony," both as defined in the bill.

- Specifically excludes the above provisions from existing law specifying the fees and mileage allowed for witnesses in civil cases.

- Reenacts provisions in the state's Felony Sentencing Law that were invalidated and severed by the Ohio Supreme Court's decision in *State v. Foster* (2006), 109 Ohio St.3d 1, and that now are, regarding some provisions, or arguably are, regarding other provisions, subject to reenactment under the U.S. Supreme Court's decision in *Oregon v. Ice* (2009), 555 U.S. 160, and the Ohio Supreme Court's decision in *State v. Hodge* (2010), ____ Ohio St.3d. ____, Slip Opinion No. 2010-Ohio-6320.

- Requires the court to commit a mentally ill criminal defendant who is incompetent to stand trial or not guilty by reason of insanity to the Department of Mental Health for an appropriate placement by the Department for the defendant's treatment and evaluation and not directly to a facility.

- Permits a prosecutor to hold charges against a defendant charged with a nonviolent misdemeanor in abeyance while the defendant engages in mental health treatment or developmental disability services.

- Designates the county or municipal indigent alcohol treatment fund in which the court costs imposed for a violation of an ordinance of a municipal corporation that is a moving violation or for an OVI violation are to be deposited, based on the court with jurisdiction over the municipal corporation.

Changes regarding court reporters; electronic recording; transcripts

(R.C. 2101.08, 2301.18, 2301.19 (repealed), 2301.20, 2301.21, 2301.22, 2301.23, 2301.24, 2301.25, 2301.26, 2501.16, 2501.17, and 2743.09; conforming changes in R.C. 1509.36, 1571.14, 2301.03, 2319.27, 2939.11, and 3745.05)

Designation of court "reporters" and "assistant reporters"

The bill changes to "reporter" the following designations under current law: (1) "stenographic reporter" or "shorthand reporter" appointed by the court of common pleas, (2) "stenographic reporter" appointed by a probate judge, and (3) "shorthand reporter" appointed by each court of appeals or the Clerk of the Court of Claims. It makes conforming changes in various sections to refer to court "reporters" instead of "stenographic reporter" or "shorthand reporter."

Current law authorizes the court of common pleas to appoint assistant shorthand reporters as the business of the court requires. It requires assistant reporters to serve for such time as is designated by the court, not exceeding three years under one appointment. Assistant reporters must take a like oath and may be paid at the same rate and in the same manner as the official shorthand reporter.[145] The bill changes the designation of "assistant shorthand reporters" to "assistant reporters," repeals R.C. 2301.19, and relocates the above provisions regarding the appointment of assistant reporters, their terms of office, and oath (but not the provision regarding the pay rate and manner of payment of assistant reporters) to the section pertaining to the appointment of reporters by the court of common pleas.

Recording of court actions

Under existing law, upon the trial of a civil or criminal action in the court of common pleas, if either party or the party's attorney requests the services of a shorthand reporter, the trial judge must grant the request or may order a full report of the testimony or other proceedings, and in either case, the reporter must take accurate shorthand notes of the oral testimony or other oral proceedings. The bill requires that all civil and criminal actions in the court of common pleas be recorded and requires the reporter to take accurate notes of or electronically record the oral testimony. It applies current law's requirements regarding the filing and preservation of the notes to the filing and preservation of the electronic records.

[145] R.C. 2301.19.

Transcripts of proceedings; costs of transcripts

Under the bill, when notes have been taken or *an electronic recording has been made*, if the court or either party (the bill deletes "or his attorney" in existing law) requests *written* transcripts of any portion of *the proceeding* (instead of "such notes in longhand"), the reporter reporting the case must make full and accurate transcripts of the notes (the bill deletes "for the use of such court or party") *or electronic recording*. The compensation of reporters for making *written* transcripts must be fixed by the court of common pleas (instead of "the judges of" the court of common pleas) in which the trial is held. The compensation for transcripts requested by the prosecuting attorney (the bill deletes "during trial") *or an indigent defendant* in criminal cases must be paid from the county treasury and taxed and collected as costs. The bill eliminates the provision in current law that provides that when more than one transcript of the same testimony or proceedings is ordered at the same time by the same party, or by the court, the compensation for making such additional transcript must be one-half the compensation allowed for the first copy, and must be paid for in the same manner except that where ordered by the same party only the cost of the original are taxed as costs. The bill instead provides that if more than one transcript of the same testimony or proceeding is ordered, the reporter must make copies of the transcript at cost pursuant to the Public Records Law or must provide an electronic copy of the transcript free of charge.

The bill makes conforming changes in the existing law pertaining to costs of transcripts being taxed as costs in the case and collected as other costs. Under the bill, reporters of the testimony of witnesses taken before the grand jury receive for the transcripts (the bill deletes "as are ordered by the prosecuting attorney" under existing law) the same compensation (the bill deletes "per folio") and be paid in the same manner as in existing law.

Electronic recording of grand jury testimony

The bill modifies current law by providing that the official reporter of the county or any reporter designated by the court of common pleas, at the request of the prosecuting attorney, or any such reporter designated by the Attorney General in the Attorney General's investigations may take notes of (the bill deletes "shorthand") *or electronically record* the testimony before the grand jury, and furnish a transcript to the prosecuting attorney or the Attorney General, and to no other person.

Electronic recording of certain administrative proceedings

In the following administrative procedures, the bill modifies existing law by providing that at the request of any party to an appeal, a stenographic *or electronic record* of the testimony and other evidence submitted must be taken by the official court *reporter* at the expense of the party making the request for the record: (1) an appeal by a

person adversely affected by an order of the Chief of the Division of Mineral Resources Management to the Oil and Gas Commission, (2) an appeal by a person claiming to be aggrieved or adversely affected by an order of the Chief of the Mineral Resources Management made under R.C. 1571.10 to 1571.16 (underground storage of gas procedures) to the Director of Natural Resources, and (3) a hearing on an appeal to the Environmental Review Appeals Commission; the fee that may be charged for the stenographic *or electronic record* cannot exceed the cost to the Commission for preparing and transcribing *or transmitting* it.

County coroner: expert testimony in civil cases; fee

(R.C. 2335.061, 2335.05, and 2335.06)

Expert testimony

The bill permits a party to subpoena a coroner (defined below) or deputy coroner (a pathologist serving as a deputy coroner) to give expert testimony (testimony given by a coroner or deputy coroner as an expert witness pursuant to the bill and the Rules of Evidence) at a trial, hearing, or deposition in a civil action only upon filing with the court a notice that must be served with the subpoena and that includes all of the following:

(1) The name of the coroner or deputy coroner whose testimony is sought;

(2) A brief statement of the issues upon which the party seeks the expert testimony from the coroner or deputy coroner;

(3) An acknowledgment by the party that the giving of that expert testimony at the trial, hearing, or deposition is governed by the bill's provisions and that the party will comply with all of the bill's requirements;

(4) A statement of the obligations of the coroner or deputy coroner as described below.

The bill further provides that for good cause shown, the court may permit a coroner or deputy coroner who has not been served with such a subpoena to give expert testimony at a trial, hearing, or deposition in a civil action. Unless good cause is shown, the failure of a party to file with the court the above described notice prohibits the party from having a coroner or deputy coroner subpoenaed to give expert testimony in a civil action or from otherwise calling the coroner or a deputy coroner to give such expert testimony.

The bill requires a party that obtains the expert testimony of a coroner or deputy coroner in a civil action to pay to the treasury of the county in which the coroner or deputy coroner holds office or is appointed or employed a "testimonial fee" or "deposition fee" (both defined below), whichever is applicable, within 30 days after receiving the following described statement. Upon the conclusion of the expert testimony, the coroner or deputy coroner must file a statement with the court on behalf of the county showing the fee due and how the coroner or deputy coroner calculated the fee and must serve a copy of the statement on each of the parties.

The bill provides that in the event of a dispute as to the contents of the above notice filed by a party or as to the nature of the testimony sought from or given by a coroner or a deputy coroner in a civil action, the court must determine whether the testimony is expert testimony or fact testimony. In making this determination, the court must consider the bill's definitions of "expert testimony" (see above) and "fact testimony" (testimony given by a coroner or deputy coroner regarding the performance of the coroner's duties under the Coroners Law, but not including expert testimony), all applicable rules of evidence, and any other information that the court considers relevant. The bill states that nothing in the bill is to be construed to alter, amend, or supersede the requirements of the Rules of Civil Procedure or the Rules of Evidence.

The bill excludes its provisions from existing laws that provide for attendance and mileage fees for witnesses in civil cases.

Definitions

The bill additionally defines the following terms:

"Coroner" means the coroner of the county in which death occurs or the dead human body is found and includes the coroner of a county other than a county in which the death occurred or the dead human body was found if the coroner of that other county performed services for the county in which the death occurred or the dead human body was found or a medical examiner appointed by the governing authority of a county to perform the duties of a coroner under the Coroners Law.

"Deposition fee" means the amount derived by multiplying the hourly rate by the number of hours a coroner or deputy coroner spent preparing for and giving expert testimony at a deposition in a civil action pursuant to the bill.

"Hourly rate" means the compensation established in existing law's annual compensation schedules and salary increases for a coroner without a private practice of medicine at the class 8 level for calendar year 2001 and thereafter (class population of 1,000,001 or more – $103,480), divided by 2,080.

"Testimonial fee" means the amount derived by multiplying the hourly rate by six and multiplying the product by the number of hours that a coroner or deputy coroner spent preparing for and giving expert testimony at a trial or hearing in a civil action pursuant to the bill.

Felony Sentencing Law

(R.C. 2929.14(B), (C), (D)(3)(b), and (E)(4), 2929.19, and 2929.41; Section 815.10)

In *State v. Foster* (2006), 109 Ohio St.3d 1, the Ohio Supreme Court held that R.C. 2929.14(B), (C), (D)(2)(b), (D)(3)(b), and (E)(4), 2929.19(B)(2), and 2929.41(A) were unconstitutional. All of the provisions pertained to felony sentencing. R.C. 2929.14(B) and (C) required judicial fact-finding before imposition of a sentence that was greater than the minimum term authorized for the degree of offense or that was the maximum term authorized for the degree of offense, R.C. 2929.14(E)(4) and 2929.41(A) required judicial finding of facts not proven to a jury or admitted by the defendant before the imposition of consecutive sentences, and R.C. 2929.14(D)(2)(b) and (D)(3)(b) required judicial fact-finding before repeat violent offender and major drug offender penalty enhancements could be imposed. The Court also held that the provisions were severable and that a sentencing court could impose the particular type of sentence without engaging in the specified judicial fact-finding.

The U.S. Supreme Court, in *Oregon v. Ice* (2009), 555 U.S. 160, held that Oregon's statutes requiring judicial findings before a court could impose consecutive sentences were valid. *Ice* did not address any of the other types of provisions found to be unconstitutional in *Foster*. In December 2010, the Ohio Supreme Court, in *State v. Hodge* (2010), ____ Ohio St.3d. ____, Slip Opinion No. 2010-Ohio-6320 held that, based on *Ice*, the jury trial guarantee of the 6th Amendment to the U.S. Constitution does not preclude states from requiring trial court judges to engage in judicial fact-finding prior to imposing consecutive sentences. The Ohio Supreme Court stated, basically, that the part of its decision in *Foster* that pertained to consecutive sentences is incorrect under today's post-*Ice* standards. However, the Ohio Supreme Court stated in *Hodge* that the Ohio consecutive sentencing provisions it found to be unconstitutional in *Foster* were not automatically "revived" as a result of *Ice*, and that the General Assembly would have to enact new legislation containing those provisions for them to be revived. *Hodge* did not address the other provisions found to be unconstitutional in *Foster*, and the Court stated that those provisions were not at issue in *Hodge* and were not implicated in *Ice*.

The bill repeals the R.C. 2929.14(B), (C), (D)(3)(b), and (E)(4), 2929.19(B)(2), and 2929.41(A) provisions that *Foster* held to be unconstitutional and re-enacts identical language. The bill does not similarly repeal and re-enact the language in R.C.

2929.14(D)(2)(b), even though *Foster* also held that the provisions in that division were unconstitutional – the provisions that were located in that division at the time of *Foster* were replaced in August 2006 by a different mechanism for the imposition of repeat violent offender penalty enhancements.

The bill states that: (1) in amending R.C. 2929.14, 2929.19, and 2929.41, it is the General Assembly's intent to simultaneously repeal and revive the amended language in those sections that was invalidated and severed by *Foster*, (2) the amended language in 2929.14(E)(4) and in 2929.41(A) clearly is subject to reenactment under *Ice* and *Hodge*; and, although constitutional under *Hodge*, that language is not enforceable until deliberately revived by the General Assembly, and (3) the amended language in the other provisions arguably also is subject to reenactment under those decisions if deliberately revived by the General Assembly.

Evaluation of criminal defendant's competence to stand trial

(R.C. 2945.371(A), (D), and (G) and 2945.38)

Under current law, if the issue of a defendant's competence to stand trial is raised or if the defendant enters a plea of not guilty by reason of insanity, the court may order one or more evaluations of the defendant's present mental condition or, in the case of a plea of not guilty by reason of insanity, of the defendant's mental condition at the time of the offense charged. If the court orders an evaluation, the person who examines the defendant must file a written report with the court within 30 days after the court's entry of an order for an evaluation of the defendant. The written report must contain specified findings and recommendations of the person examining the defendant.

The bill specifies an additional recommendation that the examiner must include in the written report if the evaluation was ordered to determine the defendant's competence to stand trial. If the defendant is charged with a misdemeanor offense that is not an offense of violence and the examiner is of the opinion that the defendant is presently mentally ill or mentally retarded and is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the examiner must include a recommendation as to whether the defendant is amenable to engagement in mental health treatment or developmental disability services.

The bill amends current law to provide that a court may order a defendant who has not been released on bail or recognizance to be examined at the defendant's place of detention or to be transported for evaluation to a program or facility operated *or certified* (added by the bill) by the Ohio Department of Mental Health (ODMH) or the Ohio Department of Developmental Disabilities (ODODD). Under current law, the court

may only order the defendant to be examined at the defendant's place of detention or to be transported for evaluation to a program or facility *operated* by ODMH or ODODD.

Commitment of a mentally ill defendant to the Department of Mental Health

(R.C. 2945.38(B))

Continuing law provides that if a court finds, after taking into consideration all relevant reports, information, and other evidence, that a defendant is incompetent to stand trial and that there is a substantial probability that the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment, the court must order the defendant to undergo treatment. However, if the court finds that a defendant is incompetent to stand trial but is unable to determine whether the defendant will become competent to stand trial within one year if the defendant is provided with a course of treatment, the court must order the defendant, if the defendant is charged with a felony, to undergo continuing evaluation and treatment.

Current law, which would be amended by the bill, provides that if a defendant is found incompetent to stand trial and the court issues an order requiring the defendant to undergo treatment or continuing evaluation and treatment, the court order must specify that the treatment or continuing evaluation and treatment is to occur at a facility operated by ODMH or ODODD, at a facility certified by either ODMH or ODODD as being qualified to treat mental illness or mental retardation, at a public or private community mental health or mental retardation facility, or by a psychiatrist or other mental health or mental retardation professional. All court orders commit the defendant to a facility or mental health professional and not to ODMH or ODODD.

The bill provides that if a defendant requires treatment or continuing evaluation and treatment for a mental illness the court order for treatment or continuing evaluation and treatment must specify that the defendant is to be committed to the ODMH for treatment or continuing evaluation and treatment at a hospital, facility, or agency as determined to be clinically appropriate by ODMH. Under the bill, the court does not commit a mentally ill defendant directly to a facility for treatment or evaluation and treatment. If the court finds that a defendant requires treatment or continuing evaluation and treatment for a developmental disability, the court order for treatment or continuing evaluation and treatment must specify that the defendant receive treatment or continuing evaluation and treatment at an institution or facility operated by ODODD, at a facility certified by ODODD as being qualified to treat mental retardation, at a public or private community mental retardation facility, or by a mental retardation professional. As under current law, the court does not commit the defendant to the ODODD.

Commitment to the Department of Mental Health: technical changes

Because the bill requires the court to commit a defendant to the DMH for treatment in cases of mental illness while continuing to commit a defendant to a facility in cases of developmental disabilities, throughout the bill, references in current law related to the commitment of a defendant are amended to differentiate between the commitment of a defendant to the DMH for placement in cases of mental illness and the commitment of a defendant to a facility in cases of developmental disabilities (*see* R.C. 2945.371(G)(3)(d), 2945.38(B)(1)(b) and (c), (E), and (G), 2945.39(D)(1) and (2), 2945.40(F) and (G), 2945.401(C), (D)(1), (I), and (J)(2), 2945.401 ("chief clinical officer"), and 2945.402).

Abeyance of charges during treatment

(R.C. 2945.38(B)(1)(d))

The bill permits the prosecutor, in the case of a defendant who is charged with a misdemeanor offense that is not an offense of violence, to hold the charges in abeyance (suspension) while the defendant engages in mental health treatment or developmental disability services.

Restrictions on a mentally ill defendant's freedom of movement after commitment and placement alternatives for a developmentally disabled defendant

(R.C. 2945.38(B) and (E), 2945.39(D)(1) and (2), and 2945.40(F))

The bill provides that in committing a defendant to the DMH, the court must consider the extent to which the defendant is a danger to the defendant and to others, the need for security, and the type of crime involved. If a court finds that restrictions on the defendant's freedom of movement are necessary, the court must specify the least restrictive limitations on the defendant's freedom of movement as are determined to be necessary to protect public safety.

Current law provides that, in determining placement alternatives for a defendant, a court must consider the extent to which a defendant is a danger to the defendant and to others, the need for security, and the type of crime involved and order the least restrictive alternative available that is consistent with public safety and treatment goals. The bill amends this provision to limit its application to commitment alternatives for defendants who are determined to require treatment or continuing evaluation and treatment for a developmental disability.

The bill also amends current law to require a court to specify the least restrictive limitations on a mentally ill defendant's freedom of movement and to order the least restrictive commitment alternative for a developmentally disabled defendant's commitment in the case of a court committing a defendant for treatment subsequent to retaining jurisdiction over a defendant in given circumstances after the expiration of the maximum time permitted by law for treatment and in the case of committing a defendant for treatment subsequent to finding the defendant not guilty by reason of insanity.

Under law generally unchanged by the bill, if a court commits a defendant who has been found incompetent to stand trial for treatment or continuing supervision and treatment, the defendant cannot be granted unsupervised on-grounds movement, supervised off-grounds movement, or nonsecured status, except as otherwise provided by this provision. The bill states that the court order of commitment may contain provisions that grant the defendant unsupervised on-grounds movement, supervised off-grounds movement, or nonsecured status. The current law does not refer to court orders in connection with exceptions to restrictions on a defendant's unsupervised on-grounds movement, supervised off-grounds movement, or nonsecured status.

Reports to be filed by place of defendant's commitment

(R.C. 2945.39(A) and (D) and 2945.40(A), (F), and (G))

Current law sets limits on the length of time that a defendant may be required to undergo treatment or continuing evaluation and treatment for a mental illness or developmental disability (R.C. 2945.38(C)). A court may retain jurisdiction over the defendant under specified circumstances after the expiration of the maximum time permitted for treatment or after the court finds that there is not a substantial probability that the defendant will become competent to stand trial even if the defendant is provided with a course of treatment, and to commit the defendant to the DMH for the defendant's placement by the DMH for further treatment of the defendant's mental illness or to commit the defendant for further treatment of the defendant's developmental disability. If a defendant is found not guilty by reason of insanity, the defendant may be committed to the DMH for treatment of a mental illness or committed to a facility for developmental disability services.

In such cases, the bill eliminates a requirement found in current law that requires the place of commitment, following the admission of the defendant, to send to the board of alcohol, drug addiction, and mental health services and community mental health board serving the county in which the charges against the defendant were filed a copy of all reports of the defendant's current mental condition and other relevant information provided by the prosecutor to the place of the defendant's commitment,

including, if provided, a transcript of the hearing held to retain jurisdiction over the defendant following the expiration of the maximum period allowed by law for the defendant's treatment or the hearing held following a finding of not guilty by reason of insanity to determine if the defendant is a mentally ill person subject to hospitalization or a mentally retarded person subject to institutionalization, relevant police reports, and prior arrest and conviction records that pertain to the defendant.

Development of plan to terminate a person's or defendant's commitment or a change in the conditions of the commitment

(R.C. 2945.401)

Current law, largely unchanged by the bill, provides in the case of a court committing a defendant for treatment subsequent to retaining jurisdiction over a defendant in given circumstances after the expiration of the maximum time permitted by law for treatment and in the case of committing a defendant for treatment subsequent to finding the defendant not guilty by reason of insanity (under R.C. 2945.39 and 2945.40) the "chief clinical officer" of the defendant's place of commitment (amended by the bill to the designee of the DMH or the managing officer of the institution or director of the facility to which a defendant is committed) may recommend the termination of the defendant's or person's commitment or a change in the conditions of the defendant's or person's commitment. If the chief clinical officer, after following specified procedures, proceeds with the officer's recommendation, the chief clinical officer must work with the "board of alcohol, drug addiction, and mental health services or community mental health board serving the area" to develop a plan to implement the recommendation. The bill amends the entities that must be worked with to "community mental health agencies, programs, facilities, or boards of alcohol, drug addiction, and mental health services."

Commitment to a "program"

The bill amends or deletes language in current law, when found in the bill, that refers to a defendant's commitment to a "program," because while a defendant may be committed to or placed at an institution or facility, a physical place, a defendant cannot be committed to a program, an ethereal course of treatment.

Indigent drivers alcohol treatment fund

(R.C. 4511.193; conforming changes to R.C. 4503.235 and 4507.164)

The bill provides that any court cost imposed as a result of a violation of a municipal ordinance that is a moving violation and designated for an indigent drivers alcohol treatment fund must be deposited into a municipal or county indigent drivers

alcohol treatment fund in accordance with existing law governing the deposit and disbursement of court funds. This court cost must be deposited into the indigent drivers alcohol treatment fund of the county in which the municipal corporation with the applicable ordinance is located if the municipal court that has jurisdiction over that municipal corporation is a county-operated municipal court. The court cost must be deposited into the indigent drivers alcohol treatment fund of the municipal corporation in which the municipal court is located if the municipal court that has jurisdiction over the municipal corporation with the applicable ordinance is not a county-operated municipal court. These provisions apply regardless of whether the court cost is imposed by a municipal court, a mayor's court, or a juvenile court. If the court cost is imposed for a violation of a municipal ordinance of a municipal corporation that is within the jurisdiction of a county court, the court cost must be deposited into the indigent drivers treatment fund of the county in which the county court with jurisdiction over the municipal corporation is located, regardless of whether the court cost is imposed by a county court, a mayor's court, or a juvenile court. The deposit must be made in accordance with existing law governing the deposit and disbursement of court funds.

Under continuing law, $25 of any fine imposed for a violation of a municipal OVI ordinance is deposited into a municipal or county indigent drivers alcohol treatment fund. The bill provides that the $25 must be deposited into the indigent drivers alcohol treatment fund of the county in which that municipal corporation is located if the municipal court with jurisdiction over that municipal corporation is a county operated municipal court. If the municipal court with jurisdiction over that municipal corporation is not a county-operated municipal court, the $25 must be deposited into the indigent drivers alcohol treatment fund of the municipal corporation in which the municipal court is located. These provisions apply regardless of whether the fine is imposed by a municipal court, a mayor's court, or a juvenile court. Under continuing law, the fines must be deposited in accordance with existing law governing the deposit and disbursement of court funds.

Under existing law, if the fine was imposed for a violation of a municipal OVI ordinance that is within the jurisdiction of a county court, the $25 must be deposited into the indigent drivers treatment fund of the county in which the county court that has jurisdiction over the municipal corporation is located, regardless of whether the fine is imposed by a county court, a mayor's court, or a juvenile court.

The bill provides that for purposes of the above provisions, a "county-operated municipal court" means the Auglaize County, Brown County, Carroll County, Clermont County, Columbiana County, Crawford County, Darke County, Erie County, Hamilton County, Hocking County, Holmes County, Jackson County, Lawrence County, Madison

County, Miami County, Montgomery County, Morrow County, Ottawa County, Portage County, Putnam County, or Wayne County municipal court.

LEGAL RIGHTS SERVICE (LRS)

- Effective October 1, 2012, abolishes the Ohio Legal Rights Service (OLRS), the Ohio Legal Rights Service Commission, and the Ombudsperson Section of OLRS.
- Requires, not later than December 31, 2011, establishment of a nonprofit protection and advocacy system and client assistance program for people with disabilities.
- Requires, not later than September 30, 2012, the nonprofit legal rights service to be designated by the Governor as Ohio's protection and advocacy system and client assistance program for people with disabilities.
- Eliminates all statutory provisions regarding the OLRS, Commission, and Ombudsperson Section of OLRS, except as follows: (1) provides that the nonprofit legal rights service is to have the same access to records as the abolished OLRS, (2) provides that all records received by the nonprofit legal rights service are to have the same confidential status as those records were provided under the abolished OLRS, and (3) provides that the nonprofit legal rights service has the same subpoena power as the abolished OLRS.

Abolishment of OLRS, OLRS Commission, and Ombudsperson Section of OLRS; designation of nonprofit legal rights service entity

(R.C. 5123.60, 5123.601, and Section 319.20 (primary); conforming changes in 3721.16, 5111.709, 5119.221, 5122.01, 5122.27, 5122.271, 5122.31, 5122.32, 5123.35, 5123.61, 5123.64, 5123.86, and 5123.99; 5123.602, 5123.603, 5123.604, and 5123.605 (repealed))

Effective October 1, 2012, the bill abolishes the Ohio Legal Rights Service (OLRS), Legal Rights Service Commission, and the Ombudsperson Section of OLRS and requires a nonprofit legal rights service entity to act as Ohio's protection and advocacy system. Except with regard to access to records, confidentiality of records, and notification requirements, the bill generally eliminates all statutory references that apply to OLRS.

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.[146] 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 governed 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 establishes a two stage process under which the existing OLRS is abolished and the new nonprofit legal rights service entity is established and designated by the Governor as Ohio's protection and advocacy system and client assistance program.

In the first stage, not later than December 31, 2011, the administrator of OLRS, in consultation with the Legal Rights Service Commission, is required to establish a nonprofit legal rights service entity to provide advocacy services and a client assistance program for people with disabilities. The existing OLRS is permitted to subcontract with the nonprofit legal rights service to perform any functions that OLRS is permitted or required to perform. The existing OLRS, Commission, and Ombudsperson Section of OLRS will continue to function as under current law during this period.

In the second stage, not later than September 30, 2012, and only if the nonprofit legal rights service complies with all federal law regarding a protection and advocacy system and client assistance program, the Governor is to designate the nonprofit legal rights service as Ohio's protection and advocacy system and as Ohio's client assistance program.

On October 1, 2012, the existing OLRS, Commission, and Ombudsperson Section of OLRS are abolished by the bill. The nonprofit legal rights service is thereafter required to serve as Ohio's protection and advocacy system and client assistant program.

Eliminated provisions

In abolishing OLRS and transferring its functions to the nonprofit legal rights service, the bill eliminates all of the following OLRS-related provisions of current law:

(1) Description of specific populations that may be served;

(2) Requirement that the administrator be an attorney and the salary of the administrator to be provided under state employee pay scales;

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[146] 42 U.S.C. 15041 *et seq.*; the specific requirement is in 42 U.S.C. 15043.

(3) Administrator responsibilities, including both of the following:

--A requirement to prepare a budget and submit the budget to the General Assembly;

--A prohibition on pursuing a class action lawsuit unless first receiving approval from the Commission.

(4) Specific authority for a person served or denied service to file a grievance;

(5) Authority to conduct public hearings;

(6) Authority to request any governmental agency for cooperation, assistance, services, or data necessary to enable the protection and advocacy service to perform its duties;

(7) Indemnification of the administrator, attorneys, or staff in any judgment awarded or amount negotiated in a settlement, and for any court costs or legal fees incurred in defense of the claim;

(8) Any function of the Ombudsperson Section of OLRS,[147] which is abolished under the bill.

Continuing provisions

The bill maintains all of the following provisions in the transfer of responsibilities to a nonprofit legal rights service:

(1) Access to the records of those who may be represented by the nonprofit legal rights service;

(2) Confidentiality status of records received or maintained by the nonprofit legal rights service;

(3) Authority to compel testimony by subpoena;

(4) Notice requirements regarding those served by the nonprofit legal rights service;

(6) The administrator's membership on the Medicaid Buy-In Advisory Council;

[147] The Ombudsperson Section mediates complaints and attempts to resolve disputes at the lowest administrative level appropriate.

(7) Eligibility for grants or contracts provided through the Ohio Developmental Disabilities Council;

(8) Exemption from the general requirement to make reports of abuse or neglect regarding persons with mental retardation and developmental disabilities.

The bill specifies that the employees of the nonprofit legal rights service are not to be members of the Public Employees Retirement System.[148]

Transition provisions

Any aspect of the function of OLRS, the Legal Rights Service Commission, and the Ombudsperson Section of OLRS that are commenced, but not completed on October 1, 2012, are to be completed by the nonprofit legal rights service in the same manner, and with the same effect, as if it were completed by the abolished OLRS. The bill specifies that no validation, cure, right, privilege, remedy, obligation, or liability pertaining to OLRS is lost or impaired by reason of the abolishment of OLRS, and will instead be administered by the nonprofit legal rights service. Any action or proceeding related to the function or duties of OLRS pending on September 30, 2012, is not to be affected by the abolishment of OLRS, but is required to be prosecuted or defended in the name of the nonprofit legal rights service. In those actions and proceedings the nonprofit legal rights service, on application to the court, is to be substituted as a party.

LOCAL GOVERNMENT (LOC)

- Authorizes a municipal corporation, county, or other political subdivision that is required by law to make any legal publication in a newspaper to use an insert placed in the newspaper.
- Revises the criteria for a publication to qualify as a newspaper.
- Permits state agencies and political subdivisions to authorize placing commercial advertising on state agency and political subdivision web sites.
- Authorizes, generally, political subdivisions to enter into agreements with other political subdivisions to perform services for one another.

[148] Current law, unchanged by the bill, generally provides that members of the Public Employees Retirement System (PERS), when performing the same duties performed by a contractor rather than a government entity, are to remain members of PERS (R.C. 145.01).

- Increases the filing fee for most disclosure statements that are required to be filed with the appropriate ethics commission.

- Increases the penalty for filing a late disclosure statement with the appropriate ethics commission.

- Extends, from through fiscal year 2011 to through fiscal year 2013, the authority for a county appointing authority to establish a mandatory cost savings program in which its exempt employees must participate, and expands the program to apply to townships and municipal corporations.

- Expands the definition of fiscal emergency for purposes of a county, township, or municipal corporation implementing mandatory cost savings days for its exempt employees in the event of a fiscal watch or fiscal emergency occurring in fiscal year 2014 or later.

- Allows a county, township, or municipal corporation appointing authority to establish a modified work week schedule program applicable to its exempt employees.

- Authorizes a board of county commissioners to require county offices to use centralized purchasing, printing, transportation, vehicle maintenance, information technology, human resources, revenue collection, and mail operation services.

- Eliminates judges as members of a corrections commission and instead provides for formation of a judicial advisory board to make recommendations to a corrections commission regarding correctional centers.

- Specifies that a member of the board of county commissioners, rather than the president of the board, is to be a member of a corrections commission.

- Establishes the Medicaid reimbursement rate as the rate of payment for medical care provided to persons confined in multicounty, municipal-county, or multicounty-municipal correctional centers by medical providers not employed by or under contract with a municipal corporation or township participating in the center.

- Increases from $10,000 to $25,000 the threshold amount that triggers competitive bidding for service contracts entered into by a board of park trustees for municipal park improvements.

- Requires a board of county commissioners to provide office space and utilities to the county's general health district board of health through FY 2011.

- Requires the board of county commissioners to pay in FY 2012 through FY 2015 specified decreasing proportions of the estimated costs of office space and utilities, with no obligation to provide or pay for office space and utilities after FY 2015.

- Relieves the board of county commissioners of its obligation to provide office space and utilities if the board of health rents, leases, lease-purchases, or acquires office space on its own.

- Permits a board of county commissioners, in FY 2016 and thereafter, to provide office space and utilities to the general health district board of health, by contract.

- Authorizes the board of county commissioners, at any time, to provide office space and utilities for the board of health free of charge.

- Authorizes a board of county commissioners to donate or sell property, buildings, and furnishings to any board of health of a general or combined health district.

- Repeals the statutes that require the Public Health Council to adopt rules governing the licensure and inspection of manufactured home parks.

- Instead requires a board of health within whose jurisdiction a manufactured home park is located to adopt rules governing the inspection of and issuance of licenses for manufactured home parks within 12 months of the provision's effective date.

- Authorizes a board of health to levy a fee for a manufactured home park license in accordance with procedures established in the Health Districts Law.

- Establishes procedures for the transition from the operation of the Public Health Council rules governing manufactured home parks in a health district to a board of health's rules.

- Repeals the statutes that require the Public Health Council to adopt rules governing the licensure and inspection of marinas.

- Instead requires a board of health within whose jurisdiction a marina is located to adopt rules governing the inspection of and issuance of licenses for marinas within 12 months of the provision's effective date.

- Authorizes a board of health to levy a fee for a marina license in accordance with procedures established in the Health Districts Law.

- Establishes procedures for the transition from the operation of the Public Health Council rules governing marinas in a health district to a board of health's rules.

- Repeals the statutes that require the Public Health Council to adopt rules governing the licensure and inspection of agricultural labor camps.

- Instead requires a board of health within whose jurisdiction an agricultural labor camp is located to adopt rules governing the inspection of and issuance of licenses for agricultural labor camps within 12 months of the provision's effective date.

- Authorizes a board of health to levy a fee for an agricultural labor camp license in accordance with procedures established in the Health Districts Law.

- Establishes procedures for the transition from the operation of the Public Health Council rules governing agricultural labor camps in a health district to a board of health's rules.

- Authorizes a board of county commissioners to adopt a quarterly spending plan or amended spending plan for appropriations from any county fund for any county office, department, or division under certain circumstances.

Legal publication in a newspaper

(R.C. 7.12)

The bill authorizes a legal publication to be made in an insert placed in a newspaper whenever any legal publication is required by law to be made in a newspaper published in a municipal corporation, county, or other political subdivision. The newspaper must be of general circulation in the municipal corporation, county, or other political subdivision, but numerous other laws throughout the Revised Code specify how and how many times legal publication is to be made.

The bill also revises the criteria for a publication to qualify as a newspaper. Under current law, except for daily law journals in which a judge serves legal notices, the newspaper must bear a title or name, be regularly issued at least once a week for a definite price or consideration paid for by not less than 50% of those to whom distribution is made, have a second-class mailing privilege, be not less than four pages, be published continuously during the immediately preceding one-year period, and be circulated generally in the subdivision in which it is published. Additionally, the newspaper 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. The bill eliminates the requirements that the publication be issued for a definite price or consideration paid for by not less than 50% of those to whom distribution is made and have a second-class

mailing privilege. The bill adds requirements that the publication must have at least 25% editorial, non-advertising content, exclusive of inserts, measured relative to total publication space, and have an audited circulation to at least 50% of the households in the newspaper's retail trade zone, as defined by the audit.

Commercial advertising on state agency and political subdivision web sites

(R.C. 9.03 and 9.031)

The bill authorizes state agencies and political subdivisions to adopt rules (in the case of state agencies) or resolutions (in the case of political subdivisions) to authorize placing commercial advertising on their respective web sites. The rules or resolutions must include: (1) a specification of the state agency or political subdivision office, and of the officials or employees therein, who are authorized to place commercial advertisements on the web site, (2) criteria for choosing the advertisers and types of advertisements that may be placed on the web site, (3) requirements and procedures for making requests for proposals for placing commercial advertising on the web site, and (4) any other requirements or limitations necessary to authorize commercial advertising on the web site.

Current law places restrictions on a political subdivision's use of public funds to distribute or otherwise communicate certain types of information to the public. Among the types of information that cannot be distributed with the use of public funds are any that contain defamatory, libelous, or obscene matter; any that promote alcoholic beverages, tobacco products, or illegal products or services; any that promote illegal discrimination, or any that supports or opposes any labor organization, candidate, or levy or bond issue.

Current law does not prohibit or restrict a political subdivision from sponsoring, participating in, or doing charitable or public service advertising "that is not commercial in nature." The bill modifies this provision by allowing commercial advertising if it complies with the bill and therefore is posted on the political subdivision's web site.

The bill states that a state agency or political subdivision web site on which commercial advertising is placed must be used exclusively to provide information from the state agency or political subdivision office to the public and must not be used as a public forum.

The bill uses the same definition of "political subdivision" that is used in the current law restricting the use of public funds for communications to the public (generally any body corporate and politic responsible for governmental activities only in a geographic area smaller than the state except for chartered municipal corporations and chartered counties). "State agency" means every organized body, office, or agency

established by state law for the exercise of any function of state government and includes state institutions of higher education. "Advertising" means Internet advertising, including banners and icons that may contain links to commercial Internet web sites; it does not include spyware, malware, or any viruses or programs considered to be malicious. And a "state agency web site" or "political subdivision web site" is a web site, Internet page, or web page of a state agency or political subdivision office, with respective Internet addresses or subdomains, that are intended to provide the public with information about services offered by the state agency or political subdivision office, including relevant forms of searchable data.

Political subdivision shared services

(R.C. 9.482)

The bill authorizes political subdivisions to enter into agreements with other political subdivisions under which a contracting political subdivision agrees to exercise any power, perform any function, or render any service for another contracting recipient subdivision that the contracting recipient political subdivision is otherwise legally authorized to exercise, perform, or render. The respective legislative authorities of the contracting political subdivisions must approve the subdivisions' participation in the agreement.

If the agreement does not determine the officer, office, department, agency, or other authority by which the powers and duties of a contracting political subdivision are to be exercised or performed, the legislative authority of the contracting political subdivision must determine and assign the powers and duties.

The contracting authority is limited in that a political subdivision must not enter into any agreement to levy any tax or to exercise, with regard to public moneys, any investment powers, perform any investment functions, or render any investment service on behalf of a contracting political subdivision. An agreement does not suspend the possession by a contracting recipient political subdivision of any power or function that is exercised or performed on its behalf by another contracting political subdivision under the agreement.

The bill specifies that the political subdivision tort liability law applies to political subdivisions that are parties to an agreement and to their employees when they are rendering a service outside the boundaries of their employing political subdivisions under an agreement. In current law, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function, except in cases of negligence.

The bill also allows employees acting outside the boundaries of their employing political subdivision, while providing a service under an agreement, to participate in any pension or indemnity fund established by the political subdivision to the same extent as while they are acting within the boundaries of the political subdivision, and entitles them to all the rights and benefits of the Workers' Compensation Law to the same extent as while they are performing a service within the boundaries of the political subdivision.

Ethics disclosure statements

(R.C. 102.02(E) and (F))

Filing fees

Beginning with calendar year 2011, the bill increases the filing fee for most required disclosure statements filed with the Ohio Ethics Commission, the Joint Legislative Ethics Commission, and the Board of Commissioners on Grievances and Discipline of the Supreme Court from $40 to $60. Most public offices are required to file a statement, including: every elected state, county, or city official; State Board of Education members; every business manager, treasurer, or superintendent of a city, local, exempted village, joint vocational, or cooperative education school district or an educational service center; every office of a board of education of a city, local, exempted village, joint vocational, or cooperative education school district or of a governing board of an educational service center; and Ohio Livestock Care Standards Board members.

The bill moves the members of the Ohio Livestock Care Standards Board from a special $25 disclosure statement filing fee, paid by the member, to the general category described above, paid by the Board.

The bill also increases disclosure statement filing fees for the following offices:

--For state offices, except members of the State Board of Education, from $65 to $95;

--For county offices, from $40 to $60;

--For city offices, from $25 to $35;

--For office of a member of the State Board of Education, from $25 to $35;

--For office of member of a city, local, exempted village, or cooperative education board of education or educational service center governing board, from $20 to $30;

--For position of business manager, treasurer, or superintendant of a city, local, exempted village, joint vocational, or cooperative education school district or educational service center, from $20 to $30.

Late fees

The bill also increases, beginning in calendar year 2011, the penalty on public officials and employees who file a late financial disclosure statement from $10 a day, with a maximum penalty of $250, to $20 a day, with a maximum penalty of $500.

County, township, or municipal corporation fiscal emergencies

(R.C. 124.34, 124.393, and 124.394)

The bill establishes and expands programs for counties, townships, and municipal corporations for cost savings and modified work week schedules. The cost savings program and modified work week program are not a modification or reduction in pay that can be appealed to the State Personnel Board of Review if an employee affected thereby is in the classified civil service.

Cost savings program

Under the bill, a county, township, or municipal corporation appointing authority can establish a mandatory cost savings program applicable to its exempt employees. An "exempt employee" means a permanent full-time or permanent part-time county, township, or municipal corporation employee who is not subject to a collective bargaining agreement between a public employer and an exclusive representative.

Each exempt employee must participate in the mandatory cost savings program for not more than 80 hours, as determined by the appointing authority, in each of state fiscal years 2010 to 2013. The program can include a loss of pay or loss of holiday pay. The bill permits the program to be administered differently among employees based on their classifications, appointment categories, or other relevant distinctions. A county, township, or municipal corporation appointing authority must issue guidelines concerning how the appointing authority will implement the cost savings program.

Additionally, after June 30, 2013, a county, township, or municipal corporation appointing authority can implement mandatory cost savings days that apply to its exempt employees in the event of a fiscal emergency. A "fiscal emergency" means: (1) a fiscal emergency declared by the Governor if the Governor determines that the available revenue receipts will likely be less than the appropriations for the year, (2) a

local fiscal watch or fiscal emergency has been declared or determined by the Auditor of State, (3) a lack of funds, or (4) reasons of economy.

Under current law, only a county appointing authority can establish a mandatory cost savings program applicable to its county exempt employees, and only for state fiscal years 2010 and 2011. Thereafter, a county appointing authority can implement mandatory cost savings days in the event of a fiscal emergency. Under current law, a fiscal emergency does not include a local fiscal watch or emergency declared by the Auditor of State.

Modified work week schedule program

The bill authorizes a county, township, or municipal corporation appointing authority to establish a modified work week schedule program applicable to its exempt employees (as defined above). Each county, township, or municipal corporation exempt employee must participate in any established program in each of state fiscal years 2012 and 2013.

A modified work week schedule program can provide for a reduction from the usual number of hours worked during a week by exempt employees immediately before the establishment of the program. The bill allows the reduction in hours to include any number of hours so long as the reduction is not more than 50% of the usual hours worked by exempt employees immediately before the establishment of the program. The program can be administered differently among exempt employees based on classifications, appointment categories, or other relevant distinctions.

The bill specifies that after June 30, 2013, a county, township, or municipal corporation appointing authority can implement a modified work week schedule program that applies to its exempt employees in the event of a fiscal emergency (as defined above).

Although the bill appears to confer authority on municipal corporations regarding cost savings days and work week modifications, it is likely municipal corporations already have authority to establish similar programs under their home rule powers of local self-government.[149]

[149] Ohio Constitution, Article XVIII, Sec. 3; see *Northern Ohio Patrolmen's Benevolent Ass'n v. Parma* (1980), 61 Ohio St.2d 375.

County centralized services

(R.C. 305.23)

The bill authorizes a board of county commissioners to adopt a resolution establishing centralized purchasing, printing, transportation, vehicle maintenance, information technology, human resources, revenue collection, and mail operation services for a county office. The bill defines "county office" as the offices of the county commissioners, county auditor, county treasurer, county engineer, county recorder, county prosecuting attorney, county sheriff, county coroner, county park district, clerk of the juvenile court, clerks of court for all divisions of the courts of common pleas, including the clerk of the court of common pleas, clerk of a county-operated municipal court, and clerk of a county court, and any agency or department under the authority of, or receiving funding in whole or in part from, any of those county offices.

The county commissioners' resolution must specify all of the following:

(1) Which county offices are required to use the centralized services;

(2) If not all of the centralized services, which centralized service each county office must use;

(3) A list of rates and charges the county office must pay for the centralized services;

(4) The date upon which each county office specified in the resolution must begin using the centralized services.

Not later than ten days after the resolution is adopted, the clerk of the board of county commissioners must send a copy of the resolution to each county office that is specified in the resolution.

Remove judges from corrections commissions; formation of judicial advisory boards

(R.C. 307.93)

The bill eliminates the presiding (or sole) common pleas court judge of each county, and the presiding (or sole) municipal court judge of each municipal corporation, as members of a corrections commission overseeing the administration of a multicounty, municipal-county, or multicounty-municipal correctional center. Under current law, these judges, the sheriff and the president of the board of county commissioners of each participating county, and the chief of police and mayor or city

manager of each participating municipal corporation are required to form a corrections commission to oversee the administration of the correctional center.

The bill also specifies that a member of the board of county commissioners, rather than the president of the board, is to be a member of the corrections commission.

Rather than serving as members of the corrections commission, the bill requires that the judges identified below form a judicial advisory board for the purpose of making recommendations to the corrections commission regarding bed allocation, expansion of the correctional center that the commission oversees, community corrections or diversion programs, the administration of sentences, and any other matters the commission considers appropriate.

The judicial advisory board consists of the administrative judge of the general division of the court of common pleas of each county participating in the correctional center, the presiding judge of the municipal court of each municipal corporation participating in the correctional center, and the presiding judge of each county court of each county participating in the correctional center, if a county court exists. Any of the foregoing judges may appoint a designee to serve in the judge's place on the board, so long as the designee is a judge of the same court as the judge who makes the appointment. The board must meet concurrently with the corrections commission.

Medical care reimbursement rate for confined persons

(R.C. 341.192)

The bill establishes the Medicaid reimbursement rate as the amount to be paid to a medical provider who is not employed by or under contract with a municipal corporation or township for providing medical services to persons confined in multicounty, municipal-county, or multicounty-municipal correctional centers. Under continuing law, a county, the Department of Youth Services, or the Department of Rehabilitation and Correction pays medical providers that are not employed by or under contract with them the Medicaid reimbursement rate to provide medical care to persons confined in a county jail or state correctional institution.

Increase competitive bidding threshold for board of park trustees

(R.C. 755.29)

The bill increases to $25,000 the threshold amount that triggers competitive bidding for service contracts entered into by a board of park trustees for municipal park improvements. Current law requires that a board of park trustees, before entering into

any contract for the performance of any work, the cost of which exceeds $10,000, to competitively bid the work.

Generally, a board of park trustees is charged with managing, controlling, and administering property or funds donated to a municipal corporation for park purposes in accordance with continuing law,[150] and may enter into contracts for the improvement of the park grounds and the erection of bridges and structures therein.

Board of health office space and utilities

(R.C. 3709.34 and 3709.341)

County responsibility for office space and utilities

The bill requires a board of county commissioners to provide office space and utilities through fiscal year 2011 for the board of health having jurisdiction over the county's general health district. Current law provides that a board of county commissioners, as well as the legislative authority of a city, "may" furnish suitable quarters for any board of health or health department having jurisdiction over all or a major part of the county or city. The Attorney General has advised that a board of county commissioners, but not a city, *is required* to provide and pay for "office space and utilities" under this law.[151]

After fiscal year 2011, the bill requires the board to make decreasing payments for office space and utilities for the board of health, based upon a written estimate of their total cost, until fiscal year 2016, at which time the board no longer has the duty to provide or pay for the board of health's office space and utilities.

Estimate of total cost

The bill requires the board of county commissioners, not later than September 30 of 2011, 2012, 2013, and 2014, to make a written estimate of the total cost for the ensuing fiscal year of providing office space and utilities to the board of health of the county's general health district. The estimate of total cost must include all of the following:

- The total square feet of space to be used by the board of health.
- The total square feet of any common areas that should be reasonably allocated to the board of health, and the method for making this allocation.

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[150] R.C. 755.19 and 755.20, not in the bill.

[151] *See* 1996 Op. Att'y Gen. No. 96-016, 1989 Op. Att'y Gen. No. 89-038, 1986 Op. Att'y Gen. No. 86-037, 1985 Op. Att'y Gen. No. 85-003, and 1980 Op. Att'y Gen. No. 80-086.

- The actual cost per square foot for both the space used by and the common areas allocated to the board of health.

- An explanation of the method used to determine the actual cost per square foot.

- The estimated cost of providing utilities, including an explanation of how this cost was determined.

- Any other estimated costs the board of county commissioners anticipates will be incurred to provide office space and utilities to the board of health, including a detailed explanation of those costs and the rationale used to determine them.

The board of county commissioners must forward a copy of the estimate of total cost to the director of the board of health not later October 5 of 2011, 2012, 2013, and 2014. The director must review the estimate and, not later than 20 days after its receipt, notify the board of county commissioners that the director agrees with or objects to the estimate, giving specific reasons for any objections.

If the director agrees with the estimate, it becomes the final estimate of total cost. Failure of the director to make objections to the estimate by the 20th day after its receipt is deemed to mean that the director is in agreement with the estimate.

If the director timely objects to the estimate and provides specific objections to the board of county commissioners, the board must review the objections and may modify the original estimate, and within ten days after receipt of the objections, send a revised estimate of total cost to the director. The director must respond to a revised estimate within ten days after receiving it. If the director agrees with the estimate, the revised estimate becomes the final estimate of total cost. If the director fails to respond within the ten-day period, the director is deemed to have agreed with the revised estimate. If the director disagrees with the revised estimate, the director must send specific objections to the board of county commissioners within the ten-day period.

If the director timely objected to the original estimate or sends specific objections to a revised estimate within the required time, or if there is no revised estimate, the probate judge of the county must determine the final estimate of total cost and certify this amount to the director and the board of county commissioners before January 1 of 2012, 2013, 2014, or 2015, as applicable.

Payment schedule

Under the bill, a board of county commissioners must pay for the board of health's office space and utilities until fiscal year 2016, based on the following percentages of the final estimate of total cost:

(1) 80% for fiscal year 2012;

(2) 60% for fiscal year 2013;

(3) 40% for fiscal year 2014;

(4) 20% for fiscal year 2015.

In fiscal years 2012, 2013, 2014, and 2015, the board of health is responsible for the payment of the remainder of any costs incurred in excess of the amount payable under (1) through (4), above, as applicable, for its office space and utilities, including any unanticipated or unexpected increases in costs beyond the final estimate of total cost.

Beginning in fiscal year 2016, the board of county commissioners has no obligation to make payments for, or provide, office space and utilities for the board of health.

Other methods to obtain office space and utilities

After fiscal year 2015, the board of county commissioners and the board of health of the county's general health district may enter into a contract for the board of county commissioners to provide office space for the use of the board of health and to provide utilities for that office space. The term of the contract cannot exceed four years and may be renewed for additional periods not to exceed four years.

Notwithstanding the bill's requirements and payment schedule, in any fiscal year the board of county commissioners, in its discretion, may provide office space and utilities for the board of health free of charge.

Board of health obtains own office space

If at any time the board of health rents, leases, lease-purchases, or otherwise acquires office space to facilitate the performance of its functions, or constructs, enlarges, renovates, or otherwise modifies buildings or other structures to provide office space to facilitate the performance of its functions, the board of county commissioners of the county served by the general health district has no further obligation to provide office space or utilities, or to make payments for office space or

utilities, for the board of health, unless the board of county commissioners enters into a contract with the board of health to provide office space for the use of the board of health and to provide utilities for that office space, or exercises its option to provide office space and utilities to the board of health free of charge.

Donating or selling property, buildings, and furnishings to board of health

The bill authorizes a board of county commissioners to donate or sell property, buildings, and furnishings to any board of health of a general or combined health district. Upon acceptance by the board of health, the board of county commissioners may convey the property, buildings, and furnishings to the board of health to be used as its quarters. The instrument conveying the property, buildings, and furnishings must include a reverter clause that, in the event the board of health subsequently sells the property, buildings, and furnishings, reverts them to the board of county commissioners if they initially were donated by the board of county commissioners, or specifies how the proceeds of the board of health's subsequent sale of the property, buildings, and furnishings are to be distributed, if they initially were sold by the board of county commissioners.

Licensing and inspection of manufactured home parks

(R.C. 3733.02 (repealed and reenacted), 3733.01, 3733.091, 3733.101, 3733.13; 3733.021 (repealed), 3733.022 (repealed), 3733.024 (repealed), 3733.025 (repealed), 3733.03 (repealed), 3733.031 (repealed), 3733.04 (repealed), 3733.05 (repealed), 3733.06 (repealed), 3733.07 (repealed), 3733.08 (repealed); R.C. 3701.83, 3709.085, 3709.09, 3709.092, 3733.41, 3733.99, 4781.04, 4781.07, and 4781.14 (for cross-references); Section 737.30)

The bill repeals the statutes governing the licensure and inspection of manufactured home parks, including the requirement that the Public Health Council adopt rules for that purpose. It instead requires a board of health within whose jurisdiction a manufactured home park is located to adopt rules governing the inspection of and issuance of licenses for manufactured home parks within 12 months of the provision's effective date. The rules may include provisions for the levying of a fee for a manufactured home park license. The fee must be established in accordance with the Health Districts Law. The bill establishes procedures for the transition from the operation of the Public Health Council rules governing manufactured home parks in a health district to a board of health's rules.

The bill retains the Landlord-Tenant Law for Manufactured Home Parks. It also retains the description of a manufactured home park as a tract of land on which at least

three manufactured or mobile homes used for habitation are parked either for free or for revenue purposes.

Current law

Currently, the Public Health Council must adopt rules of uniform application throughout the state governing the review of plans, issuance of management permits for development in flood plains, and issuance of licenses for manufactured home parks. The rules also must address the location, layout, density, construction, drainage, sanitation, safety, and operation of those parks and the provision of notices of flood events concerning, and flood protection at, the parks.

A person who intends to operate a manufactured home park annually must procure a license to operate the park. The license must be obtained from the applicable board of health or, if the Director of Health has determined that the board is not in compliance with the Manufactured Home Parks Law and rules adopted under it, from the Director. Before a license is initially issued and annually thereafter, or more often if necessary, the applicable licensor must have a manufactured home park inspected and make a record of the inspection. Additionally, a person applying for an initial license must provide acceptable proof to the Director that adequate fire protection will be provided and that applicable fire codes will be adhered to in the construction and operation of the park. The licensor may charge a fee for an annual license to operate such a park. A license may be denied, suspended, or revoked. Finally, current law provides for enforcement of the Manufactured Home Parks Law and rules adopted under it.

Licensing and inspection of marinas

(R.C. 3709.09, 3733.21, 3733.22 (repealed), 3733.23 (repealed), 3733.24 (repealed), 3733.25 (repealed), 3733.26 (repealed), 3733.27 (repealed), 3733.28 (repealed), 3733.29 (repealed), 3733.30 (repealed), and 3733.99; R.C. 3701.83 and 3709.092 (for cross-references); Section 737.20)

The bill repeals the statutes governing the licensure and inspection of marinas, including the requirement that the Public Health Council adopt rules for that purpose. It instead requires a board of health within whose jurisdiction a marina is located to adopt rules governing the inspection of and issuance of licenses for marinas within 12 months of the provision's effective date. The rules may include provisions for the levying of a fee for a marina license. The fee must be established in accordance with the Health Districts Law. The bill establishes procedures for the transition from the operation of the Public Health Council rules governing marinas in a health district to a board of health's rules.

The bill retains current law stating that a marina is a boat basin that has docks or moorings for seven or more watercraft. A dock is a structure or platform designed to provide access to or an area to secure a watercraft.

Current law

Currently, the Public Health Council must adopt rules governing the licensure and inspection of marinas in order to ensure that the marinas provide adequate sanitary facilities and that marinas are operated in a sanitary manner. Current law prohibits a person from constructing or altering a marina unless the Director of Health has approved the plans as providing adequate sanitary facilities. In addition, a person cannot operate a marina without a license issued by the board of health of the health district in which the marina is located. However, the Director of Health may become the licensor in a health district if the Director determines that the board of health is not complying with the Marinas Law and rules adopted under it. A license may be denied, suspended, or revoked.

A board of health must determine any fee for the license in accordance with the Health Districts Law. The fee must include any additional amount determined by rule of the Public Health Council, which must be credited to the existing General Operations Fund. The portion of any fee retained by the health district must be paid into a special fund of the health district. The money from the fee must be used by the Director and the board for the administration of the Marinas Law and rules adopted under it.

A board annually must inspect each marina, keep a record of the inspection, and require each marina to comply with the Marinas Law and rules adopted under it. A board also must certify to the Director that a marina has been licensed and is in satisfactory compliance with that Law and the rules. Finally, current law provides for enforcement of that Law and the rules.

Licensing and inspection of agricultural labor camps

(R.C. 3733.42 (repealed and reenacted), 3733.41, 3733.43 (repealed), 3733.431 (repealed), 3733.44 (repealed), 3733.45 (repealed), 3733.46 (repealed), 3733.47 (repealed), 3733.471 (repealed), 3733.48 (repealed), 3733.49 (3733.43), 3733.99; R.C. 3701.83, 3733.41, 4141.031, and 5321.01 (for cross-references); Section 737.10)

The bill repeals most of the statutes governing the licensure and inspection of agricultural labor camps, including the requirement that the Public Health Council adopt rules for that purpose. It instead requires a board of health within whose jurisdiction an agricultural labor camp is located to adopt rules governing the inspection of and issuance of licenses for agricultural labor camps within 12 months of the provision's effective date. The rules may include provisions for the levying of a fee

for an agricultural labor camp license. The fee must be established in accordance with the Health Districts Law. The bill establishes procedures for the transition from the operation of the Public Health Council rules governing agricultural labor camps in a health district to a board of health's rules.

The bill retains the Office of the Migrant Agricultural Ombudsperson under the Director of Job and Family Services. It also retains the description of an agricultural labor camp as an area established or used as temporary living quarters for two or more families, or five or more people, who are engaged in agriculture or food processing.

Current law

Currently, the Public Health Council must adopt rules having a uniform application throughout the state governing the issuance of licenses, location, layout, construction, approval of plans, sanitation, safety, operation, use, and maintenance of agricultural labor camps. The rules must include minimum standards of habitability. The rules also must establish additional voluntary standards of habitability for those camps and priorities for those additional standards.

The Director of Health is responsible for the administration and enforcement of the Agricultural Labor Camps Law and rules adopted under it. However, the Director may delegate the Director's authority to the local board of health within whose jurisdiction an agricultural labor camp is located.

A person who intends to operate an agricultural labor camp annually must apply for a license from the Director of Health or a local board of health, as applicable. The application must be accompanied by a $75 license fee and any plans for the camp required in rules. The applicant also must submit a fee of $10 for each housing unit in the camp. A license may be denied, suspended, or revoked.

The Director of Health or the local board of health, as applicable, must inspect an agricultural labor camp at least once a year. The applicable inspector must issue an annual report of the inspections conducted at each agricultural labor camp. The report must include the number of inspections, the number of violations found, and any action taken in regard to violations. Finally, current law provides for enforcement of the Agricultural Labor Camps Law and rules adopted under it.

County quarterly spending plans

(R.C. 5705.392)

The bill authorizes a board of county commissioners, by resolution, to adopt a spending plan or an amended spending plan that establishes a quarterly schedule of

expenses and expenditures of appropriations from *any* county fund, for the second half of a fiscal year and any subsequent fiscal year, for any county office, department, or division that has spent or encumbered more than six-tenths of the amount appropriated for personal services and payrolls during the first half of a fiscal year. At least 30 days before a resolution for a proposed or amended spending plan is adopted, the board must provide written notice to each county office, department, or division for which it intends to adopt a spending plan or amended spending plan. The notice must be sent by regular first class mail or provided by personal service, and must include a copy of the proposed spending plan or proposed amended spending plan. The county office, department, or division may meet with the board at any regular session of the board to comment on the notice, or to express concerns or ask questions about the proposed spending plan or proposed amended spending plan.

Under current law, a board of county commissioners may adopt as part of its annual appropriation resolution a spending plan (or in the case of an amended appropriation resolution, an amended spending plan) that sets forth a quarterly schedule of expenses and expenditures of all appropriations for the fiscal year from the *county general fund*. The spending plan must set forth separately a quarterly schedule of expenses and expenditures for each office, department, and division, and, within each, the amount appropriated for personal services. Each office, department, and division is limited in its expenses and expenditures of moneys appropriated from the general fund during any quarter by the schedule established in the spending plan. The schedule is a limitation on entering into contracts and giving orders involving the expenditure of money during the quarter for purposes of obtaining the requisite certificate of available funds under continuing law.

STATE LOTTERY COMMISSION (LOT)

- Requires that the State Lottery Commission adopt non-instant game rules in the same manner as lottery instant game rules, in that all game rules are to be adopted under the abbreviated rule-making procedure and are not subject to legislative review and invalidation.

- Authorizes the Commission to adopt an alternative program or policy for a lottery sales agent license applicant to establish financial responsibility, in lieu of obtaining a surety bond or making a dedicated account deposit.

- Eliminates the requirement that license application fees, the license renewal fee, and administrative fees charged by the Commission be approved by the Controlling Board.

- Authorizes the Commission to charge a lottery sales agent license applicant fees, rather than a fee, and makes it permissive for the Commission to charge those license fees and license renewal fees.

State Lottery Commission rule-making procedures

(R.C. 111.15(D)(7) and 3770.03(A))

The bill requires that *non-instant* game rules, for example, Mega Millions, Pick 3, and Pick 4, be adopted by the State Lottery Commission in the same manner as lottery *instant* game rules in that all game rules are to be adopted under the abbreviated rule-making procedure[152] and are not subject to legislative review and invalidation,[153] which is the case under current law for instant game rules.

Lottery sales agent licenses

(R.C. 3770.05(G))

Alternative to surety bonding

The bill authorizes the Director of the Ohio Lottery Commission, with the approval of the Commission, to establish, by rule adopted under the Administrative Procedure Act (which requires notice and a public hearing), a program or policy that is an alternative for a lottery sales agent license applicant to establish financial responsibility, in lieu of obtaining a surety bond or making a dedicated account deposit. Under current law, an applicant for a lottery sales agent license must obtain a surety bond in an amount required by rules of the Director of the Commission, or, with the Director's approval, must deposit the same amount into a dedicated account for the benefit of the state lottery. This financial responsibility requirement also applies for renewal of a lottery sales agent's license.

Under the bill, the alternative program or policy must ensure that the financial interests of the state lottery are protected. If an alternative program or policy is established, an applicant or an existing lottery sales agent may participate in the program or proceed under the policy, with the Director's approval. The program or policy must be conducted in accordance with the Director's rules.

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[152] R.C. 111.15.

[153] R.C. 111.15(D)(7) and 3770.03(A).

The bill also provides that the amount deposited into a dedicated account does not have to be the same amount that would be required for the surety bond.

Application and renewal fees

The bill eliminates the requirement that lottery sales agent license application fees, the license renewal fee, and administrative fees charged by the Commission be approved by the Controlling Board.

The bill authorizes the Commission to charge an applicant fees for a lottery sales agent license, rather than a fee, but makes it permissive for the Commission to charge those fees. The bill likewise makes it permissive for the Commission to charge a renewal fee.

DEPARTMENT OF MENTAL HEALTH (DMH)

- Maintains a requirement for the Ohio Department of Mental Health (ODMH) to establish a methodology for allocating state mental health subsidies to boards of alcohol, drug addiction, and mental health services (ADAMHS boards) but eliminates requirements applicable to the methodology and allocations.

- Permits ODMH to allocate the state mental health subsidies on a district or multi-district basis.

- Eliminates a prohibition against ADAMHS boards using state funds to discourage employees from seeking collective bargaining representation or encouraging employees to decertify a recognized collective bargaining agent.

- Permits ODMH, for fiscal year 2012, to distribute to ADAMHS boards a portion of ODMH's appropriation for hospital services and generally requires ADAMHS boards to use the funds to pay for the boards' expenditures for inpatient hospitalization services provided by state regional psychiatric hospitals to persons involuntarily committed to the boards.

- Eliminates the requirement that an ADAMHS board annually obtain ODMH's approval of a community mental health plan as a condition of receiving state mental health subsidies from ODMH.

- Requires each ADAMHS board to implement a community mental health program for making community mental health services the board selects available in the board's district.

- Eliminates ODMH's responsibility for paying the nonfederal share for services provided under a component of the Medicaid program that ODMH administers.

- Eliminates ADAMHS boards' responsibility for paying for such services on July 1, 2012, and requires ADAMHS boards to use state subsidy funds that ODMH allocates to them to make the payments while they remain responsible for the payments.

- Makes the Ohio Department of Job and Family Services (ODJFS) responsible for paying for such services effective July 1, 2012.

- Transfers from ADAMHS boards to ODMH, effective July 1, 2012, various duties regarding the commitment of individuals with mental illness.

- Gives members of a board of directors, and employees, of a facility or agency in which ODMH places a person committed to ODMH qualified immunity for injury or damages the person suffers.

- Provides for the Attorney General to represent in civil actions persons who, pursuant to an agreement with ODMH, render medical, nursing, dental, podiatric, optometric, physical therapeutic, psychiatric, or psychological services to patients in an institution ODMH operates.

- Eliminates prohibitions against (1) an ADAMHS board member or employee serving as a board member of any agency with which the ADAMHS board contracts for services or facilities, (2) an ADAMHS board member being an employee of an agency with which the ADAMHS board contracts for services or facilities, (3) a person serving as an ADAMHS board member if the person's spouse, child, stepchild, parent, stepparent, sibling, stepsibling, grandchild, parent-in-law, child-in-law, or sibling-in-law serves as a board member of any agency with which the ADAMHS board contracts for services or facilities, and (4) a person serving as an ADAMHS board member or employee if the person's spouse, child, stepchild, parent, stepparent, sibling, stepsibling, parent-in-law, child-in-law, or sibling-in-law serves as county commissioner of a county in the ADAMHS board's district.

- Eliminates the authority of an ADAMHS board to operate, under certain circumstances, a facility or provide a community mental health service.

- Provides that an ADAMHS board is responsible for investigating, or requesting another entity to investigate, an allegation of abuse or neglect concerning a person who receives community mental health services or residential facility services if the person receiving the services resides in the ADAMHS board's district.

- Provides that ODMH is to receive information about such investigations from ADAMHS boards without having to request it.

- Eliminates a requirement that a board of county commissioners provide certain entities a comprehensive plan that complies with rules of ODMH and the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) rules when the board of county commissioners seeks to withdraw from participation in a multi-county ADAMHS district.

- Gives ODMH all the authority necessary to carry out its powers and duties under state law governing ODMH.

- Authorizes the ODMH Director to contract with agencies and institutions as necessary for ODMH to carry out its duties under state laws governing ODMH, ADAMHS boards, criminal offenses against the family, criminal trials, and mentally ill persons subject to hospitalization by court order.

- Exempts such contracts from state law governing the state's purchases of services.

- Eliminates a requirement for ODMH to establish and support a program at the state level to promote a community support system for every ADAMHS district and requires, instead, that ODMH support, to the extent ODMH has available resources, a community support system on a district or multi-district basis.

- Eliminates a requirement that ODMH assist in identifying resources and coordinating the planning, evaluation, and delivery of services to facilitate mentally ill persons' access to public services at federal, state, and local levels.

- Permits ODMH to prioritize support for one or more of the elements of a community support system.

- Provides that ODMH's responsibility for promoting and supporting a full range of mental health services that are available and accessible to all Ohio residents applies to the extent ODMH has available resources.

- Eliminates a requirement that ODMH cooperate with ADAMHS boards when providing training on community-based mental health services to ODMH's employees who are utilized in state-operated, community-based mental health services.

- Eliminates the responsibility of ODMH's medical director for decisions relating to medical diagnosis, treatment, rehabilitation, quality assurance, and the clinical

aspects of licensure of hospitals and residential facilities, research, community mental health services, and delivery of mental health services.

- Provides that the requirement for the ODMH Director to develop and operate a community mental health information system or systems applies to the extent the ODMH Director determines necessary and permits the ODMH Director to contract for the operation of the system or systems.

- Requires ODMH to use money in its Trust Fund to pay for expenditures that ODMH incurs in performing any of its duties under state law rather than for specific mental health purposes.

- Transfers to ODMH (from ODA) the administration of the Residential State Supplement Program (RSS).

- Removes a requirement to prepare an annual report for the General Assembly on the costs and savings achieved through a home first process for RSS recipients.

- Transfers to ODMH (from ODA) responsibility for the certification of adult family homes.

- Removes a requirement that certain facilities be certified by ODA for residents of the facility to be eligible for RSS payments.

- Transfers to ODMH (from ODH) responsibility for licensing adult care facilities.

- Requires ODMH, rather than the Public Health Council, to adopt rules governing adult care facilities and provides what the rules are permitted, rather than required, to include.

- Specifies that inspections of adult care facilities may be conducted as desk audits or on-site inspections.

- Provides that if an inspection is conducted to investigate an alleged violation in an adult care facility serving residents receiving publicly funded mental health services or Residential State Supplement (RSS) Program payments, the inspection may (rather than must) be coordinated with the appropriate mental health agency, ADAMHS board, or RSS (rather than PASSPORT) administrative agency.

- Adds the right to be free from seclusion and mechanical restraint to the rights of an adult care facility resident and modifies the current definition of "physical restraint."

- Removes residents' rights advocates from the list of individuals authorized to assert on behalf of adult care facility residents their statutory residents' rights.

- Eliminates the authority of residents' rights advocates and sponsors of current or prospective residents to enter an adult care facility during reasonable hours.

- If a court grants injunctive relief for operating an adult care facility without a license, eliminates a requirement that the facility assist residents' rights advocates in relocating facility residents and instead requires the facility to assist in relocating residents.

- Specifies that certain government and mental health agency employees and the ODMH Director may release resident-identifying information from the records of an adult care facility, without the resident's consent, if authorized by law to do so.

- Authorizes hospitals licensed by ODMH to exchange with other healthcare providers a patient's psychiatric records and other pertinent information if the purpose of exchanging the confidential information is to facilitate the continuity of the patient's care.

Medicaid elevation for community mental health services

(R.C. 340.03 (primary), 9.03, 173.35, 340.01, 340.011, 340.04, 340.05, 340.07, 340.08 (repealed), 340.09, 340.091, 340.11, 2919.271, 3722.01, 3923.28, 3923.30, 5111.023, 5111.025, 5111.911, 5111.912, 5119.01, 5119.02, 5119.021, 5119.06, 5119.07, 5119.22, 5119.61, 5119.611, 5119.612, 5119.62, 5119.621, 5119.622, 5119.623, 5119.63, 5122.01, 5122.02, 5122.05, 5122.12, 5122.13, 5122.14, 5122.15, 5122.21, 5122.23, 5122.231, 5122.25, 5122.31, and 5122.36 (repealed); Sections 337.20.60, 812.20, and 812.40)

ODMH allocations of state mental health subsidies

The Ohio Department of Mental Health (ODMH) is required to allocate state mental health subsidies to boards of alcohol, drug addiction, and mental health services (ADAMHS boards). State mental health subsidies have two sources: (1) funds appropriated to ODMH for local management of mental health services and (2) funds appropriated to ODMH for hospital personal services, hospital maintenance, and hospital equipment, other than such funds that ODMH retains for forensic services.

ODMH is required by current law to establish a methodology, including a formula, for the allocations. The formula must include as a factor the number of severely mentally disabled persons who reside in each ADAMHS district and may include other factors such as the historic utilization of public hospitals. The methodology must provide for a portion of the state mental health subsidies to be

distributed on the basis of the ratio of each ADAMHS district's population to the state's total population.

Each ADAMHS board is required to elect to have its allocation distributed to the board or retained by ODMH. A board that elects to have its allocation distributed to it must agree to certain requirements related to the board's utilization of state mental health hospitals and other state-operated services, including a requirement to make payments to the ODMH Risk Fund. If an ADAMHS board elects to have ODMH retain its allocation, ODMH is to determine the use of the board's allocation and the board must provide ODMH with a projection of the board's utilization of state mental health hospitals and other state-operated services. An ADAMHS board may not elect to have ODMH retain the board's allocation unless (1) ODMH has estimated that the total General Revenue Funds to be allocated to the board is to be substantially reduced for reasons not related to performance or (2) the board has experienced circumstances specified in ODMH guidelines. Also, an ADAMHS board may not elect the option to have ODMH retain the board's allocation unless the board conducts a public hearing on the issue not later than seven days before notifying ODMH of the board's decision.

As discussed above, an ADAMHS board that elects to have its allocation distributed to it must make payments to the ODMH Risk Fund. Money in the ODMH Risk Fund must be used to help ADAMHS boards that pay into the fund with (1) costs for utilizing state mental health hospitals that exceed their allocations and (2) other financial hardships. When an ADAMHS board's costs of utilizing state mental health hospitals exceed its allocation, the board and ODMH Risk Fund are to pay for the excess costs pursuant to a schedule under which the board's and ODMH Risk Fund's proportional responsibility depends on the amount of the excess.

Under the bill, ODMH continues to be required to establish a methodology for allocating state mental health subsidies to ADAMHS boards. But, the bill eliminates the requirements applicable to the methodology and allocations discussed above. The bill also eliminates a prohibition against ADAMHS boards using state funds to discourage employees from seeking collective bargaining representation or encouraging employees to decertify a recognized collective bargaining agent. The bill permits the methodology to provide for the subsidies to be allocated to ADAMHS boards on a district or multi-district basis. An ADAMHS board's use of the subsidies is subject to audit by county, state, and federal authorities.

As discussed above, current law provides for ODMH to use two sources of funds for state mental health subsidies: (1) funds appropriated to ODMH for local management of mental health services and (2) funds appropriated to ODMH for hospital personal services, hospital maintenance, and hospital equipment, other than such funds that ODMH retains for forensic services. Under the bill, state mental health

subsidies are funds appropriated to ODMH for the purpose of allocation to ADAMHS boards.

Although the bill does not expressly provide for state mental health subsidies to include funds appropriated to ODMH for hospital personal services, hospital maintenance, and hospital equipment, ODMH is permitted, for fiscal year 2012, to distribute to ADAMHS boards a portion of ODMH's appropriation for hospital services. If ODMH elects to make this distribution, ODMH is to establish an allocation methodology to be used in making the distribution. The allocation methodology is to include as factors at least the per diem cost of inpatient hospitalization services at state regional psychiatric hospitals and the estimated number of bed days that each ADAMHS board will incur in fiscal year 2012 in carrying out their duties regarding mentally ill individuals subject to hospitalization by court order who are involuntarily committed for treatment. ODMH is authorized to require each ADAMHS board to provide ODMH with an estimate of the number of bed days the board will incur in fiscal year 2012 for that purpose. An ADAMHS board is required to use the funds distributed to it to pay for expenditures the board incurs in fiscal year 2012 in paying for inpatient hospitalization services provided by state regional psychiatric hospitals to persons involuntarily committed to the board. However, if the amount distributed to an ADAMHS board exceeds the amount that the board needs to pay for such expenditures, ODMH may permit the board to use the excess funds for community mental health services. Also, ODMH may permit an ADAMHS board to use a portion of the funds (as determined by ODMH) either (1) to purchase insurance to pay the board's costs for utilizing the services of state regional psychiatric hospitals if the board's state mental health subsidies are insufficient or (2) to have that portion of the funds deposited into the ODMH Risk Fund. Even though the bill eliminates the law creating the ODMH Risk Fund, the bill provides for the fund to continue to exist in the state treasury until it is no longer needed. While it continues to exist, money in the ODMH Risk Fund is to be used in accordance with guidelines ODMH is to develop in consultation with representatives of ADAMHS boards.

Community mental health plans

Under current law, an ADAMHS board's eligibility for state mental health subsidy funds is contingent on ODMH's approval of the board's community mental health plan or relevant part of the plan. An ADAMHS board must annually develop its community mental health plan in accordance with ODMH guidelines. The plan is to list the community mental health needs of the residents of the district the ADAMHS board serves and all the facilities and community mental health services that are to be available under the plan. Crisis intervention services must be included among the services in the plan. An ADAMHS board must include in its plan an explanation of how the board intends to make payments that it may be required to make under state

law governing the state mental health subsidies, a statement of the inpatient and community-based services the ADAMHS board proposes that ODMH operate, an assessment of the number and types of residential facilities needed, a budget for the state mental health subsidies the ADAMHS board expects to receive, and other information ODMH requires.

The bill eliminates the requirement that an ADAMHS board obtain ODMH's approval of a community mental health plan as a condition of receiving state mental health subsidies from ODMH. Instead, each ADAMHS board is to implement a community mental health program that makes community mental health services the board selects available in its district. An ADAMHS board's community mental health program is to be implemented in accordance with a plan developed in cooperation with other local and regional planning and funding bodies and relevant ethnic organizations. Unlike a community mental health *plan* that is developed under current law, an ADAMHS board's community mental health *program* is not required to be developed or implemented in accordance with ODMH rules or be approved by ODMH. ADAMHS boards' continuing duties to promote, arrange, and implement working agreements with social and judicial agencies are also no longer subject to ODMH rules.

Current law provides that nothing in state law governing ADAMHS boards, ODMH, the Ohio Department of Alcohol and Drug Addiction Services (ODADAS), or the hospitalization of individuals with mental illness is to be construed to require a board of county commissioners to provide resources for community mental health services beyond the total amount set forth in a community mental health plan. The bill provides instead that nothing in those laws is to be construed to require a board of county commissioners to provide resources for community mental health services beyond the total amount of (1) state mental health subsidies allocated by ODMH and (2) funds available to the board of county commissioners that are raised by a county tax levy for community mental health services.

Payment for mental health services provided under Medicaid

Under current law, ODMH and ADAMHS boards are responsible for paying the nonfederal share of any Medicaid payment for services provided under a component of the Medicaid program that ODMH administers on the behalf of the Ohio Department of Job and Family Services (ODJFS). The bill eliminates ODMH's responsibility when this provision of the bill goes into effect (the 91st day after the bill is filed with the Secretary of State unless it is the subject of a referendum). The bill eliminates ADAMHS boards' responsibility July 1, 2012. While the ADAMHS boards remain responsible, they are to use state mental health subsidies that ODMH allocates to them. Effective July 1, 2012, ODJFS is to become responsible for the payments. If necessary, the ODJFS Director

must submit a Medicaid state plan amendment to the U.S. Secretary of Health and Human Services regarding ODJFS's responsibility.

ADAMHS boards' duties regarding hospitalization of mentally ill persons

A probate court that finds an individual to be a mentally ill person subject to hospitalization by court order is to order the individual to a place of commitment. Under current law, ADAMHS boards are among the entities to which the individual may be committed. Under the bill, ODMH is to replace ADAMHS boards as one of the possible places of commitment effective July 1, 2012. While an ADAMHS board remains a possible place of commitment, it is permitted by the bill to designate a hospital, residential facility, or community mental health agency as the entity in which the individual is to be placed. Once ODMH becomes a possible place of commitment, it too may designate a hospital, residential facility, or community mental health agency as the entity in which the individual is to be placed.

Effective July 1, 2012, the bill terminates many duties that ADAMHS boards have under current law regarding individuals with mental illness who are voluntarily or involuntarily committed for hospitalization, including duties to do the following:

- When an individual with a mental illness voluntarily applies for admission to a public hospital, determine whether to authorize the admission.

- Assess, or have a designee assess, an individual who is the subject of an emergency or judicial commitment procedure to help a hospital determine whether the individual is subject to involuntary hospitalization and whether alternative services are available.

- Receive, or have a designee receive, notice of a hearing on an affidavit regarding a judicial commitment.

- Designate, under certain circumstances, an attorney to present the case in a judicial commitment proceeding that the individual who is the subject of the proceeding is a mentally ill person subject to hospitalization by court order. (An ADAMHS board that elects to have ODMH retain the board's state mental health subsidies does not have this responsibility under current law. All ADAMHS boards have this duty under the bill until July 1, 2012. The bill requires the Attorney General to designate the attorney in all cases beginning July 1, 2012.)

- Receive from a public hospital a report regarding the removal, death, escape, discharge, or trial visit of an individual hospitalized pursuant to a judicial commitment procedure.

The bill transfers to ODMH, effective July 1, 2012, some of the duties that ADAMHS boards have regarding the commitment of individuals with mental illness, including duties to do the following:

- Establish a method of evaluating referrals for involuntary commitment and affidavits for the hospitalization of individuals with mental illness. (Effective July 1, 2012, ODMH is to establish (1) a method that each probate court may use to evaluate whether an individual is a mentally ill person subject to hospitalization by court order and subject to involuntary commitment pursuant to a judicial commitment procedure and (2) criteria the probate court may use to determine whether an individual determined to be a mentally ill person subject to hospitalization by court order would benefit from alternative treatment and if any options for alternative treatment are available to the individual.)

- Assist, or have a designee assist, a probate court in determining whether an individual is subject to hospitalization and whether alternative services are available.

- Designate a psychiatrist, or clinical psychologist and physician, to prepare a written report regarding the mental condition of an individual who is the subject of an affidavit regarding judicial commitment and the individual's need for custody, care, or treatment in a mental hospital.

Under current law, an individual with mental illness who has been voluntarily or involuntarily hospitalized may apply to an ADAMHS board for community mental health services. The bill permits such an individual to apply to an ADAMHS board for services made available under the board's community mental health program.

The bill repeals a law, effective July 1, 2012, that makes the county of residence of an individual with mental illness responsible for the following:

- The necessary expense of returning the individual to the individual's county of residence.

- Regular probate court fees and expenses incident to an order of hospitalization.

Qualified immunity of facilities and agencies

(R.C. 5122.341)

The bill provides that no member of a board of directors, or employee, of an entity in which ODMH places a person committed to ODMH is liable for injury or damages caused by an action or inaction taken within the scope of the board member's official duties or employee's employment relating to the commitment of, and services provided to, the person committed to ODMH, unless the action or inaction constitutes willful or wanton misconduct. A board member's or employee's action or inaction does not constitute willful or wanton misconduct if the board member or employee acted in good faith and reasonably under the circumstances and with the knowledge reasonably attributable to the board member or employee. The qualified immunity that the board provides is in addition to and not in limitation of any immunity otherwise conferred by state law or judicial precedent.

Attorney General representing officers and employees

(R.C. 109.36)

The bill provides, beginning July 1, 2012, for the Attorney General to represent in civil actions persons who, pursuant to an agreement with ODMH, render medical, nursing, dental, podiatric, optometric, physical therapeutic, psychiatric, or psychological services to patients in an institution ODMH operates. This replaces a similar responsibility that the Attorney General has until July 1, 2012, to represent persons who, pursuant to an agreement between an ODMH institution and an ADAMHS board, render medical services to patients in the ODMH institution.

Restrictions on serving on and working for an ADAMHS board

(R.C. 340.02)

The bill eliminates prohibitions against (1) an ADAMHS board member or employee serving as a board member of any agency with which the ADAMHS board contracts for services or facilities, (2) an ADAMHS board member being an employee of an agency with which the ADAMHS board contracts for services or facilities, (3) a person serving as an ADAMHS board member if the person's spouse, child, stepchild, parent, stepparent, sibling, stepsibling, grandchild, parent-in-law, child-in-law, or sibling-in-law serves as a board member of any agency with which the ADAMHS board contracts for services or facilities, and (4) a person serving as an ADAMHS board member or employee if the person's spouse, child, stepchild, parent, stepparent, sibling, stepsibling, parent-in-law, child-in-law, or sibling-in-law serves as county commissioner of a county in the ADAMHS board's district.

ADAMHS boards providing services

(R.C. 340.03(B)(7), 3313.65, 3722.15, and 3722.16)

The bill eliminates the authority of an ADAMHS board to operate a facility or provide a community mental health service under certain circumstances. Under current law, an ADAMHS board, with ODMH's prior approval, may operate a facility or provide a community mental health service if there is no other qualified private or public facility or community mental health agency that is immediately available and willing to operate the facility or provide the service. This authority is limited as follows:

- The ADAMHS board may operate the facility or provide the service in an emergency situation to provide essential services for the duration of the emergency.
- If the ADAMHS board's district has a population of at least 100,000 but less than 500,000, the board may operate the facility or provide the service for no longer than one year.
- If the ADAMHS board's district has a population of less than 100,000, the board may operate the facility or provide the service for no longer than one year unless the board has the prior approval of ODMH and the board of county commissioners or, in the case of a multi-county district, a majority of the boards of county commissioners.

ADAMHS boards' investigations of complaints

(R.C. 340.03(B)(1))

The bill provides that an ADAMHS board is responsible for investigating, or requesting another entity to investigate, an allegation of abuse or neglect concerning a person who receives community mental health services or residential facility services if the person receiving the services resides in the ADAMHS board's district. Under current law, this requirement applies without regard to where the person resides.

Under the bill, ODMH is to receive information about such investigations from ADAMHS boards without having to request it.

County withdrawal from multi-county ADAMHS district

(R.C. 340.01(B))

The bill eliminates a requirement that a board of county commissioners submit a comprehensive plan that complies with ODMH and ODADAS rules when the board of county commissioners seeks to withdraw from participation in a multi-county ADAMHS district. Under current law, the plan is to be submitted to the ADAMHS board, the boards of county commissioners of the other counties participating in the multi-county ADAMHS district, ODMH, and ODADAS. The bill maintains a requirement that the board of county commissioners provide those entities a resolution about the withdrawal that provides for the equitable adjustment and division of all services, assets, property, debts, and obligations of the multi-county ADAMHS district.

ODMH's general authority

(R.C. 5119.012)

The bill provides that ODMH has all the authority necessary to carry out its powers and duties under state laws governing ODMH, ADAMHS boards, offenses against the family, criminal trials, and hospitalization of individuals with mental illness.

ODMH's contracts with providers

(R.C. 5119.013, 5119.06, and 5119.18)

The bill authorizes the ODMH Director to contract with agencies and institutions as necessary for ODMH to carry out its duties under state laws governing ODMH, ADAMHS boards, offenses against the family, criminal trials, and hospitalization of individuals with mental illness. The contracts are not subject to state law governing the state's purchases of services.

Community support system

(R.C. 5119.06(A))

The bill eliminates a requirement for ODMH to establish and support a program at the state level to promote a community support system to be available for every ADAMHS district and requires, instead, that ODMH support, to the extent ODMH has available resources, a community support system on a district or multi-district basis. The bill also eliminates a requirement that ODMH assist in identifying resources and coordinating the planning, evaluation, and delivery of services to facilitate mentally ill persons' access to public services at federal, state, and local levels. ODMH is permitted

by the bill to prioritize support for one or more of the elements of a community support system.

ODMH's support of services

(R.C. 5119.06(D))

The bill provides that ODMH's responsibility for promoting and supporting a full range of mental health services that are available and accessible to all Ohio residents applies to the extent ODMH has available resources.

State employee training on community mental health services

(R.C. 5119.06(L))

The bill eliminates a requirement that ODMH cooperate with ADAMHS boards when providing training on community-based mental health services to ODMH's employees who are utilized in state-operated, community-based mental health services.

ODMH's medical director

(R.C. 5119.07)

Under current law, ODMH's medical director is responsible for decisions relating to (1) medical diagnosis, treatment, rehabilitation, and quality assurance and (2) the clinical aspects of licensure of hospitals and residential facilities, research, community mental health services, and delivery of mental health services. The medical director or the medical director's designee is to advise the ODMH Director on matters relating to licensure, research, community mental health services, and delivery of mental health services.

The bill provides instead that the medical director or the medical director's designee is to advise the ODMH Director on matters relating to medical diagnosis, treatment, rehabilitation, and quality assurance. The bill also provides that the medical director's or designee's advisory role applies to all aspects of the licensure of hospitals and residential facilities, research, community mental health services, and delivery of mental health services rather than just the clinical aspects of those matters.

Community mental health information system

(R.C. 5119.61(E))

The bill provides that the requirement for the ODMH Director to develop and operate a community mental health information system or systems applies to the extent

the ODMH Director determines necessary and permits the ODMH Director to contract for the operation of the system or systems.

ODMH Trust Fund

(R.C. 5119.18)

The bill expands ODMH's authority to use its Trust Fund money to pay for any expenditure incurred in performing its duties under state law, rather than for the following specific mental health purposes:

(1) Establishing and supporting a program at the state level to promote a community support system to be available for every alcohol, drug addiction, and mental health service district;

(2) Providing training, consultation, and technical assistance regarding mental health programs and services and appropriate prevention and mental health promotion activities to ODMH employees, community mental health agencies and boards, and other agencies providing mental health services;

(3) Promoting and supporting a full range of mental health services that are available and accessible to all Ohio residents, especially for severely mentally disabled individuals;

(4) Designing and setting criteria for the determination of severe mental disability;

(5) Establishing standards for evaluation of mental health programs;

(6) Promoting, directing, conducting, and coordinating scientific research concerning the causes and prevention of mental illness, methods of providing effective services and treatment, and means of enhancing the mental health of all Ohio residents;

(7) Fostering the establishment and availability of vocational rehabilitation services and the creation of employment opportunities for consumers of mental health services;

(8) Establishing a program to protect and promote the rights of persons receiving mental health services;

(9) Establishing guidelines for the development of community mental health plans and the review and approval or disapproval of such plans;

(10) Promoting the involvement of persons who are receiving or have received mental health services in the planning, evaluation, delivery, and operation of mental health services;

(11) Notifying and consulting with the relevant constituencies that may be affected by rules, standards, and guidelines issued by ODMH;

(12) Providing training regarding the provision of community-based mental health services to ODMH employees who are utilized in state-operated, community-based mental health services;

(13) Providing consultation to the Department of Rehabilitation and Correction concerning the delivery of mental health services in state correctional institutions.

Transfer of Residential State Supplement Program

(R.C. 5119.69, 5119.691, and 5119.692; conforming changes in R.C. 173.14, 173.35, 340.091, 2903.33, 3721.56, 3722.04, 5101.35, and 5119.61)

The bill transfers to ODMH (from ODA) the implementation of the Residential State Supplement Program (RSS). The program provides cash supplemental payments to eligible aged, blind, or disabled adults who receive benefits under the federal Supplemental Security Income (SSI) program. The cash supplements provided under RSS must be used for the provision of accommodations, supervision, and personal care services.

The bill provides that the transferred RSS program is to be implemented in the same manner as it was administered by ODA, except as follows:

(1) Permits, rather than requires, the ODMH Director to adopt rules that specify procedures and requirements for placing an individual on the RSS waiting list and priorities for the order that those on the waiting list are to be provided with RSS payments;

(2) Permits, rather than requires, the Director to adopt rules that establish the method to be used to determine the payment amount an eligible person will receive under the RSS program;

(3) In establishing the method to be used to determine RSS payments, permits, rather than requires, the Director to consider amounts appropriated by the General Assembly for the program;

(4) Removes a requirement that, each year, a report be provided to the General Assembly detailing the number of individuals participating in RSS rather than receiving

care in a nursing facility, and the savings achieved as a result of the RSS enrollments (see "**RSS Home First**," below);

(5) Permits, rather than requires, ODJFS to adopt rules establishing standards of eligibility for the program.

To qualify for RSS, a person must meet a number of criteria. One requirement is that the person resides in an approved living facility. As part of the transfer, the bill eliminates requirements for facilities to be certified by ODA in order for residents to be eligible for payments. Under the transfer, ODA certification requirements are removed for all of the following facilities:

(1) A home or facility, other than a nursing home, licensed by the Ohio Department of Health (ODH);

(2) A residential facility licensed by ODMH and, under the bill, adult care facilities licensed by ODMH;

(3) An apartment or room used to provide community mental health housing services;

(4) An adult foster home, which the bill requires ODMH to certify rather than ODA.

RSS Home First

Under Home First provisions, current law requires that, each month, RSS administrators notify the ODA long-term care consultation program administrator that a person on the RSS waiting list has been admitted to a nursing facility. The long-term care administrator is to determine if the person admitted to the nursing home would rather participate in RSS. If so, the person is to be approved to participate in the RSS program instead of receiving services in a nursing facility. The bill specifies that the notifications are to be made by the RSS administrators on a periodic schedule determined by ODMH.

Adult care facilities

(R.C. 5119.70 to 5119.88 and 5119.99; Section 337.30.80)

Adult care facilities are residential facilities that provide accommodations and supervision to three to 16 unrelated adults, at least three of whom require personal care services.

The bill transfers to ODMH (from ODH) responsibility for licensing adult care facilities. For purposes of the transition, the bill provides that existing licenses are deemed to have been issued by ODMH. It also specifies that no validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer.

Under the bill, ODMH (rather than the Public Health Council) is required to adopt rules governing adult care facilities. The bill provides what the rules are permitted, rather than required, to include.

Inspections

(R.C. 5119.73)

During each licensing period, the ODMH Director must make at least one unannounced inspection of an adult care facility and may make additional unannounced inspections as necessary.[154]

The bill specifies that inspections of adult care facilities may be conducted as desk audits or on-site inspections. If an inspection is conducted to investigate an alleged violation in an adult care facility serving residents receiving publicly funded mental health services or Residential State Supplement (RSS) Program[155] payments, the bill permits, rather than requires, that the inspection be coordinated with the appropriate mental health agency, ADAMHS board, or RSS (rather than PASSPORT) administrative agency.

Residents' rights

(R.C. 5119.81)

Residents of adult care facilities have certain statutory rights, including the right to be free from physical restraint. The bill adds the right to be free from seclusion and mechanical restraint. Under the bill, "seclusion" means the involuntary confinement of a resident alone in a room in which the resident is physically prevented from leaving. "Mechanical restraint" means any method of restricting a resident's freedom of movement, physical activity, or normal use of the resident's body, using an appliance or device manufactured for this purpose.

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[154] 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. 5119.73(C)).

[155] The RSS Program provides cash supplements to payments made to eligible aged, blind, or disabled adults under the Supplemental Security Income (SSI) program.

The definition of "physical restraint" is modified by the bill to mean any method of physically restricting a resident's freedom of movement, physical activity, or normal use of the resident's body without the use of a mechanical restraint. Currently, it is defined as any article, device, or garment that interferes with the free movement of the resident and that the resident is unable to remove easily. The bill specifies that "physical restraint" is also known as "manual restraint."

The bill removes residents' rights advocates from the list of individuals authorized to assert on behalf of adult care facility residents their residents' rights. The individuals authorized to do so under current law are the Director of Health and Director of Aging,[156] sponsors, and residents' rights advocates.

Injunctions

(R.C. 5119.78)

If a court grants injunctive relief for operating an adult care facility without a license, the bill eliminates a requirement that the facility assist residents' rights advocates in relocating facility residents. Instead, it requires the facility to assist in relocating residents.

Authorization to enter facility

(R.C. 5119.84)

Under current law, all of the following individuals are authorized to enter an adult care facility during reasonable hours: (1) sponsors of current or prospective residents, (2) residents' rights advocates, (3) residents' attorneys, (4) ministers, priests, rabbis, or other persons ministering to residents' religious needs, (5) physicians or other persons providing health care services to residents, (6) employees authorized by CDJFSs and local boards of health or health departments, and (7) prospective residents.

The bill eliminates the authority of residents' rights advocates and sponsors of current or prospective residents to enter an adult care facility.

[156] Since the bill transfers the licensing of adult care facilities to ODMH from ODH, the ODMH Director (rather than the ODH Director) is authorized to assert residents' rights on behalf of a facility resident.

Records

(R.C. 5119.84)

Certain state and local government and mental health agency employees are authorized to enter an adult care facility at any time[157] and have access to facility records, including records pertaining to residents.

The bill expands when these employees and the ODMH Director may release resident-identifying information from the records of an adult care facility, without the resident's consent. In addition to current law's provision that permits employees and the ODMH Director to release this information by court order, the bill permits the release of information if authorized by law to do so.

Exchange of confidential health information by ODMH-licensed hospitals

(R.C. 5122.31)

The bill expands one of 15 exceptions to the provision in current law generally requiring that documents pertaining to the hospitalization of the mentally ill and criminal trials of persons alleged to be insane be kept confidential and not be disclosed unless the patient consents to disclosure.

Under current law, the particular exception permits ODMH hospitals, institutions, and facilities to exchange psychiatric records and other pertinent information regarding a patient with both of the following if the purpose of the exchange is to facilitate the patient's continuity of care: (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 also authorizes hospitals that are not ODMH hospitals, but are licensed by ODMH, to exchange with other providers of treatment and health services the records and information described above if the purpose is the same as that in current law – facilitating the patient's continuity of care.

[157] The following employees are authorized to enter an adult care facility at any time: (1) employees designated by the ODMH Director, (2) employees designated by the Director of Aging, (3) employees designated by the Attorney General, (4) employees designated by a county department of job and family services, (5) employees of a mental health agency under certain circumstances, (6) employees of the Long-term Care Ombudsperson Program, and (7) employees of an ADAMHS board under certain circumstances (R.C. 5119.84).

- Eliminates the Natural Resources Publications and Promotional Materials Fund.

- Requires the transfer of the remaining cash balance in the Natural Resources Publications and Promotional Materials Fund to the Departmental Projects Fund and the Geological Mapping Fund in amounts determined by the Director of Budget and Management in consultation with the Director of Natural Resources.

- Requires all moneys from the sale of books, bulletins, maps, or other publications and promotional materials on and after July 1, 2011, to be credited to the Departmental Projects Fund or the Geological Mapping Fund as determined by the Director of Natural Resources.

- Authorizes the Chief of the Division of Forestry to enter into a personal service contract for consulting services to assist the Chief with the sale of timber or other forest products and related inventory.

- Revises and expands the purposes for which money credited to the Geological Mapping Fund may be used, and requires money collected from fees for products provided and services performed by the Division of Geological Survey as required by the bill to be credited to the Fund.

- Revises the duties of the Division concerning all of the following:

  --Types of mineralogical and geological raw materials and natural resources data that must be collected, studied, and interpreted;

  --Special studies and reports of the state's geological resources that are of economic, environmental, or educational significance or significance to public health, welfare, and safety;

  --Storing and cataloging of data, maps, diagrams, records, rock core, samples, profiles, and geologic sections of the state; and

  --Advising, consulting, and collaborating with state agencies, other state governments, and the federal government on geological problems or issues.

- Authorizes the Division to create custom products and provide information on Ohio's geological nature to governmental agencies, colleges and universities, and persons.

- Requires the Chief of the Division to adopt rules establishing fee schedules for:

--Providing manipulated, interpreted, or analyzed data from the Division's archived geologic records, data, maps, rock core, and samples; and

--Creating custom maps, custom data sets, or other custom products and providing information on Ohio's geological nature.

- Revises the requirements governing well logs and related reports, and establishes a fine for failure to comply with the requirements.

- Revises the purposes for which the Chief may obtain temporary assistance from specified persons by including studies and plans for economic development or geologic hazards projects rather than studies and plans for erosion projects as in current law.

- Creates the Division of Oil and Gas Resources Management in the Department of Natural Resources, and transfers to the Division the functions and duties of the Division of Mineral Resources Management in the Department with respect to oil and gas.

- Eliminates the Division of Natural Areas and Preserves, and transfers most of its duties and responsibilities to the Division of Parks and Recreation.

- Transfers the management of the Ohio Natural Heritage Database from the Division of Natural Areas and Preserves to the Division of Wildlife.

- Requires the Chief of the Division of Wildlife, in addition to the Chief of the Division of Parks and Recreation, to prepare and maintain surveys and inventories of rare and endangered species of plants and animals and other unique natural features for inclusion in the Database.

- Renames the Natural Areas and Preserves Fund the Natural Areas and Preserves and State Parks Fund, and specifies additional purposes related to parks and recreation for which money in the renamed Fund may be used.

- Authorizes the Chief of the Division of Parks and Recreation, with the approval of the Director of Natural Resources, to sell, lease, or transfer minerals or mineral rights, specifically oil and natural gas, on state-owned lands that the Division administers and to enter into contracts for drilling.

- Requires money so collected from rentals to be credited to the existing State Park Fund and money so collected from royalties to be credited to the Parks Mineral Royalties Trust Fund created by the bill.

- Also creates the Parks Mineral Royalties Fund, consisting of all investment earnings of the Parks Mineral Royalties Trust Fund and of any principal transferred from the Trust Fund at the Director's request.

- Requires money in both funds to be used by the Division to facilitate capital improvements, maintenance, repairs, and renovations on state properties administered by the Division.

- Allows the Chief of the Division of Parks and Recreation to sell or otherwise dispose of by lawful means forest products, in addition to timber as in existing law, that require management for specified reasons, and adds to those reasons implementation of sustainable forestry practices.

- Authorizes the Chief of the Division of Parks and Recreation to enter into a memorandum of understanding with the Chief of the Division of Forestry to allow the Division of Forestry to administer the sale of timber and forest products on lands owned or controlled by the Division of Parks and Recreation.

- Requires 75% of any proceeds from such a sale to be credited to the State Park Fund and 25% to be credited to the State Forest Fund.

- Requires the Administrator of Workers' Compensation each fiscal year, when requested by the Director of Natural Resources, to transfer from the investment earnings of the Coal-Workers Pneumoconiosis Fund an amount not to exceed $3 million to the Mine Safety Fund.

- Eliminates current law that instead authorizes the Administrator to transfer an unspecified portion of the investment earnings to the Mine Safety Fund.

- Requires the Ohio Soil and Water Conservation Commission to establish a Conservation Program Delivery Task Force.

- Requires the Task Force to make recommendations to the Director of Natural Resources regarding how soil and water conservation districts may advance operations while continuing to provide local program leadership, and requires that the final report of recommendations be submitted no later than December 31, 2011.

Natural Resources Publications and Promotional Materials Fund

(R.C. 1501.031 (repealed); Section 512.60)

The bill eliminates the Natural Resources Publications and Promotional Materials Fund to which all money received from the sale of publications and promotional materials of the Department of Natural Resources are credited and that is used to pay for the production of those items.

The bill requires the Director of Budget and Management, on July 1, 2011, or as soon as possible thereafter, and at the request of the Director of Natural Resources, to transfer the remaining cash balance in the Natural Resources Publications and Promotional Materials Fund to the Departmental Projects Fund and the Geological Mapping Fund. The amount transferred to each of those Funds must be determined by the Director of Budget and Management after consultation with the Director of Natural Resources. Additionally, beginning July 1, 2011, all moneys from the sale of books, bulletins, maps, or other publications and promotional materials must be credited to the Departmental Projects Fund or the Geological Mapping Fund as determined by the Director of Natural Resources.

Division of Forestry personal service contracts

(R.C. 1503.05)

The bill authorizes the Chief of the Division of Forestry to enter into a personal service contract for consulting services to assist the Chief with the sale of timber or other forest products and related inventory. Compensation for the consulting services must be paid from the proceeds of the sale. Current law authorizes the Chief to sell timber and other forest products from state forests and state forest nurseries. The Chief may make the sales whenever the Chief considers such a sale desirable.

Division of Geological Survey

(R.C. 1505.01, 1505.011, 1505.04, 1505.05, 1505.06, 1505.09, 1505.11, and 1505.99)

Geological Mapping Fund

The bill revises and expands the purposes for which the Chief of the Division of Geological Survey must use money in the existing Geological Mapping Fund. It requires money in the Fund to be used for performing necessary field, laboratory, and administrative tasks to map and make public reports on the geologic hazards and energy resources, in addition to the geology, of the state. Current law requires money in the Fund to be used to conduct those activities regarding the geology and mineral resources of each county of the state.

In addition, the bill requires money collected from fees for products provided and services performed by the Division as required by the bill to be credited to the Fund (see "**Fee schedules**," below).

Duties of the Division

The bill revises the duties of the Division concerning all of the following:

(1) The types of mineralogical and geological raw materials and natural resources data that must be collected, studied, and interpreted by adding dolomite, aggregates, sand, and gravel;

(2) Special studies and reports of the state's geological resources that the Division must make by adding geological resources that are of current or potential environmental significance or of significance to the health, welfare, and safety to the public;

(3) The making and storing of maps, diagrams, profiles, and geologic sections by requiring such information to be cataloged and available in perpetuity rather than for distribution and by adding data, records, rock cores, and samples; and

(4) Advising and consulting with state agencies on problems of a geological nature by adding that the Division also collaborates with other state governments and the federal government.

The bill also expands the Division's duties by authorizing the Division to do both of the following: (1) create custom maps, custom data sets, or other custom products for government agencies, colleges and universities, and persons, and (2) provide information on the geological nature of Ohio to those entities and persons.

Fee schedules

The bill requires the Chief of the Division to adopt rules in accordance with the Administrative Procedure Act that establish fee schedules for both of the following:

(1) Requests for manipulated, interpreted, or analyzed data from the geologic records, data, maps, rock cores, and samples archived by the Division. The schedule may include the cost of specialized storage requirements, programming, labor, research, retrieval, data manipulation, and copying and mailing of records.

(2) Creating custom maps, custom data sets, and other custom products and providing geological information of the state. The schedule may include the costs of labor, research, analysis, equipment, and technology.

The rules must establish procedures for the levying and collection of the fees. In addition, the bill authorizes the Chief to reduce or waive a fee in a schedule for a student who is enrolled in an institution of higher education. All fees collected pursuant to a schedule must be credited to the existing Geological Mapping Fund (see above). Finally, the Ohio Geology Advisory Council must review and the Director of Natural Resources must approve any revision to a fee schedule.

Custom products as intellectual property

The bill exempts custom maps, custom data sets, and other products created and provided by the Division from the Public Records Law by declaring such custom products to be intellectual property records. Under current law, a public record does not include intellectual property records. An intellectual property record is a record, other than a financial or administrative record, that is produced or collected by or for faculty or staff of a state institution of higher learning in the conduct of or as a result of study or research on an educational, commercial, scientific, artistic, technical, or scholarly issue regardless of whether the study or research was sponsored by the institution alone or in conjunction with a governmental body or private concern and that has not been publicly released, published, or patented.

The bill authorizes the Division, pursuant to a contract, to keep confidential custom maps, custom data sets, and other custom products created and information provided by the Division for use by government agencies and colleges and universities. However, it requires the Division, pursuant to a contract, to keep confidential such custom products and information provided for use by persons.

Well logs and related reports

The bill requires a government agency, in addition to any person, firm, or corporation as in current law, that drills, bores, or digs a well for any liquid or gas production or extraction or that bores or digs, in addition to drills, a well for exploring geological formations to keep a careful and accurate log of the activity. it also requires the log and the results of any rock or fluid analyses or of any production or pressure tests, rather than just production tests as in current law, to be reported to the Chief. In addition, the bill authorizes Division personnel to collect samples from such a well of fluids and gases in addition to samples of cores, chips, or sludge.

The bill prohibits a person, firm, agency, or corporation from failing to keep an accurate log or file a report. A violator must be fined between $100 and $1,000 on a first offense and between $1,000 and $2,000 on each subsequent offense.

Use of temporary assistance

The bill authorizes the Chief to obtain temporary assistance from specified persons to make studies, surveys, maps, and plans for economic development or geologic hazards projects rather than for erosion projects as in current law.

Division of Oil and Gas Resources Management

(R.C. 1509.02, 121.04, 124.24, 1501.022, 1509.01, 1509.021, 1509.03, 1509.04, 1509.041, 1509.05, 1509.06, 1509.061, 1509.062, 1509.07, 1509.071, 1509.072, 1509.073, 1509.08, 1509.09, 1509.10, 1509.11, 1509.12, 1509.13, 1509.14, 1509.15, 1509.17, 1509.181, 1509.19, 1509.21, 1509.22, 1509.221, 1509.222, 1509.223, 1509.224, 1509.225, 1509.226, 1509.23, 1509.24, 1509.25, 1509.26, 1509.27, 1509.28, 1509.29, 1509.31, 1509.32, 1509.33, 1509.34, 1509.36, 1509.38, 1509.40, 1509.50, 1510.01, 1510.08, 1561.06, 1561.12, 1561.13, 1561.35, 1561.49, 1563.06, 1563.24, 1563.28, 1571.01, 1571.012, 1571.013, 1571.014, 1571.02, 1571.03, 1571.04, 1571.05, 1571.06, 1571.08, 1571.09, 1571.10, 1571.11, 1571.14, 1571.16, 1571.18, 1571.99, 3750.081, and 6111.044; Section 515.20)

The bill creates the Division of Oil and Gas Resources Management in the Department of Natural Resources. It transfers to the Division the functions and duties of the Division of Mineral Resources Management in the Department with respect to oil and gas. Those functions and duties include:

(1) Regulation of oil and gas wells in Ohio, including permitting, location and spacing, plugging, restoration of disturbed land, and pooling;

(2) Enforcement of the Oil and Gas Law;

(3) Oversight of oil and gas resources inspectors;

(4) Administration and enforcement of the Underground Storage of Gas Law; and

(5) Examination to become and oversight of the state gas storage well inspector.

The bill also establishes transition procedures for the transfer of the functions and duties concerning oil and gas from the Division of Mineral Resources Management to the new Division of Oil and Gas Resources Management.

Abolishment of the Division of Natural Areas and Preserves and transfer of its duties

(R.C. 1517.02 (1541.51), 121.04, 1531.04, 1517.01 (1541.50), 1517.021 (1541.52), 1517.03 (1541.53), 1517.04 (1541.54), 1517.05 (1541.55), 1517.051 (1541.56), 1517.06 (1541.57),

1517.07 (1541.58), 1517.08 (1541.59), 1517.09 (1541.60), 1517.10 (1541.61), 1517.11 (1541.62), 1517.12 (1541.63), 1517.13 (1541.64), 1517.21 (1541.80), 1517.22 (1541.81), 1517.23 (1541.82), 1517.24 (1541.83), 1517.25 (1541.84), 1517.26 (1541.85), 1517.99 (repealed), 1518.01 (1541.70), 1518.02 (1541.71), 1518.03 (1541.72), 1518.04 (1541.73), 1518.05 (1541.74), 1518.99 (repealed), and 1541.99; Section 515.10; cross reference changes to R.C. 109.71, 145.01, 317.08, 742.63, 1501.04, 1501.45, 1506.35, 1513.02, 1531.131, 1531.17, 2935.01, 2935.03, 3714.03, 5709.09, and 5747.113)

The bill eliminates the Division of Natural Areas and Preserves and transfers most of its duties and responsibilities to the Division of Parks and Recreation. Those duties and responsibilities include:

(1) Establishment and administration of a system of nature preserves;

(2) Preparation and maintenance of surveys and inventories of natural areas, rare and endangered species of plants and animals, and other unique natural features;

(3) Identification and designation of plant species native to Ohio that are in danger of extirpation or are threatened with becoming endangered;

(4) Oversight of preserve officers; and

(5) Administration of the program identifying and protecting the state's cave resources.

The bill provides for the necessary transfer of assets and liabilities and provides that legal actions initiated under existing law by the Division of Natural Areas and Preserves are to be continued by the Division of Parks and Recreation. Additionally, as a result of the transfer, the bill eliminates the Division of Natural Areas and Preserves Law Enforcement Fund and transfers any remaining money in that Fund to the Division of Parks and Recreation Law Enforcement Fund.

Ohio Natural Heritage Database

The bill transfers the management of the Ohio Natural Heritage Database from the Division of Natural Areas and Preserves to the Division of Wildlife. It requires the Chief of the Division of Wildlife, in addition to the Chief of the Division of Parks and Recreation under the bill, to prepare and maintain surveys and inventories of rare and endangered species of plants and animals and other unique natural features for inclusion in the Database. It retains the requirement that the Chief of the Division of Natural Areas and Preserves (the Chief of the Division of Parks and Recreation under the bill) prepare and maintain surveys and inventories of natural areas for inclusion in the Database.

Natural Areas and Preserves and State Parks Fund

The bill renames the existing Natural Areas and Preserves Fund the Natural Areas and Preserves and State Parks Fund. It adds to the purposes for which money in the renamed Fund may be used for, including the acquisition of parks and recreation properties, projects related to parks and recreation, and maintenance, repair, and renovation of parks and recreation facilities.

Drilling on state park land

(R.C. 1541.03, 1541.25, and 1541.26)

The bill authorizes the Chief of the Division of Parks and Recreation, with the approval of the Director of Natural Resources, to sell, lease, or transfer minerals or mineral rights on state-owned lands that the Division administers when the Chief and the Director determine it to be in the best interest of the state. Upon approval of the Director, the Chief may enter into contracts, including leases, to drill for oil and natural gas on and under those lands with any person who complies with the terms of such a contract. No such contract must be valid for more than 50 years. Consideration for minerals and mineral rights must be by rental or royalty basis as prescribed by the Chief and payable as prescribed by contract. Money collected from rentals must be credited to the existing State Park Fund. Money collected from royalties must be credited to the Parks Mineral Royalties Trust Fund created by the bill.

Parks Mineral Royalties Trust Fund

As noted above, the bill creates the Parks Mineral Royalties Trust Fund, which must be in the custody of the Treasurer of State and must be a part of the state treasury.[158] The Fund must consist of royalties paid to the Division pursuant to the sale, lease, or transfer of minerals or mineral rights as provided in the bill. Money in the Fund must be used by the Division to facilitate capital improvements, maintenance, repairs, and renovations on state-owned properties that the Division administers (Division properties).

Investment earnings of the Fund must be credited to the Parks Mineral Royalties Fund created by the bill. Quarterly each fiscal year, those investment earnings must be transferred to the Parks Mineral Royalties Fund. Additionally, upon the request of the Director of Natural Resources, the Director of Budget and Management annually may transfer an amount not to exceed 10% of the principal of the Parks Mineral Royalties Trust Fund to the Parks Mineral Royalties Fund.

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[158] The intent of this provision is unclear because a custodial account by definition is not a part of the state treasury.

Parks Mineral Royalties Fund

The bill also creates in the state treasury the Parks Mineral Royalties Fund. The Fund must consist of all investment earnings of the Parks Mineral Royalties Trust Fund and any principal transferred from the Trust Fund as authorized by the bill. Money in the Parks Mineral Royalties Fund must be used by the Division of Parks and Recreation to facilitate capital improvements, maintenance, repairs, and renovations on Division properties. All expenditures from the Fund must be approved by the Director.

Sale of timber and forest products from state parks

(R.C. 1541.05)

The bill allows the Chief of the Division of Parks and Recreation, with the approval of the Director of Natural Resources, to sell or otherwise dispose of by lawful means forest products, in addition to timber as in current law, that require management for specified reasons. Currently, those reasons include the improvement of wildlife habitat, protection against wildfires, provision of access to recreational facilities, and improvement of the safety, quality, or appearance of any state park area. The bill adds implementation of sustainable forestry practices as another reason for which forest products and timber may be sold or disposed of.

Under current law, retained by the bill, the Chief also may sell or otherwise dispose of standing timber that as a result of certain natural occurrences may present a hazard to life or property and timber that has weakened or fallen on lands under the control and management of the Division.

The bill authorizes the Chief of the Division of Parks and Recreation to enter into a memorandum of understanding with the Chief of the Division of Forestry to allow the Division of Forestry to administer the sale of timber and forest products on lands owned or controlled by the Division of Parks and Recreation. 75% of the proceeds from such a sale must be credited to the existing State Park Fund, and 25% of the proceeds must be credited to the existing State Forest Fund.

Currently, proceeds from the disposition of items by the Chief of the Division of Parks and Recreation, including timber and forest products specified above and agricultural products that are grown or raised by the Division, must be credited to the State Park Fund.

Coal-Workers Pneumoconiosis and Mine Safety Funds

(R.C. 4131.03)

The bill authorizes the Director of Natural Resources annually to request the Administrator of Workers' Compensation to transfer to the Mine Safety Fund a portion of the investment earnings credited to the Coal-Workers Pneumoconiosis Fund. If the Administrator receives a request from the Director, the Administrator, on July 1 or as soon as possible after that date, must transfer from those investment earnings an amount not to exceed $3 million. The bill eliminates current law that instead authorizes the Administrator to transfer an unspecified portion of the investment earnings credited to the Coal-Workers Pneumoconiosis Fund to the Mine Safety Fund. It retains current law that requires the Administrator to adopt rules to ensure the solvency of the Coal-Workers Pneumoconiosis Fund.

Conservation Program Delivery Task Force

(Section 715.10)

The bill requires the existing Ohio Soil and Water Conservation Commission to establish a Conservation Program Delivery Task Force. The Task Force must provide recommendations to the Director of Natural Resources regarding how soil and water conservation districts established under current law may advance effective and efficient operations while continuing to provide local program leadership. The bill also requires the Task Force to examine methods for improving services and removing impediments to organizational management and explore opportunities for sharing services across all levels of government.

The Task Force must hold its first meeting no later than September 1, 2011, and submit a final report of recommendations to the Director and the Commission no later than December 31, 2011. Upon submission of the final report, the Task Force ceases to exist.

Under the bill, the chairperson of the Commission in consultation with the Director can appoint no more than nine members to the Task Force. The Task Force must include members of the boards of supervisors of soil and water conservation districts and other individuals who represent diverse geographic areas of the state and may include members from the Ohio Federation of Soil and Water Conservation Districts, the Natural Resources Conservation Service in the United States Department of Agriculture, the County Commissioners' Association of Ohio, the Ohio Municipal League, and the Ohio Township Association. The Task Force may consult with those organizations and agencies.

The bill states that the chairperson of the Commission or another member of the Commission who is designated by the chairperson must serve as chairperson of the Task Force. Members appointed to the Task Force must serve without compensation and cannot be reimbursed for expenses. The Division of Soil and Water Resources in the Department of Natural Resources must provide technical and administrative support as needed by the Task Force.

OPTICAL DISPENSERS BOARD (ODB)

- Removes the graduated fee schedule for the optician licensure application and makes the fee $50, regardless of when the licensure application is submitted.
- Decreases to $50 (from $75) the reciprocity fee for out-of-state opticians seeking licensure in Ohio.
- Increases to $20 (from $10) the initial and annual optician apprentice registration fees.

Fees charged by the Board

Licensure application fee

(R.C. 4725.48 and 4725.50)

The bill removes the graduated fee schedule for applicants seeking initial licensure as an optician and makes the fee $50, regardless of when the application is submitted. The current graduated fee schedule is as follows:

--For applications submitted in January − March: $50;

--For applications submitted in April − June: $37.50;

--For applications submitted in July − September: $25;

--For applications submitted in October − December: $12.50.

Reciprocity licensure fee

(R.C. 4725.57)

The bill decreases to $50 (from $75) the reciprocity fee for an out-of-state optician seeking licensure in Ohio. The bill retains current law's requirements regarding age, moral character, and education that must be met by out-of-state applicants. It specifies that the Optical Dispensers Board may require that an out-of-state applicant have received a passing score, as determined by the Board, on an examination that is substantially the same as the examination required to be taken by in-state applicants.

Apprentice registration fee

(R.C. 4725.52)

The bill increases both the initial registration fee and annual registration renewal fee for optician apprentices to $20 (from $10).

STATE BOARD OF OPTOMETRY (OPT)

- Increases the initial and renewal fees for an optometrist certificate of licensure from $110 to $130.
- Increases the initial and renewal fees for an optometrist therapeutic pharmaceutical agents certificate and the renewal fee for an optometrist topical ocular pharmaceutical agents certificate from $25 to $45.
- Increases the fees for late completion or submission, or both, of continuing optometric education and for late renewal of one or more expired optometrist certificates from $75 to $125.

Fees for optometrists

(R.C. 4725.34)

The bill increases some of the fees charged to optometrists as follows:

(1) Initial certificate of licensure: increased to $130 (from $100);

(2) Initial therapeutic pharmaceutical agents certificate: increased to $45 (from $25);

(3) Renewal of certificate of licensure: increased to $130 (from $110);

(4) Renewal of a topical ocular pharmaceutical agents certificate: increased to $45 (from $25);

(5) Renewal of a therapeutic pharmaceutical agents certificate: increased to $45 (from $25);

(6) Late completion or submission, or both, of continuing optometric education: increased to $125 (from $75);

(7) Late renewal of one or more expired certificates: increased to $125 (from $75).

OHIO BOARD OF REGENTS (BOR)

Charter universities

- Requires the Chancellor to develop a plan for designating public institutions of higher education as charter universities, allowing qualifying institutions increased flexibility in managing their finances and operations.
- States that institutions meeting the plan's eligibility criteria may enter into negotiations with the Governor to develop a management agreement.
- Requires the Chancellor to report, by August 15, 2011, recommendations for changes in policy, statute, and administrative rules, and states the General Assembly's intent to take actions necessary for implementation of the plan to commence July 1, 2012.
- Requires each state agency and each state institution of higher education to provide the Chancellor with assistance, upon request, in developing the plan.

Faculty workloads

- Beginning with the 2011-2012 academic year, requires each state institution of higher education to modify or adopt a faculty workload policy so that full-time research and instructional faculty members, individually or in the aggregate, must teach at least one additional course during each two-year period than the previous two-year period.

- Maintains the current law that institutional faculty workload policies prevail over collective bargaining agreements.

- Requires the Chancellor to report to the Governor and General Assembly on the efforts of state institutions of higher education to increase teaching workloads by December 1, 2012.

Three-year baccalaureate degrees

- Requires all state institutions of higher education that offer baccalaureate degrees to issue a statement describing a method of earning those degrees in three years, and sets a timeline by which institutions must complete the statements for 10% and 60% of majors offered.

College remediation

- Requires the presidents of the state institutions of higher education jointly to establish by December 31, 2012, uniform statewide standards in math, science, reading, and writing for a student to be considered as having a "remediation-free" status.

- Requires the state institutions annually to report (1) their remediation costs, both in the aggregate and disaggregated according to the school districts from which the students graduated and (2) any other information with respect to remedial courses that the Chancellor considers appropriate.

- Requires the Chancellor and the Superintendent of Public Instruction to issue an annual report recommending policies and strategies for reducing the need for college remedial courses at state institutions.

Distance learning clearinghouse

- Makes changes in the administration of the distance learning clearinghouse, currently operated by the Chancellor.

- Requires that the clearinghouse be located in the Ohio Resource Center for Mathematics, Science, and Reading administered by the College of Education and Human Ecology at The Ohio State University.

- Establishes the Ohio Digital Learning Task Force to make recommendations, by March 1, 2012, to the Governor and General Assembly on the expansion of digital learning opportunities.

Choose Ohio First scholarship

- Allows colleges and universities to propose Choose Ohio First initiatives that award scholarships for a STEMM teacher education master's program to students who establish domicile in Ohio and commit to teach for at least three years in a hard-to-staff Ohio school district.

Financial interests in intellectual property

- Expands the definition of products that employees of public colleges or universities may hold equity in, under rules adopted by the board of trustees of that institution, to include "intellectual property."

Charter universities

(R.C. 3345.81)

The bill requires the Chancellor to develop a plan for designating some state institutions of higher education as charter universities, having increased flexibility in managing their finances and operations. The language of this provision appears to contemplate that the designation would occur following negotiations with the Governor, resulting in a management agreement with the state that presumably would remove the institution from some state mandates and regulations in statute and rules. And it explicitly states that an institution that meets eligibility criteria in the Chancellor's plan may proceed to negotiations with the Governor. But it might not be clear whether this statement actually authorizes the designation and regulatory changes to occur by administrative action, or only following the development of future legislation, which the bill states the General Assembly intends to address in order for the plan to commence July 1, 2012 (see below).

Initial recommendations; statement of legislative intent to take action

By August 15, 2011, the Chancellor must submit to the General Assembly and the Governor findings and recommendations for use in developing changes to policy, statute, and administrative rules necessary to implement the plan. The bill states that "the General Assembly intends that the General Assembly, Governor, and Chancellor will take actions necessary for the plan for charter universities to commence July 1, 2012."

Development of the plan

In developing the plan, the Chancellor must:

(1) Study the administrative and financial relationships between the state and its public institutions of higher education, to determine the extent to which they can manage their operations more effectively when accorded flexibility through selected delegation of authority;

(2) Examine legal and other issues, and the feasibility and practicability, related to restructuring the relationship between the state and its public institutions of higher education; and

(3) Consult with the presidents of the institutions.

Contents of the plan

The plan must specify:

(1) The manner in which an institution may become eligible, and performance measures and criteria to determine eligibility. The measures and criteria must address an institution's ability to manage its administrative and financial operations without jeopardizing its financial integrity and stability.

(2) Specific areas of financial and operational authority that are subject to increased flexibility; and

(3) The nature and term of the management agreement between the state and an institution.

Assistance to the Chancellor

The Office of Budget and Management, the Department of Administrative Services, and each state institution of higher education must provide the Chancellor, upon the Chancellor's request, with research assistance, fiscal and policy analysis, and other services during the Chancellor's development of the plan. Any other state agency also must provide any other assistance requested by the Chancellor.

Faculty workloads

(R.C. 3345.45; Section 733.20)

Current law requires the board of trustees of each state university to develop standards for instructional workloads for full-time and part-time faculty, particularly with regard to teaching undergraduate students. Current law does not specify any

minimums, but does require the Chancellor to have issued clear guidelines for universities to determine a range of acceptable undergraduate teaching by faculty. The requirements of each university's policy prevail over collective bargaining agreements.

The bill requires the board of trustees or managing authority of each state institution of higher education (state university, state community college, technical college, community college, and university branch) to modify or adopt, if the institution does not have one, its faculty workload policy to require one of the following, beginning with the 2011-2013 two-year period:

(1) Each full-time research and instructional faculty member to teach at least one more course than the faculty member taught in the preceding two-year period; or

(2) Each academic unit to increase aggregate faculty teaching loads by the equivalent number of courses.

As under current law, the policy would be exempt from collective bargaining.

Thus, under the first option, if a faculty member taught three classes in the 2009-2010 and 2010-2011 academic years, that member would have to increase the member's course load to four classes for the 2011-2012 and 2012-2013 academic years, five classes for the 2013-2014 and 2014-2015 academic years, and so on. The bill does not set an upper limit on the number of courses that a faculty member must teach, nor does it set an end date for the addition of course load.

The bill requires the Chancellor to report to the Governor and General Assembly on the efforts of state institutions of higher education to increase teaching workloads for full-time faculty as required in the bill. The report is due by December 1, 2012, and must include an appendix of courses taught by faculty during fiscal years 2010, 2011, and 2012 and courses planned for fiscal year 2013.

Three-year baccalaureate degrees

(R.C. 3333.43)

The bill requires the Chancellor of the Board of Regents to require all state institutions of higher education (state universities, community colleges, technical colleges, state community colleges, and university branches) that offer baccalaureate degrees to submit a statement describing how each major for which the school offers a baccalaureate degree may be completed within three academic years, consisting of two semesters, or the equivalent, each. The statement must include a chronology starting in the fall semester, or equivalent, of a student's first year. Schools that fail to comply stand to lose authorization from the Chancellor to offer such programs. However, the

bill specifies that institutions are not required to do anything that would violate the requirements of any independent association that accredits baccalaureate degree programs.

Each institution must provide statements for 10% of all baccalaureate degree programs offered by the institution not later than October 15, 2012. Institutions must determine the majors for which to offer statements based on majors with the greatest number of students enrolled from July 1, 2007, to June 30, 2011 (fiscal years 2008 through 2011). Not later than June 30, 2014, institutions must provide statements for 60% of all baccalaureate degrees. Again, institutions must choose majors for which to issue statements based on the majors with greatest number of students enrolled from July 1, 2009, to June 30, 2013 (fiscal years 2010 through 2013).

Each institution must post its three-year option statements on its website and provide that information to the Department of Education, which, in turn, must distribute it to the superintendent, high school principal, and guidance counselor, or the equivalents, of each school district, community ("charter") school, and STEM school in the state.

The statement may include any of the following methods to contribute to earning a degree in three years:

(1) Advanced placement credit;

(2) International baccalaureate program credit;

(3) A waiver of degree and credit-hour requirements earned by completion of college courses through community colleges, on-line courses from state or private, nonprofit institutions of higher education, or the Post-Secondary Enrollment Options program;

(4) Completion of coursework during the summer session immediately preceding the three-year period, provided that the institution offering the summer courses makes them available to at least 95% of students who apply to enroll in those courses; or

(5) A foreign language requirement waiver based on a proficiency examination specified by the institution.

If a method requires a particular score, grade, or passing exam level to earn credit, the statement must specify that score, grade, or level. The statement cannot require students to carry more than the typical course-load or credits taken by an average student per semester, as defined by the Chancellor.

College remediation

(R.C. 3345.061)

The bill requires the presidents, or their designees, of all state institutions of higher education (state universities, community colleges, state community colleges, university branches, and technical colleges) to jointly establish uniform statewide standards in math, science, reading, and writing for a student to be considered as having a "remediation-free" status. These standards must be adopted by December 31, 2012. The presidents also must establish any assessments they find necessary to assess student knowledge in those fields. Each institution must assess the needs of its enrolled students in the manner adopted by the presidents, and each board of trustees must adopt the agreed-upon standards and any related assessments into the institution's policies. The Chancellor must assist in coordinating the presidents' work.

The bill also requires each state institution of higher education to report to the Governor, General Assembly, Chancellor, and Superintendent of Public Instruction annually, on a date established by the Chancellor, all of the following information: (1) the institution's aggregate costs for providing academic remedial or developmental courses, (2) the amount of those costs disaggregated according to the city, local, or exempted village school districts from which the students taking those courses received their high school diplomas, and (3) any other information concerning academic remedial and developmental courses that the Chancellor considers appropriate.

Finally, the bill requires the Chancellor and Superintendent of Public Instruction to issue an annual report recommending policies and strategies for reducing the need for academic remediation and developmental courses at state institutions of higher education. The first report is due on December 31, 2011, and then due on December 31 each year thereafter.

Distance learning clearinghouse

(R.C. 3333.81, 3333.82, 3333.83, 3333.84, 3333.85, and 3333.87; Section 371.60.70; conforming change in R.C. 3313.603)

Background

The Chancellor of the Board of Regents is required under current law to establish and maintain a distance learning clearinghouse. Under that program, school districts, community schools, STEM schools, public and private colleges and universities, and other nonprofit and for-profit course providers may offer on-line or other distance learning courses through the clearinghouse for sharing with other school districts, community schools, STEM schools, public and private colleges and universities, and

individuals. In operating the clearinghouse, the Chancellor must use a "common statewide platform" to support the delivery of courses, but, the provider is solely responsible for the course content. For that purpose, a common statewide platform is defined as a "software program that facilitates the delivery of courses via computers from multiple course providers to multiple end users, tracks the progress of the end user, and includes an integrated searchable database of standards-based course content."[159] The Chancellor maintains the clearinghouse as the "OhioLearns! Gateway," as required by current law, including an online searchable database of both primary-secondary and higher education courses offered through the program (see http://www.ohiolearns.org/).

Relocation of clearinghouse to OSU College of Education

The bill specifies that the distance learning clearinghouse must be located at the Ohio Resource Center for Mathematics, Science, and Reading administered by the College of Education and Human Ecology at The Ohio State University.[160] Presumably, this means that the Chancellor is required to relocate the clearinghouse to the College by contracting with the College to operate the program. But the bill also eliminates some of the language in current law that specifically permits the Chancellor to contract out the clearinghouse.[161] At the very least, it appears that the College is required to operate the clearinghouse under the auspices of the Chancellor in lieu of the Chancellor's operating it directly. The bill does not appear to set a limit on the duration of the bill's statutory arrangement.

The bill requires the College to provide access to its online repository of educational content to offer courses from multiple providers at competitive prices for Ohio students in grades K to 12. It does not indicate whether the College is required to also maintain the current offerings of the clearinghouse, including those offered for higher education students.

Under the bill, the College must review the content of each course offered to assess the course's alignment with the state academic content standards, as adopted by the State Board of Education, and to shall publish its determination about the degree of that alignment. Presumably, this requirement applies only to the courses offered for credit in a primary or secondary school. As noted above, the Chancellor currently is not responsible for the content of courses offered through the clearinghouse.[162] It appears

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[159] R.C. 333.81.

[160] See Section 371.60.70.

[161] R.C. 3333.82(F).

[162] R.C. 3333.82(A).

that the College in administering the program must take some responsibility for course content.[163]

The College also must indicate for each course offered the academic credit that a student may reasonably expect to earn upon successful completion of the course. However, the bill stipulates that a student's school district or school retains "full authority to determine the credit awarded to the student."[164] Still, the bill also appears to require a student's district or school to award some amount of credit for a successfully completed course.[165]

The College is specifically permitted to establish policies to protect the proprietary interest in or intellectual property of the educational content and courses offered through the clearinghouse. The College may require users to agree to the terms of any such policies prior to accessing the repository.[166]

As under current law, the bill specifies that the fee charged for a course offered through the clearinghouse, as it is operated by the College, is set by the course provider. But the bill also permits the College to retain a percentage of the fee to offset the cost of maintaining the clearinghouse.[167] The Chancellor is also permitted under current law to retain a percentage of a provider's fee.[168] It appears that both the Chancellor and the College might be able to retain amounts from the fee for a single course if necessary to offset their respective costs.

Participation by primary and secondary schools

The bill eliminates a current provision that permits a primary and secondary student to enroll in a course through the clearinghouse only if the student's district or school approves it and agrees to accept for credit the grade assigned by the course provider. Instead, the bill requires each school district, community school, and STEM school to encourage students to take advantage of the distance learning opportunities offered through the clearinghouse and to assist them in selecting and scheduling courses that both satisfy the district's or school's curriculum requirements and promote

[163] Section 371.60.70(B).

[164] Section 371.60.70(C).

[165] R.C. 3333.85(B).

[166] Section 371.60.70(E).

[167] Section 371.60.70(D).

[168] R.C. 3333.84(C).

the student's post-secondary college or career plans.[169] It also requires districts and schools to award credit for successfully completed courses that is equivalent to the credit that would be awarded for similar courses offered at the students' districts or schools. Moreover, districts and schools are prohibited from denying or limiting access to or participation in courses offered through the clearinghouse and from refusing to recognize courses that fulfill the minimum high school curriculum.[170]

However, the bill also states that a school district, community school, or STEM school is not required to pay the fee charged for a course taken by a student.[171] Under current law, not changed by the bill, the Chancellor is responsible for prescribing the manner in which the fee for a course "shall be collected or deducted from the school district, school, college or university, or individual subscribing to the course and in which manner the fee shall be paid to the course provider."[172] Presumably, a district or school is free to pay the fee on behalf of a student but cannot be compelled to do so. Still, it is not clear whether a district or school can require a student to take a course through the clearinghouse if it cannot offer the course directly unless it pays for the course on behalf of the student.

Distribution of information by the eTech Ohio Commission

The bill requires the eTech Ohio Commission, in consultation with the Chancellor and the State Board of Education, to distribute information to students and parents describing the clearinghouse. The information must be provided in an easily understandable format.[173]

Guiding principles

The bill prescribes "principles" for how the clearinghouse for K-12 students is to be administered. They are as follows.

"(1) All Ohio students shall have access to high quality distance learning courses at any point in their educational careers.

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[169] R.C. 3333.83(A).

[170] R.C. 3333.85. See also R.C. 3313.603(C).

[171] R.C. 3333.84(D).

[172] R.C. 3333.84(A).

[173] R.C. 3333.82(F).

(2) All students shall be able to customize their education using distance learning courses offered through the clearinghouse and no student shall be denied access to any course in the clearinghouse in which the student is eligible to enroll.

(3) Students may take distance learning courses for all or any portion of their curriculum requirements and may utilize a combination of distance learning courses and courses taught in a traditional classroom setting.

(4) Students may earn an unlimited number of academic credits through distance learning courses.

(5) Students may take distance learning courses at any time of the calendar year.

(6) Student advancement to higher coursework shall be based on a demonstration of subject area competency instead of completion of any particular number of hours of instruction."[174]

Rules for implementation of the clearinghouse

Current law requires the Chancellor to adopt rules in accordance with the Administrative Procedures Act prescribing procedures for implementation of the clearinghouse. The bill prescribes instead that the Chancellor and the State Board of Education, jointly, must adopt such rules. The Chancellor and the State Board must consult with the Director of the Governor's Office of 21st Century Education in adopting those rules.[175]

The Ohio Digital Learning Task Force

(Section 371.60.80)

The bill establishes the Ohio Digital Learning Task Force "to develop a strategy for the expansion of digital learning that enables students to customize their education, produces cost savings, and meets the needs of Ohio's economy."

The Task Force consists of the following members:

(1) The Chancellor;

(2) The Superintendent of Public Instruction;

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[174] R.C. 3333.82.

[175] R.C. 3333.87.

(3) The Director of the Governor's Office of 21st Century Education;

(4) Up to six members appointed by the Governor, who must be representatives of school districts that are ranked in the highest 5% of districts statewide according to performance index and have demonstrated the ability to incorporate technology into the classroom successfully. These members must be appointed by September 30, 2011.

The Governor must designate the chairperson of the Task Force. Meetings of the Task Force are held at the call of the chairperson.

Recommendations

The Task Force must issue a report, by March 1, 2012, to the Governor, President of the Senate, and Speaker of the House with recommendations regarding all of the following:

(1) The "creation of high quality digital content and instruction" for free access by public and nonpublic schools and students receiving home instruction;

(2) "High quality professional development for teachers and principals providing online instruction or blended learning programs";

(3) Funding strategies;

(4) Student assessment and accountability;

(5) Infrastructure to support digital learning;

(6) Mobile learning and mobile learning applications;

(7) The distance learning clearinghouse (see above);

(8) "Ways to align the resources and digital learning initiatives of state agencies and offices";

(9) "Issuance of a request for proposals to establish a digital learning site, including a learning management system for the provision of free online instruction to public and nonpublic schools and students receiving home instruction to replace the OhioLearns! Gateway" (see "**Background**" under "**Distance Learning Clearinghouse**" above);[176] and

[176] It is not clear whether the Task Force is supposed to make recommendations for modifying the distance learning clearinghouse, as it is administered by The Ohio State University College of Education

(10) Methods of addressing future changes in technology and learning.

Upon issuing its report, the Task Force will cease to exist.

Choose Ohio First scholarship to recruit STEMM teachers

(R.C. 3333.66)

The law authorizing the Choose Ohio First scholarship program generally contemplates that the program will award money for scholarships to undergraduate students in the STEMM fields (science, technology, engineering, math, or medicine) or in STEMM education. But it also directs the Chancellor to encourage state colleges and universities, alone or in collaboration with each other or with private institutions, to submit proposals to attract Ohio residents attending college elsewhere to return to Ohio for *graduate-level* study in a STEMM field or in STEMM education.

The bill directs the Chancellor to encourage a second type of proposal for graduate students, to retain students already in Ohio to take a master's teacher education program in a STEMM field and teach in a hard-to-staff Ohio school district. Specifically, it directs the Chancellor to encourage proposals to award scholarships to STEMM graduates (or undergraduates who will graduate in time to participate in the proposed program by the subsequent school year) from an Ohio college or university to participate in a teacher education masters program in a STEMM field. To qualify for approval, a proposal must require that a participant establish domicile in Ohio and commit to teach for a minimum of three years in a hard-to-staff school district, as defined by the Department of Education, after completing the master's degree program. (The bill does not elaborate how the three-year teaching obligation might be enforced; presumably, through contractual obligation.) Moreover, the Chancellor may require a proposing college or university to give priority to qualified candidates who graduated from an Ohio high school.

Background

The Choose Ohio First Scholarship Program is part of the Ohio Innovation Partnership, which also includes the Ohio Research Scholars Program and the Ohio Co-op/Internship Program. The Choose Ohio First Scholarship Program assigns a number of scholarships to state universities and NEOUCOM to recruit Ohio residents as undergraduate students in the STEMM fields or in STEMM education. The scholarships are awarded to each participating eligible student as a grant to the state

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under the bill, or replacement of the clearinghouse, as administered by the Chancellor as OhioLearns!, or replacement of both with some other new system.

university or college the student is attending and must be reflected on the student's tuition bill.

A student who receives a Choose Ohio First scholarship must receive at least $1,500, but no more than one-half of the highest in-state, undergraduate instructional and general fees charged by all state universities. However, the Chancellor may authorize an institution of higher education to award a scholarship for more than that amount to either (1) an undergraduate student enrolled in a program leading to a teaching profession in a STEMM field or (2) a graduate student in a STEMM field or STEMM education. As stated above, 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.

Financial interests in intellectual property

(R.C. 3345.14)

Under current law, the board of trustees of a state college or university may adopt rules under which an employee may solicit or accept, or a person may give or promise to an employee, a financial interest in any entity (firm, corporation, or other association) to which the board has given (assigned, licensed, or transferred) or sold the university's interests in the employee's discoveries, inventions, or patents. The bill broadens the potential products that a board could allow an employee to hold a financial interest in to include any "intellectual property." Thus, under the bill, an employee of a state college or university may, if permitted under the rules adopted by the institution's board of trustees, hold equity in any intellectual property created by the employee that the college or university has transferred or sold to another entity.

DEPARTMENT OF REHABILITATION AND CORRECTIONS (DRC)

- Revises the authority of the Department of Rehabilitation and Correction (DRC), a county, or a municipality to contract for the private operation and management of a state or specified local correctional facility by a private person or entity by repealing a 2-year limitation on the duration of an initial contract and repealing a requirement that the contractor generally must be accredited by the American Correctional Association.

- Expressly authorizes DRC's Director and the Director of Administrative Services to contract with a private person or entity for the private operation of the Lake Erie Correctional Facility, the Grafton Correctional Institution, the North Coast

Correctional Treatment Facility, the North Central Correctional Institution, and the vacated correctional facility previously operated by the Department of Youth Services that is adjacent to the North Central Correctional Institution and the transfer of the state's right, title, and interest in the facility to the private person or entity, and requires additional terms in a contract of that nature.

- Authorizes the sale of the state's right, title, and interest in the real property on which a facility described in the preceding dot point is situated and any surrounding land to the private person or entity privately operating the facility pursuant to a contract described in that dot point.

- Permits rather than requires the DRC to provide laboratory services to itself and the departments of Mental Health, Developmental Disabilities, and Youth Services.

- Expands the definition of a DRC "psychiatric hospital" operated for the treatment of inmates to include a portion of a facility that is operated by DRC, designated as a psychiatric hospital, licensed, and in compliance with applicable standards.

- Provides that a psychiatric hospital is no longer limited to those facilities operated by DRC but also includes those operated by a contractor of DRC.

- Provides that any money received by DRC for agricultural products produced in penal and correctional institutions be deposited into the Ohio Penal Industries Manufacturing Fund.

- Renames the Services and Agricultural Fund the Institutional Services Fund.

- Modifies the purposes for which money in the Institutional Services Fund may be used.

- Modifies the purposes for which money in the Ohio Penal Industries Manufacturing Fund may be used.

- Increases from $500 to $1,000 the initial threshold amount for determining increased penalties (generally from a misdemeanor to a felony) for theft-related offenses and increases by 50% the other threshold amounts for determining increased penalties for those offenses.

- Increases from $500 to $1,000 the threshold amount of the value of property or amount of physical harm required to commit vandalism in specified circumstances and increases by 50% the property value thresholds used in determining the penalty for the offense, and increases from $500 to $1,000 the property valuations that are used in determining whether certain criminal activity constitutes corrupt activity.

- Provides that if "nonsupport of dependents" is based on an abandonment of or failure to support a child or a person to whom a court order requires support and is a felony, the sentencing court generally must first consider placing the offender on one or more community control sanctions.

- Adds a possible prison term of 11 years to the possible prison term range for a first degree felony and changes the possible prison term range for a third degree felony from 1, 2, 3, 4, or 5 years to 9, 12, 18, 24, or 36 months.

- Generally requires a community control sanction as a sentence for a fourth or fifth degree felony that is not an offense of violence but authorizes a prison term if the offender possessed or controlled a firearm or caused physical harm to another person.

- Allows a judge in specified circumstances to recommend risk reduction sentencing for an offender sentenced to prison for a felony, requires DRC to provide risk reduction programming and treatment for such an offender who meets specified eligibility criteria, and requires such an offender who completes such treatment or programming to be released to supervised release after serving at least 75% of the prison term.

- Allows a court to sentence a felony offender to a "community-based corrections program" if the offender is convicted of a first, second, or third degree felony, is convicted of a fourth or fifth degree felony and found to be a high risk of reoffending or violating a term of supervision under the bill's single validated risk assessment tool, or has had one or more community residential or nonresidential sanctions revoked and is a medium or high risk under that assessment tool.

- Specifies that a term at a community-based correctional facility is a community residential sanction if the relevant felony offender is convicted of a first or second degree felony, is convicted of a third degree felony and is a medium or high risk of reoffending or violating a term of supervision under the bill's single validated risk assessment tool, is convicted of a fourth or fifth degree felony and is a high risk under that assessment tool, or has had one or more community residential sanctions or nonresidential sanctions revoked and is a medium or high risk under that assessment tool.

- Revises the earned credits mechanism to authorize certain eligible prisoners to earn five days of credit for each month of productive participation in a specified prison program, certain eligible prisoners imprisoned for specified, serious offenses to earn one day of credit for each month of such productive participation in a program, and any such eligible prisoner to earn days of credit for successful completion of such a

program; limits the aggregate days of credit a prisoner may so earn to not more than 8% of the total number of days in the prisoner's stated prison term; eliminates days of credit for sex offender treatment programs; and makes prisoners sentenced for a sexually oriented offense on or after the bill's effective date ineligible for such credit.

- Authorizes DRC's Director to petition the sentencing court for the judicial release of an inmate who is serving a stated prison term of one year or more, who is eligible under specified eligibility criteria, and who has served at least 85% of the term remaining after becoming eligible and requires that an inmate released under this mechanism be placed under Adult Parole Authority (APA) supervision and be under GPS monitoring in specified cases.

- Requires the Chair of the Parole Board or the Chair's designee to review the cases of all parole-eligible inmates who are 65 or older and who have had a parole consideration hearing, requires the Chair to present to the Board the cases of those offenders, and authorizes the Board to choose to rehear the offender's case for possible parole.

- Eliminates the difference in criminal penalties for drug offenses involving crack cocaine and powder cocaine, provides a penalty for all such drug offenses involving any type of cocaine that generally has a severity that is between the two current penalties, and revises a penalty for possession of cocaine.

- Revises some of the penalties for trafficking in marihuana or hashish and possession of marihuana or hashish.

- Revises and clarifies the law regarding prosecution of multiple theft, Medicaid fraud, workers' compensation fraud, and similar offenses and the valuation of property or services involved.

- Includes workers' compensation fraud as a theft offense.

- Requires DRC to select a "single validated risk assessment tool" for assessing the likelihood of a person reoffending or violating a term of supervision to be used by courts, probation departments, correctional facilities, the APA, and the Parole Board, requires training and certification for all employees of those entities who will use the assessment tool, and requires each entity that uses the assessment tool to develop specified policies and protocols related to it.

- Requires a court of common pleas to follow specified procedures when appointing a chief probation officer, requires that probation officers be trained in accordance with minimum APA standards, and requires a court of common pleas to require the

probation department to publish specified policies for probationer supervision and provide DRC with a monthly report of specified statistical data.

- Establishes a mechanism for the supervision by a single entity of specified offenders who are subject to supervision by multiple supervisory authorities.

- Modifies for a person serving a community control sanction who is arrested the time at which notice of the arrest must be given to the person's probation officer and at which the arrested person must be brought before a court.

- Specifies that, in order to be eligible for a DRC community corrections subsidy, counties, groups of counties, and municipalities must satisfy all applicable probation department requirements, utilize the bill's single validated risk assessment tool, and deliver programming that addresses the needs of high risk offenders; requires that the county comprehensive plan adopted by the local corrections planning board of a county that desires to receive a subsidy must include a description of the offender population's assessed needs and the capacity to deliver services and programs within the county and surrounding region that address those needs; and authorizes, instead of requiring, DRC to discontinue subsidy payments to a political subdivision that receives a subsidy and that reduces, by any amount, the amount of local, nonfederal funds it expends for corrections or that uses any portion of the subsidy to make capital improvements.

- Requires DRC to establish and administer a Probation Improvement Grant and a Probation Incentive Grant for court of common pleas probation departments that supervise felony offenders and specifies the purposes and uses of, stipulations that apply to, and controls regarding, the Grants.

Correctional facilities – private operation and transfer of state facilities to private owner

Private operation of state or local correctional facilities

(R.C. 9.06; Section 753.10)

Existing law authorizes the Department of Rehabilitation and Correction (DRC) to contract for the private operation and management of any state correctional institution. It also generally authorizes counties and municipal corporations to contract for the private operation and management of a county, multicounty, municipal, municipal-county, or multicounty-municipal jail, workhouse, prison, or other correctional facility used only for misdemeanants. Any state correctional institution or

local facility that is the subject of any such contract is a "facility" for purposes of the provision. A contract under the provision must be for an initial term of not more than two years with an option to renew for additional periods of two years. A person or entity that enters into a contract to operate and manage a state correctional institution or local facility under the provision (the contractor) generally must be accredited by the American Correctional Association and, at the time of the person's or entity's application to enter into the contract, must operate and manage one or more facilities accredited by the Association. Existing law establishes procedures that govern the execution of any such contract, prescribes terms that must be in the contract, imposes duties and standards that apply to the contractor in operating the facility, and specifies other criteria that apply to the operation of the facility. Among the mandatory contract terms is a requirement that the contractor retain accreditation from the American Correctional Association throughout the contract term.

The bill modifies current law regarding a contract for the private operation and management of a state correctional institution or for any of the specified local facilities in several ways:

(1) First, it replaces the requirement that any such contract must be for an initial term of not more than two years with a requirement that the contract must be for an initial term specified in the contract.

(2) Second, it repeals the requirement that the contractor generally must be accredited by the American Correctional Association and the related mandatory contract term that specifies that any such contract must include a requirement that the contractor retain accreditation from the Association throughout the contract term.

(3) Third, it expands the provision to include new language that applies only in relation to the private operation and management of any of five state institutions that DRC and the Department of Administrative Services (DAS) are authorized to sell, as described below in "**Authorization for sale of state facilities**." The institutions are four specified state correctional institutions and one closed Department of Youth Services (DYS) institution. Regarding those institutions, the bill expands the definition of "facility" that applies to the provision so that the term includes any of those institutions at any time prior to or after any sale to a contractor of the state's right, title, and interest in the facility, the land situated thereon, and specified surrounding land. It specifies that if, on or after its effective date, a contractor enters into a contract with DRC for the operation and management of any of those institutions, if the contract provides for the sale of the facility to the contractor, if the facility is sold to the contractor subsequent to the execution of the contract, and if the contractor is privately operating and managing the facility, notwithstanding the contractor's private operation and management of the facility, all of the following apply:

(a) Except as expressly provided to the contrary in the provision, the facility being privately operated and managed by the contractor is to be considered for purposes of the Revised Code as being under the control of, or under the jurisdiction of, DRC.

(b) Any reference in the provision to "state correctional institution," any reference in R.C. Chapter 2967. to "state correctional institution," other than the definition of that term set forth in R.C. 2967.01, or to "prison," and any reference in R.C. Chapter 2929., 5120., 5145., 5147., or 5149. or any other R.C. provision to "state correctional institution" or "prison" is to be considered to include a reference to the facility being privately operated and managed by the contractor, unless the context makes the inclusion of that facility clearly inapplicable.

Authorization for sale of state facilities

(Section 753.10; R.C. 5120.092)

The bill authorizes DAS's Director and DRC's Director to award one or more contracts through requests for proposals for the operation and management by a contractor of one or more of the facilities described in this paragraph, pursuant to the provision described above in "**Private operation of state or local correctional facilities**," and for the transfer of the state's right, title, and interest in the real property on which the facility is situated and any surrounding land. This provision applies to the Lake Erie Correctional Facility, the Grafton Correctional Institution, the North Coast Correctional Treatment Facility, the North Central Correctional Institution, and the vacated correctional facility previously operated by DYS that is adjacent to the North Central Correctional Institution.

If DAS's Director and DRC's Director award a contract of the type described in the preceding paragraph to a contractor regarding any of the five specified facilities, in addition to the requirements, statements, and authorizations that must be included in the contract pursuant to the provision described above in "**Private operation of state or local correctional facilities**," the contract must include all of the following regarding the facility that is the subject of the contract:

(1) An agreement for the sale to the contractor of the state's right, title, and interest in the facility, the land situated thereon, and specified surrounding land;

(2) A requirement that the contractor provide preferential hiring treatment to DRC employees in order to retain staff displaced as a result of the transition of the operation and management of the facility and to meet the administrative, programmatic, maintenance, and security needs of the facility;

(3) Notwithstanding any Revised Code provision, authorization for the transfer to the contractor of any supplies, equipment, furnishings, fixtures, or other assets considered necessary by DRC's Director and DAS's Director for the continued operation and management of the facility.

If DAS's Director and DRC's Director award a contract of the type described above to a contractor regarding any of the five specified facilities, notwithstanding any Revised Code provision, the state may transfer to the contractor in accordance with the contract any supplies, equipment, furnishings, fixtures, or other assets considered necessary by DRC's Director and DAS's Director for the continued operation and management of the facility. For purposes of this paragraph and the transfer authorized under it, any such supplies, equipment, furnishings, fixtures, or other assets are not considered supplies, excess supplies, or surplus supplies as defined in R.C. 125.12 and may be disposed of as part of the transfer of the facility to the contractor.

The bill states that nothing in the provisions described in the preceding paragraphs or in its parts that identify the five specified facilities and provide the procedures and details of a sale of any of those facilities restricts DRC from contracting for only the private operation and management of any of those facilities.

The bill provides procedures and details regarding the sale of any of the five specified facilities. It authorizes the Governor to execute a deed in the name of the state conveying to the grantee, its successors and assigns, all of the right, title, and interest of the state in the particular facility, the land situated thereon, and any surrounding land. Consideration for conveyance of the real estate must be set forth in the contract and be paid in accordance with its terms. The deed may contain any restriction that DAS's Director and DRC's Director determine is reasonably necessary to protect the state's interest in neighboring state-owned land. The deed must contain restrictions prohibiting the grantee from using, developing, or selling the real estate, or the correctional facility on it, except in conformance with the restriction, or if the use, development, or sale will interfere with the quiet enjoyment of the neighboring state-owned land, and from using the real estate for any use other than as a correctional institution. The real estate must be sold as an entire tract and not in parcels. Upon payment of the purchase price as set forth in the contract, the Auditor of State, with the assistance of the Attorney General, is to prepare a deed to the real estate. The grantee must present the deed for recording in the office of the recorder of the county in which the particular facility is located. The grantee must pay all costs associated with the purchase and conveyance of the real estate, including recordation costs of the deed. The authorizations for the sale of the five specified facilities expire two years after the authorizations' effective date.

The proceeds of the conveyance of any of the five specified facilities must be deposited into the state treasury to the credit of the Adult and Juvenile Correctional Facilities Bond Retirement Fund, which the bill creates. The proceeds must be used to redeem or defease the outstanding portion of any state bonds issued for the facilities sold, and any remaining proceeds must be transferred to the General Revenue Fund.

Laboratory services

(R.C. 5120.135)

The bill permits rather than requires DRC to provide laboratory services to itself and the departments of Mental Health, Developmental Disabilities, and Youth Services. The bill also removes from law a complementary provision detailing what happens if DRC provides unsatisfactory laboratory services to the departments of Mental Health, Developmental Disabilities, and Youth Services.

Definition of a Department "psychiatric hospital"

(R.C. 5120.17(A)(3))

Under existing law, DRC may transfer an inmate who is a mentally ill person subject to hospitalization from a state correctional institution to a psychiatric hospital, pursuant to specified procedures. Current law defines a "psychiatric hospital" for this purpose.

The bill amends the current definition of a psychiatric hospital to define a psychiatric hospital as a facility *or a portion of a facility* (added by the bill) that is operated by DRC *or its contractor* (added by the bill), is designated as a psychiatric hospital, is licensed by the Department of Mental Health, and is in substantial compliance with the standards set by the Joint Commission on Accreditation of Healthcare Organizations. The current definition of a psychiatric hospital does not include a "portion" of a facility or a facility operated by a contractor of DRC. Under current law, a portion of a facility otherwise meeting the qualifications of a psychiatric hospital or a facility operated by a contractor of DRC is not a psychiatric hospital.

Deposit into Ohio Penal Industries Manufacturing Fund

(R.C. 5120.28)

Existing law requires that any money received by DRC for labor and services performed and agricultural products produced be deposited into the Services and Agricultural Fund. That money must be used for specified purchases and payments

and must be accounted for pursuant to an accounting system for the allocation of the earnings of each prisoner, created by rule pursuant to R.C. 5145.03(B).

The bill removes the requirement that those moneys be deposited into the Services and Agricultural Fund and instead requires that any money received by DRC for agricultural products produced and articles manufactured in penal and correctional institutions (already required under existing law) be deposited into the Ohio Penal Industries Manufacturing Fund. It does not specify any fund for the receipt of money earned by DRC for labor and services performed.

Institutional Services Fund

(R.C. 5120.29(A))

Existing law creates the Services and Agricultural Fund and specifies the purposes for which the Fund may be used. The bill renames the Services and Agricultural Fund the Institutional Services Fund. It also alters several of the purposes for which the money in the Institutional Services Fund may be used by specifying that the money may be used for the following purposes:

(1) Purchasing material, supplies, and equipment and the erection and extension of buildings used in *services provided between institutions of the Department of Rehabilitation and Correction* (replacing service industries and agriculture);

(2) Payment of compensation to employees necessary to carry on *institutional services* (replacing the service industries and agriculture);

(3) Payment of prisoners confined in state correctional institutions a portion of their earnings in accordance with rules adopted by the Department (same as existing law).

The bill also eliminates the purchase of lands and buildings for service industries and agriculture as one of the purposes of the Fund.

Ohio Penal Industries Manufacturing Fund

(R.C. 5120.29(B))

Existing law requires that the Ohio Penal Industries Manufacturing Fund be used for the following:

(1) Purchasing material, supplies, and equipment and the erection and extension of buildings used in manufacturing;

(2) Purchasing of lands and buildings necessary to carry on or extend the manufacturing industries;

(3) Payment of compensation necessary to carry on the manufacturing industries;

(4) Payment of prisoners confined in state correctional institutions a portion of their earnings in accordance with rules adopted by the Department.

The bill modifies the purposes of the Ohio Penal Industries Manufacturing Fund by allowing the purchase of materials, supplies, and equipment, the erection and extension of buildings, the purchase of lands and buildings, and the payment of compensation of employees for agriculture.

Threshold amount for increased penalties − theft-related and other crimes

(R.C. 926.99, 1333.99, 1707.99, 1716.99, 2909.03, 2909.11, 2913.02, 2913.03, 2913.04, 2913.11, 2913.21, 2913.31, 2913.32, 2913.34, 2913.40, 2913.401, 2913.42, 2913.421, 2913.43, 2913.45, 2913.46, 2913.47, 2913.48, 2913.49, 2913.51, 2913.61, 2915.05, 2917.21, 2917.31, 2917.32, 2921.13, 2921.41, and 2981.07; Section 803.20)

Existing law

Under existing law, the penalties for many theft-related offenses and for certain non-theft-related offenses are increased as the value of the victim's loss, or the value of the property or loss that was the subject of the offense, increases. Generally, for the offenses, a default penalty (generally a misdemeanor) is provided and that penalty applies unless the value of the property or loss involved in the offense reaches or exceeds a specified threshold. If the specified threshold value is reached or exceeded, an increased penalty (generally a felony) is provided. Generally, for the offenses, the initial threshold amount that must be reached or exceeded for the penalty to be increased above the default penalty is $500. For some of the offenses, additional threshold amounts in excess of $500 are provided, and, if the value of the property or loss involved in the offense reaches or exceeds the higher threshold amount, the penalty is increased above the penalty that is provided when the value reaches or exceeds $500.

The offenses to which penalty provisions of the type described in the preceding paragraph apply are: operating as an agricultural commodities handler without a license when insolvent; proposing, planning, preparing, or operating a pyramid sales plan or program; certain violations of the state's securities law; solicitation fraud; arson, when committed in specified circumstances; petty theft and theft; theft from an elderly person or disabled adult; unauthorized use of a vehicle when committed in specified

circumstances; unauthorized use of computer, cable, or telecommunications property when committed in specified circumstances; passing bad checks; misuse of credit cards when committed in specified circumstances; forgery when committed in specified circumstances; criminal simulation; trademark counterfeiting when committed in specified circumstances; Medicaid fraud; Medicaid eligibility fraud; tampering with records when committed in specified circumstances; illegally transmitting multiple commercial electronic mail messages; securing writings by deception; defrauding creditors; illegal use of food stamps of WIC program benefits; insurance fraud; Workers' Compensation fraud; identity fraud; receiving stolen property; cheating; telecommunications harassment in specified circumstances; inducing panic when committed in specified circumstances; making false alarms when committed in specified circumstances; falsification in a theft offense; theft in office; and interference with or diminishing forfeitable property.

Existing law also provides procedures for determining the value of property involved in the alleged offense when a person is charged with arson, vandalism, a theft offense, or solicitation fraud and the value is relevant in determining whether a threshold regarding increased penalties for the offense has been reached or exceeded.

Operation of the bill

For the offenses to which the penalty provisions of the type described above in "**Existing law**" apply, the bill increases from $500 to $1,000 the initial threshold amount of the value of the property or loss involved in the offense that must be reached or exceeded for the penalty to be increased above the default penalty. For those offenses that include additional threshold amounts, the bill also increases by 50% all of the threshold amounts in excess of $500. The bill makes conforming changes in the procedures for determining the value of property involved in the alleged offense when a person is charged with arson, a theft offense, or solicitation fraud and the value is relevant in determining whether any threshold regarding increased penalties for the offense have been reached or exceeded.

The amendments described above apply to a person who commits an offense containing the amendments on or after the effective date of the amendments and to a person to whom existing R.C. 1.58(B), not in the bill, makes the amendments applicable. The provisions of the Revised Code sections described above that existed prior to the effective date of the amendments apply to a person upon whom a court imposed sentence prior to its effective date.

Elements of vandalism and corrupt activity and penalties for vandalism

(R.C. 2909.05 and 2923.31(I), (Q), and (T); Section 803.20)

Vandalism

Existing law

Existing law prohibits a person from knowingly doing any of the following: (1) causing "serious physical harm" to an occupied structure or any of its contents, (2) causing physical harm to property owned or possessed by another, when either the property is used by its owner or possessor in the owner's or possessor's profession, business, trade, or occupation, and *the value of the property or the amount of physical harm involved is $500 or more*, or regardless of the value of the property or the amount of damage done, the property or its equivalent is necessary in order for its owner or possessor to engage in the owner's or possessor's profession, business, trade, or occupation, (3) causing "serious physical harm" to property owned, leased, or controlled by a governmental entity, or (4) without privilege to do so, causing "serious physical harm" to any tomb, monument, gravestone, or other similar structure used as a memorial for the dead; to any fence, railing, curb, or other property that is used to protect, enclose, or ornament any cemetery; or to a cemetery. For purposes of these prohibitions, "serious physical harm" means physical harm to property that results in *loss to the value of the property $500 or more*. A violation of any of these prohibitions is the offense of vandalism. Vandalism generally is a fifth degree felony, but if the value of the property or the amount of physical harm involved is $5,000 but less than $100,000, it is a fourth degree felony, and if the value of the property or the amount of physical harm involved is $100,000, it is a third degree felony.

Existing law provides procedures for determining the value of property involved in the alleged offense when a person is charged with a violation of any of the prohibitions and the value is relevant in determining whether the $500 threshold regarding certain elements of the offense has been proved.

Operation of the bill

The bill increases from $500 to $1,000 the threshold amount of the value of the property that is relevant in determining: (1) whether the offense of vandalism has been committed based upon knowingly causing physical harm to property owned or possessed by another when the property is used by its owner or possessor in the owner's or possessor's profession, business, trade, or occupation or (2) whether "serious physical harm" has been committed for purposes of any of the prohibitions under the offense that require as an element of the prohibition the causing of serious physical

harm to property. The bill also increases by 50% the property-value thresholds used in determining the penalty for the offense.

The bill makes conforming changes in the procedures for determining the value of property involved in the alleged offense when a person is charged with vandalism and the value is relevant in determining whether the $1,000 threshold regarding certain elements of the offense has been proved or whether any threshold used in determining the penalty for the offense has been reached or exceeded.

The amendments described above apply to a person who commits vandalism on or after the effective date of the amendments and to a person to whom existing R.C. 1.58(B), not in the bill, makes the amendments applicable. The provisions of the vandalism statute as it existed prior to the effective date of the amendments apply to a person upon whom a court imposed sentence for vandalism prior to its effective date.

Corrupt activity

Existing law

Existing law (R.C. 2923.32, not in the bill) prohibits a person from engaging in specified types of conduct that involve or relate to a "pattern of corrupt activity" (see below) or the collection of an unlawful debt. A violation of any of the prohibitions is the offense of engaging in a pattern of corrupt activity. As used in the prohibitions, "pattern of corrupt activity" means two or more incidents of "corrupt activity" (see below), whether or not there has been a prior conviction, that are related to the affairs of the same enterprise, are not isolated, and are not so closely related to each other and connected in time and place that they constitute a single event. At least one of the incidents forming the pattern must occur on or after January 1, 1986, and, unless any incident was an aggravated murder or murder, the last of the incidents forming the pattern must occur within six years after the commission of any prior incident forming the pattern, excluding any period of imprisonment served by any person engaging in the corrupt activity. As used in the definition, "corrupt activity" means engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, or intimidating another person to engage in any of a list of specified offenses, including:

(1) A violation of any of a list of specified criminal statutes *when the proceeds of the violation, the payments made in the violation, the amount of a claim for payment or for any other benefit that is false or deceptive and that is involved in the violation, or the value of the contraband or other property illegally possessed, sold, or purchased in the violation exceeds $500,* or any combination of those violations *when the total proceeds of the combination of violations, payments made in the combination of violations, amount of the claims for payment or for other benefits that is false or deceptive and that is involved in the combination of violations,*

or value of the contraband or other property illegally possessed, sold, or purchased in the combination of violations exceeds $500;

(2) Conduct constituting a violation of any law of any state other than Ohio that is substantially similar to the conduct described above provided the defendant was convicted of the conduct in a criminal proceeding in the other state;

(3) Conduct constituting any of the following: (a) "organized retail theft" (defined as the theft of retail property *with a retail value of $500 or more* from one or more retail establishments with the intent to sell, deliver, or transfer that property to a retail property fence), or (b) conduct that constitutes one or more violations of any law of any state other than Ohio, that is substantially similar to organized retail theft, and that if committed in Ohio would be "organized retail theft," if the defendant was convicted of or pleaded guilty to the conduct in a criminal proceeding in the other state.

Operation of the bill

In all places in the definition of "corrupt activity" or the definition of "organized retail theft" that are set forth above in which there is a reference to a property valuation equaling or exceeding $500, the bill increases the amount of the property valuation in the reference to $1,000.

The amendments described above apply to a person who commits the offense of engaging in a pattern of corrupt activity on or after the effective date of the amendments and to a person to whom existing R.C. 1.58(B), not in the bill, makes the amendments applicable. The provisions of the corrupt activity statute as it existed prior to the effective date of the amendments apply to a person upon whom a court imposed sentence for engaging in a pattern of corrupt activity prior to its effective date.

Nonsupport of dependents

(R.C. 2919.21)

Existing law

Existing law prohibits any person from: (1) abandoning, or failing to provide adequate support to, the person's child who is under 18 years of age or mentally or physically handicapped child who is under 21 years of age, or (2) abandoning, or failing to provide support as established by a court order to, another person whom the person is legally obligated by court order or decree to support. A violation of either prohibition is "nonsupport of dependents," generally a first degree misdemeanor. If the offender previously has been convicted of nonsupport of dependents committed by a violation of either prohibition or if the offender failed to provide support under either

prohibition for a total accumulated period of 26 weeks out of 104 consecutive weeks, whether or not the 26 weeks were consecutive, then a violation of either prohibition is a fifth degree felony. If the offender previously has been convicted of or pleaded guilty to a felony offense of nonsupport of dependents, a violation of either prohibition is a fourth degree felony.

Operation of the bill

The bill provides that, if the violation of either prohibition described above in "**Existing law**" is a felony, all of the following apply to the sentencing of the offender:

(1) Except as otherwise described in (2), below, the court in imposing sentence on the offender must first consider placing the offender on one or more community control sanctions under existing R.C. 2929.16, 2929.17, or 2929.18, with an emphasis under the sanctions on intervention for nonsupport, obtaining or maintaining employment, or another related condition.

(2) The preference for placement on community control sanctions described in (1), above, does not apply to any offender to whom any of the following applies: (a) the court determines that the imposition of a prison term on the offender is consistent with the purposes and principles of sentencing set forth in existing R.C. 2929.11, (b) the offender previously was convicted of or pleaded guilty to felony nonsupport of dependents, the conviction or guilty plea occurred on or after the bill's effective date, and the offender was sentenced to a prison term for that violation, or (c) the offender previously was convicted of or pleaded guilty to felony nonsupport of dependents, the conviction or guilty plea occurred on or after the bill's effective date, the offender was sentenced to one or more community control sanctions of a type described in (1), above, for that violation, and the offender failed to comply with the conditions of any of those community control sanctions.

Ranges of possible prison terms for first and third degree felonies

(R.C. 2929.14(A); Section 803.30)

Currently, under the Felony Sentencing Law, a court sentencing a felony offender generally has discretion to determine the most effective way to comply with specified principles and purposes of sentencing and generally may impose any sanction provided under that Law. If the court elects or is required to impose a prison term, the court generally must impose a definite prison term it selects from a range of possible prison terms, with a different range provided for each degree of felony.

The bill changes the range of possible prison terms for a first or third degree felony. Under the bill, except when a special type of mandatory prison term is required

and except in relation to an offense for which a sentence of death or life imprisonment is to be imposed, if the court sentencing an offender for a first or third degree felony elects or is required to impose a prison term pursuant to the Felony Sentencing Law, it must impose a definite prison term that is one of the following:

(1) For a first degree felony, a definite prison term of three, four, five, six, seven, eight, nine, ten, *or eleven* years. Currently, the range for a first degree felony does not include a possible term of eleven years.

(2) For a third degree felony, a definite prison term of *nine, twelve, eighteen, twenty-four, or thirty-six months*. Currently, the range for a third degree felony is one, two, three, four, or five years.

The changes to the range of possible prison terms for a first or third degree felony apply to a person who commits an offense penalized under those changes on or after the effective date of the changes and to a person to whom existing R.C. 1.58(B), not in the bill, makes the changes applicable.

General community control requirement for nonviolent fourth and fifth degree felonies

(R.C. 2929.14(M); Section 803.30; conforming changes in R.C. 2929.14(A) to (C))

Currently, under the Felony Sentencing Law, a court sentencing a felony offender generally has discretion to determine the most effective way to comply with specified principles and purposes of sentencing and generally may impose any sanction provided under that Law. If the court is not required to impose a prison term, it may directly impose as a sentence one or more community control sanctions authorized under that Law (i.e., community residential sanctions, nonresidential sanctions, or financial sanctions). The duration of all community control sanctions cannot exceed five years.

Under the bill, except as described in the next paragraph, if an offender is convicted of or pleads guilty to a fourth or fifth degree felony that is not an offense of violence, the court must sentence the offender to a community control sanction if (1) the offender previously has not been convicted of or pleaded guilty to a felony offense, and (2) the violation is the most serious charge before the offender at the time of sentencing.

The bill provides that the court has discretion to impose a prison term upon an offender who is convicted of or pleads guilty to a fourth or fifth degree felony that is not an offense of violence if (1) the offender committed the offense while having a firearm on or about the offender's person or under the offender's control, or (2) the offender caused physical harm to another person while committing the offense.

Under the bill, a sentencing court may impose an additional penalty under R.C. 2929.15(B) upon an offender sentenced to a community control sanction under the provision described in the second preceding paragraph if the offender violates the conditions of the community control sanction, violates a law, or leaves the state without the permission of the court or the offender's probation officer. Existing R.C. 2929.15(B), unchanged by the bill, provides that, if an offender violates the conditions of a community control sanction, violates a law, or leaves the state without the permission of the court or the offender's probation officer, the sentencing court may impose upon the violator a longer time under the same sanction if the total time under the sanctions does not exceed the five-year limit, a more restrictive community control sanction, or a prison term (the Law provides limits on the length of the prison term that may be so imposed), or any combination of those sanctions.

The community control sanctions provisions described in the preceding three paragraphs apply to a person who commits an offense listed in those provisions on or after the effective date of those provisions and to a person to whom existing R.C. 1.58(B), not in the bill, makes the changes applicable.

Risk reduction sentencing

(R.C. 2929.143 and 5120.036; also R.C. 2929.01(BB), 2930.12(F), 5120.16(A), 5120.331(A)(2), and 5120.48(B))

Under the bill, when a court sentences an offender who is convicted of a felony to a term of incarceration in a state correctional institution, the court may recommend that the offender serve a risk reduction sentence, as described in the next paragraph, if the court determines that a risk reduction sentence is appropriate and both of the following apply: (1) the offender agrees to cooperate with an assessment of the offender's needs and risk of reoffending that DRC conducts as described in the next paragraph, and (2) the offender agrees to participate in any programming or treatment that DRC orders to address any issues raised in the assessment described in clause (2) of this paragraph. An offender who is serving a risk reduction sentence is not entitled to any earned credit under DRC's earned credits program.

The bill requires that DRC provide risk reduction programming and treatment for inmates whom a court, as described in the preceding paragraph, recommends serve a risk reduction sentence and who meet the eligibility criteria described in this paragraph. If an offender is sentenced to a term of imprisonment in a state correctional institution and the sentencing court recommended that the offender serve a risk reduction sentence, DRC must conduct a validated and objective assessment of the person's needs and risk of reoffending. If the offender cooperates with the risk assessment and agrees to participate in any programming or treatment DRC orders,

DRC must provide programming and treatment to the offender to address the risks and needs identified in the assessment. If DRC determines that an offender serving a term of incarceration for whom the sentencing court recommended a risk reduction sentence has successfully completed the assessment and treatment or programming that DRC required, DRC must release the offender to "supervised release" after the offender has served a minimum of 75% of that term of incarceration. DRC is required to notify the sentencing court that the offender has successfully completed the terms of the risk reduction sentence at least 30 days prior to the date upon which the offender is to be released.

The bill provides that, if a sentence imposed upon an offender is modified pursuant to this risk reduction sentencing mechanism, the notice that must be provided to the victim of the offender's offense under an existing provision of the Crime Victims' Rights Law must include notice of the modification. The victim notification provision applies when the victim requests notification, and it apparently is given by the prosecutor in the case.

The bill also adds references to release under the risk reduction sentencing mechanism in existing sections that: (1) include in the definition of "prison term" that applies to the Criminal Sentencing Law a term in a prison shortened by, or with the approval of, the sentencing court pursuant to any of a list of specified provisions, (2) generally require confinement of a person sentenced to DRC's custody until release under any of a list of specified provisions, (3) require an annual report that DRC must prepare for the General Assembly that indicates the number of prisoners released from prison in the preceding calendar year under any of a list of specified provisions to include prisoners released under the mechanism, and (4) require the managing officer of a DRC institution to notify the APA when a prisoner is released prior to the end of his or her term other than under any of a list of specified provisions.

Sentencing to a community corrections program

(R.C. 2929.15(E))

Specifically, the bill provides that the court sentencing a felony offender may sentence the offender to a "community-based corrections program" that is established pursuant to the provisions described below in "**Community corrections programs and subsidies**" if the offender meets any of the following criteria: (1) the offender is convicted of a first, second, or third degree felony, (2) the offender is convicted of a fourth or fifth degree felony and is found to be a high risk of reoffending or violating a term of supervision, as assessed by the single validated risk assessment tool described below in "**Department of Rehabilitation and Correction selection of single validated offender risk assessment tool**," or (3) the offender's community residential

sanction, nonresidential sanction, or combination of such sanctions have been revoked and the offender is found to be a medium or high risk of reoffending or violating a term of supervision, as assessed by that assessment tool.

Sentencing to a community-based correctional facility

(R.C. 2929.16(A)(1))

The bill specifies circumstances in which a sentence to a community-based correctional facility may be used as a community residential sanction for a felony offender. Currently, the court imposing a sentence upon a felony offender who is not required to serve a mandatory prison term may impose any community residential sanction or combination of community residential sanctions as a sanction. Community residential sanctions include, but are not limited to, any of five types of specifically identified sanctions.

One of the types of sanctions that currently is specifically identified as a community residential sanction is a term of up to six months at a community-based correctional facility that serves the county. The bill modifies this provision so that it specifically identifies as a community residential sanction a term of up to six months at a community-based correctional facility that serves the county if the offender satisfies any of the following criteria: (1) the offender is convicted of a first or second degree felony, (2) the offender is convicted of a third degree felony and is found to be a medium or high risk of reoffending or violating a term of supervision, as assessed by the single validated risk assessment tool described below in "**Department of Rehabilitation and Correction selection of single validated offender risk assessment tool**," (3) the offender is convicted of a fourth or fifth degree felony and is found to be a high risk of reoffending or violating a term of supervision, as assessed by that assessment tool, or (4) the offender's community residential sanction, nonresidential sanction, or combination of such sanctions have been revoked, and the offender is found to be a medium or high risk of reoffending or violating a term of supervision, as assessed by that assessment tool.

Earned credits for prisoners

(R.C. 2967.193)

Under the bill, subject to the maximum aggregate total specified below, a person confined in a state correctional institution may earn one day *or five days* of credit, based on the category described below in which the person is included, as a deduction from the person's stated prison term for each *completed* month during which the person productively participates in an education program, vocational training, employment in prison industries, treatment for substance abuse, or any other constructive program

developed by DRC with specific standards for performance by prisoners (sex offender treatment programs are removed from the list). Also, subject to the maximum aggregate total specified below, a person so confined may, in addition, earn days of credit for the successful completion of such a program or activity. However, the bill specifies that no person *who is serving a sentence for a sexually oriented offense*, as defined in the existing Sex Offender Registration and Notification Act, *imposed for a conviction occurring or guilty plea entered on or after the bill's effective date* (added by the bill) *or who is serving a risk reduction sentence* (added by the bill), as well as no person barred under existing law, may be awarded any days of credit under either provision. Under the bill, the aggregate days of earned credit that a person may earn under the provisions cannot exceed 8% of the total number of days in the person's stated prison term.

The bill repeals the existing language that specifies that DRC generally must use a post-release control sanction to retain control of a prisoner granted early release from a prison term by reason of earned credits. It retains existing law that specifies that, if the prisoner violates prison rules, DRC may deny the prisoner a credit that otherwise could have been awarded to the prisoner or may withdraw one or more credits previously earned by the prisoner. It expands the provision requiring DRC to adopt rules that specify the programs or activities for which credit may be earned under the provision, the criteria for determining productive participation in the programs or activities and for awarding credit, and the criteria for denying or withdrawing previously earned credit as a result of a violation of prison rules to require that the rules also address those criteria regarding an award of additional days of credit for program or activity completion.

Under the bill, the determination of whether a person confined in a state correctional institution may earn one day of credit or five days of credit under this provision for each completed month during which the person productively participates in a program or activity specified is to be made in accordance with the following:

(1) The offender may earn one day of credit under the provision, unless the offender is barred from earning any days of credit as described above, if the most serious offense for which the offender is confined is any of the following that is a first or second degree felony: (a) a violation of R.C. 2903.11, 2903.15, 2905.01, 2907.24, 2907.25, 2909.02, 2909.09, 2909.10, 2909.101, 2909.26, 2909.27, 2909.29, 2911.01, 2911.02, 2911.11, 2911.12, 2919.13, 2919.151, 2919.22, 2921.34, 2923.01, 2923.131, 2923.162, 2923.32, 2925.24, or 2927.24, or (b) a conspiracy or attempt to commit, or complicity in committing, aggravated murder, murder, any other offense for which the maximum penalty is death or imprisonment for life, or any offense listed in clause (a) of this paragraph.

(2) The offender may earn one day of credit under the provision, unless the offender is barred from earning any days of credit as described above, if the most

serious offense for which the offender is confined is a sexually oriented offense and the offender was convicted of or pleaded guilty to that offense prior to the bill's effective date.

(3) The offender may earn five days of credit under the provision, unless the offender is barred from earning any days of credit as described above, if the most serious offense for which the offender is confined is a first or second degree felony and neither paragraph (1) nor (2), above, applies to the offender, or if the most serious offense for which the offender is confined is a third, fourth, or fifth degree felony or an unclassified felony and paragraph (2), above, does not apply to the offender.

Release mechanism for certain prisoners who have served at least 85% of their prison term

(R.C. 2967.19(A) to (H); also R.C. 109.42(A)(8), 2929.13(F) and (G), 2929.14(D), 2930.03, 2930.16(B), 2930.17, 2950.99(A)(2), and 5120.66)

Submission by Director of petition for release; adoption of rules

The bill authorizes DRC's Director to petition the sentencing court for the release from prison of any offender confined in a state correctional institution under a stated prison term of one year or more who is eligible under the criteria described below in "**Offenders who are eligible**" and who has served at least 85% of that stated prison term that remains to be served after the offender becomes eligible under those criteria for a release under the mechanism. The Director must submit the petition not earlier than 90 days prior to the date on which the offender has served 85% of the offender's stated prison term that remains to be served after the offender becomes eligible under those criteria. The Director's submission of a petition for release under the mechanism constitutes a recommendation by the Director that the court strongly consider release of the offender consistent with the purposes and principles of sentencing set forth in existing R.C. 2929.11 and 2929.13.

The Director must include with any petition so submitted to the sentencing court: (1) an institutional summary report that covers the offender's participation while confined in a state correctional institution in school, training, work, treatment, and other rehabilitative activities and any disciplinary action taken against the offender while so confined, and (2) a post-release control assessment and placement plan, when relevant, and any other documentation requested by the court, if available. When the Director submits a petition, DRC promptly must forward to the prosecuting attorney of the county in which the offender was indicted a copy of the petition, a copy of the institutional summary report, and any other information provided to the court. DRC also promptly must forward a copy of the petition to any victim of the offender or

victim's representative of any victim of the offender who is registered with DRC's Office of Victim's Services. It also must post notice of the petition on the Internet database it maintains and include information on where a person may send comments regarding the petition.

The bill requires DRC to adopt under the Administrative Procedure Act any rules necessary to implement the mechanism.

Court action after the submission of a petition

Upon receipt of a petition for release of an offender submitted by DRC's Director under the provisions described above, the court is required to grant or deny the petition without conducting a hearing on the matter. Prior to entering a ruling on the motion, the court must provide the prosecuting attorney of the county in which the offender was indicted an opportunity to provide the court with written information relevant to the petition. The court must afford the same opportunity to the victim or the victim's representative, as defined in the Crime Victims Rights Law, and any other person the court determines is likely to provide additional, relevant written information. The court must enter its ruling on the petition within 30 days after the petition is filed. After ruling on the motion, the court must notify the victim of its ruling in accordance with specified provisions of the Crime Victims Rights Law.

If the court grants a petition for release of an offender under the mechanism, it must order the offender's release under APA supervision. The court cannot make a release under the mechanism effective prior to the date on which the offender has served at least 85% of the offender's stated prison term that remains to be served after the offender becomes eligible under the bill's criteria. If the sentence from which the offender is being released was imposed for a first or second degree felony, the court must order that the offender be monitored by means of a global positioning system device for the period of time that the APA considers appropriate, provided that an offender for whom electronic monitoring is ordered under the mechanism must be monitored for not fewer than the first 90 days and not more than the first 180 days after the offender is released under the mechanism. If, upon being released by the court under the mechanism, the offender has fewer than 90 days remaining to be served on the offender's stated prison term, the offender must be monitored by means of a global positioning system device for the entire period of time remaining on the offender's state prison term. The cost of monitoring shall be borne by the offender through the imposition of supervision fees under R.C. 5120.56. If the offender is indigent, the cost must be paid by DRC. The initial period of APA supervision is required to conclude on the date of expiration of the stated prison term from which the offender was released. If the Parole Board imposed a period of post-release control on the offender, upon the conclusion of that initial period of supervision, the offender must be placed on post-

release control in accordance with the post-release control sanctions the Board imposed on the offender.

If the court grants a petition for release of an offender under the mechanism, it must notify the appropriate person at DRC of the release, and DRC must post notice of the release on the Internet database it maintains.

The bill modifies several existing provisions that pertain to the service of prison terms and crime victims rights regarding early release of a prisoner to reflect the enactment of the mechanism and include references to it.

Offenders who are eligible

Except as otherwise described in this paragraph, an offender serving a stated prison term of one year or more is eligible for release from prison under the bill's 85% release mechanism described above upon the offender's commencement of service of that stated prison term. An offender serving a stated prison term that includes a "disqualifying prison term" is not eligible for release from prison under the mechanism. An offender serving a stated prison term that consists solely of one or more "restricting prison terms" is not eligible for release under the mechanism. An offender serving a stated prison term of one year or more that includes one or more "restricting prison terms" and one or more "eligible prison terms" becomes eligible for release under the mechanism after having fully served each "restricting prison term." For purposes of determining an offender's eligibility for release under the mechanism, if the offender's stated prison term includes consecutive prison terms, any restricting prison terms are deemed served prior to any eligible prison terms that run consecutively to the restricting prison terms, and the eligible prison terms are deemed to commence after all of the restricting prison terms have been fully served. If an offender confined in a state correctional institution under a stated prison term is eligible for release under the mechanism and if the offender has served at least 85% of that stated prison term that remains to be served after the offender becomes eligible, DRC's Director may petition the sentencing court for the release from prison of the offender, as described above.

An offender serving a stated prison term of one year of more that includes a mandatory prison term that is not a disqualifying prison term and is not a restricting prison term is not automatically ineligible as a result of the offender's service of that mandatory term for release from prison under the mechanism, and the offender's eligibility for release from prison under the mechanism is determined in accordance with the preceding paragraph and this paragraph.

85% release mechanism definitions

As used in the 85% release mechanism:

"**Disqualifying prison term**" means any of the following: (1) a prison term imposed for aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, kidnapping, rape, aggravated arson, aggravated burglary, or aggravated robbery, (2) a prison term imposed for complicity in, an attempt to commit, or conspiracy to commit any offense listed in clause (1) of this definition, (3) a prison term of life imprisonment, including any term of life imprisonment that has parole eligibility, (4) a prison term imposed for any felony other than carrying a concealed weapon an essential element of which is any conduct or failure to act expressly involving any deadly weapon or dangerous ordnance, (5) a prison term imposed for a drug trafficking offense under R.C. 2925.03 that is a first or second degree felony, (6) a prison term imposed for the offense of engaging in a pattern of corrupt activity, or (7) a prison term imposed under the Sexually Violent Predator Sentencing Law.

"**Eligible prison term**" means any prison term that is not a disqualifying prison term and is not a restricting prison term.

"**Restricting prison term**" means any of the following: (1) a mandatory prison term imposed under R.C. 2929.14(D)(1)(a), (D)(1)(c), (D)(1)(f), (D)(1)(g), or (D)(2) for a specification of the type described in those divisions (those divisions provide for a mandatory prison term for a felon convicted of a specification that the felon: possessed an automatic or silenced or muffled firearm while committing the felony; displayed, brandished, indicated possession of, or used a firearm while committing the felony; possessed a firearm while committing the felony; discharged a firearm from a motor vehicle while committing the felony; committed the felony by discharging a firearm at a peace officer or corrections officer; or is a repeat violent offender), (2) in the case of an offender who has been sentenced to a mandatory prison term for a specification of the type described in clause (1) of this definition, the prison term imposed for the felony offense for which the specification was stated at the end of the body of the document charging the offense, or (3) a prison term imposed for a specified "offense of violence-type crime" if the offender previously was convicted of or pleaded guilty to any of those "offense of violence-type crimes." The "offense of violence-type crimes" that are within the scope of clause (3) of this definition are any first or second degree felony that is an offense of violence and is not described in clause (1) or (2) of the definition of "disqualifying prison term," any attempt to commit a first or second degree felony that is an offense of violence and is not described in clause (1) or (2) of the definition of "disqualifying prison term" if the attempt is a first or second degree felony, and any

offense under an existing or former law of Ohio, another state, or the United States that is or was substantially equivalent to any other offense described in this sentence.

"**Deadly weapon**" and "**dangerous ordnance**" have the same meanings as in existing R.C. 2923.11, which is not in the bill.

Parole Board review of cases of elderly parole-eligible inmates

(Section 729.10)

The bill specifies that the Chair of the Parole Board or the Chair's designee must review the cases of all parole-eligible inmates who are age 65 or older and who have had a statutory first parole consideration hearing. The review must be completed within 90 days after the effective date of the provision. Upon completion of the review, the Chair must present to the Board the cases of the offenders whose cases are required to be reviewed. The review must be completed within 90 days after the effective date of the provision. Upon presentation of the case of an offender, the Board, by majority vote, may choose to rehear the offender's case for possible release on parole. The bill requires DRC to adopt under the Administrative Procedure Act any rules necessary to implement these provisions.

Distinction between crack cocaine and powder cocaine in criminal penalties

(R.C. 2925.03(C)(4), 2925.05(A)(3), and 2925.11(C)(4); also R.C. 2925.01(GG) and 2929.01(C) and (W); Section 803.10)

The bill eliminates the distinction between "crack cocaine" and "cocaine that is not crack cocaine" that existing law makes in certain provisions.

Penalties for trafficking in cocaine and possession of cocaine

Currently, the drug trafficking offenses and drug possession offenses that involve cocaine are "trafficking in cocaine" and "possession of cocaine." Two distinct sets of penalties are provided − one set applies to cocaine that is crack cocaine, and the other applies to cocaine that is not crack cocaine. The penalties for either offense when it is a particular amount of crack cocaine are much more stringent than the penalties provided for the offense when it involves the same amount of cocaine that is not crack cocaine. The bill eliminates the penalty distinctions provided in the offenses involving the two forms of cocaine and provides a penalty for the offenses involving any type of cocaine that generally has a severity that is between the two current penalties. The penalties when lower amounts of cocaine are involved generally are closer to the current penalties when similar amounts of cocaine that is not crack cocaine are involved

and the penalties when higher amounts of cocaine are involved generally are closer to the current penalties when similar amounts of crack cocaine are involved.

Trafficking in cocaine

Under the bill, the classification and penalty for trafficking in cocaine, regardless of the nature of the cocaine as crack cocaine or cocaine that is not crack cocaine, are as set forth in the following chart. The references in the chart to "school or juvenile" mean that the offense was committed in the vicinity of a school or a juvenile. The references to "Option 2" mean that there is no presumption for a prison term or against a prison term. The references to "Presumption for a prison term" mean that there is a presumption for a prison term. The references to "Mandatory prison term" mean that a prison term is required, generally selected from the range of prison terms authorized for a felony of the specified level.

Amount of cocaine involved and location of offense	Degree of offense	Option 2, presumption for prison term, or mandatory prison term
(1) Less than 5 grams School or juvenile	F5 F4	Option 2 Option 2
(2) Equals or exceeds 5 grams and is less than 10 grams School or juvenile	F4 F3	Presumption for prison term Presumption for prison term
(3) Equals or exceeds 10 grams and is less than 20 grams School or juvenile	F3 F2	Mandatory prison term Mandatory prison term
(4) Equals or exceeds 20 grams and is less than 27 grams School or juvenile	F2 F1	Mandatory prison term Mandatory prison term
(5) Equals or exceeds 27 grams and is less than 100 grams	F1	Mandatory prison term
(6) Equals or exceeds 100 grams	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

Possession of cocaine

Under the bill, the classification and penalty for possession of cocaine are as set forth in the following chart. The references to "Presumption for a prison term," and "Mandatory prison term" have the same meanings as described above in relation to the chart for the offense of trafficking in cocaine. The references to "Option 1" mean that there is a presumption against a prison term:

Amount of cocaine involved and location of offense	Degree of offense	Option 1 or 2, presumption for prison term, or mandatory prison term
(1) Less than 5 grams	F5	Option 1
(2) Equals or exceeds 5 grams and is less than 10 grams	F4	Option 1 (currently, the penalty when 5-25 grams of cocaine is involved provides a presumption for a prison term)
(3) Equals or exceeds 10 grams and is less than 20 grams	F3	Mandatory prison term
(4) Equals or exceeds 20 grams and is less than 27 grams	F2	Mandatory prison term
(5) Equals or exceeds 27 grams and is less than 100 grams	F1	Mandatory prison term
(6) Equals or exceeds 100 grams	F1	Mandatory 10-year prison term and permissive additional prison term of 1 to 10 years

Aggravated funding of drug trafficking

Currently, one of the elements of the offense of "aggravated funding of drug trafficking" specifies a threshold amount of the Schedule I or II drug that must be involved in the funding conduct in order for the offense to have occurred. If the drug involved is cocaine, the element specifies two distinct amounts that must be involved--one amount applies to cocaine that is crack cocaine (one gram), and the other applies to cocaine that is not crack cocaine (five grams). The bill eliminates the distinction between the two forms of cocaine that currently is made in the element and uses the drug quantity threshold currently specified for cocaine that is not crack cocaine (five grams) as the basis for determining whether the offense has occurred, regardless of the form of the cocaine involved in the conduct.

Major drug offender definition

Currently, under the special sentencing mechanism that applies when a person who is being sentenced for a felony is a major drug offender, the definition of "major drug offender" specifies a threshold amount for each drug that must be involved in the offender's conduct in order for the offender to be within the definition. If the drug involved is cocaine, the definition specifies two distinct amounts--one amount applies to cocaine that is crack cocaine (at least 100 grams), and the other applies to cocaine that is not crack cocaine (at least 1,000 grams). The bill eliminates the distinction between the two forms of cocaine that currently is made in the definition and uses the drug

quantity threshold currently specified for crack cocaine (100 grams) as the basis for determining whether the offender is a major drug offender, regardless of the form of the cocaine involved.

Other related changes

The bill repeals the existing definition of crack cocaine that applies to the Drug Offense Law, because the term "crack cocaine" no longer will be used in R.C. Chapter 2925. or 2929. It also repeals a cross-reference to the definition that is contained in the Criminal Sentencing Law definitions.

Application of the changes

The amendments described above regarding cocaine apply to a person who commits an offense involving cocaine on or after the amendments' effective date and to a person to whom R.C. 1.58(B), not in the bill, makes the amendments applicable. The provisions of R.C. 2925.01, 2925.03, 2925.05, 2925.11, and 2929.01 in existence prior to the amendments' effective date apply to a person upon whom a court imposed sentence prior to that date for an offense involving cocaine.

Penalties for trafficking in marihuana or hashish and for possession of marihuana or hashish

(R.C. 2925.03(C)(3) and (7) and 2925.11(C)(3) and (7); Section 803.10)

The bill revises the penalties for "trafficking in marihuana," "trafficking in hashish," "possession of marihuana," and "possession of hashish." As used in the following discussions, the references to an offense being "committed in the vicinity of a school or juvenile" have the meaning ascribed in R.C. 2925.01. The references to "R.C. 2929.13(B)" mean the sentencing procedure under that division, which generally reflects a presumption against a prison term. The references to "R.C. 2929.13(C)" mean the sentencing procedure under that division, which reflects no presumption for a prison term or against a prison term. The references to a "presumption for a prison term" mean the sentencing procedure under R.C. 2929.13(D), which reflects a presumption for a prison term. The references to a "mandatory prison term" mean that a prison term is required, generally selected from the range of prison terms authorized for a felony of the specified level.

Trafficking in marihuana or hashish

Under the bill, the penalties for trafficking in marihuana and trafficking in hashish are as follows:

(1) Except as otherwise provided in paragraph (2), (3), (4), (5), (6), (7), or (8) below, the offense is a fifth degree felony, *R.C. 2929.13(B) applies* in determining whether to impose a prison term on the offender.

(2) Except as otherwise provided in paragraph (3), (4), (5), (6), (7), or (8) below, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a fourth degree felony, and *R.C. 2929.13(B) applies* in determining whether to impose a prison term on the offender.

(3) If the amount of the drug involved equals or exceeds 200 grams but is less than 1,000 grams of marihuana, equals or exceeds 10 grams but is less than 50 grams of hashish in a solid form, or equals or exceeds two grams but is less than 10 grams of hashish in a liquid form, the offense is a fourth degree felony, and *R.C. 2929.13(B) applies* in determining whether to impose a prison term on the offender, except that if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a third degree felony, and R.C. 2929.13(C) applies in determining whether to impose a prison term on the offender.

(4) If the amount of the drug involved equals or exceeds 1,000 grams but is less than 5,000 grams of marihuana, equals or exceeds 50 grams but is less than 250 grams of hashish in a solid form, or equals or exceeds 10 grams but is less than 50 grams of hashish in a liquid form, the existing penalties are retained.

(5) If the amount of the drug involved equals or exceeds 5,000 grams but is less than 20,000 grams of marihuana, equals or exceeds 250 grams but is less than 1,000 grams of hashish in a solid form, or equals or exceeds 50 grams but is less than 200 grams of hashish in a liquid form, the existing penalties are retained.

(6) *If the amount of the drug involved equals or exceeds 20,000 grams but is less than 40,000 grams of marihuana, equals or exceeds 1,000 grams but is less than 2,000 grams of hashish in a solid form, or equals or exceeds 200 grams but is less than 400 grams of hashish in a liquid form, the offense is a second degree felony, and the court must impose a mandatory prison term of five, six, seven, or eight years, except that if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a first degree felony, and the court must impose as a mandatory prison term the maximum prison term prescribed for a first degree felony.*

(7) If the amount of the drug involved equals or exceeds 40,000 grams of marihuana, equals or exceeds 2,000 grams of hashish in a solid form, or equals or exceeds 400 grams of hashish in a liquid form, the offense is a second degree felony, and the court must impose as a mandatory prison term the maximum prison term prescribed for a second degree felony, except that if the offense was committed in the vicinity of a school or in the

vicinity of a juvenile, it is a first degree felony, and the court must impose as a mandatory prison term the maximum prison term prescribed for a first degree felony.

(8) If the offense involves a gift of 20 grams or less of marihuana, it is a minor misdemeanor upon a first offense and a third degree misdemeanor upon a subsequent offense, except that if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, it is a third degree misdemeanor.

Possession of marihuana or hashish

Under the bill, the penalties for possession of marihuana and possession of hashish are as follows:

(1) Except as otherwise provided in paragraph (2), (3), (4), (5), (6), or (7) below, as under existing law, the offense is a minor misdemeanor.

(2) If the amount of the drug involved equals or exceeds 100 grams but is less than 200 grams of marihuana, equals or exceeds five grams but is less than 10 grams of hashish in a solid form, or equals or exceeds one gram but is less than two grams of hashish in a liquid form, the existing penalties are retained.

(3) If the amount of the drug involved equals or exceeds 200 grams but is less than 1,000 grams of marihuana, equals or exceeds 10 grams but is less than 50 grams of hashish in a solid form, or equals or exceeds two grams but is less than ten grams of hashish in a liquid form, the existing penalties are retained.

(4) If the amount of the drug involved equals or exceeds 1,000 grams but is less than 5,000 grams of marihuana, equals or exceeds 50 grams but is less than 250 grams of hashish in a solid form, or equals or exceeds 10 grams but is less than 50 grams of hashish in a liquid form, the existing penalties are retained.

(5) If the amount of the drug involved equals or exceeds 5,000 grams but is less than 20,000 grams of marihuana, equals or exceeds 250 grams but is less than 1,000 grams of hashish in a solid form, or equals or exceeds 50 grams but is less than 200 grams of hashish in a liquid form, the existing penalties are retained.

(6) If the amount of the drug involved equals or exceeds 20,000 grams *but is less than 40,000 grams of marihuana*, equals or exceeds 1,000 grams *but is less than 2,000 grams of* hashish in a solid form, or equals or exceeds 200 grams *but is less than 400 grams of hashish* in a liquid concentrate, liquid extract, or liquid distillate form, *the offense is a second degree felony, and the court must impose a mandatory prison term of five, six, seven, or eight years.*

(7) *If the amount of the drug involved equals or exceeds 40,000 grams of marihuana, equals or exceeds 2,000 grams of hashish in a solid form, or equals or exceeds 400 grams of hashish in a liquid form,* the offense is a second degree felony, and the court must impose as a mandatory prison term the maximum prison term prescribed for a second degree felony.

Application of the changes

The amendments described above regarding marihuana and hashish apply to a person who commits an offense involving marihuana or hashish on or after the amendments' effective date and to a person to whom R.C. 1.58(B), not in the bill, makes the amendments applicable. The provisions of R.C. 2925.03 and 2925.11 in existence prior to the amendments' effective date apply to a person upon whom a court imposed sentence prior to the bill's effective date for an offense involving marihuana or hashish.

Prosecution of multiple theft, Medicaid fraud, workers' compensation fraud, and similar offenses

(R.C. 2913.61(C); Section 803.20)

Existing law

Existing law specifies the following, regarding the prosecution of multiple theft-related or fraud-related offenses:

(1) When a series of offenses under R.C. 2913.02 (theft and several theft-related offenses), or a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of division (A)(1) of R.C. 1716.14 (committing a deceptive act or practice in the planning, conducting, or executing of a solicitation of contributions for a charitable organization or charitable purpose or to the planning, conducting, or executing of a charitable sales promotion), R.C. 2913.02, 2913.03 (unauthorized use of a vehicle), or 2913.04 (unauthorized use of property; unauthorized use of computer, cable, or telecommunications property; and unauthorized use of the law enforcement automated data processing system), division (B)(1) or (2) of R.C. 2913.21 (misuse of credit cards, committed in specified circumstances), or R.C. 2913.31 (forgery; forging identification cards or selling or distributing forged identification cards) or 2913.43 (securing writings by deception) involving an elderly or disabled victim, is committed by the offender in the offender's same employment, capacity, or relationship to another, all of those offenses are to be tried as a single offense. The value of the property or services involved in the series of offenses is the aggregate value of all property and services involved in all offenses in the series.

(2) If an offender commits a series of offenses under R.C. 2913.02 that involves a common course of conduct to defraud multiple victims, all of the offenses may be tried as a single offense. If they are tried as a single offense, the value of the property or services involved is the aggregate value of all property and services involved in all of the offenses in the course of conduct.

(3) If an offender is being tried for the commission of a series of violations of, attempts to commit a violation of, conspiracies to violate, or complicity in violations of any section or division identified in paragraph (1), above, whether committed against one victim or more than one victim, involving an elderly or disabled victim, pursuant to a scheme or course of conduct, all of those offenses may be tried as a single offense. If they are tried as a single offense, the value of the property or services involved is the value described in the preceding paragraph.

(4) When a series of two or more offenses under R.C. 2921.41 is committed by the offender in the offender's same employment, capacity, or relationship to another, all of those offenses may be tried as a single offense. If they are tried as a single offense, the value of the property or services involved is the aggregate value of all property and services involved in all of the offenses in the series of two or more offenses.

(5) In prosecuting a single offense under a provision described in paragraph (1), (2), (3), or (4), above, it is not necessary to separately allege and prove each offense in the series. Rather, it is sufficient to allege and prove that the offender, within a given span of time, committed one or more theft offenses or violations of section 2921.41 of the Revised Code in the offender's same employment, capacity, or relationship to another as described in paragraph (1) or (4), above, or committed one or more theft offenses that involve a common course of conduct to defraud multiple victims or a scheme or course of conduct as described in paragraph (2) or (3), above.

Operation of the bill

The bill modifies the existing provisions described above under "**Existing law**" in three ways:

(1) It expands the provision described in paragraph (4) of that part of the analysis by adding references to existing R.C. 2913.40 (Medicaid fraud) and 2913.48 (workers' compensation fraud). Under the bill, that provision specifies that, when a series of two or more offenses under R.C. 2913.40, 2913.48, or 2921.41 is committed by the offender in the offender's same employment, capacity, or relationship to another, all of those offenses may be tried as a single offense.

(2) In the provision described in paragraph (5) of that part of the analysis, it retains the first sentence without change, but it expands the second sentence by adding

references to existing R.C. 2913.40 (Medicaid fraud) and 2913.48 (workers' compensation fraud). Under the bill, the second sentence of that provision specifies that, in prosecuting a single offense under a provision described above in paragraph (1), (2), (3), or (4) of that part, it is sufficient to allege and prove that the offender, within a given span of time, committed one or more theft offenses or violations of section 2913.40, 2913.48, or 2921.41 of the Revised Code in the offender's same employment, capacity, or relationship to another as described above in paragraph (1) or (4) of that part, or committed one or more theft offenses that involve a common course of conduct to defraud multiple victims or a scheme or course of conduct as described above in paragraph (2) or (3) of that part.

(3) In the provision described in paragraph (5) of that part of the analysis, it adds language that specifies that, while it is not necessary to separately allege and prove each offense in the series in order to prosecute a single offense under a provision described above in paragraph (1), (2), or (3) of that part, or in paragraph (4) of that part as expanded by the bill (see the second preceding paragraph), it remains necessary in prosecuting them as a single offense to prove the aggregate value of the property or services in order to meet the requisite statutory offense level sought by the prosecution.

Workers' compensation fraud as theft offense

(R.C. 2913.01(K))

The bill expands the definition of "theft offense," for purposes of R.C. Chapter 2913., to include a violation of R.C. 2913.48 (workers' compensation fraud), a violation of an existing or former municipal ordinance or law of Ohio or any other state, or of the United States, substantially equivalent to a violation of that section, or a conspiracy or attempt to commit, or complicity in committing, any violation of that section or an existing or former municipal ordinance or law of Ohio or any other state, or of the United States, substantially equivalent to a violation of that section.

Fifty two existing Revised Code sections use the term "theft offense." Of those 52 sections, 38 use the term as it is defined in R.C. 2913.01, in a variety of ways. The uses in those 38 sections include the commission of a theft offense as part of an element of another offense; license issuance, employment, and other restrictions imposed upon a person who has been convicted of such an offense; an increase in penalties if a person previously has been convicted of such an offense; and recovery of damages by a victim of such an offense.

Department of Rehabilitation and Correction selection of single validated offender risk assessment tool

(R.C. 5120.114; also R.C. 2929.15(E), 2929.16(A)(1), 2967.28(D)(1), 5149.31, 5149.32, and 5149.34)

The bill requires DRC to select a "single validated risk assessment tool" for assessing the likelihood of a person reoffending or violation a term of supervision. This assessment tool must be used by the following entities: (1) municipal courts, (2) common pleas courts, (3) county courts, (4) municipal court probation departments, (5) county probation departments, (6) probation departments established by two or more counties, (7) state and local correctional institutions, (8) private correctional facilities, (9) community-based correctional facilities, (10) the APA, and (11) the Parole Board.

For each entity required to use the assessment tool, each employee of the entity who actually will use the tool must be trained and certified by a trainer who is certified by DRC. Each entity utilizing the assessment tool must develop policies and protocols regarding all of the following activities: (1) application and integration of the assessment tool into operations, supervision, and case planning, (2) administrative oversight of the use of the assessment tool, (3) staff training, (4) quality assurance, and (5) data collection and sharing.

The bill expands the information that the Parole Board or a court working with it is required to review in determining the post-release control sanctions for a prisoner who is about to be released and for whom the Board or court is required or authorized to impose one or more post-release control sanctions. Under the bill, in addition to the factors it currently is required to review, the Board or court must review results from the single validated risk assessment tool selected by DRC in determining the sanctions. Currently, the Board or court must review the prisoner's criminal history, all juvenile court adjudications that found the prisoner while a juvenile to be a delinquent child, and the prisoner's record of conduct while confined. The assessment tool also is used in or applies to many other provisions of the bill, described below in "**Probation departments – chief probation officer, probation officer training, and publication of probation supervision policies**," "**Community corrections programs and subsidies**," and "**Probation Improvement Grant and Probation Incentive Grant – establishment and operation by Department of Rehabilitation and Correction**," and above in "**Sentencing to a community-based correctional facility**."

Probation departments − chief probation officer appointment, probation officer training, and publication of probation supervision policies

(R.C. 2301.27, 2301.271, and 2301.30)

The bill establishes hiring practices that courts of common pleas that establish a probation department must follow in appointing a chief probation officer, requires that probation officers be trained in accordance with standards developed by the Supreme Court, and requires that probation department probation supervision policies be published.

Appointment of chief probation officer

Under existing law, a court of common pleas may establish a county department of probation in accordance with specified procedures. The department is to consist of a chief probation officer and the number of other probation officers and employees, clerks, and stenographers that is fixed by the court. The court appoints those individuals, fixes their salaries, and supervises their work. The court cannot appoint as a probation officer any person who does not possess the training, experience, and other qualifications prescribed by the APA. Probation officers have all the powers of regular police officers and are required to perform any duties designated by the judge or judges of the court. The chief probation officer may grant a probation officer permission to carry firearms in the discharge of official duties, provided that a probation officer granted this permission must successfully complete a basic firearm training program of a specified nature conducted at a training school. A probation officer who receives a certificate of satisfactory completion of a basic firearm training program annually must successfully complete a firearms requalification program to maintain the right to carry a firearm in the discharge of official duties. If two or more counties desire to jointly establish a probation department for those counties, the judges of the courts of common pleas of those counties may establish a probation department for those counties.

In the portion of existing law that pertains to the establishment of a single county department of probation, the bill specifies that, when appointing a chief probation officer, a court of common pleas must: (1) publicly advertise the position on the court's web site, including, but not limited to, the job description, qualifications for the position, and the application requirements, (2) conduct a competitive hiring process that adheres to state and federal equal employment opportunity laws, and (3) review applicants who meet the posted qualifications and comply with the application requirements.

Probation officer training

The bill requires that probation officers of county or multicounty probation departments be trained in accordance with a set of minimum standards as established by the APA. Related to this, it requires the APA to develop minimum standards for the training of the probation officers. Within six months after the provision's effective date, the Court must provide a copy of the minimum standards to DRC, to every municipal court, county court, and court of common pleas and the Supreme Court, and to every probation department.

Publication of probation supervision policies

Currently, the court of common pleas of a county in which a county probation department is established as described above must require the department to perform certain functions. The court may impose the requirement in the rules through which supervision of the department is exercised or otherwise. The bill expands the duty of the court to also require it to require the probation department to do the following:

(1) Publish policies regarding the supervision of probationers that must include the following: (a) the minimum number of supervision contacts required for probationers, based on each probationer's risk to reoffend as determined by the single validated risk assessment tool selected by DRC (see "**Department of Rehabilitation and Correction selection of single validated offender risk assessment tool**," above), under which higher risk probationers receive the greatest amount of supervision, and (b) a graduated response policy to govern which types of violations a probation officer may respond to administratively and which type require a violation hearing by the court.

(2) Provide DRC with a monthly report that includes statistical data needed to support budget requests and satisfy requests for information relating to the operation of probation departments under the jurisdiction of courts of common pleas and municipal courts and that includes all of the following: (a) a count of the number of individuals placed on probation, (b) a count of the number of individuals terminated from probation listed by type of termination, including revocation, (c) the total number of individuals under supervision at the end of the month, and (d) any other elements, as determined necessary by DRC, that allow for better measurement of the types of individuals placed on probation and their outcomes at termination.

Supervision of concurrent supervision offenders by a single court

(R.C. 2951.022)

Determination of supervising court

The bill establishes a mechanism for the supervision by a single entity of offenders who are not incarcerated, who are subject to supervision by multiple supervisory authorities, and to whom other specified criteria apply. Offenders in that category are designated as "concurrent supervision offenders." The definition of the term is set forth below in "**Definitions regarding concurrent supervision mechanism**."

Under the mechanism, subject to several exceptions, a concurrent supervision offender is to be supervised by the court that imposed the longest possible sentence and cannot be supervised by any other authority. The exceptions provide as follows:

(1) In the case of a concurrent supervision offender subject to supervision by two or more municipal or county courts in the same county, the municipal or county court in the territorial jurisdiction in which the offender resides is to supervise the offender.

(2) In the case of a concurrent supervision offender subject to supervision by a municipal court or county court and a court of common pleas for two or more equal possible sentences, the municipal or county court is to supervise the offender.

(3) In the case of a concurrent supervision offender subject to supervision by two or more courts of common pleas in separate Ohio counties, the court that lies within the same territorial jurisdiction in which the offender resides is to supervise the offender.

(4) Separate courts within the same county may enter into an agreement or adopt local rules of procedure specifying, generally, that concurrent supervision offenders are to be supervised in a manner other than that provided for in the two preceding paragraphs.

(5) The judges of the various courts of the state with jurisdiction over a concurrent supervision offender may agree by journal entry to transfer jurisdiction over a concurrent supervision offender from one court to another court in any manner the courts consider appropriate, if the offender is supervised by only a single supervising authority at all times. An agreement to transfer supervision of an offender under this provision does not take effect until approved by every court with authority to supervise the offender and may provide for the transfer of supervision to the offender's jurisdiction of residence whether or not the offender was subject to supervision in that jurisdiction prior to transfer.

(6) If the judges of the various courts of the state with authority to supervise a concurrent supervision offender cannot reach agreement as described in the preceding paragraph with respect to the supervision of the offender, the offender may be subject to concurrent supervision in the interest of justice upon the courts' consideration of the factors described below in "**Factors to be considered in maintaining or transferring authority**."

(7) Notwithstanding any other provision of the mechanism, the APA remains solely responsible for addressing any alleged violations by a parolee or releasee of the terms of supervision of that parolee or releasee.

Factors to be considered in maintaining or transferring authority

The bill provides that, in determining whether a court maintains authority to supervise an offender or transfers authority to supervise the offender under the provisions described above in paragraphs (4) to (6) under "**Determination of supervising court**," the court is required to consider all of the following: (1) the safety of the community, (2) the risk that the offender might reoffend, (3) the nature of the offenses committed by the offender, (4) the likelihood that the offender will remain in the jurisdiction, (5) the ability of the offender to travel to and from the offender's residence and place of employment or school to the offices of the supervising authority, (6) the resources for residential and nonresidential sanctions or rehabilitative treatment available to the various courts having supervising authority, and (7) any other factors consistent with the purposes of sentencing.

Authority and duties of supervising court

The bill specifies that the court having sole authority over a concurrent supervision offender pursuant to the mechanism is required to enforce any financial obligations imposed by any other court, to set a payment schedule consistent with the offender's ability to pay, and to cause collections of the offender's financial obligations to be distributed in proportion to the total amounts ordered by all sentencing courts, or as otherwise agreed by the sentencing courts. Financial obligations include financial sanctions imposed pursuant to provisions of the Felony Sentencing Law (R.C. 2929.18) and Misdemeanor Sentencing Law (R.C. 2929.28), court costs, and any other financial order or fee imposed by a sentencing court. A supervision fee may be charged only by the agency providing supervision of the case.

Unless the local residential sanction is suspended, the offender must complete any local residential sanction before jurisdiction is transferred in accordance with the mechanism. The supervising court must respect all conditions of supervision established by a sentencing court, but any conflicting or inconsistent order of the

supervising court supersedes any other order of a sentencing court. In the case of a concurrent supervision offender, the supervising court must determine when supervision will be terminated but cannot terminate supervision until all financial obligations are paid pursuant to the provisions of the Felony Sentencing Law and Misdemeanor Sentencing Law.

Definitions regarding concurrent supervision mechanism

The bill provides the following definitions that apply to the supervision mechanism:

"**Concurrent supervision offender**" means any offender who has been sentenced to community control for one or more misdemeanor violations, is a "parolee" or "releasee" (see below), or has been placed under a community control sanction pursuant to provisions of the Felony Sentencing Law (R.C. 2929.16, 2929.17, 2929.18, or 2929.20) and who is simultaneously subject to supervision by any of the following: (1) two or more Ohio municipal courts or county courts, (2) two or more Ohio courts of common pleas, (3) one or more Ohio courts of common pleas and one or more Ohio municipal courts or county courts, or (4) one or more Ohio municipal or county courts or Ohio courts of common pleas and the APA. "**Concurrent supervision offender**" does not include an offender subject to the joint supervision of a court of common pleas and the APA pursuant to an agreement entered into under an existing provision that permits a court of common pleas and DRC to enter into an agreement allowing the court and the Parole Board to make joint decisions relating to parole and post-release control.

"**Parolee**" means any inmate who has been released from confinement on parole by order of the APA or conditionally pardoned, who is under supervision of the APA and has not been granted a final release, and who has not been declared in violation of the inmate's parole by the authority or is performing the prescribed conditions of a conditional pardon. As used in this definition, "**parole**" means, regarding a prisoner who is serving a prison term for aggravated murder or murder, who is serving a prison term of life imprisonment for rape or the former offense of felonious sexual penetration, or who was sentenced prior to July 1, 1996, a release of the prisoner from confinement in a state correctional institution by the APA that is subject to the eligibility criteria specified in R.C. Chapter 2967. and that is under the terms and conditions, and for the period of time, prescribed by the APA or required by law.

"**Releasee**" means an inmate who has been released from confinement pursuant to R.C. 2967.28 under a period of post-release control that includes one or more post-release control sanctions. As used in this definition, "**post-release control**" means a period of supervision by the APA after a prisoner's release from imprisonment that includes one or more post-release control sanctions imposed under R.C. 2967.28 and

"**post-release control sanction**" means a sanction that is authorized under the Felony Sentencing Law and imposed upon a prisoner upon the prisoner's release from a prison term.

Notice of arrest and court appearance of community control sanction violator

(R.C. 2951.08)

The bill modifies the time at which notice must be given to the probation officer of a person serving a community control sanction if the person is arrested and the time at which the arrested person must be brought before a court.

Under existing law, unchanged by the bill, during a period of community control: (1) any field officer or probation officer may arrest the person under a community control sanction and bring the person before the judge or magistrate before whom the cause was pending, (2) any peace officer may arrest the person under any such sanction upon the written order of the chief probation officer if the person under the sanction is under the supervision of the officer's agency or on the order of an APA officer if the person under the sanction is under the APA's supervision, (3) any peace officer may arrest the person under any such sanction on the warrant of the judge or magistrate before whom the cause was pending, and (4) any peace officer may arrest the person under any such sanction if the peace officer has reasonable ground to believe that the person has violated or is violating any of a list of specified conditions that is a condition of the person's community control sanction. The provisions do not limit the powers of arrest otherwise granted to law enforcement officers and citizens under specified provisions of law.

Under the bill, *within three business days after* an arrest under the provisions described above, the arresting field officer, probation officer, or peace officer or the department or agency of the arresting officer must notify the chief probation officer or the chief's designee that the person has been arrested. *Within 30 days of being notified* that a field officer, probation officer, or peace officer has made an arrest under the provisions, the chief probation officer or designee, or another probation officer designated by the chief, promptly must bring the arrested person before the judge or magistrate before whom the cause was pending. Currently, the arresting officer must provide the notice to the chief probation officer or designee *promptly upon making the arrest*, and the chief probation officer, designee, or other probation officer must bring the arrested person before the judge or magistrate *promptly upon being notified of the arrest*.

Community corrections programs and subsidies

(R.C. 5149.31, 5149.32, 5149.33, and 5149.34; conforming change in R.C. 5149.36)

In general

Existing law requires DRC to establish and administer a program of subsidies for eligible counties and groups of counties for felony offenders and a program of subsidies for eligible municipal corporations, counties, and groups of counties for misdemeanor offenders for the development, implementation, and operation of "community corrections programs." As used in the provisions, "community corrections programs" include, but are not limited to, probation, parole, preventive or diversionary corrections programs, release-on-recognizance programs, prosecutorial diversion programs, specialized treatment programs for alcoholic and narcotic-addicted offenders, and community control sanctions. Existing law establishes criteria that a county, groups of counties, and municipal corporations must satisfy to be eligible for funds from the subsidy program and imposes certain duties and restrictions upon them. The bill modifies some of these criteria, duties, and restrictions.

Eligibility for subsidies

The bill enacts a new eligibility criterion that specifies that, in order to be eligible for the community corrections subsidies, counties, groups of counties, and municipal corporations must satisfy all applicable requirements under R.C. 2301.27 and 2301.30 (those sections specify criteria for establishment and operation of county and multicounty probation departments) and must utilize the single validated risk assessment tool selected by DRC as described above in "**Department of Rehabilitation and Correction selection of single validated offender risk assessment tool**." DRC must give any county, group of counties, or municipal corporation found to be noncompliant with the requirements described in the preceding sentence a reasonable period of time to come into compliance. If the noncompliant county, group of counties, or municipal corporation does not become compliant after a reasonable period of time, DRC is required to reduce or eliminate the subsidy granted to that county, group of counties, or municipal corporation.

The bill also expands a series of existing criteria that must be satisfied for a county, group of counties, or municipal corporation to be eligible for a community corrections subsidy so that, in addition to the existing criteria (see below), a county, group of counties, or municipal corporation must deliver programming that addresses the assessed needs of high risk offenders as established by the single validated risk assessment tool selected by DRC as described above in "**Department of Rehabilitation and Correction selection of single validated offender risk assessment tool**" and that may be delivered through available and acceptable resources within the municipal

corporation, county, or group of counties or through DRC. Currently, those criteria specify that, to be eligible for funds from the subsidy programs, a county, group of counties, or municipal corporation must comply with all of the following that are relevant: (1) maintain programs that meet the standards for community corrections programs adopted by DRC, (2) demonstrate that it has made efforts to unify or coordinate its correctional service programs through consolidation, written agreements, purchase of service contracts, or other means, (3) demonstrate that the comprehensive plan for the county, for each county of the group of counties, or for the county in which the municipal corporation is located, as adopted under a specified provision of existing law (see "**Local corrections planning board and county comprehensive plan**," below), has been approved by DRC's Director, and (4) if a subsidy was received in any prior fiscal year from a subsidy program, demonstrate that the subsidy was expended in a good faith effort to improve the quality and efficiency of its community corrections programs and to reduce the number of persons committed to state correctional institutions and to local jails or workhouses.

Local corrections planning board and county comprehensive plan

Existing law specifies that, if a county desires to receive a subsidy from a community corrections subsidy program, the board of county commissioners of the county must establish and maintain a local corrections planning board. A planning board generally must include specified local corrections officials, county and municipal officials, judges, practicing attorneys, law enforcement officers, and representatives of the public who meet specified eligibility criteria. Each local corrections planning board must adopt within 18 months after its establishment, and from time to time revise, a comprehensive plan for the development, implementation, and operation of corrections services in the county. The plan is to be adopted and revised after consideration has been given to the impact that it will have or has had on the populations of state correctional institutions and local jails or workhouses in the county, and is to be designed to unify or coordinate corrections services in the county and to reduce the number of persons committed, consistent with the standards for community corrections programs adopted by DRC, from that county to state correctional institutions and to local jails or workhouses. The plan and any revisions to it must be submitted to the board of county commissioners of the county in which the planning board is located for approval.

The bill expressly requires that the county comprehensive plan adopted by a local corrections planning board must include a description of the "offender population's" assessed needs as established by the single validated risk assessment tool selected by DRC as described above in "**Department of Rehabilitation and Correction selection of single validated offender risk assessment tool**," with particular attention to high risk offenders, and the capacity to deliver services and programs

within the county and surrounding region that address the offender population's needs. As used in this provision, "offender population" means the total number of offenders currently receiving corrections services provided by the county.

Sentencing to community corrections program

The bill establishes criteria for a court to sentence a felony offender to a community correction program established pursuant to the provisions described above. The criteria are described above in "**Sentencing to a community corrections program**."

DRC discontinuation of subsidy payments under community corrections subsidy

Existing law prohibits any municipal corporation, county, or group of counties receiving a community corrections subsidy under R.C. 5149.31(A) from reducing, by the amount of the subsidy it receives or by a greater or lesser amount, the amount of local, nonfederal funds it expends for corrections, including, but not limited to, the amount of local, nonfederal funds it expends for the operation of the county, multicounty, municipal, municipal-county, or multicounty-municipal jail or workhouse, for any county or municipal probation department, or for any community corrections program. Each subsidy must be used to make corrections expenditures in excess of those being made from local, nonfederal funds. Existing law also prohibits the use of any subsidy or portion of a subsidy to make capital improvements.

The bill authorizes, instead of requiring as under existing law, DRC to discontinue subsidy payments to a political subdivision that is a recipient of a community corrections subsidy payment and that reduces, by the amount of the subsidy it receives or by a greater or lesser amount, the amount of local, nonfederal funds it expends for corrections or that uses the subsidy or any portion of a subsidy to make capital improvements.

Probation Improvement Grant and Probation Incentive Grant – establishment and operation by Department of Rehabilitation and Correction

(R.C. 5149.311)

The bill requires DRC to establish and administer a Probation Improvement Grant and a Probation Incentive Grant for court of common pleas probation departments that supervise felony offenders. A discussion of the Grants follows.

Probation Improvement Grant

The Probation Improvement Grant is to provide funding to court of common pleas probation departments to adopt policies and practices based on the latest research on how to reduce the number of felony offenders on probation supervision who violate the conditions of their supervision. DRC is required to adopt and promulgate rules for the distribution of the Probation Improvement Grant, including the formula for the allocation of the subsidy based on the number of felony offenders placed on probation annually in each jurisdiction.

Probation Incentive Grant

The Probation Incentive Grant is to provide a performance-based level of funding to court of common pleas probation departments that are successful in reducing the number of felony offenders on probation supervision whose terms of supervision are revoked. DRC is required to calculate annually any cost savings realized by the state from a reduction in the percentage of people who are incarcerated because their terms of supervised probation were revoked. The cost savings estimate must be calculated for each county and be based on the difference from fiscal year 2010 and the fiscal year under examination. DRC must adopt and promulgate rules that specify the subsidy amount to be appropriated to court of common pleas probation departments that successfully reduce the percentage of people on probation who are incarcerated because their terms of supervision are revoked.

Stipulations applicable to both Grants

The following stipulations apply to both the Probation Improvement Grant and the Probation Incentive Grant:

(1) In order to be eligible for the Probation Improvement Grant and the Probation Incentive Grant, courts of common pleas must satisfy all requirements under R.C. 2301.27 and 2301.30 (those sections specify criteria for establishment and operation of county and multicounty probation departments) and must utilize the single validated risk assessment tool selected by DRC under the bill, as described above in "**Department of Rehabilitation and Correction selection of single validated offender risk assessment tool**."

(2) DRC may deny state financial assistance to any applicant if the applicant fails to comply with the terms of any agreement entered into pursuant to any of the bill's provisions that apply regarding either Grant;

(3) DRC must evaluate or provide for the evaluation of the policies, practices, and programs the common pleas probation departments utilize with the programs of

subsidies detailed in the bill's provisions that apply regarding either Grant and establish means of measuring their effectiveness;

(4) DRC must specify the policies, practices, and programs for which court of common pleas probation departments may use the program subsidy, it must establish minimum standards of quality and efficiency that recipients of the subsidy shall follow, and it must give priority to supporting evidence-based policies and practices it defines.

REHABILITATION SERVICES COMMISSION (RSC)

- Adds the Administrator of the Ohio Rehabilitation Services Commission (ORSC) as a member of the Ohio Family and Children First Cabinet Council.
- Requires funding agreements between ORSC and a public or private entity to comply with federal regulations for third-party cooperative agreements by public agencies.
- Increases to 25% (from 13%) the maximum percentage of funds that ORSC may receive under a third-party funding agreement and removes the specification that ORSC use the funds for administration.

Ohio Family and Children First Cabinet Council membership

(R.C. 121.37)

The bill adds the Administrator of the Ohio Rehabilitation Services Commission (ORSC) as a member of the Ohio Family and Children First Cabinet Council. The Council helps families seeking government services by streamlining and coordinating existing government services. It is currently 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, Developmental Disabilities, Aging, Rehabilitation and Correction, and Budget and Management.

ORSC third-party funding

(R.C. 3304.181 and 3304.182)

The bill requires all funding agreements between ORSC and a public or private entity to comply with federal regulations for third-party cooperative agreements by

public agencies (34 C.F.R. 361.28). Current law specifies only that the agreements must comply with state statutes.

The bill increases the maximum percentage of funds that ORSC may receive under a third-party funding agreement from 13% to 25%. Additionally, the bill removes the specification that ORSC use these funds for administration.

RETIREMENT (RET)

- Decreases employer contribution rates of the state's five public retirement systems by 2% of payroll, effective with payrolls beginning on or after July 1, 2011.
- Increases employee contribution rates of the state's five public retirement systems by 2% of salary, effective payrolls with beginning on or after July 1, 2011.

Retirement system contribution rates

(R.C. 145.47, 145.48, 145.49, 742.31, 742.33, 742.34, 3307.26, 3307.28, 3309.47, 3309.49, and 5505.15)

The bill decreases by 2% of payroll the employer contribution rates and increases by 2% of salary the employee contribution rates of the state's five public retirement systems. Contributions from employers and employees, along with earnings on those contributions, are used to fund the retirement, survivor, disability, and health care benefits provided to public employees and their beneficiaries. Ohio public employers and their employees do not contribute to the Social Security system for their public employment and are not eligible for Social Security benefits based on that employment.

The contribution rates for employers are decreased as follows:

Retirement system	Applicable employers	Contribution rate until payrolls beginning on or after July 1, 2011	Contribution rate after payrolls beginning on or after July 1, 2011
Public Employees Retirement System (PERS)	Employers of state and local employees other than PERS-Law Enforcement or PERS-Public Safety	14% of payroll	12% of payroll

Retirement system	Applicable employers	Contribution rate until payrolls beginning on or after July 1, 2011	Contribution rate after payrolls beginning on or after July 1, 2011
	Employers of state and local employees who are PERS-Law Enforcement or PERS-Public Safety	18.1% of payroll	16.1% of payroll
Ohio Police & Fire Pension Fund (OP&F)	Local government employers of police officers	19.5% of payroll	17.5% of payroll
	Local government employers of firefighters	24% of payroll	22% of payroll
State Teachers Retirement System (STRS)	Employers of teachers, school administrators, and university faculty	14% of payroll	12% of payroll
School Employees Retirement System (SERS)	Employers of school employees who are not teachers	14% of payroll	12% of payroll
State Highway Patrol Retirement System (SHPRS)	State Highway Patrol employees in the uniform division and patrol cadets	26.5% of payroll	24.5% of payroll

The contribution rates for employees are increased as follows:

Retirement system	Applicable employees	Contribution rate until payrolls beginning on or after July 1, 2011	Contribution rate after payrolls beginning on or after July 1, 2011
PERS, OP&F, SERS, STRS, and SHPRS	All employees covered under the respective system	10% of salary	12% of salary
PERS	PERS-Law Enforcement	11.6% of salary	13.6% of salary
	PERS-Public Safety	11% of salary	13% of salary

STATE BOARD OF SANITARIAN REGISTRATION (SAN)

- Increases the registration renewal fee for a registered sanitarian and a sanitarian-in-training from $74 to $80.
- Increases the late fee for a renewal application from $27 to $50, and specifies that the late fee is in addition to the renewal fee.
- Authorizes the State Board of Sanitarian Registration to establish by rule fees for additional copies of pocket identification cards and wall certificates.

Fees for registered sanitarians and sanitarians-in-training

(R.C. 4736.12)

The bill increases the registration renewal fee for registered sanitarians and sanitarians-in-training that the State Board of Sanitarian Registration charges from $74 to $80. Additionally, the bill increases the late fee for a renewal application from $27 to $50 and specifies that the late fee is in addition to the renewal fee. Finally, the bill authorizes the Board to adopt rules establishing fees for additional copies of pocket identification cards and wall certificates.

SCHOOL FACILITIES COMMISSION (SFC)

- Increases to 13 months (from one year under current law) the period after which the conditional approval of state funding for a school district's classroom facilities construction project lapses if the district voters do not approve within that period a bond issue and tax levy necessary to pay the district's portion of the project cost.
- Specifies procedures for setting a new project scope, cost estimate, and millage estimate for districts for which funding has lapsed.
- Requires that funds reserved to pay the state and school district shares of all projects be spent simultaneously, in proportion to their respective shares, instead of spending the state funds first as under current law for most district projects.
- Specifies procedures for close-out of projects.
- Codifies and makes permanent the Corrective Action Program.

- Codifies and makes permanent an Exceptional Needs sub-program to assist districts to relocate or replace a facility due to environmental contamination.

- Requires school districts, when applying to the School Facilities Commission for authority to purchase energy conservation measures to report both (1) forgone residual value of materials or equipment replaced by the energy conservation measures and (2) a baseline analysis of actual energy consumption data for the preceding five years (along with other certified cost-savings estimates required under current law).

- Requires that a district's report on its monitoring of the approved energy cost-saving measures be submitted annually to the Commission, instead of be made available to the Commission upon request as under current law.

- Authorizes the Commission to request the Director of Administrative Services to debar a contractor from contract awards for Commission projects in the same manner the Director debars contractors from contract awards for public improvements under current law.

Background to school facilities programs

The Ohio School Facilities Commission administers several programs that provide state assistance to school districts and community schools in constructing classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP), is designed to provide each city, exempted village, and local school district with partial funding to address all of the district's classroom facilities needs. It is a graduated, cost-sharing program where a district's portion of the total cost of the project and priority for funding are based on the district's relative wealth. Districts are ranked by wealth into percentiles. The poorest districts are served first and receive a greater amount of state assistance than wealthier districts will receive when it is their turn to be served based on their respective wealth percentile. Joint vocational school districts are served by the Vocational School Facilities Assistance Program, which is similar to CFAP.

Other programs have been established to address the particular needs of certain types of districts. The Exceptional Needs School Facilities Assistance Program provides funding for districts in the 1st through 75th wealth percentiles, and districts with territories of more than 300 square miles, in advance of their districtwide CFAP projects to construct single buildings in order to address acute health and safety issues. The Expedited Local Partnership Program permits most school districts that have not been

served under CFAP to apply the advance expenditure of *district* money on approved parts of their districtwide needs toward their shares of their CFAP projects when they become eligible for that program. The Accelerated Urban School Building Assistance Program allows certain Big-Eight school districts[177] to receive CFAP assistance earlier than otherwise permitted.

Lapse of project funding

(R.C. 3318.032, 3318.05, and 3318.41)

Once a district is eligible for funding under CFAP or the Vocational School Facilities Assistance Program, based on its wealth ranking and the amount of available moneys, the district must secure local funding to pay its portion of the project cost. Usually, the district seeks approval by its voters for a bond issue and an accompanying property tax levy to pay its share. Under current law, if the voters do not approve the bond issue and tax levy within one year after the Commission's conditional approval of the project, the encumbrance of state funds for the project lapses. In other words, a district has one year to secure funds to pay its share of the project. If it cannot do so by that time, those state funds will be offered to other eligible districts. The district does have first priority for funding in the future, however.

The bill extends to 13 months the period from conditional approval to lapse of funding if a district does not secure funding for its share of the project.

New estimates for renewal of lapsed projects

(R.C. 3318.032, 3318.05, 3318.054, and 3318.41)

As noted above, a district for which state funding lapses because the voters fail to approve local funding has first priority for funding in the future. But current law does not specify what project scope and costs a district board must resubmit to the voters after a project's funding lapses. In practice, it is the former project scope and costs that are resubmitted, which may not reflect the district's current needs, tax valuation, and relative wealth. In fact, the new election may be years after the project was conditionally approved. Thus, what the voters approve might not be enough to pay the district's portion. Or a district might wish to scale down its project before resubmitting the project to the voters. In either case, current law does not provide guidance to districts in seeking voter approval after their projects lapse.

[177] The program applies to Akron, Dayton, Cincinnati, Columbus, Cleveland, and Toledo. The other two Big-Eight districts, Canton and Youngstown, received CFAP funding prior to the operation of the Accelerated Urban Program.

The bill establishes procedures for a district board to follow if it wishes to renew its project after lapse. To do so, the board must request that the School Facilities Commission set a new scope, estimated cost, and estimated millage rate for the project based on the district's *current* wealth percentile and tax valuation. In the case of districts that participated in the Expedited Local Partnership Program and are now eligible for CFAP funding, their respective shares will be based on the percentage specified in the their Expedited Local Partner agreements.[178]

The new scope, estimated costs, and estimated millage rate are valid one year. The district board may resubmit the project, based on the new estimates, to the district's voters. If approved by the voters, the district's project will receive first priority for funding as it becomes available, as provided under current law.

Simultaneous spending of state and school district shares

(R.C. 183.51, 3318.08, 3318.38, and 3318.41)

Under current law, for all school districts except the Big-Eight districts participating in the Accelerated Urban Program or joint vocational districts, the state funds encumbered for a district's project are spent before the district's funds are spent. For the Accelerated Urban districts and joint vocational districts, the state and districts funds are spent simultaneously in proportion to their respective percentages of the total project cost. The bill requires simultaneous spending of the state and district shares for all district projects. As in the case of current law for the Accelerated Urban districts and joint vocational districts, the bill authorizes a district spend a greater portion of its funds during any specific period than would otherwise be required, if necessary to maintain the federal tax status or tax-exempt status of the notes or bonds issued by the district.

Final close-out of projects

(R.C. 3318.12 and 3318.48)

The bill specifies some procedures for the School Facilities Commission to use in closing out completed projects.

First, it requires the Commission to issue a "certificate of completion" to the district's board when all of the following have occurred: (1) all facilities have been completed and the district has received certificates of occupancy, (2) the Commission has issued certificates of contract completion on all prime construction contracts, (3) the

[178] Under the Expedited Local Partnership Program, a district locks in its percentage for future CFAP funding at the time it enters into the Expedited Local Partner agreement (R.C. 3318.36, not in the bill).

Commission has completed a final accounting of the district's project construction fund and determined that all payments were in compliance with Commission policies, (4) any litigation concerning the project has been resolved, and (5) all construction management services provided by the Commission have been delivered.

However, the bill permits the Commission to issue a certificate of completion prior to satisfaction of those conditions, if the Commission determines that the circumstances preventing their satisfaction "are so minor in nature that the project should be considered complete." When doing so, the Commission may specify any of the following: (1) the work that has yet to be completed and the manner in which the district board must oversee its completion, (2) terms and conditions for the resolution of pending litigation, or (3) any remaining responsibilities of the project construction manager.

Finally, the bill also permits the Commission to issue a certificate of completion even when the district does not voluntarily participate in the close-out process. The Commission may do so if the construction manager verifies that all facilities have been completed and the facilities have been occupied for at least a year. If there are any state funds remaining in the project construction fund that have not been returned within 60 days after issuance of the certificate of completion, the Auditor of State must issue a finding for recovery against the district and request legal action by the Attorney General.

Corrective Action Program

(R.C. 3318.49; Sections 620.20 and 620.21)

Sub. H.B. 462 of the 128th General Assembly, the capital reauthorization act for the 2010-2012 biennium, gave temporary authority to the School Facilities Commission and appropriated $23.3 million for grants to districts to correct defective or omitted work connected with a project. The bill codifies that authority and makes it a permanent program. Beginning July 1, 2011, the Commission must operate the program using the new codified statutory language.

For purposes of the permanent program, the Commission must define both "defective" and "omitted" and establish procedures and deadlines for districts to use in applying for assistance. The permanent authorization also differs from H.B. 462's temporary provisions as follows:

(1) It changes the deadline for a school district to notify the Commission of defects or omissions to three years after facility occupancy, instead of five years after project close-out as under H.B. 462.

(2) It states that the Commission's procedures for corrective action first must focus on engaging the responsible contractors.

(3) It requires a local share of the cost of the corrective work, based on the method used to determine respective shares of CFAP or vocational district projects. But the bill allows a district to request additional state assistance if it cannot provide its share; and

(4) The bill requires the Commission to seek recovery from responsible parties and to apply any recovered funds first to the district's share of the cost of the corrective work and then to the state's share.

Environmental contamination program

(R.C. 3318.371)

In 1999, the General Assembly authorized a temporary sub-program of the Exceptional Needs Program to assist particular districts that needed to relocate or replace a facility due to environmental contamination. Established in uncodified law, it has been reauthorized in every biennial budget act since. The bill codifies and makes permanent that authority. As in the prior temporary provisions, the new codified sub-program is available to any district regardless of wealth. And, if a district receives restitution for the contamination from the federal government or some other public or private entity, it must repay the state any amount of that restitution that exceeds the district's share of the cost of the project under the sub-program.

On the other hand, the new permanent sub-program differs from the temporary sub-program in that, first, it requires the Commission to adopt guidelines for determining district eligibility and funding. Second, it makes the Commission's use of environmental consultants optional, rather than mandatory. Third, it specifies that the contamination may include any contamination of air, soil, or water that impacts the occupants of a classroom facility. Prior uncodified law referred only to "extreme environmental contamination."

Finally, the most recent enactment of the temporary sub-program, in Am. Sub. H.B. 1 of the 128th General Assembly, capped a district's local share at 50% of the project cost, regardless of the district's wealth ranking. The sub-program, as codified by the bill, does not cap a district's share.

Energy conservation measures

(R.C. 133.06 and 3313.372)

Current law permits a school district, subject to approval by the School Facilities Commission, to issue bonds to purchase energy conservation improvements without voter approval in an amount up to 9/10 of 1% of the district's tax valuation. The debt service on the bonds is paid with the estimated savings on energy costs. In a similar manner, districts may enter into a series of installment contracts for energy conservation improvements with the approval of the Commission.

In applying for approval, a district must submit to the Commission a report prepared by an architect, professional engineer, or other person experienced in the design and implementation of energy conservation measures. That report must include estimates of all costs of design, engineering, installation, maintenance, repairs, debt service, and amounts by which energy consumption and resultant operational and maintenance costs may be reduced. The bill adds requirements that the report also include estimates of both (1) forgone residual value of materials or equipment replaced by the new energy conservation measures, and (2) a baseline analysis of actual energy consumption data for the preceding five years.

Also, current law requires the district board to monitor the savings and maintain a report of those savings, which must be made available to the Commission upon request. The bill, instead, requires outright that the district board submit its report to the Commission annually.

Debarment of contractors on SFC projects

(R.C. 153.02 and 3318.31)

The bill grants the Ohio School Facilities Commission (SFC) the authority to request the Director of Administrative Services to debar a contractor from contract awards for SFC projects.[179] The Director is to use the same grounds, and follow the same procedures, for debarring a contractor from public improvement contract awards under current law. During the period of debarment, the contractor is not eligible to bid for or participate in any contract for a public improvement or SFC project, as applicable.

[179] The bill defines "project" for this purpose as a project to construct or acquire classroom facilities, or to reconstruct or make additions to existing classroom facilities, to be used for housing the applicable school district and its functions (R.C. 153.02(A)).

- Removes the requirement for the Secretary of State to compile and publish specified numbers of nonelectronic copies of election statistics and official rosters of officers.

- Requires the Secretary of State to charge a filing fee for multiple agents' change filings.

- Creates the Information Systems Fund in the state treasury for the information technology related expenses of the Secretary of State's office.

- Creates the Help America Vote Act (HAVA) Fund in the state treasury, and specifies that HAVA moneys received by the Secretary of State from the U.S. Election Assistance Commission are to be credited to the fund and used for activities conducted pursuant to HAVA.

- Creates the Election Reform/Health and Human Services Fund in the state treasury, and specifies that HAVA moneys received by the Secretary of State from the U.S. Department of Health and Human Services are to be credited to the fund and used to assure access for disabled individuals.

- Establishes a privately funded Citizen Education Fund in the state treasury, and requires the Secretary of State to use moneys in the fund for preparing, printing, and distributing voter registration and educational materials and for conducting related workshops and conferences.

- Eliminates the Secretary of State's duty to publish and distribute the session laws in a bound format and provides for more flexible publishing and distribution requirements.

- Abolishes the Secretary of State Business Technology Fund.

- Requires the Secretary of State to use ordinary or electronic mail instead of certified mail or notices sent "in writing" to give businesses certain notices.

- Harmonizes inconsistent filing fee statutes by referencing the statute specifying fees to be charged by the Secretary of State.

- Increases from $1,800 to $2,400 the fee that must be paid by a voting machine vendor in order to have the Board of Voting Machine Examiners test the voting equipment for possible certification in Ohio.

Election statistics and official rosters of federal, state, county, township, and municipal officers

(R.C. 111.12)

The bill removes the specified numbers of nonelectronic copies of election statistics and official rosters of federal, state, county, township, and municipal officers that currently are required to be compiled and published biennially by the Secretary of State. The bill, instead, provides that the statistics and rosters must be compiled and published biennially in a paper, book, or electronic format.

Filing fees for multiple agent changes

(R.C. 111.16)

The bill requires the Secretary of State to charge and collect $125, plus $3 per entity record being changed, for a multiple change of agent name or address, standardization of agent address, or resignation of agent for corporations, nonprofit corporations, foreign corporations, foreign nonprofit corporations, limited liability companies, foreign limited liability companies, business trusts, real estate investment trusts, partnerships, or limited partnerships.

Information Systems Fund

(R.C. 111.181)

The bill creates the Information Systems Fund in the state treasury for the information technology related expenses of the Secretary of State's office. The fund is to receive revenue from fees charged to customers for special database requests, including corporate and Uniform Commercial Code filings. The fund is currently established in temporary law.

Help America Vote Act funds

(R.C. 111.28)

The bill creates, in the state treasury, the Help America Vote Act (HAVA) Fund. All moneys received by the Secretary of State from the United States Election Assistance Commission must be credited to the fund. The Secretary of State is required to use the moneys credited to the fund for activities conducted pursuant to the Help America Vote Act of 2002.[180] All investment earnings of the fund must be credited to the fund.

[180] Pub. L. No. 107-252, 116 Stat. 1666.

The bill also creates, in the state treasury, the Election Reform/Health and Human Services Fund. All moneys received by the Secretary of State from the United States Department of Health and Human Services must be credited to the fund. The Secretary of State is required to use the moneys credited to the fund for activities conducted pursuant to grants awarded to the state under the Help America Vote Act of 2002[181] to assure access for individuals with disabilities. All investment earnings of the fund must be credited to the fund.

The Help America Vote Act of 2002, among other provisions, provides for grants of money to states to assist in the acquisition of voting machines and to ensure that polling places and voting equipment is accessible to individuals with disabilities. The bill establishes, in permanent law, funds that previously existed only in temporary law to receive federal moneys pursuant to HAVA.

Citizen Education Fund

(R.C. 111.29)

The bill establishes, in the state treasury, the Citizen Education Fund. The fund is to receive gifts, grants, fees, and donations from private individuals and entities for voter education purposes. The Secretary of State is required to use moneys credited to the fund for preparing, printing, and distributing voter registration and educational materials and for conducting related workshops and conferences for public education. The fund is currently established in temporary law.

Electronic format and more flexible distribution requirements for session laws

(R.C. 149.091 and 149.11)

The bill authorizes the Secretary of State to publish the session laws (the Laws of Ohio) in a paper or electronic format as an alternative to the current requirement for a permanently bound format (a minimum of 25 copies in permanently bound volumes). The bill also eliminates current specific numbers of copies to be produced and relaxes the distribution requirements by authorizing instead of requiring the free distribution of the session laws to specified persons (county auditors, county law libraries, and other public officials). The persons who would have received free bound copies under current law (the clerks of both houses of the General Assembly, the Legislative Service Commission, the Ohio Supreme Court, the Library of Congress, the State Library, the

[181] Title II, Subtitle D, Sections 261 to 265.

Ohio Historical Society, and the Secretary of State) must continue to receive free copies of the session laws in paper or electronic format from the Secretary of State.

Abolishment of the Secretary of State Business Technology Fund

(R.C. 1309.528 and 111.18)

The bill abolishes the Secretary of State Business Technology Fund in the state treasury. The money in the Fund resulted from transfers of 1% of the money credited to the Corporate and Uniform Commercial Code Filing Fund. The moneys credited to the Secretary of State Business Technology Fund were used only for the upkeep, improvement, or replacement of equipment, or for the training of employees in the use of equipment, that is used to conduct business of the Secretary of State under the Uniform Commercial Code or the General Corporation Law.[182] Funds that were transferred to the Secretary of State Business Technology Fund will be retained in the Corporate and Uniform Commercial Code Filing Fund.

Notices sent by the Secretary of State

(R.C. 1329.04, 1329.42, 1701.07, 1702.59, 1776.83, and 1785.06)

The bill requires the Secretary of State to use ordinary or electronic mail instead of certified mail or notices sent "in writing" to notify businesses of the need to renew registrations of trade names, reports of fictitious names, and registrations of names, marks, or devices to indicate ownership of articles or supplies; to renew statements of continued existence; to revoke statements of qualification of partnerships that fail to file biennial reports; to give notices of failure to file a biennial statement; and to appoint a new statutory agent or file a statement of change of address for that agent. These notices are to be sent to the last known physical or electronic mail address of the businesses, rather than the last known address.

Filing fees for transactions of business and mergers or consolidations

(R.C. 1703.031 and 1703.07)

The bill removes the specific fee ($100) from the statute requiring a bank, savings bank, or savings and loan association chartered under the laws of the United States and whose main office is located in another state to provide notice it is transacting business in Ohio with the Secretary of State, and instead cross references the statute detailing the fees to be charged and collected by the Secretary of State,[183] which currently sets this fee

[182] R.C. Titles XIII and XVII.

[183] R.C. 111.16, not in the bill.

at $125. Similarly, the bill removes the fee specified in current law ($10) from the statute requiring a filing fee to be collected by the Secretary of State before filing a certificate of a foreign corporation's merger or consolidation and instead cross references the statute detailing the fees to be charged and collected by the Secretary of State, which currently sets this fee at $125. This cures the inconsistency in current law between the fees charged for these two activities.

Voting equipment testing fee

(R.C. 3506.05)

The bill increases from $1,800 to $2,400 the fee that must be paid by a voting machine vendor in order to have the Board of Voting Machine Examiners test the vendor's voting equipment for possible certification in Ohio.

The Board of Voting Machine Examiners is required to test voting machines, marking devices, and automatic tabulating equipment that a vendor submits for possible certification for use in Ohio. Upon submission of voting equipment for testing, and the payment of the required fee by the vendor, the Board must examine the voting equipment to determine whether it meets the statutory standards for vote retention, security, storage, and other crucial operations of the equipment as may be determined by the Board. If the Board determines that the voting equipment is secure and capable of performing the required functions, it may recommend that the Secretary of State certify the equipment for use in Ohio.

BOARD OF TAX APPEALS (BTA)

Board of Tax Appeals review

(Section 757.30)

The bill requires the Tax Commissioner to review the operations of the Ohio Board of Tax Appeals (BTA) and make recommendations for how the operations could be improved. The Commissioner's review must include consultations with people who have or have had matters before the BTA. The recommendations must address internal operations, the appeals process, and "other operational matters." The Commissioner must report the review and recommendations by November 15, 2011, to the Governor, President of the Senate, and Speaker of the House. The Commissioner may designate an employee to conduct the review.

- Reduces the amount of state tax revenue credited to the Local Government Fund (LGF) to 75% of fiscal year 2011 levels for each month between August of 2011 and June of 2012 and to 50% of fiscal year 2011 levels for all months in fiscal year 2013.

- Reduces the amount of state tax revenue credited to the Public Library Fund (PLF) for all months between August of 2011 and June of 2013 to 95% of fiscal year 2011 levels.

- Provides that distributions to the LGF and PLF after fiscal year 2013 will depend on the total amount allocated to the respective funds in fiscal year 2013 as a percentage of total state tax revenue credited to the GRF in that fiscal year.

- Authorizes, beginning in August of 2011, pro rata distributions from the LGF to counties and municipal corporations based on the proportionate share each subdivision received from the LGF in fiscal year 2011.

- Authorizes, for the period between July and December of 2011, pro rata distributions from the PLF to counties based on the proportionate share each county received in 2010 and, for the period between January of 2012 and June of 2013, pro rata distributions to counties based on the proportionate share each county received in 2011.

- Provides that county undivided local government funds shall no longer receive 5/8 of the revenue from the dealers in intangibles tax on unaffiliated dealers, and instead allocates all revenue from that tax to the GRF.

- Beginning in FY 2012, decreases over ten years the portion of commercial activity tax revenue earmarked for reimbursing school districts and other taxing units for business personal property tax losses, and increases the GRF portion.

- Replaces the current reimbursement schedule for fixed-rate levy losses with one that ends in 2026 (school districts) or 2030 (non-school taxing units), and:

  --Terminates payments if a taxing unit's reimbursement for calendar year 2010 (non-school taxing units) or fiscal year 2011 (school districts) fails to exceed an annually increasing percentage of the taxing unit's total resources (a fixed measure of its state aid and local levy revenues); and

  --Phases out payments for taxing units whose 2010 or 2011 reimbursement exceeds the threshold percentage by paying the unit its 2010 or 2011 reimbursement minus the threshold percentage of its total resources.

- Phases out the reimbursement for non-current expense fixed-rate levy losses in one-fourth increments between 2012 and 2015 for school districts and between 2011 and 2014 for municipal corporations. (Other taxing units' non-current expense, fixed-rate levies, if any exist, are disregarded).

- Retains the current law reimbursement for unvoted debt levies and fixed-sum levies (i.e., school district "emergency" and similar fixed-dollar levies, and voted debt levies).

- Reduces the reimbursement frequency for school districts from three payments per year (one-third in August, October, and May) to two payments per year (two-thirds in November and one-third in May).

- Changes the installment fractions for non-school taxing units to one-seventh in May and six-sevenths in November through 2013, and thereafter to one-half in both May and November.

- Changes the manner of apportioning reimbursement payments among school districts that have transferred or merged territory to reflect the changes in the factors for computing reimbursement payments and to apportion payments on the basis of the per-pupil values of those factors.

- Changes the default method for apportioning reimbursement payments among other local governments for mergers or annexations from a property value basis to a square mileage basis.

- Phases out the county administrative fee losses caused by the tangible personal property tax phase-out from 2012 to 2016. The reimbursement equals a percentage of the 2010 administrative fee loss reimbursement (80% for 2012 and declining to 0% in 2016 in 20% increments).

- Beginning in FY 2012, decreases over 20 years the portion of kilowatt-hour tax revenue earmarked for reimbursing school districts and other taxing units for public utility personal property tax losses and increases the GRF portion.

- Requires all natural gas distribution ("MCF") tax revenue to be credited to the GRF.

- Replaces the current reimbursement schedule for fixed-rate levy losses with one that ends in 2030, and:

    --Terminates payments if a taxing unit's reimbursement for calendar year 2010 (non-school taxing units) or fiscal year 2011 (school districts) fails to

exceed an annually increasing percentage of the taxing unit's total resources (a fixed measure of its state aid and local revenues); and

--Phases out payments for taxing units exceeding the threshold percentage by paying the unit its 2010 or 2011 reimbursement minus the threshold percentage of its total resources.

- Phases out the reimbursement for non-current expense fixed-rate levy losses in one-fourth increments between 2012 and 2016 for school districts and between 2011 and 2014 for municipal corporations. (Other taxing units' non-current expense, fixed-rate levies, if any exist, are disregarded).

- Retains the current law reimbursement for unvoted debt levies and fixed-sum levies (i.e., school district "emergency" and similar fixed-dollar levies, and voted debt levies).

- Requires debt levies authorized by a municipal charter to be levied without a vote of municipal electors to be reimbursed as an unvoted debt levy.

- Terminates payments of "surplus" money remaining in the Local Government Property Tax Replacement Fund after all reimbursement is paid; currently the surplus is distributed among counties on a per-capita and prorated utility property tax loss basis and paid to taxing units in the counties in proportion to current property taxes.

- Changes the manner of apportioning reimbursement payments among school districts that have transferred or merged territory to reflect the changes in the factors for computing reimbursement payments and to apportion payments on the basis of the per-pupil values of those factors.

- Changes the default method for apportioning reimbursement payments among other local governments for mergers or annexations from a property value basis to a square mileage basis.

- Repeals the law creating, as of January 1, 2011, the Public Utility Tax Study Committee, which was to study the extent to which school districts had been compensated by the tax loss reimbursements.

- Expands the existing job retention tax credit (JRTC) program, which includes both a permanent nonrefundable and a temporary refundable credit program, to provide for a new, separate refundable tax credit available to certain eligible businesses for a limited time.

- Requires recipients of the new refundable credit to have an annual payroll of at least $20 million, invest at least $5 million at a project site located within the same jurisdiction as that in which the business has its principal place of business, and meet other existing JRTC program requirements.

- Modifies the JRTC eligibility requirement that a business must retain at least 500 employees by instead requiring a business to either meet the 500-employee retention requirement or have an annual payroll of $35 million.

- Authorizes the new credit only temporarily by providing that the Tax Credit Authority may only enter agreements for the new credit between July 1, 2011 and December 31, 2013.

- Provides a new annual credit limit applicable to both the existing and new refundable JRTC credits by allowing the authorization of up to $25 million of new refundable credits in 2011 and 2012 combined, and up to $25 million of new credits in 2013, for a total limit of $50 million in annual credits claimable in 2013 and every year thereafter for up to 15 years.

- Authorizes the Tax Commissioner to adopt rules requiring employer withholding, motor fuel, cigarette and tobacco product, or severance tax returns or reports to be filed, or payments made, electronically, unless exempted for good cause.

- Extends by one year the authority of local governments to offer Enterprise Zone economic development incentives, which currently expires on October 15, 2011.

- Authorizes the Tax Commissioner to issue notices and orders using delivery means other than certified mail or personal service if the alternative means records when the notice or order is placed with the delivery service and when it is accepted from a recipient, and if the delivery service is available to the general public and is as timely and reliable as the U.S. Postal Service.

- Eliminates requirement that the Department of Taxation include mail-in voter registration materials with income tax returns.

Local Government Funds

(R.C. 131.44, 131.51, 5747.46 to 5747.48, and 5747.50 to 5747.51; Section 757.10)

The bill reduces the amount of state tax revenue credited to the Local Government Fund (LGF) and the Public Library Fund (PLF), and thus the amount of

revenue available for distribution to counties, municipalities, townships, public library systems, and other special-purpose political subdivisions receiving revenue sharing payments.

State funding of the Local Government Fund (LGF)

(R.C. 131.51(A); Section 757.10)

Existing law authorizes monthly allocations to the state Local Government Fund (LGF) of 3.68% of all state tax revenue credited to the General Revenue Fund (GRF) in the preceding month. The bill proposes to reduce these monthly allocations beginning on August 1, 2011. Between August of 2011 and June of 2012, each month's LGF allocation equals 75% of the allocation made in the corresponding month in fiscal year 2011. Then, between July of 2012 and June of 2013, each month's LGF allocation equals 50% of the allocation made in the corresponding month in fiscal year 2011. The bill also specifies that the reduced allocations must be made from income tax revenue credited to the GRF. (Current law does not specify a revenue source for LGF or PLF allocations, but does require the Director of Budget and Management to create a schedule identifying specific tax revenue sources for the allocations.)

Under the bill, the reductions made in fiscal years 2012 and 2013 will provide the basis for future LGF allocations. Beginning in July of 2013, the percentage of state tax revenue allocated to the LGF in any month will equal the total percentage of state tax revenue allocated to the LGF in fiscal year 2013. As under current law, the bill provides that LGF allocations after June of 2013 may be made from any state tax revenue credited to the GRF.

State funding of the Public Library Fund (PLF)

(R.C. 131.51(B); Section 757.10)

Under existing codified law, the state Public Library Fund (PLF) receives monthly allocations equal to 2.22% of total GRF tax revenue credited in the preceding month. However, that percentage was temporarily reduced to 1.97% for all months between August of 2009 and June of 2011 in Am. Sub. H.B. 1 of the 128th G.A. (see Section 381.20 of that act). The bill proposes to further reduce these monthly allocations beginning in August of 2011.

Under the bill, between August of 2011 and June of 2013, each month's PLF allocation equals 95% of the allocation made in that month in fiscal year 2011. These reduced allocations must be made from income arising from the sales tax and kilowatt-hour tax, rather than from any state tax revenue credited to the GRF. Beginning in July of 2013, the percentage of state tax revenue allocated to the PLF in any month will be

based on the total percentage of state tax revenue allocated to the PLF in fiscal year 2013. PLF allocations after June of 2013 may be made from any state tax revenue credited to the GRF.

LGF distributions to local governments

Current law

(R.C. 5747.50 to 5747.51)

Continuing law provides for the distribution of LGF funds to county undivided local government funds in every county of the state. Local governments in the county agree on how money in the county LGF is allocated among the various political subdivisions within each county. (In a few counties, a default statutory formula determines the allocation.) The amounts disbursed are to be used for the current operating expenses of the subdivisions. In addition, more than 500 municipal corporations receive direct distributions from the LGF. Such distributions are made to a municipal corporation's general fund.

Distributions to a particular county undivided LGF or municipal corporation general fund depend on the amounts distributed to those funds in 2007. Each county and municipal corporation must receive at least the same amount distributed to their respective fund in that year. If revenue in the state LGF is insufficient to meet these minimum distributions, then each county and municipal corporation must receive a reduced share prorated according to their share of 2007 distributions. However, if there is excess revenue in the state LGF after making the minimum distributions, each county undivided LGF may receive a prorated share of the excess based on the county's proportionate share of the state population, according to U.S. Census Bureau estimates from the previous year. No additional revenue is allocated to municipal corporations.

Proposed law

(Section 757.10(E))

The bill adjusts the current LGF allocation method to provide for distributions to county undivided LGFs on a pro rata basis based on the proportionate share of state distributions each county LGF received in fiscal year 2011. For each month between August of 2011 and June of 2013, each county LGF will receive a share equal to its proportionate share of LGF distributions made to all county LGFs in that month in fiscal year 2011 (however, any dealers in intangibles taxes received by a county undivided LGF in FY 2011 would not be counted in the county's proportionate share). Similarly, each municipal corporation that receives direct LGF distributions will receive

a share equal to its proportionate share of all municipal corporation direct distributions made in that month in fiscal year 2011.

PLF distributions to local governments

Current law

(R.C. 5705.32, 5705.321, and 5747.46 to 5747.48)

Under continuing law, county undivided public library funds in every county receive a distribution from the state PLF. Agreements among local governments (and, in a few cases, a statutory formula) determine the amounts to be allocated to libraries within the county, and county treasurers distribute the amounts accordingly. (In a few counties, other kinds of local governments receive a share of the county PLF.)

The amount a county undivided PLF receives in a given year under current law depends upon the fund's "guaranteed share" and its "share of the excess." A fund's "guaranteed share" is the amount the fund received in the previous year after an adjustment for inflation. In any year, if the guaranteed shares of all counties exceed the total balance of the state PLF, then the share of county funds must be reduced proportionately. Alternatively, if the balance of the state PLF exceeds the guaranteed shares of the counties, then each county may receive a "share of the excess." That share is calculated by determining an equalization ratio for each county that is based on the county's population and its guaranteed share from the previous year.

Proposed law

(Section 757.10(F) and (G))

Under the bill, a county undivided PLF's distribution would be based on the fund's proportionate share of distributions in prior years, rather than on the actual amounts received in those prior years, thus reflecting the 5% reduction in the state PLF. In each month between July and December of 2011, each county undivided PLF will receive a share of the state PLF equal to the county's proportionate share of all state PLF distributions it received in 2010. Similarly, between January of 2012 and June of 2013, each fund's share would be based on that fund's proportionate share of all distributions it received in 2011.

Tax Commissioner estimates

Under existing law, the Tax Commissioner must periodically certify estimates of the amount of revenue that each county undivided LGF and PLF will receive in the following year. For county undivided LGFs, the estimates for a distribution year must be provided by July 25 of the preceding year. The Tax Commissioner must provide

three separate estimates to county undivided PLFs for a given year: one each in July and December of the preceding year and one in June of the distribution year.

The bill excuses the Tax Commissioner from compliance with these certification requirements in the 2012 and 2013 distribution years. Instead, the Tax Commissioner must send to each county only one estimate of the total amount to be received from the LGF and the PLF by July 20 of the preceding year. The Tax Commissioner may provide additional revised estimates at any time.

Dealers in intangibles tax

(R.C. 5707.03, 5725.01, 5725.151, 5725.18, and 5725.24)

Current law allocates 5/8 of the tax revenue from most dealers in intangibles to county undivided local government funds. Under the bill, counties would no longer receive that portion of tax revenue after December 31, 2011; all revenue would be allocated to the General Revenue Fund (GRF).

Background

Continuing law provides for the taxation of shares in and capital employed by dealers in intangibles. The tax applies to businesses that operate in Ohio and engage in certain financial and lending activities (e.g., stockbrokers, mortgage companies, nonbank loan companies). The tax also applies to "qualifying dealers," which are generally dealers in intangibles that are subsidiaries of a financial institution or insurance company. The tax is levied on the fair value of capital employed by or value of shares of dealers of intangibles at a rate of .8% (8 mills).

Under current law, all tax revenue collected from qualifying dealers is paid into the General Revenue Fund (GRF). However, the revenue collected from all other dealers in intangibles is divided between the GRF and county undivided local government funds. The GRF receives 3/8 of those receipts, while counties receive 5/8. The bill proposes to instead allocate all revenue collected from any dealer in intangibles to the GRF.

Local taxing unit reimbursement for business personal property tax losses

(R.C. 5751.20, 5751.21, and 5751.22)

From 2005 to 2011, state law phased out taxes levied by school districts and other local taxing units on business personal property. To compensate the taxing units for the resulting property tax losses, state law established a schedule of "replacement" payments. Currently, the schedule reimburses taxing units in full for their levy losses each year until tax year 2011 (non-school taxing units) or fiscal year 2013 (school

districts), when the payments themselves begin to be phased out.[184] The schedule terminates payments as of fiscal year 2019 for school districts or tax year 2018 or 2019 for non-school taxing units, depending on the type of personal property.

Commercial activity tax revenue allocation

Currently, payments are made from commercial activity tax (CAT) revenue, which, for fiscal year 2011, is credited as follows: 0% to the General Revenue Fund (GRF), 70% to the School District Tangible Property Tax Replacement Fund (SDRF), and 30% to the Local Government Tangible Property Tax Replacement Fund (LGRF). Over fiscal years 2012 through 2018, the amount credited to the LGRF is reduced and the amount credited to the GRF increases correspondingly. In fiscal years 2019 and thereafter, no CAT revenue is credited to the LGRF. The amount credited to the SDRF, however, does not decline, even though current law terminates school district reimbursement payments as of fiscal year 2019. The amount credited to the SDRF that is not distributed is reserved for unspecified "school purposes."

As shown in the table below, the bill reallocates the portion of CAT revenue credited to the GRF, SDRF, and LGRF. It also eliminates the reservation of undistributed SDRF money for "school purposes."

Fiscal Year	General Revenue Fund	School District Property Tax Replacement Fund	Local Government Property Tax Replacement Fund
2012	~~5.3%~~ 25.0%	~~70.0%~~ 52.5%	~~24.7%~~ 22.5%
2013	~~10.6%~~ 50.0%	~~70.0%~~ 35.0%	~~19.4%~~ 15.0%
2014	~~14.1%~~ 73.8%	~~70.0%~~ 19.5%	~~15.9%~~ 6.7%
2015	~~17.6%~~ 83.4%	~~70.0%~~ 13.3%	~~12.4%~~ 3.3%
2016	~~21.1%~~ 88.0%	~~70.0%~~ 10.0%	~~8.9%~~ 2.0%
2017	~~24.6%~~ 90.7%	~~70.0%~~ 8.0%	~~5.4%~~ 1.3%
2018	~~28.1%~~ 92.3%	~~70.0%~~ 6.7%	~~1.9%~~ 1.0%
2019 ~~and thereafter~~	~~30.0%~~ 97.0%	~~70.0%~~ 3.0%	0%
2020	98.0%	2.0%	0%
2021 and thereafter	100%	0%	0%

[184] A "tax year" is the same as the calendar year. For example, tax year 2011 means January 1, 2011 through December 31, 2011.

TPP loss reimbursement phase-out

Losses experienced by city, local, or exempted village school districts, joint vocational school districts, and other local taxing units for personal property tax losses are divided into three types: fixed-rate levy losses, fixed-sum levy losses, and losses on unvoted debt levies (i.e., debt levies within the 10-mill limit).

Fixed-rate levy loss reimbursement

In general, a taxing unit's fixed-rate levy losses equal its 2004 personal property taxable values multiplied by the sum of the effective tax rates for its fixed-rate levies in effect in tax year 2004 or applicable to tax year 2005 (so long as the levy was approved by voters before September 1, 2005). For school districts, from this product is subtracted the district's "state education aid offset," which is the increase in state funding a school district receives due to the loss of its personal property tax base. (The aggregate annual amount of state education aid offset is transferred quarterly from the SDRF to the GRF because state education aid is paid from the GRF. The offset is discussed in more detail below under "**Transfers to GRF for school districts' state aid**.")

Current law. Under current law, fixed-rate levies that do not apply to a tax year after 2010 do not qualify for reimbursement beginning with the later of 2011 or the first tax year to which the levy does not apply. With respect to all other fixed-rate levies, the losses are reimbursed in full through October 2010 for non-school taxing units and through May 2013 for school districts and, as shown below, and with one exception, are reduced to zero by fiscal or tax year 2018.

School Districts Current law	
Fiscal Year	Percentage of Loss Reimbursed
2011, 2012, and 2013	100%
2014	9/17 (~ 53%)
2015	7/17 (~ 41%)
2016	5/17 (~ 29%)
2017	3/17 (~ 18%)
2018	1/17 (~ 6%)
2019 and thereafter	0%

Non-school Taxing Units Current law		
Tax Year	Percentage of Loss Reimbursed (Machinery and equipment, inventory, and furniture and fixtures fixed-rate levy losses)	Percentage of Loss Reimbursed (Telephone property fixed-rate levy losses)
2011	14/17 (~ 82%)	100%
2012	11/17 (~ 65%)	87.5%
2013	9/17 (~ 53%)	75%
2014	7/17 (~ 41%)	62.5%
2015	5/17 (~ 29%)	50%
2016	3/17 (~ 18%)	37.5%
2017	1/17 (~ 6%)	25%
2018	0%	12.5%
2019 and thereafter	0%	0%

Proposed law. The bill changes the manner in which fixed-rate levy loss reimbursements are computed and phased out. The pace at which a school district's or, taxing unit's reimbursement is phased out depends on how much of its revenue consists of reimbursement under current law. Beginning in fiscal year 2012, the base for a taxing unit's fixed-rate levy loss reimbursement is, for school districts, the district's "current expense TPP allocation" and, for non-school taxing units, the unit's "TPP allocation." Current expense TPP allocation is the portion of the reimbursement the school district received in fiscal year 2011 relating to fixed-rate current expense levies, excluding any portion relating to levies that have expired. TPP allocation is the sum of the reimbursements the non-school taxing unit received in tax year 2010 relating to fixed-rate and fixed-sum levies. (For ease of explanation, current expense TPP allocation will be referred to hereafter as "TPP allocation.")

To determine whether a taxing unit is entitled to fixed-rate levy loss reimbursement for a fiscal year (school districts) or tax year (non-school taxing units), the taxing unit's TPP allocation is compared to its "total resources," which, as described below in "**Total Resources**," is the unit's total receipts over a single fixed period from certain state and local sources. If the taxing unit's TPP allocation does not exceed a threshold percentage of its total resources, it is no longer entitled to reimbursement for fixed-rate levy losses. If its TPP allocation does exceed the threshold, its reimbursement for the fiscal or tax year equals the difference of its TPP allocation minus the threshold percentage of its total resources. The foregoing can be symbolized as follows:

TPP Allocation ≤ Th% of Total Resources: **Reimbursement = $0.00**

TPP Allocation > Th% of Total Resources: **Reimbursement = TPP Allocation – Th% of Total Resources**

The threshold percentage is 2% for fiscal year 2012 (school districts) and for tax year 2011 (non-school taxing units). Each fiscal or tax year thereafter, the threshold percentage increases by 2 percentage points.

Reimbursement for fixed-rate levies for purposes other than current expenses (as the bill defines "current expenses") will be phased out over four years in one-fourth increments. Only school districts and municipal corporations will receive this reimbursement. The payments are computed on the basis of the reimbursement received under the current reimbursement formula in fiscal year 2011 (school districts) or tax year 2010 (municipal corporations).

Total resources

"Total resources" is the measure employed in the bill's new reimbursement method to calculate the phase-out of fixed-rate current expense levies (by comparing the TPP allocation to total resources). "Total resources" is defined separately depending

on the type of taxing unit: school districts, joint vocational school districts, counties, municipal corporations, townships, and all other taxing units. With respect to counties, total resources is defined separately for different county functions: mental health and disabilities, senior services, children's services, public health, and all other functions.

As described more fully in the table below, "total resources" for a city, local, or exempted village school district equals the sum of its 2012 state aid, its fiscal year 2010 business and utility TPP reimbursement for unexpired fixed-rate current expense and capital improvement levy losses, and current expense property and income taxes (including emergency property taxes):

Total Resources **(City, local, and exempted village school districts)**
• The district's fiscal year 2012 state aid; • The district's fiscal year 2010 reimbursement for current expense fixed-rate levy losses (excluding the portion related to expired fixed-rate levies) and non-debt fixed-sum levy losses due to (1) the phase-out of business tangible personal property taxes ("business TPP"), and (2) the reduction in assessment rates for electric and gas utility personal property ("utility TPP"), excluding the portion attributable to levies for joint vocational school district purposes;[185] • The average of the school district's current expense real and public utility taxes charged and payable for tax years 2008 and 2009 (determined after the H.B. 920 tax reduction but before the 2.5% and 10% rollbacks, for which school districts are reimbursed by the state), excluding taxes levied for joint vocational school district purposes, and including emergency levies; • The district's current expense taxes charged and payable (determined as above) on non-public utility personal property for tax year 2009 (taxes on the personal property of a telephone telegraph, or interexchange telecommunications company had not been fully phased out by tax year 2009); • The district's fiscal year 2009 receipts from a school district income tax levied for current expenses (except for certain receipts allocated to a state-assisted classroom facilities project); • The district's receipts during calendar year 2009 from a municipal income tax levied for municipal and school district purposes.

For a joint vocational school district, "total resources" equals the sum of its 2012 state aid, its fiscal year 2010 business and utility TPP reimbursement for unexpired fixed-rate current expense and capital improvement levy losses, and property taxes:

[185] Current law terminates reimbursements for fixed-sum levies that expire and are not renewed, substituted, or converted. (See "**Fixed-sum and unvoted debt levy loss reimbursement**.")

Total Resources (Joint vocational school districts)
• The district's fiscal year 2012 state aid; • The district's fiscal year 2010 reimbursement for current expense fixed-rate levy losses (excluding the portion related to expired fixed-rate levies) and fixed-sum levy losses due to (1) the phase out of business TPP taxes, and (2) the reduction in assessment rates for utility TPP; • The average of the school district's current expense real and public utility taxes charged and payable for tax years 2008 and 2009 (determined after the H.B. 920 tax reduction but before the 2.5% and 10% rollbacks, for which taxing units are reimbursed by the state); • The average of the real and public utility taxes charged and payable for tax year 2008 and 2009 from city, local, or exempted village school district levies devoted to the joint vocational school district; • The district's current expense taxes charged and payable (determined as above) on non-public utility personal property for tax year 2009.

For counties, "total resources" is defined separately for mental health and disability functions, senior services functions, children's services functions, public health functions, and, finally, for all other functions.[186] Total resources for mental health and disability, senior services, children's services, and public health functions equals the sum of the specified function's portion of (1) the calendar year 2010 reimbursement for unexpired business and utility TPP fixed-rate levy losses and business TPP fixed-sum levy losses and (2) property taxes:

Total Resources (Each for county mental health and disability, senior services, children's services, and public health functions)
• The portion of the county's calendar year 2010 reimbursement attributable to the specified function for fixed-rate levy losses (excluding the portion related to expired fixed-rate levies) due to (1) the phase-out of business TPP taxes, and (2) the reduction in assessment rates for utility TPP and for fixed-sum levy losses due to the business TPP tax phase-out; • Real and public utility taxes charged and payable for the specified function for tax year 2009.

[186] The effect of this separation on the comparison of TPP allocation to the threshold percentage of total resources is not clear. The counties' TPP allocation is not similarly separated, and the bill does not indicate whether a county's total resources equals the sum of the subsidiary total resources or whether a separate comparison of TPP allocation to some percentage of total resources should be made for each subsidiary total resources.

The total resources for the county catch-all category is the same as for the function-specific total resources, except the referenced function is "all other purposes," taxes charged and payable for debt is not counted, and the following amounts are added:

- The county's share of Local Government Fund and Dealers in Intangibles Tax allocations from the count undivided local government fund for calendar year 2010;

- The county's receipts in calendar year 2010 from the county sales and use tax that may be levied at a rate of up to 1% and used for general purposes or for criminal and administrative justice services in the county.

For municipal corporations, total resources equals the sum of the municipality's 2010 business and utility TPP reimbursement for unexpired fixed-rate levy losses and for business TPP fixed-sum losses, its 2010 share of Local Government Fund and Dealers in Intangibles Tax allocations, and property, municipal income, admissions, and estate taxes:

Total Resources (Municipal corporations)
• The municipality's calendar year 2010 reimbursement for fixed-rate levy losses (excluding the portion related to expired fixed-rate levies) due to (1) the phase-out of business TPP taxes, and (2) the reduction in assessment rates for utility TPP and for fixed-sum levy losses due to the phase-out of business tangible personal property taxes; • The municipality's share of Local Government Fund and Dealers in Intangibles Tax allocations from the county undivided local government fund for calendar year 2010; • The municipality's receipts directly from the Local Government Fund for calendar year 2010; • The municipality's current expense real and public utility taxes charged and payable for tax year 2009; • The municipality's admissions tax collections in calendar year 2008, or if such information has not yet been reported to the Tax Commissioner, in the most recent year before 2008 for which the municipality has reported data to the Commissioner; • The municipality's income tax collections in calendar year 2008, or if such information has not yet been reported to the Tax Commissioner, in the most recent year before 2008 for which the municipality has reported data to the Commissioner; • The median estate tax distribution to a municipality for the period 2006 through 2009.[187] If a municipality received no distributions in any of such years, its median estate tax distribution equals zero.

[187] Presumably, the distributions will be ordered according to value and not chronologically.

For townships, total resources equals the sum of the township's 2010 business and utility TPP reimbursement for fixed-rate losses and for business TPP fixed-sum losses (excluding fixed-rate and fixed-sum debt levies), its 2010 share of Local Government Fund and Dealers in Intangibles Tax allocations, and its 2009 real and public utility property taxes charged and payable (except from debt levies):

Total Resources (Townships)
• The township's calendar year 2010 reimbursement for fixed-rate levy losses (excluding the portion related to expired fixed-rate levies) due to (1) the phase-out of business TPP taxes, and (2) the reduction in assessment rates for utility TPP and for fixed-sum levy losses due to the phase-out of business TPP taxes, excluding the portion attributable to fixed-rate or fixed-sum debt levies; • The township's share of Local Government Fund and Dealers in Intangibles Tax allocations from the county undivided local government fund for calendar year 2010; • The township's real and public utility taxes charged and payable for tax year 2009 (except taxes to pay debt).

Total resources for all other taxing units equals the sum of the unit's 2010 business and utility TPP reimbursement for unexpired fixed-rate levy losses and for business TPP fixed-sum losses, its 2010 share of Local Government Fund and Dealers in Intangibles Tax allocations, property taxes (except for debt repayment), transit authority sales and use taxes, and certain allocations for state community college districts.

Total Resources (All other taxing units)
• The taxing unit's calendar year 2010 reimbursement for fixed-rate levy losses (excluding the portion related to expired fixed-rate levies) due to (1) the phase-out of business TPP taxes, and (2) the reduction in assessment rates for utility TPP, and for fixed-sum levy losses due to the phase-out of business TPP taxes; • The taxing unit's share of Local Government Fund and Dealers in Intangibles Tax allocations from the county undivided local government fund for calendar year 2010; • The taxing unit's real and public utility taxes charged and payable for tax year 2009 (except taxes to pay debt); • A transit authority's calendar year 2010 receipts from transit authority sales and use taxes; • For state community college districts receiving property tax revenue, the district's final state share of instruction allocation for fiscal year 2010.

Fixed-sum and unvoted debt levy loss reimbursement

Losses from fixed-sum levies and from unvoted debt-purpose levies (i.e., levies within the 10-mill limit for debt purposes) are computed in the same manner as fixed-

rate levy losses, except there is no deduction for state education aid increases, and, for fixed-sum levies, one-half mill is subtracted from the sum of the effective fixed-sum tax rates. Currently, fixed-sum levy losses are reimbursed in full until the levy (or, in the case of school districts, its successor fixed-sum levy) expires. (School district fixed-sum levies include "emergency," "substitute," "renewal," and "conversion" levies.) Losses on unvoted debt levies are reimbursed in full through fiscal year 2018. No reimbursement occurs thereafter. If the unvoted levy is no longer used for debt purposes, it becomes subject to the phase-out schedule for fixed-rate levy losses.

The bill retains the reimbursement for fixed-sum and unvoted debt levy losses, although the timing and weighting of payments is altered. (See "**Reimbursement payments**," below.) The bill also specifies that debt levies that have been impose pursuant to a municipal charter and that do not have to be approved by voters (so-called "charter millage") will, like other unvoted debt levies, continue to be reimbursed at 100% as long as the levy was still being levied to pay debt in 2010 and as long as it continues to be levied to pay debt.

Appeal

A school district or local taxing unit is permitted to appeal how a levy has been classified for the purposes of the new reimbursement method or how its total resources have been computed. The appeal must be filed in writing with the Tax Commissioner (including electronic mail). The Tax Commissioner must consider any appeal and make any changes the Commissioner deems warranted. The Commissioner's decision is final and not appealable. No changes are permitted after June 30, 2013. (Section 757.20.)

Reimbursement payments

Under current law, reimbursement payments are made on the last day of August, October, and May. For school district fixed-sum levy losses, one-third of the reimbursement for a fiscal year is distributed in each payment. For all other loss types, the reimbursement for a fiscal or tax year is distributed as follows: 3/7 (August), 3/7 (October), and 1/7 (May). Beginning in fiscal year 2012, however, reimbursements for school district fixed-rate and unvoted debt levy losses are distributed in one-third installments.

The bill eliminates the August and October payments and replaces them with a payment to be made on or before November 20. Beginning in fiscal year 2012, one-half of fiscal year reimbursement for school district fixed-rate and unvoted debt levy loss reimbursement is to be distributed in November and May. For school district fixed-sum levy losses, two-thirds of the fiscal year reimbursement is paid in November and one-third in May. For non-school taxing units, 1/7 of the calendar year reimbursement for all losses is distributed in May and 6/7 is distributed in November for years 2011

through 2013. For years 2014 and thereafter, one-half is distributed in May and one-half in November.

School district mergers and territory transfers

Current law establishes a procedure to determine how fixed-rate and fixed-sum levy loss reimbursements are computed when a school district or joint vocational school district merges with or transfers territory to another district. The bill amends this procedure as follows:

Type of merger or transfer of territory	Fixed-rate levy loss	Fixed-sum levy loss
Complete merger of two or more districts	**Current law:** Successor district receives the sum of the fixed-rate levy losses for each district merged. **Bill:** The total resources, current expense TPP allocation, total TPP allocation, and non-current expense TPP allocation of the successor district equals the sum of such items from the merging districts	**Current law:** Successor district receives the sum of the fixed-sum levy losses for each district merged. **Bill:** Same as current law.
Transfer of part of a district's territory to an existing district	**Current law**: The recipient district receives a pro rata share of the transferring district's total fixed-rate levy loss based on the value of business tangible personal property on the land being transferred. **Bill:** The recipient district receives a pro rata share of the transferring district's total resources, current expense TPP allocation, total TPP allocation, and non-current expense TPP allocation based on the ADM being transferred as compared to the total ADM of the district from which the territory is transferred.	**Current law**: The Department of Education, in consultation with the Tax Commissioner, shall make an equitable division of the fixed-sum levy loss reimbursements. **Bill**: Same as current law.

Type of merger or transfer of territory	Fixed-rate levy loss	Fixed-sum levy loss
Transfer of part of a district's territory to a newly created district	**Current law:** No fixed-rate levy losses are transferred **Bill:** No total resources, current expense TPP allocation, total TPP allocation, and non-current expense TPP allocation are transferred.	**Current law**: The Department of Education, in consultation with the Tax Commissioner, shall make an equitable division of the fixed-sum levy loss reimbursements. **Bill**: Same as current law.

Taxing unit mergers and annexations

Under current law, if all or a part of the territories of two or more non-school taxing units are merged, or if territory of a township is annexed by a municipal corporation, the Tax Commissioner must adjust the reimbursement payments "in proportion to the tax value loss apportioned to the merged or annexed territory," or as otherwise provided by a written agreement between the taxing units.

The bill requires the reimbursement payments to be apportioned according to the square mileage of the merged or annexed territory as a percentage of the total square mileage of the jurisdiction from which the territory originated.

County administrative fee loss reimbursement

(R.C. 5751.23)

Current law devotes a portion of the personal property tax loss reimbursements payable to school districts and other taxing units to compensate county auditors and treasurers for the loss of administrative fees payable on the basis of property tax collections. Under continuing law, county auditors and treasurers are entitled to a percentage of the property taxes collected to help cover the cost of administering and collecting property taxes, including the percentage credited to the real estate assessment fund to defray the cost of assessing real property. Under current law, the fee reimbursement for a county equals its 2010 reimbursement multiplied by the fractions used to phase out local taxing unit fixed-rate levy losses:

2011	14/17 (~ 82%)
2012	11/17 (~ 65%)
2013	9/17 (~ 53%)
2014	7/17 (~ 41%)
2015	5/17 (~ 29%)
2016	3/17 (~ 18%)
2017	1/17 (~ 6%)
2018	0%

The bill changes the manner in which fee losses are computed and phases reimbursements out by 2016. The losses for a county equal 14/17 (~ 82%) of the county's 2010 fee loss for 2011, and is reduced by one-fifth of the 2011 payments each year thereafter.

Transfers to GRF for school districts' state aid

(R.C. 5751.21(A)(1)(c))

Current law adjusts some school districts' reimbursement for fixed-rate levy losses to account for the fact that those districts' state aid increased as the taxable value of their business tangible personal property was phased out. (The state aid funding formulas pay a school district more per-pupil aid as the district's taxable property value declines, unless the district is paid a "guarantee" amount, which is based on its previous payments, if the formula would yield no aid amount or a smaller amount than in preceding years.) The increase in state aid arising from the reduction in taxable business personal property value is subtracted from a school district's reimbursement payment to avoid overcompensating the tax loss; this subtraction is the "state education aid offset." The total amount of the offset for all school districts is transferred from the School District Tangible Property Tax Replacement Fund to the GRF on a quarterly basis to cover the increased state formula aid paid from the GRF.

The bill specifies that this quarterly transfer is to end with the June 2013 transfer. For the purpose of computing the amount of the transfer until then, the bill fixes the amount of the offset for fiscal years 2012 and 2013 equal to the fiscal year 2011 offset.

Local taxing unit reimbursement for utility personal property tax losses

(R.C. 5727.84, 5727.85, and 5727.86)

In tax year 2001, the assessment rates for taxes levied by school districts and other taxing units against electric and rural electric company personal property were

reduced.[188] In tax year 2002, assessment rates for natural gas property were similarly reduced.[189] To compensate taxing units for the resulting property tax losses, state law established a schedule of "replacement" payments. Currently, the schedule reimburses school districts in full for their levy losses through 2016. Thereafter, no payments are made. Non-school taxing units were reimbursed in full through 2006. In 2007, payments to non-school taxing units began to be phased out. The schedule terminates payments as of 2017.

Kilowatt-hour tax and natural gas tax revenue allocation

Currently, payments are made from kilowatt-hour tax and natural gas distribution (or "MCF") tax revenue. Revenue from these taxes is credited as follows:

Tax	General Revenue Fund	School District Property Tax Replacement Fund	Local Government Property Tax Replacement Fund
Kilowatt-hour tax	63%	25.4%	11.6%
Natural gas tax	0%	68.7%	31.3%

Payments to taxing units are made from the replacement funds.

The bill requires all natural gas tax revenue to be credited to the GRF beginning in fiscal year 2012. It requires kilowatt-hour tax revenue to be credited as follows:

Fiscal Year	General Revenue Fund	School District Property Tax Replacement Fund	Local Government Property Tax Replacement Fund
2012 and 2013	88%	9%	3%
2014-2020	90%	8%	2%
2021-2030	93%	6%	1%
2031 and thereafter	100%	0%	0%

TPP loss reimbursement phase-out

Losses experienced by city, local, or exempted village school districts, joint vocational school districts, and other local taxing units for public utility personal property tax losses are divided into three types for the purposes of reimbursement:

[188] S.B. 3 of the 123rd General Assembly.

[189] S.B. 287 of the 123rd General Assembly.

fixed-rate levy losses, fixed-sum levy losses, and losses on unvoted debt levies (i.e., debt levies within the 10-mill limit).

Fixed-rate levy loss reimbursement

In general, a taxing unit's fixed-rate levy losses equal the difference between electric and natural gas personal property taxes due using the old (higher) assessment rates and the taxes due using the new (lower) assessment rates.[190] For school districts, from this product is subtracted the district's "state education aid offset," which is the increase in state funding a school district receives due to the reduction of its public utility personal property tax base. If a school district's offset exceeds its fixed-rate levy loss (i.e., its loss is compensated wholly by state aid increases), no fixed-rate levy reimbursement is paid. For all taxing units, if the unit is entitled to reimbursement for a particular fixed-rate levy, it continues to be reimbursed even if the levy expires.

Non-school taxing units experiencing a fixed-rate levy loss currently are reimbursed according to the following schedule:

Non-school taxing units	
Year	Percentage of Loss Reimbursed
2002-2006	100%
2007-2011	80%
2012	66.7%
2013	53.4%
2014	40.1%
2015	26.8%
2016	13.5%
2017 and thereafter	0%

A school district's fixed-rate levy loss currently is reimbursed through 2016 or until increases in the district's state aid above its 2002 level exceed its fixed-rate reimbursement in 2002 adjusted for inflation, whichever occurs first.

[190] For electric and rural electric company property, 1998 taxable values were used; for gas company property, 1999 values were used; and for nuclear power plant property, values for 2000 and 2001 or 2005 and 2006 were used. Losses relating to certain nuclear fuel and assemblies and natural gas were determined using a three-year average. For electric companies, 1998 tax rates were used, and for natural gas companies 1999 tax rates were used.

The bill changes the manner in which fixed-rate levy loss reimbursements are computed and phased out. The computation is nearly identical to that for reimbursement of business personal property tax losses. (See "**Fixed-rate levy loss reimbursement**" under the heading "**Local taxing unit reimbursement for business personal property tax losses**.") Beginning in fiscal year 2012, the base for a taxing unit's fixed-rate levy loss reimbursement is, for school districts, the district's "2011 current expense S.B. 3 allocation," and, for non-school taxing units, the unit's "2010 S.B. 3 allocation." The 2011 current expense S.B. 3 allocation is the portion of the reimbursement the school district received in fiscal year 2011 for current expense fixed-rate levy losses. 2010 S.B. 3 allocation is the portion of the reimbursement a non-school local taxing unit received in tax year 2010 for fixed-rate levy losses. In both instances, if a levy comprising a portion of the reimbursement has expired, its value is subtracted from the total reimbursement. (For ease of explanation, both reimbursements will be referred to as "S.B. 3 allocation.")

To determine whether a taxing unit is entitled to fixed-rate levy loss reimbursement for the fiscal year (school districts) or tax year (non-school taxing units), the taxing unit's S.B. 3 allocation is compared to its "total resources," which is the unit's total receipts over a single fixed period from certain state and local sources. If the taxing unit's S.B. 3 allocation does not exceed a threshold percentage of its total resources, it is no longer entitled to reimbursement for fixed-rate levy losses. If its S.B. 3 allocation does exceed the threshold, its reimbursement for the fiscal or tax year equals the difference of its S.B. 3 allocation minus the threshold percentage of its total resources. Reimbursement terminates for all taxing units in February 2030.

A taxing unit's "total resources" is the same as its total resources for purposes of determining its reimbursement for business personal property fixed-rate levy losses. (See "**Total Resources**" under the heading "**Local taxing unit reimbursement for business personal property tax losses**.") The threshold per cent for fiscal or tax year 2011 equals 2% and is increased by two percentage points each year thereafter.

Reimbursement for school district and municipal corporation fixed-rate levies that are not for current expenses is phased down in one-fourth increments over four years beginning in fiscal year 2012. The reimbursement amount is based on the reimbursement paid for those levies in fiscal year 2011 (school districts) or tax year 2010 (municipal corporations).

Fixed-rate levy loss reimbursement for certain taxing units

Under current law, the following non-school taxing unit receives 100% of its fixed-rate levy losses through 2016: a taxing unit in a county of less than 250 square miles that receives 80% or more of its combined general fund and bond retirement fund

revenues from property taxes and tax rollback reimbursements based on 1997 actual revenue as presented in its 1999 tax budget, and in which electric and rural electric property comprises over 20% of its property valuation.

The bill requires this taxing unit to be reimbursed in the same manner as all other non-school taxing units beginning in 2011.

Fixed-sum and unvoted debt levy loss reimbursement

Fixed-sum losses and losses relating to taxes levied within the ten-mill limit for debt purposes are computed in the same manner as fixed-rate levy losses, except there is no deduction for state education aid increases. Fixed-sum levies are reimbursed for all but one-fourth of a mill per dollar (0.025%). Currently, fixed-sum levy losses are reimbursed in full (less than one-fourth mill) until the levy expires. School district emergency levies are considered not to have expired if the school district levies another emergency levy that raises an amount equal to or greater than the difference of the amount raised by the expiring levy minus the amount of reimbursement the school district receives for that expiring levy.

Losses on unvoted debt levies currently are reimbursed in full through fiscal year 2016. No reimbursement is paid thereafter. Current law does not address how the levy is to be reimbursed if it is no longer used for debt purposes. Nor does current law address reimbursement of levy losses relating to millage authorized by a municipal charter to be levied for debt purposes without a vote of municipal electors.

The bill leaves unchanged the reimbursement provisions for fixed-sum levy losses. With respect to unvoted debt levies within the ten-mill limit, however, it states that if the levy was no longer levied for debt purposes for tax year 2010 or for any tax year thereafter, payments for that levy are to be made under the new reimbursement mechanism for fixed-rate levy losses beginning the earlier of tax year 2012 or the first tax year for which it is no longer levied for debt purposes. (See "**Fixed-rate levy loss reimbursement**" above.) It is unclear how this requirement will affect reimbursement for such levies, as the new reimbursement mechanism for fixed-rate levies bases reimbursement amounts on two constant amounts (S.B. 3 allocation and total resources) and an annually increasing percentage (the threshold percentage).

The bill requires losses relating to municipal charter millage for debt purposes to be reimbursed in the same manner as inside-millage debt levies.

Reimbursement payments − timing

Under current law, reimbursement payments are made in late August and late February. Each payment equals 50% of the annual fixed-rate, fixed-sum, or unvoted tax levy losses.

The bill requires payments to be made on or before August 31 and February 28.

State education aid offset transfer

Under current law, the greater of the amount in the SDRF or the aggregate annual amount of state education aid offset is transferred from the SDRF to the GRF in one-half installments near the first of September and in early May.

The bill terminates such transfers as of the end of fiscal year 2011.

Appeal

A school district or local taxing unit has the same right to appeal how a levy has been classified or how its total resources have been determined as it does under the business personal property reimbursement scheme.

Taxing unit mergers, territory transfers, and annexations

Current law establishes a procedure to determine how fixed-rate and fixed-sum levy loss reimbursements are computed when two or more taxing units merge, a portion of a school district's territory is transferred to another district, or if township territory is annexed by a municipal corporation. The procedures generally are the same as those under the provisions of law regarding business personal property tax loss reimbursements. (See "**School district mergers and territory transfers**" and "**Taxing unit mergers and annexations**" under the primary heading "**Local taxing unit reimbursement for business personal property tax losses**.")

The bill amends this procedure in the same manner as it does with respect to business personal property tax loss reimbursements.

Distribution of "surplus" LGRF money

The bill terminates distributions of "surplus" money among non-school taxing units when there is money remaining in the LGRF after the levy losses are reimbursed according to the reimbursement schedule. Currently, if any money remains in the fund, one-half of the excess is allocated to counties on a per-capita basis and one-half is allocated to counties in proportion to the utility property tax losses of taxing units in each county. Each county's share of the surplus is then distributed among the non-school taxing units in the county in proportion to taxing units' respective property tax

billings. The payment of the surplus is terminated with the January 2011 payment. Any future surpluses are to be transferred to the GRF.

Public utility tax study committee

Current law establishes the Public Utility Tax Study Committee as of January 1, 2011. The committee is to study the extent to which school districts have been compensated by the tax loss reimbursements discussed above.

The bill repeals the creation of this committee.

New refundable job retention tax credit

(R.C. 122.171)

Credit eligibility

Continuing law authorizes the Ohio Tax Credit Authority to award to eligible businesses involved in significant capital investment projects a refundable or nonrefundable job retention tax credit (JRTC) against the income tax, commercial activities tax, insurance company premiums tax, or corporation franchise tax. Either credit is measured as a percentage of the state income taxes withheld from full-time employees working at a project site. However, qualifying businesses may only receive the existing refundable credit if the business' credit application is recommended for approval before July 1, 2011.

The bill authorizes the Tax Credit Authority to grant a new, separate refundable credit to certain qualifying businesses between July 1, 2011, and December 31, 2013. To qualify for the new refundable credit, an eligible business must have an annual payroll of at least $20 million, invest at least $5 million at a project site located within the same political subdivision as that in which the business has its principal place of business, and meet other existing JRTC program requirements.

Employee retention or annual payroll requirement

Under current law, in order to qualify as an "eligible business" for the purposes of either existing JRTC, a business must employ and retain at least 500 "full-time equivalent employees." A business' number of "full-time equivalent employees" is calculated by dividing its total employee-hours at a project by 2,080, which the number of hours in a 40-hour-per-week, 52-week work year.

The bill amends this requirement to provide that, to be considered an "eligible business" for any JRTC, a business may either meet the employee retention requirement or have an annual payroll of at least $35 million. The bill further requires that, to

qualify for the new refundable JRTC, an eligible business must have an annual payroll of at least $20 million, regardless of whether the business qualifies as an "eligible business" by meeting the 500-employee retention requirement.

Capital investment requirement

To be considered an "eligible business" for the purposes of the existing credits, a business must invest at least $50 million in assets in manufacturing operations or $20 million in assets for "significant" corporate administrative functions. Additionally, a business applying for the existing refundable JRTC must make a capital investment of $25 million, regardless of investment type. The required capital investment must involve capitalized costs of basic research or new product development, or the acquisition, construction, renovation, or repair of buildings, machinery, or equipment.

To qualify for the bill's new refundable credit, a business need only make a capital investment of $5 million.

Additional requirements for existing and proposed refundable credits

In addition to the requirements described above, an eligible business may only qualify to receive the existing refundable credit if the business received a written offer of financial incentives from another state in 2010 and if the Director of Development determined that offer to be sufficient inducement for the business to relocate to the state. The business' tax credit application must also receive a recommendation for approval before July 1, 2011. These requirements do not apply to either the existing nonrefundable credit or to the refundable credit proposed in the bill.

However, the bill does impose additional requirements on applicants for the new refundable credit that do not apply to either existing credit. To receive the new credit, an eligible business must demonstrate that its capital investment project will be located in the same political subdivision as that in which the business maintains its principal place of business. In addition, the business' tax credit application must be approved by the Tax Credit Authority between July 1, 2011, and December 31, 2013.

Refundability

Under existing law, a business may not claim a nonrefundable JRTC in excess of the business' annual tax liability. The excess, however, may be carried forward for up to three years. Alternatively, a business that qualifies for the existing refundable credit or the bill's refundable credit may claim the full amount of the credit in one year; if the amount of the credit exceeds outstanding tax liability, the business would be entitled to a refund.

Credit amount and term

As under continuing law, the bill requires that the amount and term of a new refundable JRTC be specified in an agreement between the eligible business and the Tax Credit Authority. The amount of the credit may equal up to 75% of the state income taxes withheld from eligible full-time employees. An eligible business may receive the credit for a period of up to 15 years; however, under Department of Development regulations, the Tax Credit Authority may not grant a nonrefundable JRTC for a term longer than ten years unless the Authority determines that there is "significant retention" of employees associated with the project.

Credit application and agreement

The bill requires recipients of the new refundable JRTC to comply with the same application procedures, agreement provisions, and reporting measures required of recipients of the existing refundable or nonrefundable JRTC. For any of the credits, an eligible business must apply to the Tax Credit Authority to enter into a tax credit agreement. The agreement must describe the capital investment project that is the subject of the agreement and require that the business maintain operations at the project site for at least the greater of (1) the term of the credit plus three years, or (2) seven years. In the case of the existing nonrefundable credit or the new refundable credit, the agreement must also require the business to retain at least 500 full-time equivalent employees or maintain an annual payroll of at least $35 million for the term of the credit. However, if a recipient of the new refundable credit only satisfies the 500-employee retention requirement (i.e., the recipient does not have an annual payroll of $35 million), the agreement must require the business to maintain an annual payroll of at least $20 million. Recipients of the existing refundable credit need only agree to retain at least 1,000 full-time equivalent employees regardless of payroll amount.

In order to continue receiving any credit, the business must file annual reports with the Department of Development and receive a certification verifying the accuracy of the reports. If a business fails to comply with any of the conditions specified in a tax credit agreement, the Tax Credit Authority may amend the agreement to reduce the percentage or term of the credit.

Aggregate credit limits

Continuing law limits the total amount of nonrefundable or refundable tax credits issued in any calendar year. In 2010, the limit for the nonrefundable credit was $13 million; this amount will increase every year between 2011 and 2024 by $13 million over the previous year's amount until the total reaches $195 million. The limit applicable to the existing refundable tax credit is $8 million.

The bill proposes a new aggregate limit that includes both the existing and proposed refundable credits. For the 2011, 2012, and 2013 calendar years combined, the total amount of refundable credits authorized by the Tax Credit Authority may not exceed $25 million.

Electronic tax filing rules

(R.C. 5703.059)

The bill authorizes the Tax Commissioner to adopt rules requiring that tax returns or payments for employer income tax withholding, motor fuel tax, cigarette and tobacco product excise taxes, and severance tax be filed electronically. The electronic filing of returns may be required by use of the Ohio Business Gateway, the Ohio "telefile" system (telephone filing), or another electronic method. (Under continuing law, the Ohio Business Gateway is a computer network system that enables businesses to electronically file forms with state agencies.) The electronic payment of those taxes may be required in a manner approved by the Tax Commissioner.

Any taxpayer that is required under the rules to file or pay electronically may apply to the Tax Commissioner to be excused from the requirement. The Commissioner must excuse the taxpayer if the taxpayer shows good cause for being excused.

Any rule adopted that requires electronic filing must be publicized on the Department's web site, as well as through seminars, workshops, conferences, or other similar outreach activities.

Enterprise zone extension

(R.C. 5709.62, 5709.63, and 5709.632)

Under continuing law, counties and municipal corporations may designate areas within the county or municipal corporation as "enterprise zones." After designating an area as an enterprise zone, the county or municipal corporation must petition the Director of Development for certification of the designated enterprise zone. If the Director certifies a designated enterprise zone, the county or municipal corporation may then enter into enterprise zone agreements with businesses 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 exemptions and other incentives.

Current law authorizes local governments to enter into enterprise zone agreements through October 15, 2011. The bill extends the time during which local governments may enter these agreements to October 15, 2012.

Tax notices by alternative delivery means

(R.C. 5703.37)

The bill permits the Tax Commissioner, when issuing a notice or order to a taxpayer or other person, to send it by certain means other than personally or by certified mail. The Commissioner may send the notice or order by a delivery service that postmarks the envelope and records the date when the notice or order was given to the delivery service and when it was received and by whom. The dates of delivery and receipt must be recorded electronically in a database that the delivery service keeps in the regular course of business. The delivery service must be available to the general public and must be at least as timely and reliable as the U.S. Postal Service.

Current law requires such notices and orders to be delivered either personally or by certified mail unless the intended recipient agrees in writing to accept them by some other means.

Voter registration forms with income tax forms

(R.C. 5703.05)

The bill eliminates the requirement in current law that the Department of Taxation include mail-in voter registration materials with income tax returns in odd-numbered years. The Secretary of State is required to bear the costs of printing and mailing the materials.

TUITION TRUST AUTHORITY (TTA)

- Requires the Tuition Trust Authority to establish, within the Variable College Savings Program, a "default investment option" to benefit contributors who are first-time investors or have low to moderate incomes.

Default investment option

(R.C. 3334.19)

The bill requires the Tuition Trust Authority (TTA) to establish a "default investment option" within its Variable College Savings Program for contributors who are first-time investors or have low to moderate incomes. The bill itself does not describe or define the term "default investment option," but it likely refers to an

investment plan that does not require the investor to choose from among savings instruments or plan administrators or to make periodic decisions whether to transfer money among investment options. The bill does not specify whether the intent is simply for TTA to market the default option as one choice, or to restrict investors with certain characteristics (such as low or moderate incomes) to the default option.

The TTA is a state agency under the purview of the Chancellor of the Board of Regents. It operates two college savings programs that correspond to the types permitted by federal tax law: (1) a guaranteed savings program, which is now closed to new investors, and (2) a variable savings program. Under the Variable College Savings Program, an individual contributes money to an investment account managed by the state, or its agent, for the benefit of the beneficiary. Assets of the Variable Program are invested in savings accounts, life insurance or annuity contracts, securities, bonds, or other investment products. Because the program is market-based, it generally provides a variable rate of return and contributors assume all investment risk.

DEPARTMENT OF YOUTH SERVICES (DYS)

- Requires the Department of Youth Services to coordinate and assist juvenile justice systems by visiting and inspecting jails, detention facilities, correctional facilities, facilities that may hold juveniles involuntarily, and any other facility that may temporarily house juveniles on a voluntary or involuntary basis for the purpose of compliance with the federal "Juvenile Justice and Delinquency Prevention Act of 1974."

Inspection of juvenile facilities

(R.C. 5139.11(K)(1)(g))

Existing law requires the Department of Youth Services to coordinate and assist juvenile justice systems by performing a list of specified duties. The bill adds an additional duty to this list by requiring the Department to visit and inspect jails, detention facilities, correctional facilities, facilities that may hold juveniles involuntarily, or any other facility that may temporarily house juveniles on a voluntary or involuntary basis for the purpose of compliance pursuant to the "Juvenile Justice and Delinquency Prevention Act of 1974," 88 Stat. 1109, as amended.

- Changes the name of the Ohio Community Service Council to the Ohio Commission on Service and Volunteerism.

- 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.

Ohio Community Service Council

(R.C. 121.40, 121.401, 121.402, 121.403, 121.404, 1501.40, 3301.70, 3333.043, and 4503.93; Section 701.803.40)

The bill changes the name of the Ohio Community Service Council to the Ohio Commission on Service and Volunteerism. The purpose, duties, authority, and membership of the agency continue without change.

Controlling Board authority to increase capital appropriations

(Sections 247.10 and 801.20)

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.

NOTE ON EFFECTIVE DATES

(Sections 812.10 to 812.40)[191]

Section 1d, Article II of the Ohio Constitution states that "laws providing for tax levies [and] appropriations for the current expenses of the state government and state institutions *** shall go into immediate effect," and "shall not be subject to the referendum." R.C. 1.471 implements this provision with respect to appropriations, providing that a codified or uncodified section of law contained in an act that contains an appropriation for current expenses is not subject to the referendum and goes into immediate effect if (1) it is an appropriation for current expenses, (2) it is an earmarking of the whole or part of an appropriation for current expenses, or (3) its implementation depends upon an appropriation for current expenses that is contained in the act. The statute states that the General Assembly is to determine which sections go into immediate effect.

The bill includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a section in the bill is subject to the referendum and takes effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The bill also includes many exceptions to the default provision, some of which provide that specified provisions are not subject to the referendum and go into immediate effect. For example, provisions that are or relate to an appropriation for current expenses go into immediate effect.

HISTORY

ACTION	DATE
Introduced	03-15-11

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[191] The bill does not include an expiration clause that traditionally is part of a budget bill. If included, the expiration clause would state 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, 2013, unless its context clearly indicates otherwise.