Ohio Legislative Service Commission

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129th General Assembly
(As Passed by the House)

Reps. Amstutz, J. Adams, Beck, Blair, Blessing, Boose, Buchy, Burke, Combs, Dovilla, Duffey, Grossman, Hackett, Hall, Hollington, Maag, McClain, Newbold, Rosenberger, Ruhl, Slaby, Sprague, Stebelton, Uecker, Batchelder

TABLE OF CONTENTS

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.

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.

DEPARTMENT OF ADMINISTRATIVE SERVICES (DAS)

- Requires the Department of Administrative Services 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, public school districts, and state institutions of higher education.

- 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.

- Requires the Office of Information Technology in the Department of Administrative Services to establish, operate, and maintain a state public notice web site where 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.

- Requires the Department of Administrative Services, through a request for proposals (RFP) process, to select a single vendor from which to procure all drugs that are stocked by the Ohio Pharmacy Service Center that the Department of Mental Health operates, unless the RFP process shows that the cost of procuring all drugs from a single vendor does not result in a net savings to the state.

- Permits agencies to assign exempt employees, with their written consent, to duties of a higher classification for up to two years.

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

(Section 701.20)

Not later than July 1, 2012, the Department of Administrative Services 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, public school districts, 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;

(5) Voluntary and mandatory participation by political subdivisions, public school districts, and institutions of higher education;

(6) The potential impacts of any changes to the existing purchasing structure on existing health care pooling and consortiums;

(7) Removing barriers to competition and access to health care pooling.

The bill prohibits any action to be taken regarding health care coverage for employees of political subdivisions, public school districts, and state institutions of higher education without the enactment of law by the General Assembly.

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;[1] 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.

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

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.[2] 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.[3] Each CMAR 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.

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[2] 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.)

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

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.[4]

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[5] 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 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.

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[4] See also Section 701.10.

[5] See R.C. 153.57.

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[6] 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[7] submitted by D/B firms for a particular project, including the firm's proposed architect of record,[8] 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,[9] (6) the form of the contract, and (7) a request for a pricing proposal. The pricing proposal of each D/B firm 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.

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[6] 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)).

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

[8] 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)).

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

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.[10]

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[11] 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.

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.

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[10] See also Section 701.10.

[11] See R.C. 153.57.

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.[12]

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[13] out to bid:

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

(2) Details to scale and full-sized;

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

[13] 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)).

(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[14] 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.

[14] 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.

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.

State public notice web site

(R.C. 125.182)

The bill requires the Office of Information Technology, by itself or by contract with another entity, to establish, operate, and maintain a state public notice web site where state agencies and political subdivisions may publish notices required by statute or rule. 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) Not charge a fee to a state agency or political subdivision for publishing a notice on the web site;

(5) 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, as directed in the alternative publication procedure established by the bill[15] or in the relevant provision of the statute or rule that requires the notice;

(6) 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;

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

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

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

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

(11) Maintain adequate systemic security and backup features 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

[15] See R.C. 7.16.

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

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.

Drug procurement for the Ohio Pharmacy Service Center

(R.C. 125.024 and 5119.16)

Single vendor requirement

The bill generally requires the Department of Administrative Services to select a single vendor from which to procure all drugs that are stocked by the Ohio Pharmacy Service Center that the Department of Mental Health operates. The Center, organized in the Department's Office of Support Services, purchases drugs and other goods in bulk, stores them in a warehouse, and repackages and ships them to customers in more convenient sizes within 48 hours.[16] The Center's customers are certain state, county, and municipal agencies; agencies operated by the federal government; certain public or private nonprofit agencies (other than free clinics) that are funded in whole or in part by the state; and free clinics to the extent the purchases fall within an exemption in federal antitrust law applicable to nonprofit institutions.[17]

Competitive bidding process

Before selecting a single vendor, the bill requires the Department of Administrative Services to develop a process to be used in issuing a request for

[16] Ohio Department of Mental Health, et al., *Ohio Consolidated Prescription Drug Purchasing Study* (December 2005).

[17] R.C. 5119.16.

proposals (RFP), receiving responses to the RFP, and evaluating the responses on a competitive basis. Not later than 60 days after the bill's effective date, the Department of Administrative Services must issue the first RFP. Each subsequent RFP must be issued at least 90 but not more than 120 days before a contract for drug procurement services terminates.

Exception to the single vendor requirement

The bill's single vendor requirement discussed above does not apply if the Department of Administrative Services determines, from a review of the proposals submitted through the RFP process, that the cost of procuring all drugs from a single vendor does not result in a net savings to the state when compared to the cost of procuring drugs from multiple vendors.

Temporary assignment of exempt employee to duties of higher classification

(Section 701.30)

The bill authorizes an appointing authority, with the written consent of an exempt employee, to assign duties of a higher classification to that exempt employee for a period of up to two years. Exempt employees that are temporarily so assigned are entitled to compensation at a rate commensurate with the duties of the higher classification. An "appointing authority" is any officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution. An "exempt employee" is a permanent employee who is paid by warrant of the Director of Budget and Management, whose position is included in the state job classification plan, and who is exempt from public employee collective bargaining.

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 only 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.[18]

[18] 42 C.F.R. 412.23(e).

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.

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,[19] 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.

[19] 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 being charged only 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 ODADAS to grant certification to an alcohol and drug addiction program if the program holds national accreditation from the Joint Commission, the Council on Accreditation of Rehabilitation Facilities, or the Council on Accreditation and specifies that the program is not subject to further evaluation.

- 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.

- Prohibits ODADAS's rules regarding documentation that alcohol and drug addiction programs must submit to ODADAS or ADAMHS boards from being more stringent than comparable federal regulations.

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.

Certification of alcohol and drug addiction programs

(R.C. 3793.06)

Each alcohol and drug addiction program and community mental health agency is required under current law to apply to ODADAS for certification. To receive certification, a program must meet the minimum standards established by ODADAS.

The bill requires ODADAS to grant certification to an alcohol and drug addiction program if the program holds national accreditation from the Joint Commission, the Council on Accreditation of Rehabilitation Facilities, or the Council on Accreditation. The bill specifies that the program is not subject to further evaluation for purposes of the certification.

Documentation submission requirements

(R.C. 3793.061)

The bill prohibits an ODADAS rule regarding documentation that alcohol and drug addiction programs must submit to ODADAS or an ADAMHS board from being

more stringent than a comparable documentation submission requirement that applies to alcohol and drug addiction programs and is established by the United States Department of Health and Human Services.

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.

ATTORNEY GENERAL (AGO)

- Permits the Apportionment Board, by majority vote, to choose to be represented by either the Attorney General or by private legal counsel in regard to any lawsuit challenging the constitutionality or legality of General Assembly districts.
- Permits the Speaker of the House of Representatives and the President of the Senate jointly to choose to have the General Assembly represented by either the Attorney General or by private legal counsel in regard to any lawsuit challenging the constitutionality or legality of Congressional districts.

Representation in lawsuits regarding redistricting and reapportionment

(R.C. 9.05, 3521.04, and 109.02)

The bill permits the Apportionment Board, by majority vote, to choose to be represented by either the Attorney General or by private legal counsel in regard to any lawsuit challenging the constitutionality or legality of General Assembly districts. Similarly, the bill permits the Speaker of the House of Representatives and the President of the Senate jointly to choose to have the General Assembly represented by either the Attorney General or by private legal counsel in regard to any lawsuit challenging the constitutionality or legality of Congressional districts. Currently, the Attorney General, as the chief law officer for the state, is responsible for representing the Apportionment Board and the General Assembly in lawsuits arising from the decennial redistricting and reapportionment process.

- 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.

BARBER BOARD (BRB)

- Prohibits the Barber Board from disqualifying a person from being issued an initial license on the grounds that the person was previously convicted of or pleaded guilty to a felony.

Barber license for felons

(R.C. 4709.13)

The bill removes the Barber Board's express authority to refuse to issue a license to practice barbering or operate a barber school because the applicant was convicted of or pleaded guilty to a felony. Under the bill, a conviction of or plea of guilty to a felony committed prior to being issued a license must not disqualify a person from being issued an initial license.

However, the bill allows the Barber Board to refuse to renew or to suspend or revoke or impose conditions upon any license for conviction of or plea of guilty to a felony committed after the person has been issued a license. The plea or conviction must be shown by a certified copy of the record of the court in which the person was convicted or pleaded guilty.

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 the Director of Transportation to enter into contracts outsourcing to private sector entities or local or regional public entities the provision of highway services.

- 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 highway 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 highway services.

- 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 highway services.

- Allows the Director of Transportation to exercise the powers 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 highway services, (2) the outsourcing contracts themselves, (3) the transfer of money or funds to support the outsourced highway services, and (4) the receipt and deposit of money received under a contract by the Director of Budget and Management.

- Requires that all money received by the Director of Budget and Management, under a contract for the provision of highway services, be deposited into the state treasury and credited to the Highway Services Fund, which is created by the bill.

- 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 highway services, (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 highway services, if the state retains any part of ownership.

- Repeals, effective June 30, 2013, the bill's provisions allowing the Director of Budget and Management and the Director of Transportation to outsource the provision of highway services.

- 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 Budget and Management 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.

Highway services provided by private, local, or regional entities

(R.C. 126.60 to 126.605, 718.01(A)(1), 5739.02(B)(51), 5747.01(A)(30), and 5751.01(F)(2)(ff); Section 105.10)

The bill permits the Director of Budget and Management and the Director of Transportation 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 highway services in order to more efficiently and effectively provide highway services, including by generating additional resources in support of those

highway services and related projects.[20] "Highways services" under the bill means the operation or maintenance of any highway in Ohio, the construction of which was funded by proceeds from state revenue bonds that are to be repaid primarily from revenues derived from the operation of the highway and any related facilities, and not primarily from the gas tax.[21]

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 provision of highway services or a related project. It may contain the terms and conditions established by the Director of Budget and Management and the Director of Transportation 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 highway services 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 highway services and any related projects. The notice must include a general description of the highway services to be provided and any related project, and of 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 Department of Transportation, 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 Department of Transportation,

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

[21] Art. XII, Sec. 5a, Ohio Const.

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 highway services and any related projects.[22]

Proposal evaluation and selection

After inviting proposals, the Director of Budget and Management, in consultation with the Department of Transportation, must evaluate the proposals submitted and may hold discussions with the proposers to further explore their proposals, the scope and nature of the highway services they would provide, and the various technical approaches they may take regarding the highway services and related projects.[23] After the evaluation, the Director, in consultation with the Department of Transportation must do the following:

(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 highway services 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 Department of Transportation, 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.

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[22] 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)).

[23] If the proposer originally only submitted a proposal, it is unclear what the bill requires the Director and Department of Transportation to do regarding the evaluation of a proposer's qualifications, once they finish evaluating the proposal. The bill appears to only require evaluation of qualifications that have been submitted. (R.C. 126.602(C)).

The Director may, after consultation with the Department of Transportation, 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 highway services to be provided or the methods or procedures for determining them;
- Standards for the highway 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;
- Events of default and remedies upon default, including mandamus, actions at law or equity, or any combinations of such remedial actions.[24]

Rejection of qualification or proposal

The bill specifies that the Director of Budget and Management 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 highway services.

Director of Transportation to exercise powers of Ohio Turnpike Commission

The bill allows the Director of Transportation to exercise all powers of the Ohio Turnpike Commission for purposes of the bill. The Director is to be authorized to execute any contract for the provision of highway services, notwithstanding any Ohio Turnpike Commission laws to the contrary.

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[24] 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.

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 highway services.

Highway Services Fund

The bill requires that all money received by the Director of Budget and Management under a contract for the provision of highway services be deposited into a state treasury fund called the Highway Services Fund, which the bill creates. The bill requires the fund to retain any interest it earns.

Contract for consulting services

The bill permits the Director of Budget and Management, in consultation with the Department of Transportation, 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 highway services and related projects to be subject to invitations for qualifications or proposals, the development of those invitations and related evaluation criteria, and the evaluation of those invitations, and negotiation of any contract.

Sunset of provisions

The bill repeals the above provisions, effective June 30, 2013.

Tax exemption

The bill states that any project or part thereof owned by the state and used for performing highway services 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 highway services under a contract are to be exempt from taxation levied by the state and its subdivisions. Accordingly, deductions are made available for such receipts or income under the commercial activity tax and the state and municipal income taxes. In addition, 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.

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 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, 2013	July 1, 2012 – December 31, 2012
August 1, 2013	January 1, 2013 – June 30, 2013

Quarterly reports

The bill also requires that, if the Office of Budget and Management 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.

CAPITOL SQUARE REVIEW AND ADVISORY BOARD (CSR)

- Designates the Capitol Square Review and Advisory Board as being in the legislative branch of government.
- Exempts the Capitol Square Review and Advisory Board from the state agencies for whom the Department of Administrative Services may contract for telecommunication and computer services.
- Exempts the Capitol Square Review and Advisory Board from the policies and oversight of the Office of Information Technology in the Department of Administrative Services.

Capitol Square Review and Advisory Board in legislative branch

(R.C. 105.41)

The bill designates, in the existing statute creating the Capitol Square Review and Advisory Board, that it is created in the legislative branch of government. The 13-member Board has general authority over capitol square.

Capitol Square Review and Advisory Board

(R.C. 125.021 and 125.18)

The bill includes the Capitol Square Review and Advisory Board (CSRAB) among the entities (like the General Assembly) that are exempted from the state agencies for whom the Department of Administrative Services is otherwise authorized to contract for telephone, other telecommunication, and computer services. Similarly, the bill includes CSRAB among the agencies that are exempted from the definition of "state agency" for purposes of the law establishing the Office of Information Technology (OIT) in the Department of Administrative Services. As a result, CSRAB will not be subject to the policies and oversight of OIT regarding information technology development and use.

CASINO CONTROL COMMISSION (CAC)

- Requires the establishment of an in-state hotline Ohio residents may call at any time to obtain problem gambling information.

Problem gambling hotline

(R.C. 3772.062)

The bill requires the executive director of the Ohio Casino Control Commission, in conjunction with the Department of Alcohol and Drug Addiction Services, to establish, operate, and publicize an in-state, toll-free telephone hotline Ohio residents may call to obtain basic information about problem gambling, the gambling addiction services available to problem gamblers, and how a problem gambler may obtain help. The telephone number must be staffed 24 hours per day, seven days a week, to respond to inquiries and provide that information. Moneys in the Problem Casino Gambling and Addictions Fund must be used to fund the hotline.

- 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.

- 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.

- Requires that assessments for video service providers be deposited into the Video Service Authorization Fund rather than the Division of Administration Fund.

- Increases the maximum annual fee placed on credit union share guaranty corporations from $5,000 to $25,000.

- 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 school district or an educational 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 spirituous liquor distribution and merchandising operations of the Division of Liquor Control, including inventory, warehouses, the exclusive right to manage and control spirituous liquor distribution and merchandising 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 have conveyed or transferred back to it, at no cost, the enterprise acquisition project no later than 25 years after the original transfer was authorized.

- Exempts from specified taxes the gross receipts and income of JobsOhio derived from the enterprise acquisition project.

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

- Requires the transfer agreement to include a requirement that JobsOhio pay for the operations of the Division of Liquor Control with regard to the Division's spirituous liquor merchandising operations.

- 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, the enterprise acquisition project, or JobsOhio.

- Allows an A-1 liquor permit holder to sell beer for personal consumption on the premises of the permit holder.

- Creates the F-9 liquor permit to be issued to a nonprofit corporation that operates a city park or provides or manages entertainment for a nonprofit corporation that

operates a city park to allow the sale of beer and intoxicating liquor by the individual drink.

- Establishes requirements governing the issuance of an F-9 liquor permit, and specifies that the permit may be issued only regarding a park that is located in a county with a specified population.

- Allows a person to have in the person's possession on an F-9 liquor permit premises an opened or unopened container of beer or intoxicating liquor that was not purchased from the holder of the permit if certain conditions are met.

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.[25] Regulation D provides exemptions that allow companies to offer and sell their securities without registering them with the SEC.[26] 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.

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,

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

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

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.

Assessments for video service providers

(R.C. 1332.24)

The bill requires that assessments for video service providers be deposited into the Video Service Authorization Fund rather than the Division of Administration Fund. Under current law, the Director of Commerce may impose annual assessments on video service providers. The total amount of annual assessments is not to exceed the lesser of $450,000 or the Department of Commerce's annual, actual administrative costs in carrying out the Department's duties relating to video service. The Video Service Authorization Fund is required to be used by the Department in carrying out these duties.[27]

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 $25,000. 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 and 4582.37; R.C. 3345.12, 4582.01, and 4582.21, 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 $3.5 million or less. Currently, any new construction on public improvements that costs $78,258 or less is exempt from the Prevailing Wage Law

[27] R.C. 1332.25, not in the bill.

(the statutory threshold of $50,000 as adjusted biennially by the Director of Commerce pursuant to that Law). Reconstruction costing $23,447 or less is similarly exempt (the statutory threshold of $15,000 as biennially adjusted). 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. All other construction on public improvements will be subject to the new threshold, 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:

(a) 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;

(b) 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 exempts from the Prevailing Wage Law any public improvement undertaken by, or under contract for, a port authority created by a municipal corporation, township, or county that was not included in a port authority in existence on December 16, 1964. The bill repeals accordingly a requirement under the law governing those port authorities that laborers and mechanics employed on the construction or repair of a port authority facility be paid pursuant to the Prevailing Wage Law.

Fourth, 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

(R.C. 4115.04)

The bill prohibits a public authority from applying the prevailing wage requirements to a public improvement undertaken by or for the board of education of any school district or the governing board of any educational service center. Such public improvements 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 when the Director of Commerce does not timely rule on the party's 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, 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.[28] 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 such transfer 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 have conveyed or transferred back to it, at no cost, the system 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.

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

[28] 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.

portion of the capital or other assets of the spirituous liquor distribution and merchandising operations of the Division of Liquor Control, including inventory, real property rights, equipment, furnishings, the spirituous liquor distribution system including transportation, 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 merchandising and to sell spirituous liquor in the state subject to the control of 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 of all or an interest.[29]

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.

The bill states that an absolute conveyance and true sale or lease exist regardless of whether JobsOhio has any recourse against the state or the treatment or characterization of the transfer as a financing for any purpose. 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 regarding the term of the transfer and the rental or lease of the project (see below). The

[29] It is unclear what is intended by "all or an interest."

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 have conveyed or transferred back to it, at no cost, the enterprise acquisition project, as it then exists, no later than 25 years after the original transfer authorized in the transfer agreement on such other terms as must be provided in the transfer agreement.

Exemption from taxes

The bill states that the exercise of the powers granted by the bill's provisions governing the transfer will be for the benefit of the people of Ohio. As the services performed by JobsOhio will constitute the performance of essential government functions, all or any portion of the enterprise acquisition project transferred pursuant to the transfer agreement that would be exempt from real property taxes or assessments or real property taxes or assessments in the absence of the transfer must, as it may from time to time exist thereafter, remain exempt from real property taxes or assessments levied by the state and its subdivisions to the same extent as if not transferred. The gross receipts and income of JobsOhio derived from the enterprise acquisition project must be exempt from taxation levied by the state and its subdivisions, including, but not limited to, the municipal and state income, sales, use and storage, and commercial activity taxes levied pursuant to current law. Any transfer from the state to JobsOhio of the enterprise acquisition project, or item included or to be included in the project, must be exempt from the sales and use and storage taxes levied pursuant to current law.

Proceeds of transfer

Under the bill, the proceeds of any transfer may be expended as provided in the transfer agreement for one or more 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 pledged liquor profits. "Pledged liquor profits," by reference to the Public Facilities Commission Law, means all receipts of the state representing the gross profit on the sale of spirituous liquor after paying all costs and expenses of the Division of Liquor Control and providing an adequate working capital reserve for 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.

Spirituous liquor revenue

The bill specifies that a sum equal to $3.38 for each gallon of spirituous liquor sold by the Division of Liquor Control, JobsOhio, or a designee of JobsOhio, rather than only the Division under current law, during the period covered by specified payments to the Treasurer of State under existing law must be paid into the state treasury to the credit of the General Revenue Fund.

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, without need for any other approval, 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 effect 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. The Director of Budget and Management may create any funds or accounts, within or without the state treasury, as are needed for the transactions and activities authorized by the bill's provisions governing the transfer.

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, the enterprise acquisition project, 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. Subject to the above provisions, ownership of the interest in the enterprise acquisition project that is transferred to JobsOhio and the transfer agreement must be maintained in JobsOhio or a nonprofit entity the sole member of which is JobsOhio until the enterprise acquisition project is transferred back to the state pursuant to the bill (see above for a discussion of the project's conveyance back to the state; see below for a discussion of the rental or lease of the enterprise acquisition project).

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 any portion of the enterprise acquisition project to others and must include a contract with, or the granting of an option to, the state to have the project, as it then exists, transferred back to it without charge 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. "Spirituous liquor profits" means all receipts representing the gross profit on the sale of spirituous liquor less the costs, expenses, and working capital provided for therein, 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 paid into the General Revenue Fund, provided that from and after the initial transfer of the enterprise acquisition project to JobsOhio and until the transfer back to the state under the bill, the reference in provisions governing the gross profit on the sale of spirituous liquor to all costs and expenses of the Division and also an adequate working capital reserve for the Division must be to all costs and expenses of JobsOhio and providing an adequate working capital reserve for JobsOhio.

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, for the continuing operation by the Division of Liquor Control of spirituous liquor distribution and merchandising subject to standards for performance provided in that contract that may relate to the bill's provisions governing the transfer agreement and the impairment of

obligations supported by pledged revenues. The contract may establish other terms and conditions for the assignment of duties to, and the provision of advice, services, and other assistance by, the Division of Liquor Control to JobsOhio. 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.

The bill states that the provisions of, and activities under, any contract entered into under the transfer agreement are subject to the requirements of, and limitations established under, current law regarding the following powers and duties of the Division of Liquor Control:

(1) Controlling the traffic in beer and intoxicating liquor in the state, including the manufacture, importation, and sale of beer and intoxicating liquor;

(2) Operating, managing, and controlling a system of state liquor stores for the sale of spirituous liquor;[30]

(3) Determining the locations of all state liquor stores and manufacturing, distributing, and bottling plants required in connection with those stores;

(4) Fixing the wholesale and retail prices of spirituous liquor sold by the Division; and

(5) Allocating the equitable distribution of state liquor stores and agency stores in the state.

Finally, the bill requires the transfer agreement to require JobsOhio to pay for the operations of the Division of Liquor Control with regard to the Division's spirituous liquor merchandising operations. The payments from JobsOhio must be deposited into the state treasury to the credit of the existing Liquor Control Fund.

Retail sale of beer by A-1 liquor permit holders

(R.C. 4303.02)

The bill allows an A-1 liquor permit holder to sell beer and beer products at retail, by individual drink in a glass or from a container, for consumption on the premises where sold. Currently, an A-1 liquor permit may be issued to a manufacturer only to manufacture beer and to sell beer products in bottles or containers for home use

[30] Currently, the sale of spirituous liquor is conducted through agency stores.

and to retail and wholesale liquor permit holders under rules adopted by the Division of Liquor Control.

Issuance of F-9 liquor permits

(R.C. 4303.209 and 4301.62)

The bill authorizes the Division of Liquor Control to issue an F-9 liquor permit to a nonprofit corporation that operates a park on property leased from a municipal corporation or a nonprofit corporation that provides or manages entertainment programming pursuant to an agreement with a nonprofit corporation that operates a park on such property to sell beer or intoxicating liquor by the individual drink at specific events conducted within the park property and appurtenant streets, but only if, and only at times at which, the sale of beer and intoxicating liquor on the premises is otherwise permitted by law. Additionally, an F-9 permit may be issued only if the park property is located in a county that has a population of between 1.1 million and 1.2 million on the provision's effective date.

The Division may issue separate F-9 liquor permits to a nonprofit corporation that operates a park on property leased from a municipal corporation and a nonprofit corporation that provides or manages entertainment programming pursuant to an agreement with a nonprofit corporation that operates a park on such property to be effective during the same time period. However, the permit privileges may be exercised by only one of those permit holders at specific events. The other holder of an F-9 permit must certify to the Division that it will not exercise its permit privileges during that specific event.

Under the bill, the premises on which an F-9 permit will be used must be clearly defined and sufficiently restricted to allow proper supervision of the permit's use by state and local law enforcement officers. Sales under an F-9 permit must be confined to the same hours permitted to the holder of a D-3 permit.

The fee for an F-9 permit is $1,700. An F-9 permit is effective for up to nine months as specified in the permit. An F-9 permit is not transferable or renewable. However, the holder of an F-9 permit may apply for a new F-9 permit at any time. The holder of an F-9 permit must make sales only at those specific events about which the permit holder has notified in advance the Division, the Department of Public Safety, and the chief, sheriff, or other principal peace officer of the local law enforcement agencies having jurisdiction over the premises.

An application for an F-9 permit is subject to the notice and hearing requirements established in current law regarding new liquor permit applications. The Liquor Control Commission must adopt rules necessary to administer the F-9 liquor permit.

The bill prohibits an F-9 permit holder from selling beer or intoxicating liquor beyond the hours of sale allowed by the permit. The bill states that this prohibition imposes strict liability on the holder of an F-9 permit and on any officer, agent, or employee of that permit holder.

Possession of beer and intoxicating liquor on F-9 permit premises

The bill adds an exemption to the existing prohibition against a person's having in the person's possession an opened container of beer or intoxicating liquor on the premises of the holder of any permit issued by the Division and in any other public place. The bill allows a person to have in the person's possession on an F-9 liquor permit premises an opened or unopened container of beer or intoxicating liquor that was not purchased from the F-9 permit holder if the person is attending an orchestral performance and the F-9 permit holder grants permission for the possession and consumption of beer or intoxicating liquor in certain predesignated areas of the premises during the period for which the F-9 permit is issued. "Orchestral performance" means a concert comprised of a group of at least 40 musicians playing various musical instruments.

OFFICE OF THE CONSUMERS' COUNSEL (OCC)

- Prohibits the OCC from operating a call center for consumer complaints.
- Prohibits the OCC from taking positions contrary to development of competitive markets in Ohio, including Ohio's policies for natural gas.

Call center prohibition

(R.C. 4911.021, 4927.17, 4928.10, and 4929.22)

The bill prohibits the Office of the Consumers' Counsel (OCC) from operating a call center for consumer complaints, and requires that consumer-complaint calls received by OCC be forwarded to the Public Utilities Commission (PUCO). The bill also removes all requirements that utilities include OCC's contact information on customer bills and notices. The PUCO is currently required to operate a call center for consumer complaints.[31]

[31] R.C. 4905.261, not in the bill.

Prohibition of advocacy against competitive markets

(R.C. 4911.02)

The bill prohibits the OCC from advocating or otherwise promoting any position contrary to development of competitive markets in Ohio, including any position contrary to natural gas retail auctions, merchant-function exit, or Ohio's policies in current law relating to competitive natural gas markets. These policies involve the promotion of diversity in the natural gas marketplace, flexible and reduced or eliminated regulation of natural gas services and goods, and the promotion of Ohio's competitiveness in the global economy.[32]

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."[33]

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.

[32] R.C. 4929.02, not in the bill.

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

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

- Delays implementation of the Department of Development's Sports Incentive Grant Program from July 1, 2011 to July 1, 2013.

- 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.

- Establishes the Ohio Housing Study Committee (OHSC) to review the policies, programs, and relationships with partners of the Ohio Housing Finance Agency (OHFA).

- Requires the OHSC to produce a quantitative report measuring the economic benefits of the OHFA and to evaluate the possible efficiencies of combining existing Ohio Department of Development housing-related programming with those of the OHFA.

- Requires the OHSC to provide a report expressing its findings about the OHFA on or before January 1, 2012.

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.;[34]

(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.;[35]

(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

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

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.

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[34] 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).

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

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.

Delay implementation of sports incentive grants

(R.C. 122.121)

The bill delays the Department of Development's implementation of the Sports Incentive Grant Program, which is currently set to begin July 1, 2011, until July 1, 2013. Continuing law authorizes the Director of Development, after that date, to make grants of General Revenue Fund money to counties or municipal corporations hosting specified sporting events. The grant amount is based on the increased state sales tax revenue directly attributable to the preparation for and presentation of the event, as

determined by the Director. Grants are available only if the increased state sales tax revenue is estimated to be greater than $250,000. No individual grant may exceed $500,000, and the total of all grants in any fiscal year may not exceed $1 million.

Ohio Housing Study Committee

(Section 701.40)

The bill creates the Ohio Housing Study Committee (OHSC) to formulate a comprehensive review of the policies and results of the Ohio Housing Finance Agency (OHFA), its program, and its working relationships with its for-profit and not-for-profit partners. The purpose of the OHSC is to evaluate all OHFA programs through an objective process to ensure Ohioans receive the benefits afforded to them through the authority of the OHFA. Under continuing law, the OHFA assists with the financing, refinancing, production, development, and preservation of safe, decent, and affordable housing for occupancy by low- and moderate-income persons; rental assistance and housing services for low- and moderate-income persons; allocation of all state and federal funds in accordance with applicable state and federal laws, including the federal Housing Credit Program; and the promotion of community development, economic stability, and growth within Ohio.

The bill requires that the OHSC be comprised of the Director of Commerce as chairperson, and two members of the General Assembly, to be appointed by the Speaker of the House of Representatives and the President of the Senate, respectively. The OHSC will meet at the chairperson's discretion.

The OHSC must do all of the following:

(1) Perform a comprehensive review of the OHFA law (R.C. Chapter 175.) to determine the relevance of the law and whether it should be formally reviewed or amended by the General Assembly, up to and including appropriate legislative oversight and accountability;

(2) Review the OHFA's relationships with its for-profit and not-for-profit partners to ensure an equitable and level playing field regarding its single- and multi-family housing programs;

(3) Review the OHFA's policy leadership and the economic impact of its Single Family Mortgage Revenue Bond Program;

(4) Review the OHFA's Qualified Allocation Plan development process and underlying policy to understand the policy basis for its annual creation and ratification by the Board of Directors;

(5) Create a quantitative report measuring the economic benefits of the OHFA's single- and multi-family programming over the last ten years;

(6) Evaluate the possible efficiencies of combining existing Ohio Department of Development housing-related programming with those of the OHFA.

The OHSC will commence on the bill's effective date and is required to provide a report expressing its findings to the Governor, the Speaker of the House of Representatives, and the President of the Senate on or before January 1, 2012.

DEPARTMENT OF DEVELOPMENTAL DISABILITIES (DDD)

- 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 ODODD's 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, under certain circumstances, a residential facility 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 DD board.

- 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.

- Reduces to eight (from ten) the number of times a county DD board that shares a superintendent or other administrative staff with one or more other county DD boards is to meet each year following its annual organizational meeting.

- 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.

- Requires a county DD board to ensure that at least a certain number of individuals are enrolled in *any* of ODODD's Medicaid waiver programs, rather than *each* of the waiver programs.

- 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 DD boards annually certify to the ODODD Director 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, which under the new formulas are to be used to pay the nonfederal share of Medicaid expenditures for home and community-based services and care management.

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) Respite care services;

(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, and 5126.04; R.C. 5123.181 (repealed))

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[36] 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.

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[36] "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)).

(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.

County DD board meetings

(R.C. 5126.029)

The bill reduces to eight (from ten) the number of times a county DD board that shares a superintendent or other administrative staff with one or more other county DD boards is to meet each year following its annual organizational meeting.

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.

County DD boards' enrollment responsibilities for Medicaid waivers

(R.C. 5126.0512 (primary), 5123.0413, and 5126.0510)

The bill modifies county DD boards' responsibilities regarding enrollment of individuals in Medicaid waiver programs that ODODD administers. Under current law

and except as provided in ODODD's rules, each county DD board must ensure, for each Medicaid waiver program ODODD administers, that the number of individuals eligible for services from the board who are enrolled in an ODODD Medicaid waiver program is no less than the sum of (1) the number of individuals eligible for services from the board who are enrolled in the program on June 30, 2007, and (2) the number of slots for ODODD Medicaid waiver programs the board requested before July 1, 2007, that were assigned to the board before that date but in which no individual was enrolled before that date. Under the bill, a county DD board must ensure that at least that number of individuals are enrolled in *any* of ODODD's Medicaid waiver programs, rather than *each* of the programs.

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.[37]

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

[37] *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.

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,[38] population,[39] and yield per person[40] 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.

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

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[38] "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)).

[39] "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)).

[40] "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)).

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.

DEPARTMENT OF EDUCATION (EDU)

I. School Financing

State school funding

- Repeals the current school funding model (unofficially known as the "Evidence Based Model" or "EBM").

- 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.

- Requires the Department to pay a supplement to guarantee all districts, for fiscal year 2012, and some districts for fiscal year 2013, at least 80% of their fiscal year 2011 amount, less the federal stimulus amount.

- 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.

- Repeals the changes to the gifted education maintenance of effort requirements recently enacted by H.B. 30 of the 129th General Assembly, but establishes a similar maintenance of effort requirement, based on fiscal year 2009 gifted education funding, in appropriations language for each year of the fiscal biennium.

- 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.

- 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, e-school, or STEM school.

- Requires the Department to use the expenditure reporting standards and existing data to rank each district, community school, e-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, e-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.

- Requires the Department to report annually to each school district the ratio of its operating spending for instructional purposes to its spending for administrative purposes, its per pupil amount for each purpose, its percentage of district funds spent for operating purposes, and the statewide average of each of those items.

- Requires each district to post the expenditure information reported to it by the Department on the district's web site and to make it available to parents and taxpayers in some other fashion.

Take-over of fiscal emergency school districts

- Requires the Auditor of State to notify the state Superintendent if the Auditor of State determines that the financial recovery plan of a school district in fiscal emergency cannot reasonably be expected to correct and eliminate its fiscal emergency conditions within five fiscal years.

- Requires the state Superintendent to develop an operation plan for the district within 90 days of the Auditor of State's notice and to submit that plan to the State Board of Education.

- Upon approval of the state Superintendent's operation plan, requires the State Board to take over operation of the district until the Auditor of State determines that the district does have a plan that reasonably can be expected to correct and eliminate the fiscal emergency conditions within five fiscal years.

- Prohibits the State Board, while it has taken over operation of the district, from de-chartering the district and transferring its territory.

School district certificate of adequate resources

- Authorizes a school district to enter into a contract without attaching the certificate of adequate resources required under current law if an alternative certificate is attached certifying that the contract is a multi-year contract for essential non-payroll items and the contract is more cost effective than single-year contracts.

Left-over textbook set-aside money

- Specifically permits a school district board to transfer any unencumbered money remaining in the district's textbook and instructional materials fund on July 1, 2011 (when the requirement to have that set-aside fund is repealed), to the district's general fund to be used for any general fund purpose.

Auxiliary services funds

- Updates statutory language regarding the kinds of education technology hardware and software and digital content that may be purchased with Auxiliary Services Funds for loan to students enrolled in chartered nonpublic schools.

Abolishment of Harmon Commission

- Eliminates the Harmon Commission.

II. Community Schools

Moratoriums on opening new 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.

- Maintains the moratorium on the establishment of new Internet- or computer-based community schools (e-schools), which is in effect until the General Assembly enacts standards governing the operation of e-schools.

- Requires the Superintendent of Public Instruction, Chancellor of the Board of Regents, and Director of the Governor's Office of 21st Century Education jointly to develop standards for the operation of e-schools by July 1, 2013, and to submit them for consideration of enactment by the General Assembly.

Conversion community schools opening in 2011-2013

- Waives the adoption (March 15) and signing (May 15) contract deadlines for new conversion community schools that open in the 2011-2012 school year, but requires that a copy of the adopted and signed contract be filed with the Superintendent of Public Instruction prior to the school's opening.

For-profit community schools

- Permits a community school to be established as a for-profit corporation or a limited liability company.

Community schools without sponsors

- Allows (1) a person, group, or entity to apply to the Department of Education for authorization to establish a community school to be operated without a sponsor or (2) the governing authority of an existing community school, upon expiration or termination of its contract with the school's sponsor, to apply for authorization to continue to operate the school without a sponsor.

- Requires the Department to approve each application, unless it determines, within 30 days, that the applicant does not meet the application requirements, and allows an applicant whose application is denied to appeal the decision under the Administrative Procedure Act.

- Requires the Department to enter into a contract with the governing authority of each unsponsored community school, the initial term of which may be up to 15 years.

- Requires each unsponsored community school to file with the Superintendent of Public Instruction either (1) a surety bond for $1 million or (2) a guarantee of $1 million issued by an entity with a certified net worth of at least $5 million.

- Permits the Department to take any action a sponsor may take under the Community School Law to enforce an unsponsored community school's compliance with that Law and the terms of its contract with the Department.

- Allows a community school that has a sponsor to merge with an unsponsored community school, and terminates the sponsored school's contract with its sponsor on the date of the merger.

Restrictions on sponsoring additional community schools

- Prohibits community school sponsors from sponsoring additional schools if they (1) are not in compliance with sponsor reporting requirements or (2) are ranked in the lowest 10% on an annual ranking of sponsors by their composite performance index scores.

- Increases to 100 schools (from 50 to 75 schools under current law, depending on the sponsor) the number of community schools that an entity may sponsor.

- Repeals the requirement that the cap on the number of schools an entity may sponsor must be reduced by one for each school sponsored by the entity that permanently closes.

Sponsor discrimination

- Prohibits an entity, including a school district board, state university board, or private non-profit organization, from refusing to sponsor a community school based solely on the type of school proposed, the membership of the public benefit corporation that will comprise the school, or the involvement of a for-profit entity in the public benefit corporation.

Sponsor assurances

- Extends the annual deadline for a community school sponsor to provide assurances to the Department of Education about the school's preparedness for operation, from ten business days prior to the school's opening to five calendar days prior to opening.

- Specifies that, in the special education plan included in the annual assurance from a community school's sponsor, the school's capacity to serve its students with disabilities be measured on an instructional-period basis.

Termination or nonrenewal of a school's contract with its sponsor

- Lengthens the notice a community school sponsor must give the community school of its intent to terminate or not renew the school's contract to 180 days (rather than 90 days, as in current law) prior to the termination or nonrenewal.

- Repeals the prohibition against a sponsor and a community school entering into a successor contract if the sponsor terminates or does not renew the prior contract.

Governing authority membership

- Sets a term limit of three years for members serving on a community school governing authority.

- Declares that no person may be deemed to have acquired a vested right in a position as a member of a community school governing authority.

- Prohibits a governing board member, or immediate relative, from being an owner, employee, or consultant of a community school sponsor for one year after the conclusion of the member's term.

- Increases the maximum compensation for governing authority members of start-up community schools from $125 per meeting per month to $5,000 per year.

Community school operators

- Eliminates the requirement that a community school operator be nonprofit if it provides programmatic oversight and support to the school and retains the right to terminate its affiliation with the school for failure to meet quality standards, and instead allows an operator of that type to be any organization or individual.

- Authorizes the governing authority of a community school to delegate any or all of its rights, duties, and responsibilities to the school's operator.

- Specifies that the renewal of a community school's contract with its sponsor is subject to the approval of the school's operator.

- Grants a community school operator standing to bring a court action concerning the school's operations or the renewal, nonrenewal, or termination of the school's contract with its sponsor.

- Requires a community school governing authority to give 180 days' notice of its intent to terminate or non-renew the contract with its operator, and states that failure to do so constitutes an irrevocable agreement to continue the contract for another school year.

- Requires a community school, upon expiration of its contract with an operator, to offer the operator the chance to renew the contract before seeking another operator.

- Revises the procedure for an operator to replace the members of a community school's governing authority if the operator prevails in an administrative appeal of its contract termination or non-renewal.

Closure of poorly performing community schools

- Beginning July 1, 2011, replaces the performance criteria that trigger automatic closure of a community school with new criteria for schools that do not offer a grade higher than 3 and for schools that offer any of grades 10 to 12, by requiring those schools to close if they have been in academic emergency for two of the three most recent school years.

Community school employees

- Permits a community school's teaching and nonteaching personnel to be employed by the school's operator.

- Eliminates the ability of community school personnel employed by the school to collectively bargain with their public employer.

- Allows layoffs with respect to teachers returning after a leave of absence due to being employed at a conversion community school to occur only in accordance with procedures in the administrative personnel suspension policy.

Taxes

- Repeals the law stating the intent of the General Assembly that no state funds paid to a community school be used to pay taxes owed by the school.

- Removes the prohibition of current law on property tax exemptions for property used by a public school that is acquired by lease or otherwise with a view to profit.

Laws applicable to community schools

- Specifies that community schools cannot be required to comply with any law or rule that is not specified in the Community School Law, in its contract, or that does not otherwise apply to chartered nonpublic schools.

- Exempts community schools from student body mass index screening requirements.

Community school payments

- Specifies that, for state funding purposes, a community school student is considered automatically re-enrolled the following school year until the student's enrollment in the school is formally terminated.

- Requires the Department of Education to pay a community school for each disabled student reported by the school, regardless of whether the student enrolls in the school after a statewide count of special education students mandated by federal law.

E-schools

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

- Revises the entitlement of e-school students to computers supplied by the school to at least one computer per household, or at least two computers if three or more students reside in the same household, instead of entitling each e-school student to a computer as under current law.

- Specifies an end-of-the-school-year deadline for e-schools to withdraw students who have failed to participate in the spring administration of state assessments for two consecutive years.

- Exempts e-schools from student immunization requirements for admission.

Community school facilities

- Allows a community school to be located in multiple facilities under the same sponsorship contract and to assign students of the same grade to different facilities, if (1) the facilities are all located in the same county and (2) the school is managed by an operator.

- Requires the Department of Education, in the case of a community school with multiple facilities, to assign a separate internal retrieval number (IRN) to the school and to each facility.

- Permits two or more community schools to be located in the same facility.

Right of first refusal of school district property

- Applies the law granting community schools a right of first refusal to acquire school district property to all real property owned by the district (instead of just real property suitable for use as classroom space, as in current law).

- Requires school districts, when offering district property to community schools, (1) to offer the property for sale by public auction, (2) to offer the property to all community schools (rather than just start-up schools within the district, as in current law), and (3) to also offer the property to community school operators and to persons or entities in lease agreements with community schools or operators.

- Gives community schools and their operators a right of first refusal when a school district seeks to donate property worth $2,500 or less.

- Gives community schools, their operators, and the schools' and operators' lessors a right of action against a school district that fails to offer property as required by the bill.

- 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.

Young adults in community school dropout programs

- Permits an individual who is between 22 and 30 years old, and who does not have a high school diploma or a certificate of high school equivalence, to enroll free of tuition for two additional years of instruction at a community school in the school's dropout prevention and recovery program.

- Permits a community school to receive state funds for students between the ages of 22 and 30 who are eligible to attend school free of tuition, from funds specifically appropriated for that purpose.

- Requires the State Board of Education to adopt rules prescribing standards and requirements for services to students with disabilities between the ages of 22 and 30 enrolled in a community school dropout prevention and recovery program.

Community school participation in joint educational programs

- 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).

III. Public College-Preparatory Boarding Schools

Creation

- Permits the establishment of public college-preparatory boarding schools operated by private non-profit entities for the benefit of qualifying at-risk middle or high school students.

- Requires the State Board of Education to issue a request for proposals from nonprofit organizations interested in operating a college-preparatory boarding school and to enter into a contract with each approved operator.

- Requires nonprofit organizations that submit a proposal to operate a college-preparatory boarding school to demonstrate experience operating a similar school or program, success in improving student academic performance, and the capacity to secure private funds for the development of the school.

- Provides that each college-preparatory boarding school issued a charter by the State Board is considered a public school and a part of the state's program of education.

School governance

- Provides for the governance of a college-preparatory boarding school by a board of trustees consisting of up to 25 members, with five members appointed by the Governor, with the advice and consent of the Senate, and the remaining members appointed pursuant to the school's bylaws.

Student enrollment

- Provides that a student qualifies to attend a college-preparatory boarding school if the student is at risk of academic failure, is from a family whose income is below 200% of the federal poverty guidelines, and meets at least two other criteria involving the student's academic performance, behavior history, disability status, or family status.

- Further limits enrollment to residents of the school district in which the school is located, and residents of any other school district that agrees to be a participating school district.

- Provides that a college-preparatory boarding school may only admit up to 80 students and offer grade 5 or 6 in its first year of operation.

- Allows a college-preparatory boarding school to offer additional grades in the years following its first year of operation, provided that the total number of students attending the school never exceeds 400.

School operations

- Permits boarding school employees to collectively bargain under the Public Employees Collective Bargaining Law.

- Applies state laws regarding achievement assessments, diploma requirements, special education, and educator misconduct to each boarding school.

- Requires each participating school district to provide weekly transportation to and from the college-preparatory boarding school for its resident students enrolled in the school.

State oversight

- Requires the Department of Education to issue an annual report card for each college-preparatory boarding school that includes data regarding the academic performance of the school's students.

- Allows the State Board to close a college-preparatory boarding school if the school violates a provision of the authorizing law or a provision of the contract between the school and the State Board.

College-Preparatory Boarding School Facilities Program

- Establishes the College-Preparatory Boarding School Facilities Program, under which the Ohio School Facilities Commission is to provide assistance for the acquisition of classroom facilities to the boards of trustees of college-preparatory boarding schools.

- Specifies that, to be eligible for the assistance, a board of trustees must secure at least $20 million of private money to satisfy its share of facilities acquisition, and that the acquisition of residential boarding facilities and any other non-classroom facilities must be funded through private means.

IV. Scholarship programs

Ed Choice

- 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.

Cleveland Scholarship Program

- Increases the base amounts of the Cleveland Scholarship to equal the maximum amounts allowed for Educational Choice Scholarships ($4,250 for grades K-8 and $5,000 for grades 9-12).

- Allows new students to enter the Cleveland Scholarship Pilot Program during high school.

Autism Scholarship Program

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

V. Educational Service Centers (ESCs)

- 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 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, by notifying the ESC governing board by January 1, 2012, or by January 1 of an odd-numbered year thereafter.

- 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.

- Provides procedures for dissolving an ESC if all of its "local" school districts have "severed" from the ESC's territory.

- Generally limits an ESC's payments, in fiscal year 2012, to 90% of the amount it received for fiscal year 2011 and, in fiscal year 2013, to 85% of the amount it received for fiscal year 2012.

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

- Eliminates ESCs' roles regarding "local" school districts' textbook selection, age and schooling certificates, and filing and receipt of student membership records.

- Requires the Governor's Director of 21st Century Education to develop a plan for the integration and consolidation of the publicly supported regional shared services organizations and to submit legislative recommendations to the Governor and the General Assembly by January 1, 2012.

VI. Teachers and School Employees

Teacher employment contracts

- Prohibits a school district or educational service center (ESC) from awarding a continuing contract (tenure) to a teacher who is initially licensed in 2011 or later, or who was initially licensed before 2011 but does not meet the statutory tenure requirements before the prohibition takes effect.

- Specifies that the prohibition on continuing contracts overrides collective bargaining agreements entered into on or after the prohibition's effective date.

- Specifies that the requirement of current law for a teacher to have taught in the employing school district or ESC for a specified number of years to qualify for a continuing contract overrides collective bargaining agreements entered into on or after the provision's effective date.

- Limits an initial employment contract with a classroom teacher entered into by a school district, community school, STEM school, or ESC on or after the provision's effective date to a maximum of three years, and specifies that any subsequent contracts must be for terms of two to five years.

- Increases from one year to two years the length of a limited contract entered into by a school district or ESC with a teacher whom it intended not to re-employ but is required to retain because it failed to comply with statutory nonrenewal procedures.

Teacher and principal evaluations

- Repeals the requirement for the State Board of Education to establish guidelines for the evaluation of teachers and principals for optional use by school districts and educational service centers (ESCs).

- Requires the Superintendent of Public Instruction, by December 31, 2011, to develop a framework for the evaluation of teachers that includes (1) standards and criteria that distinguish between performance levels of "highly effective," "effective," "needs improvement," and "unsatisfactory" and (2) a standard of student academic growth that must be met to achieve each of these ratings.

- Specifies that the framework must require each teacher evaluation to consider (1) quality of instructional practice, (2) communication and professionalism, and (3) parent and student satisfaction.

- Directs each school district, community school, STEM school, and ESC, by July 1, 2012, to adopt a teacher evaluation policy that utilizes the framework, and requires the policy to be approved by the Superintendent of Public Instruction.

- Requires employers to evaluate each teacher annually.

- Requires at least 50% of each teacher evaluation to be based on student academic growth for students assigned to the teacher in the three most recent school years, except that if less than three years of data is available, the portion of the evaluation based on student growth may be reduced to 40%.

- Requires student academic growth to be measured by value-added data derived from the state achievement assessments when applicable and by other assessments selected by the employer when not applicable.

- Requires employers to use teacher evaluations to inform decisions about compensation, nonrenewal, termination, reductions in force, and professional development.

- Requires employers to revoke a teacher's continuing contract if the teacher receives (1) a rating of "unsatisfactory" for two consecutive years or for two of three consecutive years, (2) a rating of "needs improvement" for three consecutive years, or (3) a combination of ratings of "needs improvement" and "unsatisfactory" for three consecutive years.

- Grants civil immunity to the employer's governing body, its members, and evaluators for conducting evaluations in accordance with the bill.

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

- Requires each school district's and ESC's evaluation procedures for principals (required under current law) to be based on principles comparable to the teacher evaluation policy, but tailored to the duties and responsibilities of principals.

- Requires a school district or ESC to consider a principal's evaluations in decisions about compensation, termination, reductions in force, and professional development (as well as nonrenewal, as in current law).

- Requires the Department of Education to publish an annual report on teacher and principal evaluation results, disaggregated by school district and public school.

Teacher compensation

- Repeals, after the 2012-2013 school year, the state 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 school districts, community schools, STEM schools, and ESCs, beginning in the 2013-2014 school year, annually to adopt a performance-based salary schedule for teachers.

- Requires a teacher's performance for salary purposes to be measured by (1) the level of the teacher's license, (2) whether the teacher is "highly qualified" under federal law, and (3) evaluation ratings.

- Requires the salary schedule to provide for annual adjustments based on teacher evaluations.

- Permits payment of additional compensation to teachers who agree to perform duties that the employer determines warrant extra pay, such as teaching in a school that is hard-to-staff, is underperforming, or has a large proportion of low-income or at-risk students.

Teacher assignments

- Prohibits a school district superintendent from assigning to a school a teacher whose evaluation rating is "needs improvement" or "unsatisfactory" without the mutual consent of the teacher and the school's principal.

- Permits a school district to place such a teacher on unpaid leave if the teacher is unable to secure a mutual-consent assignment, and allows the district to terminate the teacher's contract after one year on unpaid leave without an assignment.

Teacher and administrator termination and layoffs

- Requires the State Board of Education to adopt rules defining "good and just cause" for terminating a teacher or administrator employed by a school district or educational service center (ESC).

- Specifies that "good and just cause" includes (1) immorality, incompetency, gross insubordination, or willful neglect of duty, (2) a conviction or finding of guilt for an offense involving moral turpitude or for certain crimes against the public interest, or (3) certain poor evaluation ratings.

- Specifies that the grounds for termination prevail over collective bargaining agreements entered into on or after the provision's effective date.

- Permits a school district or ESC to terminate a teacher or administrator *without* "good and just cause" if the employee is in the first year of employment and has a one-year contract, and specifies that the employee is not entitled to due process procedures.

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

- Eliminates the prohibition against holding a termination hearing during summer vacation without the employee'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, community schools, STEM schools, and ESCs to lay off teachers in order of their evaluation ratings, starting with teachers who receive "unsatisfactory" ratings first.

- Prohibits giving teachers preference in retention based on seniority.

- 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.

Exemptions for highly performing school districts

- Prohibits the State Board of Education from exempting excellent and effective school districts from the bill's requirements regarding teacher employment contracts, evaluations, compensation, and reductions in force.

Retesting teachers

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

- Permits a school district, community school, or STEM school 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.

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.

Certification of chartered nonpublic school teachers

- Requires the State Board of Education to issue a person a certificate to teach foreign language, music, religion, computer technology, or fine arts in a chartered nonpublic school upon receipt of an affidavit from the person's potential employer, stating that the person has previous instructional training or experience or has specialized expertise that qualifies the person to teach.

School district employee's sick leave

- Exempts substitutes, adult education instructors who are scheduled to work the full-time equivalent of less than 120 days per school year, or persons who are employed on an as-needed, seasonal, or intermittent basis from the 15 days sick leave with pay provided to each person who is employed by a school district or ESC.

School Employees Health Care Board – repeal

- Eliminates the School Employees Health Care Board, which adopts and releases a set of best practices to which public school districts must adhere in the selection and implementation of health care plans.

- Repeals the provision that requires all health care benefits provided to persons employed by public school districts to be provided by health care plans that contain best practices established by the Board.

- Repeals a provision that permits any board of education member of a school district and the dependent children and spouse of the member to be covered under any medical plan designed by the Board.

VII. School Restructuring

Restructuring low-performing schools

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

- 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

- Establishes a pilot project in the Columbus City School District under which, 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 district 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.

VIII. Other Education Provisions

Statewide academic standards

- Removes the requirement that the statewide academic standards adopted by the State Board of Education specify development of skill sets related to creativity, innovation, critical thinking and problem solving, and communication and collaboration and that promote personal management, productivity and accountability, and leadership and responsibility.

- Removes the senior project from the high school graduation requirements under the college and work-ready assessment system.

- Eliminates development of a composite score system for the college and work-ready assessment system.

Gifted education coordinator

- Allows a school principal or any other school employee to also serve as the school district's gifted education coordinator if qualified to do so.

Testing of students with disabilities

- Requires the individualized education program (IEP) developed for a disabled student to specify the manner in which the student will participate in the state achievement assessments.

Calamity day make-up

- Allows school districts, chartered nonpublic schools, community schools, and STEM schools to make up a maximum of three calamity days either via lessons posted online or "blizzard bags" (paper lesson plans distributed to students that correspond to online lessons).

- Requires a school district to obtain the written consent of its teacher's union to implement the plan.

Approval to take GED

- Requires a person 16 to 18 years old to obtain approval to take the General Educational Development (GED) tests from the superintendent of the school district in which the person was last enrolled or, if the person was last enrolled in a community school or STEM school, from the school principal.

- Permits the Department of Education to require a person younger than 18 also to obtain approval to take the GED from the person's parent or a court official.

- Specifies that, for the purpose of calculating graduation rates for the school district report cards, a person who obtains approval to take the GED must be counted as a dropout from the district in which the person was last enrolled.

Superintendent for state schools

- Permits the State Board of Education to appoint one person to serve as the Superintendent of both the State School for the Deaf and the State School for the Blind.

Pilot project for multiple-track curriculum

- Requires the Superintendent of Public Instruction to establish a pilot project in Columbiana County under which one or more school districts must offer a multiple-track high school curriculum for students with differing career plans.

School district lease to higher education institutions

- Specifically states that school districts may rent or lease facilities to public or nonpublic institutions of higher education for the use in providing evening and summer classes.

I. School Financing

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, 3306.19, 3306.191, 3306.192, 3306.21, 3306.22, 3317.011, 3317.016, 3317.017, 3317.0216, 3317.04, 3317.17, 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, 3313.482, 3313.55, 3313.64, 3313.6410, 3313.981, 3314.08, 3314.087, 3314.088, 3314.091, 3314.10, 3314.13, 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.)

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

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

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

[43] Repealed R.C. 3306.051.

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]

Temporary formula

(Sections 267.30.50 and 267.30.53)

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.

The bill also provides supplemental funding for fiscal year 2012 to guarantee each district operating funding in an amount that is at least 80% of the state operating funding, less federal stimulus funding, the district received for fiscal year 2011 under the EBM. For fiscal year 2013, supplemental funding is provided to districts that received the funding for fiscal year 2012 to guarantee each of these districts operating funding equal to the amount it received for fiscal year 2012 under the temporary formula and supplemental formula combined. Thus, a district that did not receive a supplement for 2012, will not receive one for fiscal year 2013 even if its total funding falls below 80% of its fiscal year 2011 amount.

For a more detailed description of the temporary formula, see the LSC Redbook for the Department of Education, published on the LSC web site at **www.lsc.state.oh.us/fiscal/redbooks129/default.htm** and the LSC Comparison Document of the bill as passed by the House, published at **www.lsc.state.oh.us/fiscal/comparedoc129/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 temporary formula do not. But the EBM and the bill both prescribe a formula amount

[44] Repealed R.C. 3306.19.

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 districts' 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."[45] 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

[45] 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.[46]

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.[47] 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[48] or for state payments for catastrophic costs.[49]

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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[46] 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.

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

[48] 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.

[49] 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%).

Gifted education maintenance of effort

(Repealed R.C. 3306.09; R.C. 3302.05, 3302.07, 3317.018, and 3317.024; Sections 267.30.40 and 267.30.50)

As part of its repeal of the EBM, the bill repeals changes enacted earlier in 2011, by H.B. 30 of the 129th General Assembly, that modify school districts' gifted education "maintenance of effort" under the EBM and provide for the reinstatement in fiscal year 2012 of state gifted unit funding. The maintenance of effort changes enacted by H.B. 30: (1) specified that school districts must sustain their fiscal year 2009 level of expenditures on staff providing gifted education services, (2) required districts to account for their maintenance of effort spending to the Department of Education, and (3) directed the Department to monitor and enforce districts' compliance with the maintenance of effort requirements.

However, in the appropriations language for the fiscal biennium, this bill (H.B. 153) directs the Department to note on each school district's annual funding statement how much of the district's state funding is allocated for gifted education services. That allocation is to equal the amount the district received, either directly or through funds allocated to educational service centers, in fiscal year 2009 through state gifted education unit funding and supplemental gifted identification funds. The Department must require each district to report data annually so that "the Department may monitor and enforce the district's compliance with the manner in which allocations for . . . gifted education funding may be spent."

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.[50]

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 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, 3314.13, 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,

[50] 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.

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.

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.

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.[51] 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;

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

(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;

(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. (However, the bill retains the current prohibition on the distribution of state operating funds to school districts without Controlling Board approval.) (R.C. 3317.01.)

(2) Eliminates the requirement that the Department 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).

(3) Eliminates the requirement that the Department 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).

(4) 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).)

(5) Eliminates a requirement that the Department 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).

(6) 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).

(7) 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).

(8) Eliminates the current statutory authority of the Department 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)).

(9) 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.

(10) 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.

(11) Repeals the statute of the former Building Blocks Model that authorizes the payment of "gap aid." Gap aid was 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),[52] 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, 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) brick and mortar community schools. There must be one group each for all Internet- or computer-based community schools (e-schools) and 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, e-school's, or STEM school's total operating budget spent for classroom instructional purposes;

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

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

(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, e-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, e-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.[53]

(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.[54] 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 district's ranking must be based on the performance of career-technical students from that district and all other districts served by that district.[55]

(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.

Additional reports of district spending

(R.C. 3302.25)

The bill requires additional annual reporting to each school district a comparison of its instructional expenditures to its administrative expenditures. The Department must report to each school district all of the following for the previous fiscal year:

(1) The ratio of its instructional expenditures to its administrative expenditures and the per pupil amounts of each;

(2) The percentage of the district's operating expenditures attributable to school district funds; and

(3) The statewide average among all districts for all of the above.

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[53] 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.

[54] 20 U.S.C. 2323.

[55] 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.

Each school district, upon receipt of the report, must publish the information in a prominent location on the district's web site and in another fashion "so that it is available to all parents of students enrolled in the district and to taxpayers of the district."

Take-over of fiscal emergency school districts

(R.C. 3316.21)

The bill adds measures the state may take in the oversight of some school districts in fiscal emergency. It grants additional powers to the Auditor of State, the state Superintendent, and the State Board of Education to oversee and take over operation of the certain district.

First, it specifies that, if the Auditor of State determines, from examination of the district's financial recovery plan, that implementing that plan cannot reasonably be expected to correct and eliminate all of the district's fiscal emergency conditions within five fiscal years, the Auditor must notify the state Superintendent of that determination.

Next, within 90 days after receiving that determination, the state Superintendent must develop an operations plan for the district and submit it to the State Board of Education for approval. Upon approval of the plan, the State Board must "suspend" the district's charter and take over the operation of the district. The State Board must continue to operate the district until (1) the district's board and its financial planning and supervision commission submit an acceptable financial recovery plan to the state Superintendent *and* (2) the Auditor of State has determined that the plan reasonably can be expected to correct and eliminate the district's fiscal emergency conditions within five fiscal years.

While the State Board is operating the district, it may exercise all powers granted to the school district board under the Revised Code for management and control of the schools of the district, except for the power to propose property tax or income tax levies. Also, subject to approval of the State Board, the district board must continue to propose tax levies necessary to operate the district and to resolve the district's fiscal emergency conditions. Moreover, the employees and officers of the district are deemed to be employees of the State Board. The State Board may delegate any management and control functions of the district to the district's financial planning and supervision commission. Finally, the State Board may *not* "revoke" the charter of the district or transfer its territory to other districts.

Background on fiscal emergency districts

The law provides for three levels of fiscal concern for which special attention is given by the state to a school district's solvency: "fiscal caution," "fiscal watch," and "fiscal emergency." It is at fiscal emergency that the state has the greatest concern for the financial situation of a school district and engages in greater oversight. The Auditor of State may declare a district to be in fiscal emergency if:

(1) The district has an operating deficit for the current fiscal year of more than 15% of its general fund revenue, and the voters have not passed a property or income tax levy sufficient to cover that deficit in the next fiscal year;

(2) The district has an operating deficit for the current fiscal year of 15% or less, but more than 10%, of its general fund revenue; there is no reasonable cause for the deficit; and its voters have not passed a tax levy sufficient to cover that deficit in the next fiscal year;

(3) The district was under fiscal watch and failed to submit an acceptable initial or updated financial plan to the state Superintendent or is "not materially complying" with its financial plan; or

(4) The district restructured a loan made under the former state loan mechanism (before 1997) and it still has a deficit or has failed to submit an acceptable initial or updated financial plan or is not complying with the plan.[56]

Financial recovery plan and oversight commission for a fiscal emergency district

A financial oversight and planning commission is created for each fiscal emergency district. That commission consists of (1) the Director of Budget and Management or the Director's designee, (2) the state Superintendent or the Superintendent's designee, and (3) three other persons, one each appointed by the Governor, the state Superintendent, and the mayor of the municipal corporation with the largest number of residents living within the school district (or, in other cases, the county auditor of the county with the largest number of residents living within the school district). The cost of operating a financial oversight and planning commission is paid by the state.[57] While the commission does not replace the district board, it does have substantial powers to influence and direct the district's financial affairs.

[56] R.C. 3316.03 and 3316.04, neither in the bill.

[57] R.C. 3316.05 and 3316.09, neither in the bill.

The commission must adopt a "financial recovery plan." That plan must describe the actions to be taken by the district to eliminate the fiscal emergency conditions (including deficits), a management structure needed to take those actions, target dates for those actions and completion of them, and the amount and purpose of debt obligations to be issued by the district.[58] The law also specifies that no appropriation measure may be adopted and no expenditure may be made that conflict with the financial recovery plan.[59]

A district's financial oversight and planning commission is granted (among others) the powers to (1) review and assume responsibility for development of the district's tax budgets, (2) after consultation with district officials, implement changes in the district's accounting systems, (3) assist or take over the restructuring of the district's debt, (4) make recommendations for or take over the implementation of reductions in costs or increases in revenues, and (5) make reductions in force among the district's personnel.[60] The district board, officers, and employees are specifically required to cooperate with the commission, and the commission may remove the district superintendent or treasurer for failing to comply with the commission's orders concerning the preparation or implementation of the financial recovery plan.[61]

The commission continues to exist until the district's financial emergency conditions have been corrected.

School District Solvency Assistance Fund

To assist a district in fiscal emergency, the state offers interest-free advances on its state operating funding through the School District Solvency Assistance Fund. A district in fiscal emergency may receive payments from the fund to help it "remain solvent." A fiscal emergency district also must pay back its advances within two years or the Director of Budget and Management is required to deduct that amount from its state operating funds.[62]

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[58] R.C. 3316.06.

[59] R.C. 3316.12, not in the bill.

[60] R.C. 3316.07, not in the bill.

[61] R.C. 3316.17, not in the bill.

[62] R.C. 3316.20.

School district certificate of adequate resources

(R.C. 5705.412)

The bill authorizes a school district to enter into certain multi-year contracts without attaching the certificate of adequate resources required under current law if an alternative certificate authorized by the bill is attached. Currently, school districts are generally required to attach a certificate to every contract the cost of which exceeds the lesser of $500,000 or 1% of the total revenue for the current fiscal year that will be credited to the district's general revenue fund. The certificate must indicate that the district has or will have adequate revenue in approved tax levies, state funding, and other resources to cover the amount of the contract for the entire term of the contract. A contract that lacks the required certificate of available resources is void, and the law provides for a civil action to recover the funds illegally spent and to levy a fine against any district officer who in absence of good faith violated the requirement.

The bill authorizes a school district to enter into a contract without attaching the certificate required under current law if an alternative certificate is attached certifying the following:

- The contract is a multi-year contract for materials, equipment, or non-payroll services "essential to the education program of the district";
- The multi-year contract demonstrates savings over the duration of the contract as compared to costs that otherwise would have been demonstrated in a single year contract and the terms will allow the district to reduce the deficit it is currently facing in future years as demonstrated in its five-year forecast.

Like the certificate required under current law, the alternative certificate must be signed by the treasurer and president of the board of education and the school district's superintendent; and, if the school district is in a state of emergency, the certificate must also be signed by a member of the district's Financial Planning and Supervision Commission designated by the Commission.

Left-over textbook set-aside money

(Section 267.60.10)

H.B. 30 of the 129th General Assembly, effective July 1, 2011, repealed the requirement that each school district annually set aside a specific amount into a

separate fund for textbooks and instructional materials.[63] Money in that fund that was not spent each year carried over to the next year. Thus, districts could have money left over in those funds when the repeal of the set-aside requirement becomes effective. The bill permits a school district board to transfer any unencumbered money remaining in the district's textbook and instructional materials fund on that date, to the district's general fund to be used for any general fund purpose.

Auxiliary services funds

(R.C. 3317.06)

School districts receive certain funds to purchase goods and services for students who attend chartered nonpublic schools located within their territories. Known as "Auxiliary Services Funds," those moneys may be used to purchase, for loan to students of chartered nonpublic schools, such things as textbooks, electronic textbooks, workbooks, instructional equipment including computers, library materials, and special education services. The bill makes several updates to the kinds of education technology hardware and software and digital content that may be purchased with Auxiliary Services Funds.

First, it redefines electronic textbook as "any book or book substitute that a student accesses through the use of a computer or other electronic medium or that is available through an Internet-based provider of course content, or any other material that contributes to the learning process through electronic means." Currently, the Auxiliary Services Funds statute defines electronic textbook as "computer software, interactive videodisc, magnetic media, CD-ROM, computer courseware, local and remote computer assisted instruction, on-line service, electronic medium, or other means of conveying information to the student or otherwise contributing to the learning process through electronic means."

Second, it adds to the list of authorized items computer application software designed to assist students in performing single or multiple related tasks, device management software, and learning management software.

Third, the bill specifies that computer hardware and related equipment includes desktop computers and workstations; laptops, tablets, and other mobile devices; and related operating systems and accessories.

Finally, it removes references to several outdated forms of technology, such as compact disks and video cassette cartridges.

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[63] Repealed R.C. 3315.17 and 3315.171.

Abolishment of the Harmon Commission

(Repealed R.C. 3306.51 to 3306.58)

The bill abolishes the Harmon Commission, which was established by H.B. 1 of the 128th General Assembly to approve applications for designation of classrooms as "creative learning environments" and to award grants to school districts and community schools that operate such classrooms, if sufficient funds are available for those grants.

Under current law, the Harmon Commission and all of the procedures for designating creative learning environments need not be implemented if the General Assembly does not appropriate funds for it, or if the Superintendent of Public Instruction determines that sufficient funds are not available for it. The Commission has never been funded.

II. Community Schools

Moratoriums on opening new community schools

"Brick and mortar" schools

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

The bill 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. 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 sponsoring additional community 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 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

(R.C. 3314.013, 3314.02(D), and 3314.029(A)(1))

The bill retains current law's outright moratorium on establishing new Internet- or computer-based community schools (e-schools), which has been in place since May 1, 2005. The moratorium is in effect until the General Assembly enacts standards governing the operation of e-schools.

With respect to standards, the bill requires the Superintendent of Public Instruction, Chancellor of the Board of Regents, and Director of the Governor's Office of 21st Century Education jointly to develop standards for the operation of e-schools by July 1, 2013, and to submit them to the Speaker of the House and President of the Senate for consideration of enactment by the General Assembly.

"Challenged" school district restriction retained

While the bill eliminates the statutory moratorium on new start-up "brick and mortar" community schools, it retains 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.[64]

Repeal of outdated provisions

(R.C. 3314.013 and repealed R.C. 3314.014)

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

Conversion community schools opening in 2011-2012

(Section 267.60.20)

The bill exempts new conversion community schools that open in the 2011-2012 school year from statutory deadlines for the adoption and signing of the school's contract with its sponsor, but requires the contract to be signed and filed with the Superintendent of Public Instruction prior to the school's opening. Under continuing

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

law, the sponsor and the school's governing authority must adopt the contract by March 15, and sign it by May 15, prior to the school year in which the school will open.

For-profit community schools

(R.C. 3314.01, 3314.02(E)(1), and 3314.03(A)(1))

The bill permits a community school to be established as a for-profit corporation or a limited liability company, instead of as a public benefit corporation as otherwise required by current law. A "public benefit corporation" generally is a corporation that is either a federal tax-exempt entity or "is organized for a public or charitable purpose and that upon dissolution must distribute its assets to [another] public benefit corporation, the United States, a state or any political subdivision of a state, or a [federal tax-exempt entity]."[65] In conformity with this change, the bill explicitly authorizes an "entity" to propose the creation of a conversion or start-up community school. Currently, only a person or a group of individuals may propose a school.

Community schools without sponsors

(R.C. 3314.029)

The bill permits the establishment of new community schools to be operated without sponsors, which are typically the entities responsible for monitoring and overseeing the schools. (Until the existing moratorium on the establishment of new e-schools is lifted, only a "brick and mortar" school may be established under this provision.) The bill also allows an existing community school, upon the expiration or termination of its contract with the school's sponsor, to continue operating without a sponsor. An unlimited number of unsponsored schools may operate under the bill. Although a community school may operate without a sponsor, the bill permits the Department of Education to take any action that a sponsor may take under the Community School Law to enforce the school's compliance with that Law and the school's contract with the Department (see below).

Authorization to operate without a sponsor

Authorization to operate a community school without a sponsor can be granted only by the Department of Education. In the case of a new school, the person, group, or entity proposing the school must apply for the authorization. In the case of an existing school, the school's governing authority must submit the application. Each application must include (1) evidence that the applicant will be able to comply with the bill's requirement to file a surety bond or other financial guarantee (see below) and (2) a

[65] R.C. 1702.01(P), not in the bill.

statement indicating that the applicant agrees to the bill's requirement to comply with all applicable provisions of the Community School Law.

The Department must approve each application, unless it determines, within 30 days after receipt of the application, that the application does not contain the information described in (1) and (2) above. If the Department denies an application, it must provide the applicant with a written explanation of the reasons for the denial and give the applicant 30 days to correct the problems with the application. If the applicant fails to correct the problems, the Department again must deny the application and provide a written explanation of its reasons. An applicant may appeal the denial of its application to the common pleas court under the Administrative Procedure Act.[66]

Contract with the Department

Once a community school has received authorization to operate without a sponsor, the school's governing authority must enter into a contract with the Department of Education. This contract is similar to the one required by continuing law between a school and a sponsor.[67] However, unlike a sponsor contract, which must begin at the start of a school year and is limited to an initial term of five years, the contract with the Department may begin at any time during the school year and may have an initial term up to 15 years. Also, unlike a sponsor contract, which may provide for the sponsor to be paid up to 3% of the school's state operating funds for the sponsor's monitoring duties, the bill prohibits an unsponsored school's contract from providing for the school to make payments to the Department. Upon expiration of the original contract, the Department may renew its contract with an unsponsored school, if the school's compliance with all applicable laws and the terms of the contract has been satisfactory.

The contract with the Department must include most of the information that is required to be specified in the contract between a school and a sponsor. But the contract for an unsponsored school need not contain the following provisions of a regular sponsor contract, some of which are related to the sponsor's roles and responsibilities:

(1) Performance standards by which the success of the school will be evaluated by the sponsor;

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[66] See R.C. 119.12, not in the bill.

[67] See R.C. 3314.03.

(2) Admission standards (although an unsponsored school must still comply with statutory provisions relating to school admissions, including anti-discrimination provisions[68]);

(3) Procedures regarding the disposition of school employees in the event the contract is terminated or not renewed;

(4) Procedures for resolving disputes between the sponsor and the school;

(5) A provision recognizing the authority of the Department of Education to take over sponsorship of the school, if the Department revokes the sponsor's approval to sponsor schools;

(6) A description of the learning opportunities that will be offered to students; and

(7) A statement indicating that the school will implement sanctions for poor performance imposed under the Department's Model of Differentiated Accountability, which was developed to comply with the federal No Child Left Behind Act. (Regardless of the exclusion of this provision from the contract, an unsponsored community school is still subject to the federal law and will have to comply with all required sanctions.)

Filing of bond or financial guarantee

Each unsponsored community school must file with the Superintendent of Public Instruction either a $1 million bond payable to the state or a $1 million guarantee issued by an entity with a net worth of at least $5 million. If the school closes, the bond or guarantee must be used to repay the state any money owed by the school.

Merger with unsponsored school

The bill permits a community school with a sponsor to merge with a community school authorized to operate without a sponsor. On the merger's effective date, the contract between the sponsored school and its sponsor is terminated, and that school becomes covered by the contract between the Department of Education and the unsponsored school with which it merges.

[68] See R.C. 3314.06 and 3314.061, latter section not in the bill.

Restrictions on sponsoring additional community schools

(New R.C. 3314.016)

The bill prohibits a community school sponsor from sponsoring any additional schools, if it (1) is not in compliance with statutory requirements to report data or other information to the Department of Education or (2) is ranked in the lowest 10% of all sponsors on an annual ranking of sponsors by their composite performance index scores. The composite performance index score, which must be developed by the Department, is a measure of the academic performance of students enrolled in all community schools sponsored by the same entity. Presumably, if a sponsor is subject to the prohibition due only to its ranking, it may sponsor additional schools if it later raises its ranking above the lowest 10%.

The bill's prohibition applies to all sponsors that are sponsoring schools on the prohibition's (90-day) effective date, including those sponsors that are exempt from the requirement to be approved for sponsorship by the Department of Education. Under continuing law, sponsors that are not subject to approval are (1) "grandfathered" entities that were already sponsoring community schools as of April 8, 2003, when the approval requirement became law,[69] and (2) the successor of the University of Toledo board of trustees (or its designee) as a sponsor of community schools.[70] However, the prohibition does not appear to apply to new sponsors that begin sponsoring schools after the prohibition takes effect.

Caps on community school sponsors

(R.C. 3314.015)

Under the bill, a community school sponsor may sponsor up to 100 schools, unless it is subject to the bill's prohibition on sponsoring additional schools (see "**Restrictions on sponsoring additional community schools**" above). This maximum is an increase from current law, which limits sponsors to 50 to 75 schools, depending on how many schools the sponsor had that were open as of May 1, 2005. The bill also repeals the requirement that a sponsor's cap must be decreased by one for each school sponsored by the entity that permanently closes. The current caps on sponsors are shown in the table below.

[69] See R.C. 3314.027, not in the bill.

[70] See R.C. 3314.021.

Current Caps on Community School Sponsors	
Number of schools sponsored by entity as of May 1, 2005	**Maximum number of schools entity may sponsor**
50 or fewer schools	50 schools
51 – 75 schools	Number of schools sponsored by the entity that were open as of May 1, 2005
More than 75 schools	75 schools

Sponsor discrimination

(R.C. 3314.02(G))

The bill prohibits an entity, including a school district board, state university board, or private non-profit organization, from refusing to enter into a preliminary agreement or a final contract to sponsor a community school based solely on (1) the type of school that is proposed to be established, (2) the composition of the members of the public benefit corporation that will comprise the school, or (3) the involvement of a for-profit entity as a member of that public benefit corporation.

Sponsor assurances

(R.C. 3314.19)

The bill extends the annual deadline by which the sponsor of a community school must provide written assurances to the Department of Education regarding the school's compliance with certain laws and the preparedness of the school's staff and facilities for the upcoming school year. Under the bill, sponsors must submit the assurances no later than five calendar days prior to the school's opening. The current deadline is ten business days before the school opens.

Community school special education personnel

(R.C. 3314.19(B))

One of the items that must be provided to the Department is a written assurance that the school has (1) submitted to the sponsor a plan for providing special education and related services to students with disabilities and (2) has demonstrated the capacity to provide those services as required under state and federal law. The bill adds that a

community school's capacity to provide those services, as demonstrated in its plan, must be measured on an "instructional-period basis."[71]

The State Board of Education's rules setting standards for services to children with disabilities prescribe various ratios of personnel to students categorized by grade levels and ages of students, types of disabilities, and services provided. Those ratios generally measure the number of personnel-to-students required for a category within a single "instructional period."[72] Instructional period is not defined in the rule, but presumably it is a period for a particular class within a school day.

Termination or nonrenewal of school's contract with its sponsor

(R.C. 3314.07)

Under the bill, if the sponsor of a community school intends to terminate or not renew its contract with the school, it must notify the school at least 180 days prior to taking the proposed action, instead of 90 days as in current law. Also, the bill repeals the prohibition on a community school and a sponsor entering into a successor contract if the sponsor terminates or does not renew the school's previous contract. Under current law, termination of a school's contract permanently closes the school because the school is not allowed to contract with any other sponsor. But the bill's repeal of the prohibition on a successor contract may permit the school to reopen at a later date with the same sponsor.

Background

Under continuing law, a sponsor may terminate or not renew its contract with a community school for (1) failure to meet student performance requirements specified in the contract, (2) fiscal mismanagement, (3) a violation of the contract or state or federal law, or (4) other good cause. The sponsor must offer the school an opportunity for a hearing on the matter. The school may appeal the sponsor's decision to terminate the contract to the State Board of Education, whose decision is final.

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[71] Separate law, not changed by the bill, requires each Internet- or computer-based community school to submit an annual special education plan to its sponsor (R.C. 3314.28, not in the bill). Another separate law, not changed by the bill, requires any community school's sponsor, by November 1 each year, to submit to the Department a description of the special education and related services provided by that school during the previous fiscal year and the school's expenditures for those services (R.C. 3314.12, not in the bill).

[72] Ohio Administrative Code 3301-51-09.

Governing authority membership

(R.C. 3314.02(E); repealed R.C. 3314.025)

The bill makes several changes relating to governing authorities of community schools. First, the bill sets a term limit of three years for governing authority members. There is no limit on the term of office for governing authority members under current law. Presumably, the three-year limit would apply to sitting governing authority members when the bill takes effect, but it might not be clear if the limit is retrospective. Second, it declares that no person "shall be deemed to have acquired a vested right as a member of a governing authority." Third, the bill prohibits a governing authority member, or immediate relative, from being an owner, employee, or consultant of a community school sponsor for one year after the end of a member's term. Under current law, this prohibition applies only to operators.

Fourth, the bill changes the law governing compensation of governing authority members. It repeals the current law that (1) limits the amount of compensation for governing authority members of start-up community schools to $125 per meeting per month, (2) requires the compensation to be paid from state funds paid to the operator, if the school has an operator, and (3) provides for allocation of the compensation among community schools if a member serves on the governing authority of more than one community school and the different governing authorities meet at the same location on the same day.[73] Instead, the bill authorizes start-up school governing authorities to provide for compensation of their members, provided that an individual is compensated not more than a total of $5,000 per year for all of the governing authorities on which the individual serves.

Community school operators

Definition of "operator"

(R.C. 3314.02(A)(8))

The bill eliminates the requirement that an operator of a community school be nonprofit, if it provides programmatic oversight and support to the school and retains the right to terminate its affiliation with the school for failure to meet quality standards. Instead, under the bill, an operator of that type may be any individual or organization, either nonprofit or for-profit. Under continuing law, an operator also may be an individual or organization that manages a community school's daily operations.

[73] R.C. 3314.025, repealed by bill.

School's delegation to the operator; operator's standing to sue

(R.C. 3314.03(E) and 3314.50(A) and (C))

Under the bill, if a community school contracts with an operator, the school's governing authority may delegate any or all of its rights, duties, and responsibilities to the operator. In addition, the bill grants the operator certain rights. First, the bill makes the renewal of the school's contract with its sponsor subject to the approval of the operator. Second, the bill gives the operator standing to bring a court action concerning the school's operations or the renewal, nonrenewal, or termination of the school's sponsorship contract, and to appear in any related court proceeding.

Termination or nonrenewal of operator's contract

(R.C. 3314.026 and 3314.50(B))

The bill requires a community school governing authority to give 180 days' notice to its operator before terminating or non-renewing the operator's contract. Any failure to provide the notice on time "constitutes the governing authority's irrevocable agreement to continue the contract for one additional school year." Moreover, it requires the governing authority to offer the operator an opportunity to renew the contract before soliciting services from any other operator.

The bill also revises the method by which the operator replaces the governing authority membership if the operator prevails in an appeal of its contract termination or nonrenewal. Instead of replacing the membership all at once following the appeal, as under current law, the bill directs that members be replaced with individuals recommended by the operator as the members' terms expire. In the meantime, the operator's contract with the school continues.

Background on operator appeals

Under current law, maintained by the bill, an operator may appeal a school's decision to terminate or non-renew the operator's contract. The appeal is made to the school's sponsor or, if the sponsor has sponsored the school for less than a year, to the State Board of Education. In the appeal, the sponsor or State Board must consider whether the operator has managed the school in accordance with all applicable laws and the terms of the school's contract with its sponsor, and whether the school's progress in meeting its academic goals has been satisfactory. If the operator prevails in the appeal, it may replace the members of the school's governing authority.

Closure of poorly performing community schools

(R.C. 3314.35)

Beginning July 1, 2011, the bill replaces the academic performance criteria that trigger permanent closure of community schools with new, more stringent criteria for those schools that serve the early elementary grades and for high schools. It does not change the criteria for schools that offer any of grades 4 to 8. Community schools that meet the existing criteria before July 1, 2011, still must close at the end of the 2010-2011 school year, in accordance with current law. The first schools subject to the new performance criteria will close following the 2011-2012 school year. The table below compares the current closure criteria with the bill's new criteria.

Community School Closure Criteria		
Type of school	**Current law**	**The bill**
A school that does not offer a grade higher than 3	Has been in academic emergency for three of the four most recent school years	Has been in academic emergency for *two of the three most recent school years*
A school that offers any of grades 4 to 8 but no grade higher than 9	(1) Has been in academic emergency for two of the three most recent school years and (2) showed less than one standard year of academic growth in reading or math for at least two of the three most recent school years	Same
A school that offers any of grades 10 to 12	Has been in academic emergency for three of the four most recent school years	Has been in academic emergency for *two of the three most recent school years*

The bill retains current law exempting a community school from the closure requirement if a majority of the school's students (1) are enrolled in a dropout prevention and recovery program that has a waiver from the Department of Education[74] or (2) are disabled students receiving special education. Also, as in current law, the performance ratings assigned to a community school for its first two years of operation do not count toward whether the school meets the closure criteria.[75]

[74] See R.C. 3314.36.

[75] R.C. 3314.012, not in the bill.

Community school employees

(R.C. 3314.10, 4117.01, and 4117.03, with conforming changes in R.C. 3314.402 (repealed) and 4117.06)

The bill allows the operator of a community school to employ the school's teaching and nonteaching staff. It also eliminates the ability of community school personnel employed by the school itself to collectively bargain with their public employer.

Collective bargaining

Under the bill, the governing authority of a community school is no longer considered a public employer under the Public Employees' Collective Bargaining Law, and thus is no longer subject to that law's requirements. The bill further states that employees of a community school established under continuing law do not have collective bargaining rights and prohibits a community school from bargaining collectively with its employees, except as provided below.

The bill also eliminates the current law procedures with respect to collective bargaining by a start-up or conversion community school. Under the bill, community school employees are no longer subject to the Public Employees' Collective Bargaining Law and are prohibited from organizing or collectively bargaining pursuant to that law. For community school employees who are covered by a collective bargaining agreement on the provision's (immediate) effective date, those employees remain covered by that agreement until the agreement expires on its terms. Upon expiration of the collective bargaining agreement, the employees are not subject to the Public Employees' Collective Bargaining Law and may not organize or collectively bargain pursuant to that law.

Community school collective bargaining under S.B. 5

S.B. 5 of the 129th General Assembly also eliminates community school employee collective bargaining rights and prohibits a community school from bargaining collectively with its employees. These provisions do not apply to a conversion community school unless the community school elects not to collectively bargain under procedures eliminated by this bill. Under S.B. 5, the governing authority of a conversion community school may submit to the State Employment Relations Board a statement that all the employees of the community school who are subject to a collective bargaining agreement be removed from the bargaining unit that is subject to that agreement. Upon submission, the employees cease to be subject to the agreement and all subsequent agreements. The bill (H.B. 153) eliminates this process as described above.

Layoffs involving teachers returning from conversion community schools

(R.C. 3314.10(B))

The bill permits reductions in force with respect to teachers returning after a leave of absence due to being employed at a conversion community school to occur only in accordance with procedures in the administrative personnel suspension policy adopted by the employing board of education. Currently, those reductions in force may occur in accordance with that policy or in accordance with the statutory teacher restoration policy (see "**Teacher reductions in force**" below).

Use of state funding to pay taxes

(Repealed R.C. 3314.082)

The bill repeals current law stating the General Assembly's intent that no state funds paid to a community school be used by the school to pay any taxes the school might owe on its own behalf, including local, state, and federal income taxes, sales taxes, and property taxes. This intent language does not apply to money withheld from a community school employee that is payable by the school to a government entity as taxes on behalf of the employee.

School property tax exemption

(R.C. 5709.07)

Current law provides a number of exemptions from the general rule that real property is subject to ad valorem taxation. One of those exceptions states that "public schoolhouses, the books and furniture in them, and the ground attached to them necessary for the proper occupancy, use, and enjoyment of the schoolhouses, and not leased or otherwise used with a view to profit" are exempt from taxation. The bill removes from this language the proviso that the property may not be "leased or otherwise used with a view to profit." Recently, the Supreme Court of Ohio upheld the Tax Commissioner's finding that property leased to a community school was subject to taxation. In that case, the Court held that under the statute amended by the bill "property cannot be exempted from taxation as a public schoolhouse when the owner leases the property to the school for profit."[76] It appears the bill's changes might change the result in such a case and might exempt property that is leased or rented for profit to a public school, including a community school.

[76] *Anderson/Maltbie Partnership v. Levin* (2010), 127 Ohio St.3d 178, 182-183.

Laws applicable to community schools

(R.C. 3314.04)

Current law provides that all state laws and rules pertaining to schools, school districts, and boards of education, except those laws and rules that grant certain rights to parents, do not apply to community schools, unless they are specifically made applicable to them in the Community School Law (R.C. Chapter 3314.) or in a particular school's contract with its sponsor. The bill states further that a community school cannot be required to comply with any law or rule that is not specified in the Community School Law, its contract, or that otherwise would not apply to a chartered nonpublic school. (A chartered nonpublic school is a private school that operates under a charter granted by the State Board of Education and has agreed to comply with certain operating standards adopted by rule of the State Board.)

The bill also makes a change to this general exemption provision to conform to the bill's separate provision permitting the State Board to contract directly with a community school for operation without a sponsor.[77]

Exemption from BMI screenings

(R.C. 3314.03(A)(11)(h))

The bill eliminates the requirement that community schools administer body mass index (BMI) and weight status category screenings to their students in the same manner as school districts. (E-schools already are exempt under current law.)

Background

Current law generally requires each school district, community school (other than an e-school), STEM school, and chartered nonpublic school annually to administer a screening for BMI and weight status category for each student enrolled in grades K, 3, 5, and 9. The parent of a student may opt out of the requirement by submitting a signed statement indicating that the parent does not wish to have the student undergo the screening. A district or school also may obtain a waiver of the screening requirements from the Superintendent of Public Instruction. To obtain the waiver, the district or school must submit an affidavit stating that it is unable to comply with the

[77] The bill refers to a school's contract under R.C. 3314.03 rather than "the contract between a community school and a sponsor."

requirements. The state Superintendent must grant the waiver upon receipt of the affidavit.[78]

Counting community school students for funding purposes

(R.C. 3314.08(L)(2))

Under the bill, beginning in the 2011-2012 school year, a student who finishes the prior school year in a community school is considered automatically re-enrolled in the same school for the following school year until the student's enrollment is formally terminated. Consequently, there will be no interruption in state funding for the student from one school year to the next. Under continuing law, the student's enrollment is considered terminated, and state funding for the student will end, on the date (1) the community school receives documentation from the student's parent terminating the student's enrollment, (2) the school receives documentation of the student's enrollment in another public or private school, or (3) the school ceases to offer learning opportunities to the student in accordance with the school's contract with its sponsor or the Community School Law.

Payments for special education students

(R.C. 3314.08(C)(2) and (D)(2))

The bill directs the Department of Education to pay a community school for each disabled student reported by the school as receiving special education and related services under an individualized education program (IEP), regardless of whether the student enrolls in the school after a statewide count of special education students required by federal law. Under federal law, each state department of education must report annually to the U.S. Department of Education the number of children with disabilities receiving special education and related services on any date between October 1 and December 1.[79] The bill ensures that a community school is still paid for a special education student who enrolls after December 1 and, therefore, may not have been included in this count.

[78] R.C. 3313.674, not in the bill. S.B. 118, As Reported by the Senate Education Committee, proposes to make the BMI and weight status category screenings permissive for district and schools, rather than mandatory subject to waiver as under current law.

[79] 34 Code of Federal Regulations 300.641.

E-schools

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.

One computer per household

(R.C. 3314.22)

The bill revises the entitlement of e-school students to computers supplied by the school. Instead of one computer per student, as in current law, the bill entitles the *household* of a student enrolled in an e-school to at least one computer. However, the bill entitles a household to at least one additional computer, if at least three students enrolled in an e-school reside in that same household. The bill continues to permit the parent of a student enrolled in an e-school to waive the entitlement to a computer or computers, and to rescind or modify that waiver, in the same manner as provided under current law.

Background

Current law entitles each child enrolled in an e-school to a computer supplied by the school. It also provides that if more than one child living in a single residence is enrolled in the school, at the option of the parent, the school may supply less than one computer per child, as long as at least one computer is supplied to the residence. In the waiver, both parent and the school must attest that there is a computer available to the student with sufficient hardware, software, programming, and connectivity so that the

student can fully participate in all of the learning opportunities offered by the school. The school is prohibited from providing a stipend as a substitute for a computer. The law sets forth procedures for parents to waive their entitlement to computers and to rescind and modify their waivers. If a parent who has waived the entitlement to one or more computers rescinds or modifies that waiver, the school must, within 30 days of the parent's notice, provide any additional computers requested by the parent, up to one computer for each child enrolled in the school.

Withdrawal of students

(R.C. 3314.26)

The bill specifies that e-schools must withdraw a student, for failing to participate in the spring administration of required assessments for two consecutive years, by the end of that second consecutive school year.

Under current law, when a student enrolled in an e-school fails to participate in the spring administration of a grade-level achievement test for two consecutive school years, the school must withdraw that student from enrollment. An e-school may not receive state funding for any student who has been withdrawn from such a school for not taking the achievement assessments. A student who is subject to withdrawal may continue to enroll in an e-school, but the student's parent must pay tuition in an amount equal to the state funds the Department determines the school would otherwise receive for that student.

Immunization requirements

(R.C. 3314.03(A)(11)(d))

The bill exempts e-schools from requiring students to be immunized to be enrolled in the school.

Current law requires pupils attending public schools, including community schools, or nonpublic schools to be immunized against mumps, polio, diphtheria, pertussis, tetanus, measles, German measles, hepatitis B, and chicken pox. A pupil may not be permitted to remain in school for more than 14 days unless the pupil presents written evidence satisfactory to the person in charge of admission that the pupil has been immunized against the diseases or is in the process of being so immunized. A child need not be immunized if (1) a child has naturally had measles, mumps, or chicken pox and submits a signed statement of that fact from the child's parent, guardian, or physician, (2) the child's parent or guardian declines to have the child immunized for reasons of conscience, including religion, and submits a written

statement declaring such, or (3) if the child's physician certifies in writing that immunization is medically contraindicated for the child.[80]

Community school facilities

Exception allowing school to have multiple facilities

(R.C. 3314.05(A) and (B)(1) and (4))

The bill allows a community school, under certain conditions, to be located in multiple facilities under the same sponsorship contract and to assign students in the same grade to different facilities, both of which are generally prohibited by current law. A community school qualifies for the bill's exception to the prohibitions, if (1) all of the school's facilities are located in the same county and (2) the school has entered into, and maintains, a contract with an operator to manage the school. Under current law, a community school may be located in multiple facilities only if space limitations make it impossible to serve all students in the same building.

Since the bill permits a qualifying school to have multiple facilities within the same county, it also creates an exception from the prohibition in current law against establishing a community school in more than one school district under the same sponsorship contract. If a qualifying school maintains facilities in more than one school district under the bill, continuing law requires that at least one of those districts be a "challenged" school district.[81] Also, the school's governing authority must designate one of those districts as the school's primary location and notify the Department of Education of that decision.

The school's primary location will affect which students may enroll in the school. Under continuing law, each community school must adopt a policy regarding admission of students who live outside the district where the school is located, which would be the school's primary location under the bill. This policy must either (1) prohibit the enrollment of students who live outside the district, (2) permit the enrollment of students who live in adjacent districts, or (3) permit the enrollment of students who live anywhere in the state.[82] If applicants for admission exceed the number of openings, students must be admitted by lottery from among all applicants,

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

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

[82] R.C. 3314.03(A)(19).

except that preference must be given to those students who reside in the district where the school is located.[83]

Assignment of internal retrieval numbers

(R.C. 3314.05(D))

For each community school that has multiple facilities, the bill requires the Department of Education to assign a separate identifier, known as an internal retrieval number (IRN), to the school and to each facility maintained by the school. An IRN is a unique number used by the Department to identify various education-related entities, including school districts, community schools, educational service centers, and nonpublic schools.

Sharing facilities

(R.C. 3314.05(E))

The bill expressly permits two or more community schools to be located in the same facility.

Right of first refusal of school district property

The bill revises the conditions under which school districts must offer unused property for community school use. The bill affects real property that school districts decide to dispose of, real property that is not being used, and personal property that a district seeks to donate.

Real property a district seeks to dispose of

(R.C. 3313.41(G)(1))

The bill broadens the law governing community schools' opportunities to purchase real property that a school district seeks to dispose of. Under current law, if a district seeks to dispose of real property that is suitable for use as classroom space, it must first offer that property for sale to the start-up community schools located in the district. Since start-up community schools may locate only in "challenged" school districts, this law currently does not apply to most school districts. The sale price may not exceed the property's appraised fair market value.

The bill makes the following revisions to the law:

[83] R.C. 3314.06(H).

(1) It eliminates the stipulation that the property must be suitable for use as classroom space, extending the law to any real property that a district seeks to dispose of.

(2) It eliminates the prohibition against the sale price exceeding fair market value, and requires instead that the sale be conducted as a public auction.

(3) It qualifies to bid at the auction (a) any community school, not just start-up schools located in the district (thus expanding the law's application to all school districts), (b) community school operators, and (c) persons or entities that have entered into a lease agreement with a community school governing authority or operator.

If no community school, operator, or lessor offers a bid, the district may proceed to dispose of the property in accordance with law.

Unused real property

(R.C. 3313.41(G)(2))

The bill likewise broadens the law governing community schools' opportunities to purchase real property that a school district has not used for a year. Under current law, a district must offer to sell to community schools real property that is suitable for use as classroom space, if (1) the district has not used the property for academic instruction, administration, storage, or any other education purpose for one full school year, and (2) the district board has not adopted a resolution outlining a plan for using the property for any of those purposes within the next three years. As in the case of property to be disposed of, the offer must be made to start-up community schools located in the district at a price not higher than the appraised fair market value.

The bill makes the following revisions to the law:

(1) It retains the requirement that the property have been unused for one year before being offered for sale, but it eliminates the stipulations that the property must be suitable for use as classroom space, that it not have been used for academic instruction, administration, storage, or any other education purpose, and that the district board not have adopted a resolution outlining its future use.

(2) It eliminates the prohibition against the sale price exceeding fair market value, and requires instead that the sale be conducted as a public auction immediately after one year of disuse.

(3) It qualifies to bid at the auction (a) any community school, not just start-up schools located in the district (thus expanding the law's application to all school

districts), (b) community school operators, and (c) persons or entities that have entered into a lease agreement with a community school governing authority or operator.

If no community school, operator, or lessor offers a bid, the district may proceed to dispose of the property in accordance with law.

Donated property

(R.C. 3313.41(H))

The bill revises current law governing how school districts may donate unused or obsolete personal property that is worth less than $2,500. It requires a district to first offer the donation to community schools located within the district and their operators.

Right of action

(R.C. 3313.41(H))

The bill allows any community school, its operator, or any person or entity that has a lease agreement with a community school or operator to bring a civil action in common pleas court to enforce the bill's provisions giving them first opportunity to obtain school district property.

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.

Young adults in community school dropout programs

(R.C. 3314.38; Sections 267.10 and 267.40.20; conforming changes in R.C. 3313.614, 3314.06, and 3314.08)

Current law entitles any individual who is a resident of the state and between the ages of 5 and 22 a tuition-free primary and secondary education until the individual attains a high school diploma.[84] Generally, an individual who is 22 or older is not entitled to tuition-free education, except for certain veterans who enlist in the armed forces prior to attaining a high school diploma.[85]

The bill permits an individual who is between 22 and 30 years old, and who has not been awarded a high school diploma or a certificate of high school equivalence (GED), to enroll in a dropout prevention and recovery program operated by a community school for up to two cumulative school years of tuition-free education. The community school must include that individual in the school's student enrollment report and may receive state payments for the individual's enrollment. The Department of Education is required to pay those amounts from funds specifically appropriated for that purpose and not to deduct the payments from a school district's account, as is required under continuing law for resident school-age students.

The bill also provides specific funding to pay for these services. It does so by directing the Director of Budget and Management to transfer $1 million in each of fiscal years 2012 and 2013 from the Economic Development Programs Fund, which consists of certain casino license fees, to a new line item and fund to be used by the Department of Education to make the required payments.[86]

Standards for students with disabilities

(R.C. 3323.25)

Each community school that enrolls a student who is between 22 and 30 years old, as permitted under the bill, who also has a disability of the type for which a school-age student can receive special education and related services, may provide similar services for that older student. However, since such a student is not entitled under federal law to those kinds of services, there are no existing standards for those services. Accordingly, the bill requires the State Board of Education to adopt rules, under the

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[84] R.C. 3313.64(B). Also, an individual who is between three and five years old and has a disability is entitled to tuition-free special education and related services under both state and federal law.

[85] R.C. 3314.08(P)(4), 3317.03(E)(4), and 3326.37(D), latter section not in the bill.

[86] The Economic Development Programs Fund is established in R.C. 3772.17.

Administrative Procedure Act, prescribing standards and requirements for the provision of special education and related services to those individuals that are comparable to the ones for school-age students.

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.[87]

III. Public College-Preparatory Boarding Schools For At-Risk Students

The bill permits the establishment of at least one college-preparatory boarding school serving at-risk middle and high school students. The boarding school may be operated only by a nonprofit organization approved by the State Board of Education. Once a boarding school receives a charter from the State Board, the school is considered a public school and a part of the state's program of education. In its initial year of operation, the school may offer only grade 5 or 6, but it may add higher grades, through grade 12, in subsequent years. The bill limits enrollment in the boarding school to students who belong to a family with an income at or below 200% of the federal poverty guidelines and who are at risk of academic failure.

Creation of college-preparatory boarding schools

School operator selection

(R.C. 3328.11)

A boarding school established under the bill must be operated by a private nonprofit entity selected by the State Board of Education. For this purpose, within 60 days after the bill's (90-day) effective date, the State Board must issue a request for proposals from nonprofit corporations interested in operating the school. Each

[87] 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.

proposal must include (1) the proposed location of the school, which may differ from any location recommended by the State Board, (2) a plan for offering grade 5 or 6 in the school's first year of operation and a plan for increasing the grade levels over time, and (3) any other information about the proposed educational program, facilities, or operations of the school considered necessary by the State Board.

The State Board must choose the school's operator from among the qualified responders. To be considered qualified, a private nonprofit corporation must (1) have experience operating a school or program similar to the school authorized by the bill and demonstrate to the State Board's satisfaction that the existing school or program has been successful in improving students' academic performance and (2) demonstrate to the State Board's satisfaction that the corporation has the capacity to secure private funds for the school's development.

If there are no responders with the required qualifications, the State Board may issue another request for proposals. Selection of a qualified operator must occur within 180 days after the issuance of the most recent request.

Contract with operator

(R.C. 3328.12)

After selecting an operator for the boarding school, the State Board of Education must enter into a contract with that entity prescribing the terms of the school's operation. The contract must stipulate the following:

(1) That the school may operate only if and to the extent it holds a valid charter issued by the State Board. Under continuing law, the State Board issues charters to school districts and individual schools within each district and may revoke a charter for failure to meet the State Board's minimum standards for elementary and secondary schools. These minimum standards cover such areas as the licensure and assignment of teachers and other staff, instructional materials and equipment, the organization and administration of schools, school facilities and grounds, student admissions, grade promotion policies, and graduation requirements.[88]

(2) That the operator will oversee the acquisition of a facility for the school (see "**College-Preparatory Boarding School Facilities Program**" below).

[88] R.C. 3301.07(D)(2) and 3301.16.

(3) That the operator will manage the school in accordance with the terms of the proposal accepted by the State Board during the selection process, including the plan for increasing the grade levels offered by the school.

(4) That the school will comply with the bill's provisions, any other provisions of law specified in the contract, State Board rules pertaining to the school,[89] the school's charter, and the school's bylaws (see "**Adoption of bylaws**" below).

(5) That the school will meet the academic goals and other performance standards outlined in the contract.

(6) That the State Board or the operator may terminate the contract in accordance with procedures described in the contract. Those procedures must include a requirement that the party seeking termination give prior notice of the intent to terminate the contract. The other party must also be given an opportunity to redress any grievances cited in the notice prior to the termination.

(7) That, if the school closes for any reason, the school's board of trustees will execute the closing in the manner specified in the contract.

Termination of contract

(R.C. 3328.45)

The bill authorizes the State Board to terminate a contract with a boarding school's operator for failure of the school to comply with the bill's provisions or the terms of the contract, or for failure to meet the academic goals or performance standards specified in the contract. Upon termination of the contract, the school must close. No termination may take effect before the end of a school year.

Option for additional boarding schools

(R.C. 3328.11(B)(1))

The bill permits the State Board to authorize one or more additional public boarding schools after the establishment of the first boarding school. If the State Board determines that additional schools are advisable, it must select and contract with qualified operators for those schools by following the same process used for selecting the first school's operator (see "**School operator selection**" above). Presumably, the operator of the first school could submit a proposal to run any additional school

[89] The bill requires the State Board to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to implement the bill's provisions (R.C. 3328.50).

authorized in the future, but the bill does not grant that operator preference in the selection process.

Public boarding school governance

Adoption of school bylaws

(R.C. 3328.13)

The operator of a boarding school established under the bill must adopt bylaws for the oversight and operation of the school. The bylaws, which are subject to the approval of the State Board of Education, must include standards for the admission and dismissal of students and procedures for the appointment of members of the school's board of trustees. The bylaws must conform to all applicable statutes and administrative rules, contract terms, and the school's charter.

Board of trustees

(R.C. 3328.15)

A board of trustees consisting of up to 25 members must govern each boarding school established under the bill. The Governor must appoint five of the trustees, with the advice and consent of the Senate. The Superintendent of Public Instruction may recommend appointees to the Governor, but those recommendations are not binding. All other trustees must be appointed in accordance with the school's bylaws.

Under the bill, trustee terms of office are three years, after an initial period in which the terms are staggered in length. Trustees may be reappointed, but no trustee may serve for more than three consecutive three-year terms. If the school's bylaws provide for compensation, trustees may be paid for their service on the board.

Student enrollment

Eligibility requirements

(R.C. 3328.01(B) and (E), 3328.04, and 3328.14)

A student is eligible to attend a boarding school established under the bill if the student (1) is entitled to attend school in a "participating school district," which is the district where the school is located or any other district that has agreed to allow its resident students to enroll in the school, (2) is at risk of academic failure, (3) is from a

family with an income below 200% of the federal poverty guidelines,[90] and (4) meets at least two of the following other risk indicators:

(a) The student has a record of in-school disciplinary actions, suspensions, expulsions, or truancy;

(b) The student failed to attain a proficient score on a state achievement assessment in English language arts, reading, or math at least once, or failed to attain a minimum score designated by the boarding school's board of trustees on an end-of-course exam in English language arts or math administered under the new high school assessment system that will eventually replace the Ohio Graduation Tests (OGT);

(c) The student has a disability;

(d) The student has been referred for academic intervention services;

(e) The student's head of household is a single parent;

(f) The student's head of household is not the student's custodial parent; or

(g) The student has a family member who has been imprisoned.

A student must also meet any additional criteria specified in the agreement between the State Board of Education and the boarding school's operator.

The bill requires the State Board to adopt procedures for school districts to follow in becoming participating school districts. In addition, the boarding school's operator must create an outreach program to inform school districts about the school, its admission procedures, and the process for becoming a participating district.

Maximum enrollment

(R.C. 3328.21)

The maximum enrollment for a boarding school established under the bill is 400 students. However, the school is limited to 80 students in its first year of operation, in which it may offer only grade 5 or 6. If the number of applicants exceeds the school's capacity, admission must be by lottery.

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[90] The 2011 federal poverty guideline for a family of four in the mainland United States is an annual income of $22,350. Using that guideline, a student from a family of four with an annual income below $44,700 (200% of $22,350) would qualify for enrollment in a school established under the bill.

School operations

Compliance with certain education laws

(R.C. 3328.18, 3328.19, 3328.191, 3328.192, 3328.193, 3328.20, 3328.24, 3328.25, 3328.26(C), and 3328.99; conforming changes in 109.57 and 3313.61)

A boarding school established under the bill, its operator, and its board of trustees are subject to the following education laws in the same manner as a school district:

- Administration of the state achievement assessments and the new high school assessment system that will replace the OGTs; provision of intervention services to students who do not attain a proficient score on an achievement assessment (R.C. 3301.0710, 3301.0711, and 3301.0712);

- High school diploma requirements (R.C. 3313.61 and 3328.25);

- Sanctions for failure to meet the federal standard of "adequate yearly progress" for two or more consecutive school years (R.C. 3302.04 and 3302.041);[91]

- Reporting requirements for the Education Management Information System (EMIS), which is a database of fiscal, personnel, enrollment, and academic performance information about school districts and buildings (R.C. 3301.0714);

- Requirement to conduct criminal records checks of applicants for employment and to periodically update those checks for nonlicensed employees other than bus drivers; prohibition on employing a person with a disqualifying criminal offense (R.C. 3319.39 and 3319.391);

- Suspension of employees from duties involving the care, custody, or control of a child upon arrest or indictment for a disqualifying offense (R.C. 3328.18(B));

- Reporting of misconduct by licensed educators to the Department of Education; immunity from civil liability for good-faith reports; and

[91] Adequate yearly progress (AYP) is a measure of performance used to determine whether a school district or building is meeting the goals of the federal No Child Left Behind Act. Under an existing federal pilot project, the Ohio Department of Education is implementing a Model of Differentiated Accountability that prescribes a series of graduated sanctions based on the length of time a district or school has failed to make AYP and the degree to which it has failed.

penalties for failure to make required reports or for making false reports (R.C. 3319.31, 3319.311, 3328.18(C), 3328.19, 3328.191, 3328.192, 3328.193, and 3328.99); and

- Requirement that private contractor employees that provide "essential school services" and work in a school in a position that requires routine interaction with a child must be supervised by a school employee or provide a recent criminal records check with no disqualifying offenses (R.C. 109.57 and 3328.20).

Special education

(R.C. 3328.23)

Similarly, in the same manner as a school district, each boarding school and its operator must comply with state and federal law regarding the provision of special education and related services to students with disabilities.[92] The bill specifies that a disabled student's resident school district is not obligated to provide the student with a "free appropriate public education" for as long as the student attends the boarding school. Therefore, the boarding school must assume the responsibility of providing the student with all necessary special education and related services. For each disabled student enrolled in the school, the school and its operator must verify to the Department of Education that the school is providing the services required by the individualized education program, or IEP, developed for the student.

Curriculum requirements

(R.C. 3328.22)

The school's educational program must include a remedial curriculum for all grades it offers below grade 9, and a college-preparatory curriculum for grades 9 to 12 that complies with the Ohio Core curriculum, which is the 20-unit state minimum high school curriculum.[93] The school's educational program also must provide (1) extracurricular activities, including athletic and cultural activities, (2) college admission counseling, (3) physical and mental health services, (4) tutoring, (5) community service opportunities, and (6) a residential student life program.

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[92] See R.C. Chapter 3323. and 20 United States Code (U.S.C.) 1400 *et seq*.

[93] See R.C. 3313.603(C). Students through the graduating class of 2017 may opt out of the Ohio Core curriculum with parental permission, so long as they meet other specified conditions, but they still must complete the current minimum high school curriculum in effect for students who entered ninth grade prior to July 1, 2010 (R.C. 3313.603(D)). This opt-out would be available to students in the eligible classes who are enrolled in a boarding school established under the bill.

Employee collective bargaining rights

(R.C. 3328.17 and 4117.01)

The bill explicitly grants teaching and nonteaching employees of a boarding school established under the bill the right to collectively bargain under the Public Employees Collective Bargaining Law.[94] Although that Law prohibits the State Employment Relations Board from placing professional and nonprofessional employees in the same bargaining unit without approval by a majority vote of both groups,[95] the bill specifies that a bargaining unit containing both teaching and nonteaching boarding school employees may be considered an appropriate unit, presumably without a vote.

Student transportation

(R.C. 3328.41)

The bill provides that a boarding school student's resident school district is responsible for the student's weekly transportation to and from the boarding school.

Annual report card

(R.C. 3328.26(A) and (B))

Under the bill, the Department of Education must issue an annual report card and performance rating for each boarding school in the same manner as required in continuing law for other public schools and school districts.[96] The bill also requires that the academic performance data of each boarding school student be used in calculating both the performance of the boarding school *and* the performance of the student's resident school district. For this purpose, the Department must include the student's achievement assessment scores in the resident district's data when determining the district's report card rating.

Time limit on state funding obligation

(R.C. 3328.03)

Under the Ohio Constitution, the maximum length of time for which a General Assembly may make an appropriation is two years, so as not to bind future General

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[94] See R.C. Chapter 4117.

[95] R.C. 4117.06(D)(1), not in the bill.

[96] R.C. 3302.03, not in the bill.

Assemblies.[97] In accordance with this constitutional provision, the bill prohibits any agreement or contract entered into under the bill's provisions, such as a contract between the State Board of Education and the operator of a boarding school, from creating a state funding obligation for more than two years. However, a financial obligation may be reauthorized every two years by a new General Assembly.

The bill includes no funding mechanism or formula for these schools.

College-Preparatory Boarding School Facilities Program

(R.C. 3318.60)

The bill creates the College-Preparatory Boarding School Facilities Program. Under this Program, the Ohio School Facilities Commission is to provide assistance for the acquisition of classroom facilities to the boards of trustees of schools authorized under the bill. To be eligible for the assistance, a board of trustees must secure at least $20 million of private money to satisfy its share of facilities acquisition. Acquisition of residential facilities and any other facilities *other than* classroom facilities must be funded by the board of trustees through private means.

The acquisition of classroom facilities with assistance provided by the Program is not subject to the Classroom Facilities Assistance Program requirements of current law.[98] The bill specifies that the lease payments made by the boarding schools are to be deposited into the existing Common Schools Capital Facilities Bond Service Fund.[99]

The Commission is to adopt rules necessary for the implementation and administration of the Program not later than 90 days after the effective date of this portion of the bill.

IV. Scholarship Programs

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

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[97] Article II, Section 22.

[98] R.C. 3318.01 to 3318.20.

[99] Money in this fund is used for payment of debt service on obligations issued by the Ohio School Facilities Commission to pay the costs of capital facilities for a system of common schools throughout the state (R.C. 151.03).

thereafter. Since the application period for Ed Choice scholarships for the 2011-2012 school year ends April 15, 2011,[100] 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 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 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

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

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 applications 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.

Cleveland Scholarship Program

(R.C. 3313.975 and 3313.978; conforming change in R.C. 3310.05)

The bill allows students to receive the Cleveland Scholarship for the first time as a high school student. Under current law, *initial* scholarships under the program are awarded only to students in grades K through 8; that is, students must have received a scholarship in elementary school to receive one in high school.

The bill also increases the base amounts of the Cleveland Scholarship to equal the maximum amounts allowed for Educational Choice Scholarships. For grades K through 8, the base amount is $4,250 in each fiscal year, up from $3,450 under current law. For grades 9 through 12, the base amount is $5,000 each fiscal year, up from $3,450 under current law. However, the bill retains the current stipulation that the maximum Cleveland Scholarship cannot exceed 90% (for low-income families) or 75% (for other families) of the base amount. The following table compares the bill's new base amounts with the actual maximum scholarship amounts after applying the 90% and 75% standards:

Grades	Base Amount	90% Amount	75% Amount
K to 8	$4,250	$3,825	$3,188
9 to 12	$5,000	$4,500	$3,750

The new base amounts apply beginning in fiscal year 2012.

Background

The Cleveland Scholarship Pilot Program provides scholarships to attend alternative schools, including private schools, and tutorial assistance grants to certain students who reside in any school district that is or has been under a federal court order requiring supervision and operational management of the district by the Superintendent of Public Instruction. Currently, only the Cleveland Municipal School District meets this criterion. The program has been authorized since 1995. It is financed partially with state funds and partially with an earmark of Cleveland's state payments.

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."

V. Educational Service Centers (ESCs)

ESC agreements

(R.C. 3311.05, 3313.843, 3313.845, 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. Currently, this authorization is generally 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.

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.

For purposes of determining whether a district must enter into an agreement, the bill specifies that a district's student count is its "total student count" as defined under continuing law. That count is the district's "average number of students enrolled during the first full school week of October" in grades K to 12, including students enrolled in a joint vocational or cooperative education district that week, and the total number of preschool children with disabilities enrolled on December 1.[101]

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, 2012, or by January 1 of any odd-

[101] R.C. 3301.011, not in the bill.

numbered year thereafter. The termination is effective on the following June 30. The bill also specifies that, if a district board fails to notify an ESC of its intent to terminate an agreement by January 1 of an odd-numbered year, the district's agreement is impliedly renewed for the next two school years.

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 apparently in favor of biennial 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.[102]

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.[103] 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.[104] If the bill is intended to allow "local" districts greater leeway to switch ESCs, their biennial decisions to terminate their agreements could frequently impact the electoral territory of ESCs. 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. Also, the bill places no geographical limitation on the selection of an ESC by a local district. It may be possible, therefore, that an ESC's territory could become noncontiguous, with its segments separated by some distance.

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[102] Repealed R.C. 3311.059.

[103] R.C. 3311.05.

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

Dissolution procedures for ESCs

(R.C. 3311.0510)

Even though the bill eliminates the formal severance and annexation procedures of current law, as discussed above, it appears to assume that "local" districts may leave their current ESCs through the bill's biennial agreement provisions. As under current law, this makes it possible for an ESC to lose all of its local districts and be left without any electoral territory. In that situation, it appears that an ESC is forced to dissolve. Yet, current law does not provide any procedures for an ESC's dissolution.

The bill provides some procedures for dissolving an ESC. First, the bill expressly states that if all of its "local" school districts sever from an ESC, the ESC's governing board is abolished and the ESC is dissolved. Next, the bill requires the Superintendent of Public Instruction to order an equitable distribution of the assets and liabilities of the ESC among the "local" school districts that made up the ESC and the "city" and "exempted village" school districts with which the ESC had service agreements during the ESC's last fiscal year of operation. The Superintendent's order "is final and not appealable."[105] Third, the bill specifies that the costs incurred by the Department of Education in dissolving the ESC may be charged against the assets of the ESC. Any amount of those costs in excess of the ESC's assets may be charged equitably against each of the local school districts that made up the ESC and the city and exempted village school districts that it last served. Fourth, a final audit of the ESC must be performed in accordance with procedures established by the Auditor of State. Finally, the bill requires that the ESC's public records be transferred to the school districts that received services from the ESC and, in the case of records that do not relate to services to a particular school district, to the Ohio Historical Society.

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

[105] The state Superintendent must appoint "a qualified individual" to implement the Superintendent's order.

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 85% of the amount it received in fiscal year 2012. However, the bill also provides that, if an ESC ceases operation, the Department of Education must redistribute that ESC's funding to the remaining ESCs in proportion to each ESC's student count. And, if two or more ESCs merge, the Department must distribute the sum of the original ESCs' funding to the new ESC.

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.[106]

(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.[107]

(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.[108]

(4) Each ESC may receive a contractually specified amount from each district with which it has a fee-for-service contract.[109]

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[106] R.C. 3317.11(C).

[107] R.C. 3317.11(F).

[108] R.C. 3317.11(B).

[109] R.C. 3313.845 and 3317.11(D).

ESC 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.

ESC 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.[110] 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

[110] 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.

Filing of membership records

(R.C. 3317.031)

Under current law, not changed by the bill, school districts and ESCs are required to keep a membership record for each pupil served. The record must include personal information, attendance records, and information on the pupil's use of school transportation. Current law also requires each local school district to file its membership records with its ESC at the end of each school year. The bill eliminates this requirement to file membership records with ESCs.

Educational shared services model

(Section 267.50.90)

The bill requires the Governor's Director of 21st Century Education to develop a plan for the integration and consolidation of the publicly supported regional shared services organizations and to submit legislative recommendations to the Governor and the General Assembly by January 1, 2012. The bill's stated goal is to have the plan ready for implementation beginning on July 1, 2012. In preparing the plan, the Director must recommend organizations to be integrated with ESCs. Those organizations include education technology centers, information technology centers, area media centers, the education regional service system, regional advisory boards, and regional staff of the Department of Education providing direct support to school districts. Further, the Director must include "an examination of services offered to public and chartered nonpublic schools and recommendations for integration of services into a shared services model." The services to consider for integration include general instruction, special education, gifted education, academic leadership, technology, fiscal management, transportation, food services, human resources, employee benefits, pooled purchasing, professional development, and noninstructional support.

In support of the study, by October 15, 2011, the Director must survey school districts, community schools, STEM schools, chartered nonpublic schools, and other educational service providers and local political subdivisions "to gather baseline data on the current status of shared services and to determine where opportunities for additional shared services exist."

VI. Teachers and School Employees

Teacher employment contracts

(R.C. 3314.03(A)(11)(d), 3319.08, 3319.11, and 3326.11)

Prohibition on continuing contracts

(R.C. 3319.08(E) and (F) and 3319.11(B))

The bill prohibits a school district or educational service center (ESC) from awarding a continuing contract (tenure) to a teacher who is issued an initial educator license by the State Board of Education on or after January 1, 2011, or who was initially licensed before 2011 but does not meet the statutory requirements for tenure (see below) prior to the prohibition's (90-day) effective date. A continuing contract is one that remains in effect until the teacher resigns or retires. The bill's prohibition applies prospectively only. It does not affect existing continuing contracts.

The prohibition on continuing contracts prevails over conflicting provisions of a collective bargaining agreement entered into on or after the prohibition's effective date. The bill also specifies that, with respect to veteran teachers who are eligible for a continuing contract, the requirement to have taught in the employing district or ESC for a requisite period of time before tenure may be awarded overrides collective bargaining agreements entered into on or after the provision's effective date.

The bill applies the prohibition on continuing contracts to community schools and STEM schools. But since those schools currently are not subject to the statutory requirements regarding teacher contracts, it is unlikely that they award continuing contracts. Therefore, the bill will probably not change their practices in that regard.

Background – tenure under current law

Under current law, a teacher who is initially licensed in 2011 or later is eligible for a continuing contract if the teacher (1) holds a professional, senior professional, or lead professional educator license, (2) has held an educator license for at least seven years, (3) has either (a) completed 30 semester hours of coursework in the area of licensure since initial issuance of an educator license, if the teacher did not have a master's degree when the initial license was issued, or (b) completed 6 semester hours of graduate coursework in the area of licensure since initial issuance of an educator license, if the teacher had a master's degree at that time, and (4) has taught in the employing district or ESC for at least three of the past five years or, if the teacher attained continuing contract status elsewhere, has taught there for the last two years. A

teacher licensed before 2011 currently is eligible for a continuing contract by meeting the criteria in (1), (3), and (4).

Length of contracts for teachers

(R.C. 3319.08(C) and 3319.11)

All classroom teachers who are not eligible for a continuing contract must be employed under a limited contract for a fixed length of time. Under the bill, the term of an initial limited contract for a classroom teacher may be up to three years. Subsequent contracts with the teacher must be two to five years in length. These terms apply to employment contracts entered into between a classroom teacher and a school district, community school, STEM school, or ESC on or after the provision's (90-day) effective date. Under current law, all limited contracts for classroom teachers may have a term up to five years.

Continuing law requires a school district or ESC to reemploy a teacher under a one-year limited contract when the district or ESC intends not to reemploy the teacher but either fails to provide the teacher with written notice of that intent by April 30 or fails to comply with required evaluation procedures. The bill increases the length of the limited contract in these cases to two years to conform to the bill's change in the length of subsequent limited contracts. In other words, if a district or ESC does not follow the nonrenewal process specified by law, it will be required to reemploy the teacher for one more year than currently mandated.

Background – S.B. 5 contract provisions

The bill's provisions regarding teacher employment contracts are the same as those enacted in S.B. 5 of the 129th General Assembly, except that S.B. 5 does not apply the provisions to community schools and STEM schools.[111]

Teacher and principal evaluations

(R.C. 3314.03(A)(11)(d), 3319.02, 3319.111, and 3326.11; new R.C. 3319.112; and repealed R.C. 3319.112; conforming changes in R.C. 3319.08 and 3319.11)

Under the bill, all school districts, community schools, STEM schools, and educational service centers (ESCs) must evaluate each teacher they employ at least annually, using an evaluation framework developed by the Superintendent of Public Instruction. Employers must use the evaluations to inform decisions about compensation, nonrenewal of contracts, termination, reductions in force, and

[111] R.C. 3319.08, as enacted by S.B. 5.

professional development. Under current law, a school district or ESC must evaluate a teacher only if it is considering not rehiring the teacher for the next school year. Community schools and STEM schools are not currently required to conduct any teacher evaluations.

The bill repeals the existing requirement for the State Board of Education, in consultation with the Chancellor of the Board of Regents, to establish guidelines for the evaluation of teachers and principals for optional use by school districts and ESCs, but it retains several of the principles required to be included in the guidelines and incorporates them into the new evaluation requirements.

Teacher evaluation framework

(New R.C. 3319.112)

By December 31, 2011, the Superintendent of Public Instruction must develop a framework for the evaluation of teachers. The framework must require at least 50% of each evaluation to be based on measures of student academic growth. It also must require each evaluation to consider the following other factors, but it may not designate the weight of any factor or prescribe a specific method for assessing the factor:

(1) Quality of instructional practice, which may be determined by announced and unannounced classroom observations and examinations of work samples, such as lesson plans or assessments designed by the teacher;

(2) Communication and professionalism, including how well the teacher interacts with students, parents, other school employees, and members of the community; and

(3) Parent and student satisfaction, which may be measured by surveys or other forms of feedback.

The evaluation framework must enable teachers to be rated as "highly effective," "effective," "needs improvement," or "unsatisfactory." For this purpose, the Superintendent of Public Instruction must develop standards and criteria that distinguish between the four levels of performance, and designate a standard of student academic growth that a teacher must meet to be rated at each level. In developing the performance standards and criteria, the Superintendent must consult with experts, public school teachers and principals, and stakeholder groups.

Value-added data, which measures the amount of a student's learning that is attributable to a particular teacher or school, is currently only available for reading and math in grades 4 to 8, when achievement assessments in those subjects are administered

each year. Since at least half of each evaluation must be based on student academic growth, the bill requires the Superintendent of Public Instruction to establish a list of assessments that districts and schools may use to measure student growth for grades and subjects for which value-added data or other achievement assessment data is not available.

Finally, similar to current law, the bill directs the Department of Education to serve as a clearinghouse of promising evaluation procedures and models and to provide technical assistance to districts and schools in developing evaluation policies.

District and school evaluation policies

(R.C. 3319.111 and new R.C. 3319.112(D))

Each school district, community school, STEM school, and ESC, in consultation with its teachers, must adopt a policy for annual teacher evaluations that utilizes the framework developed by the Superintendent of Public Instruction, including the requirement for at least 50% of each evaluation to be based on student academic growth. This policy must be adopted by July 1, 2012, but it must be approved by the state Superintendent prior to implementation. The state Superintendent must approve or disapprove each policy by November 1, 2012. If a policy is not approved, the state Superintendent must recommend revisions. Presumably, if its policy is approved, a district or school must begin conducting evaluations under the new policy in the 2012-2013 school year.

Besides using the state Superintendent's evaluation framework, the policy adopted by a district or school must specify the relative weight in the overall evaluation that will be given to quality of instructional practice, communication and professionalism, and parent and student satisfaction, and how each of those factors will be assessed. An employer also may designate additional aspects of teacher performance to be considered in evaluations.

The bill further requires each policy to establish an evaluation system that:

(1) Is evidence-based, and uses multiple measures of a teacher's use of knowledge and skills and multiple measures of student academic progress;

(2) Is aligned with the Educator Standards Board's standards for teachers, as adopted by the State Board of Education;

(3) Provides statements of expectation for professional performance and establishes criteria of expected job performance in the teacher's areas of responsibility;

(4) Requires a teacher to be observed by the person conducting the evaluation at least twice for no less than 30 minutes each time;

(5) Assigns evaluation ratings of "highly effective," "effective," "needs improvement," and "unsatisfactory" in accordance with the Superintendent of Public Instruction's standards and criteria; and

(6) Requires each teacher to be given a written report of the evaluation results that includes recommendations for improvements, suggestions for professional development in areas that do not meet expected performance levels, and information on how to obtain assistance in making needed improvements.

Measuring student growth

For the 50% of each teacher evaluation that must be based on measures of student academic growth, the bill requires the employer to include growth data for students assigned to the teacher for the three most recent school years. If less than three years of data is available, the employer must use all available data, but it also may elect to reduce the portion of the evaluation based on student growth to 40% of the total.

When applicable, the measures of student academic growth used for evaluations must include student performance on the state achievement assessments and value-added data. (When a new assessment system is developed to replace the Ohio Graduation Tests under continuing law, growth for high school students must be measured by the nationally standardized assessment in English language arts, math, and science, and the end-of-course exams in those subjects and social studies, that are required as part of the new system.[112]) For teachers of grades and subjects that do not have a state assessment, the employer must administer tests that measure student mastery of the course content, which may include nationally normed standardized assessments, industry certification exams, end-of-course exams developed or selected by the employer, or assessments from the list established by the Superintendent of Public Instruction.

Timing and conduct of evaluations

All teachers must be evaluated at least annually under the bill. The employer must complete the evaluation by April 1 and provide the teacher with the results by April 10. However, under continuing law, the employer must evaluate a teacher at least twice during the school year, if the teacher does not have a continuing contract and the employer is considering not rehiring the teacher for the next school year. In that case, the employer must conduct the first evaluation by January 15, with results provided to

[112] See R.C. 3301.0712.

the teacher by January 25, and the second evaluation between February 10 and April 1, with results provided to the teacher by April 10.

Under continuing law, each evaluation must be conducted by (1) a school district superintendent or assistant superintendent, (2) a school principal, (3) a person licensed by the State Board of Education to be a supervisor or a vocational director, or (4) a person designated to conduct evaluations under a peer review agreement entered into by the employer and the teachers' union. The bill grants civil immunity to the governing body of the employer, its members, and evaluators for any losses incurred by a teacher as a result of conducting an evaluation of the teacher in good faith and in accordance with the bill's requirements.

Revocation of continuing contracts

The bill requires an employer to revoke the continuing contract of a teacher who receives consistently poor evaluation ratings. Specifically, the contract must be revoked if the teacher receives (1) an "unsatisfactory" rating for two consecutive years or for two of three consecutive years, (2) a rating of "needs improvement" for three consecutive years, or (3) a combination of ratings of "unsatisfactory" and "needs improvement" for three consecutive years. If the employer continues to employ the teacher after revoking the continuing contract, it may grant the teacher only a limited contract. It appears that the bill would require the limited contract to be for a term of two to five years (see "**Length of contracts for teachers**" above).

Application of collective bargaining agreements

The bill specifies that the provisions regarding teacher evaluations, including their content, the manner of conducting them, and how they are used, prevail over collective bargaining agreements entered into on or after the provisions' (90-day) effective date.

Principal evaluations

(R.C. 3319.02 and 3319.112(B))

Although current law requires each school district and ESC to evaluate principals annually in accordance with evaluation procedures adopted by the employer, the bill further requires those evaluation procedures to be based on principles comparable to the teacher evaluation policy adopted by the district or ESC, including the requirement for student growth to account for at least 50% of the evaluation. While the evaluation procedures for principals must be similar to those for teachers, they must be tailored to the duties and responsibilities of principals and the environment in which

principals work. As with teachers, the Superintendent of Public Instruction must establish standards and criteria for rating principals on evaluations.

Each school district and ESC must consider a principal's evaluations in making decisions about compensation, termination, reductions in force, and professional development. Under continuing law, the evaluations also must be a factor in deciding whether to renew the principal's contract.

Annual report of evaluation results

(R.C. 3319.111(G) and new R.C. 3319.112(E))

Each employer must submit to the Department of Education the results of its annual evaluations for teachers and principals, disaggregated by the four evaluation ratings. However, the bill prohibits the information submitted from identifying any teacher or principal. By December 1, 2013, and annually thereafter, the Department must issue a report of the evaluation results submitted by employers for the previous school year. This report must include the percentage of teachers and principals who receive each evaluation rating in each school district, district-operated school, community school, and STEM school.

Background – S.B. 5 evaluation provisions

This bill's requirements regarding teacher and principal evaluations are similar to those enacted in S.B. 5 of the 129th General Assembly. However, under S.B. 5, the Superintendent of Public Instruction must recommend frameworks for the evaluation of teachers and principals to the State Board of Education, which must then adopt or modify the frameworks. Also, under S.B. 5, annual teacher evaluations will start in the 2013-2014 school year, a year later than under this bill.

S.B. 5 does not contain this bill's requirements for (1) community and STEM schools to adopt policies for the evaluation of teachers, (2) approval of teacher evaluation policies by the Superintendent of Public Instruction, (3) employers to assign ratings based on evaluation results, (4) employers to select tests to measure student growth when data from the state achievement assessments is not available, (5) evaluations to include growth data for students assigned to a teacher for the three most recent school years, (6) employers to revoke continuing contracts for poor evaluation ratings, and (7) an annual report of statewide evaluation results.[113]

[113] R.C. 3319.111 and 3319.112, as enacted by S.B. 5 of the 129th General Assembly.

Teacher compensation

(R.C. 3314.03(A)(11)(d), 3317.01(C), 3317.13, 3317.14, 3317.141, 3326.11, and 5126.24; conforming changes in R.C. 3302.061 and 3319.08)

Beginning with the 2013-2014 school year, 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 "**Minimum salary schedule**" below.)

Instead, starting in that school year, the bill directs each school district and ESC annually to adopt a performance-based salary schedule for teachers. The employer must measure a teacher's performance by:

(1) The level of educator license that the teacher holds. Under continuing law, the four levels of standard teacher licensure are (a) the resident educator license, which is for entry-level teachers, (b) the professional educator license, which a teacher may teach under throughout the teacher's career, (c) the senior professional educator license, and (d) the lead professional educator license.

(2) Whether the teacher is "highly qualified" under the federal No Child Left Behind Act (NCLB). To be highly qualified within the meaning of NCLB, a teacher generally must have a bachelor's degree, be fully certified by the state, and demonstrate competency in the teaching subject.[114]

(3) The ratings received by the teacher on evaluations conducted under the bill (see "**Teacher and principal evaluations**" above).

Additionally, the salary schedule must provide for annual adjustments based on evaluation ratings. While the bill does not designate the amount of these adjustments, it specifies that the annual performance-based adjustment for an "effective" teacher must be 50% to 75% of the adjustment for a "highly effective" teacher.

Finally, the employer may provide in the salary schedule for additional compensation for teachers who assume duties that the employer determines warrant extra pay, but for which the teacher does not have a supplemental contract. These duties may include, among others determined by the employer, (1) assignment to a school that is eligible for federal funding for low-income or other at-risk students or that has failed to meet the NCLB standard of "adequate yearly progress" for two or more

[114] 34 Code of Federal Regulations § 200.56.

consecutive years, (2) teaching in a grade or subject area for which the employer has a shortage of teachers, or (3) assignment to a hard-to-staff school. Under continuing law, a teacher may receive extra compensation for duties in addition to regular teaching duties, such as coaching or directing an extracurricular activity, under a supplemental contract. However, the pay for the duties covered by a supplemental contract is not provided for in the main salary schedule.

Initial placement on the salary schedule

The bill does not specify a method for determining where a veteran teacher is initially placed on the performance-based salary schedule. Nevertheless, continuing law prohibits the salary of a teacher employed by a school district or ESC from being lower than the previous school year, unless the reduction is part of a uniform plan affecting the entire district or ESC.[115] Therefore, a teacher probably must be paid at least the same salary as the teacher was paid in the school year before the new schedule takes effect.

Applicability to community schools and STEM schools

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

The bill requires community schools and STEM schools, beginning in the 2013-2014 school year, to adopt an annual performance-based salary schedule that complies with the bill's requirements for the teachers they employ. Unlike school districts, those schools are not subject to the requirements of current law to pay teachers based on years of service and training or to pay a minimum salary. Consequently, they currently may set teacher salaries in accordance with their own procedures.

Applicability to county DD boards

(R.C. 5126.24)

Each county DD board, beginning in the 2013-2014 school year, must adopt for teachers employed by the board an annual performance-based salary schedule that complies with the bill's requirements. 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 state minimum salary schedule for teachers.

[115] R.C. 3319.12, not in the bill.

Background

Minimum salary schedule

(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.[116]

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.

S.B. 5 compensation provisions

S.B. 5 of the 129th General Assembly also enacted a requirement for performance-based compensation for teachers employed by school districts, ESCs, and county DD boards (but not by community schools or STEM schools). Teacher performance under that act generally is measured by the same three factors (licensure, "highly qualified" status, and evaluations) as in this bill, but it also requires consideration of (1) the value-added measure the employer uses to determine the performance of the students assigned to the teacher's classroom and (2) other criteria

[116] R.C. 3317.01.

established by the employer. Also, while this bill requires adoption of a formal salary schedule, S.B. 5 does not.[117]

Teacher assignments

(R.C. 3319.113)

Under the bill, a school district superintendent may not assign to a school a teacher who has received an evaluation rating of "needs improvement" or "unsatisfactory" without the consent of both the teacher and the school's principal. If the superintendent is unable to assign the teacher because mutual consent is not obtained, the district board of education may place the teacher on unpaid leave until an assignment can be arranged. When a mutual-consent placement is obtained, the district board must pay the teacher at least the same salary the teacher earned before the unpaid leave. After one year on unpaid leave, though, the board may terminate the teacher's contract instead of continuing to attempt to place the teacher. Any termination must be in accordance with statutory due process procedures.[118]

Teacher and administrator termination

Grounds for termination

(R.C. 3319.16(A))

The bill directs the State Board of Education to adopt rules defining "good and just cause" for which a teacher or administrator (including a principal, treasurer, business manager, internal auditor, or superintendent) employed by a school district or educational service center (ESC) may be terminated under current law. The grounds for termination, as defined by the rules, prevail over a collective bargaining agreement entered into on or after the provision's (90-day) effective date. Under the State Board's rules, "good and just cause" must include at least the following:

(1) Immorality;

(2) A conviction of, a finding of guilt for, or a guilty plea to an offense involving moral turpitude;

[117] R.C. 3317.13, as enacted by S.B. 5 of the 129th General Assembly.

[118] See R.C. 3319.16.

(3) A conviction of, a finding of guilt for, or a guilty plea to (a) theft in office, (b) having an unlawful interest in a public contract, (c) soliciting or accepting improper compensation, or (d) dereliction of duty;[119]

(4) Incompetency;

(5) Gross insubordination;

(6) Willful neglect of duty; or

(7) An evaluation rating of "unsatisfactory" for two consecutive years or for two of three consecutive years, a rating of "needs improvement" for three consecutive years, or a combination of ratings of "unsatisfactory" and "needs improvement" for three consecutive years (see "**Teacher and principal evaluations**" above).

First-year teachers

(R.C. 3319.16(E))

Under the bill, a school district or ESC may terminate the contract of a teacher or administrator *without* "good and just cause" at any time in the employee's first year of employment with the district or ESC, if the employee has a one-year contract. In that case, the bill states that the employee is not entitled to the due process procedures afforded other licensed educators.

Due process procedures

(R.C. 3319.16(B) and (C) and repealed R.C. 3319.161; conforming change in R.C. 5126.23)

The bill eliminates the option for a teacher or administrator to request that a hearing on the matter of the employee's termination be held before a referee, rather than the school 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 collective bargaining agreement entered into on or after the provision's (90-day) effective date.

[119] See R.C. 2921.41, 2921.42, 2921.43, and 2921.44, none in the bill.

The bill also repeals the prohibition against a termination hearing before the employing board taking place during summer vacation without the employee'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,[120] falsification of a sick or assault leave statement,[121] assisting a student in cheating on a statewide achievement assessment,[122] 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 evaluations in determining the order of layoffs (see "**Teacher and principal evaluations**" above). (Current law requires that preference in retention be given first to teachers with continuing contracts (tenure) and then to teachers with greater seniority.) Within the teaching field or service area affected, the employer must suspend teachers with "unsatisfactory" evaluation ratings first, teachers with "needs improvement" ratings second, teachers

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

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

[122] R.C. 3319.151, not in the bill.

with "effective" ratings third, and teachers with "highly effective" ratings last, until all necessary reductions have been made. The bill explicitly prohibits granting preference in retention based on seniority. 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, previous evaluation ratings 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' (90-day) effective date. Also, unless a district or ESC has a separate layoff policy for administrators, the requirement to consider evaluations as the main factor in retention will also apply to reductions in force affecting those employees.[123]

Application to community and STEM schools

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

The bill requires community schools and STEM schools to comply with the provisions for the layoff and rehiring of teachers in the same manner as a school district. Under current law, these schools are not subject to any statutory requirements regarding reductions in force.

Background – S.B. 5 reduction in force provisions

S.B. 5 of the 129th General Assembly enacted a requirement for school districts and ESCs to consider quality of performance as the principal factor in determining the order of teacher layoffs, but it retained current law requiring the employer to give preference in retention first to teachers on continuing contracts. Under that act, a teacher's quality of performance must be measured by (1) the type of license held by the teacher, (2) whether the teacher is "highly qualified" under federal law, (3) evaluations, (4) the value-added measure used to determine the growth of the teacher's students, and (5) any other criteria established by the employer. S.B. 5, like this bill, eliminates consideration of seniority in determining the order of layoffs. Also like this bill, S.B. 5 exempts the order of layoffs from collective bargaining.[124]

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[123] See R.C. 3319.171, not in the bill.

[124] R.C. 3319.17 and 4117.081, as enacted by S.B. 5.

Exemptions for highly performing school districts

(R.C. 3302.05)

When adopting rules freeing school districts rated "excellent" or "effective" from statutes and administrative rules related to education under continuing law, the bill prohibits the State Board of Education from exempting a district from the following provisions of the bill:

(1) The prohibition on awarding continuing contracts to teachers who are initially licensed in 2011 or later, or who were initially licensed before 2011 but do not meet the tenure requirements before the prohibition takes effect;

(2) The requirement for an initial contract with a classroom teacher to be a maximum of three years and for any subsequent contracts to be for two to five years (see "**Teacher employment contracts**" above);

(3) The requirement to adopt a policy for the annual evaluation of teachers (see "**Teacher and principal evaluations**" above);

(4) The requirement to adopt a performance-based salary schedule for teachers beginning in the 2013-2014 school year (see "**Teacher compensation**" above); and

(5) The requirement to lay off teachers in order of their evaluation ratings, and the prohibition on giving preference in retention based on seniority (see "**Teacher reductions in force**" above).

Retesting teachers

(R.C. 3319.58)

Under the bill, in any year in which a building of a school district, community school, or STEM school is ranked in the lowest 10% of all buildings based on its performance index score (see "**Annual ranking by performance index scores**" below), the building'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, community school, or STEM school 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.

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 school, or STEM school. These stipends are to be 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 to be 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,[125] 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, assessment procedures, curriculum development, classroom management, and teaching methodology. (4) Passage of the Praxis II subject area assessment.	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.

[125] See Ohio Administrative Code 3301-24-19 and 3301-24-21.

	Current law	The bill
Conditions of holding license	(1) Participate in the Ohio Teacher Residency Program, which is a four-year, entry-level mentoring program for classroom teachers;[126] (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.

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:

[126] See R.C. 3319.223.

(1) Have a bachelor's degree;

(2) Have been licensed and employed as a teacher in the other state for each of the preceding five 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.[127] 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.

[127] See also R.C. 3314.03(A)(11)(d) and 3326.11.

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.

Certification of chartered nonpublic school teachers

(R.C. 3301.071)

The bill creates an alternative pathway to certification for individuals to teach foreign language, music, religion, computer technology, or fine arts in a chartered nonpublic school. It requires the State Board to certify a person to teach one of these subjects upon receipt of a signed affidavit from the chief administrative officer of the chartered nonpublic school that wishes to employ the person, stating that the person (1) has specialized knowledge, skills, or expertise that qualifies the person to provide instruction or (2) has provided the chief administrative officer with evidence of either (a) at least three years of teaching experience in another school or (b) completion of a teacher training program named in the affidavit.

Under current law, to be certified to teach any subject in a chartered nonpublic school, a person must have a bachelor's degree from an accredited institution of higher education or, at the State Board's discretion, an equivalent degree from a foreign college or university of comparable standing. The bill's change enables individuals who do not have a bachelor's degree, but who have subject area proficiency or instructional training or experience, to receive teaching certification.

School district employees sick leave

(R.C. 3319.141)

The bill exempts substitutes, adult education instructors who are scheduled to work the full-time equivalent of less than 120 days per school year, and persons who are employed on an as-needed, seasonal, or intermittent basis from the current law that provides 15 days sick leave with pay for each year under contract to each person who is employed by a school district or ESC, which is credited at the rate of 1.25 days per month.

Current law requires that part-time, seasonal, intermittent, per diem, or hourly service employees be entitled to sick leave for the time actually worked at the same rate as that granted like full-time employees. The bill requires this time to be calculated at a rate of 4.6 hours of sick leave for each completed 80 hours of service, and removes

seasonal and intermittent employees from those employees who are eligible for this sick leave.

Employee leave under S.B. 5

S.B. 5 of the 129th General Assembly repeals the 15 days of sick leave provided to school district and ESC employees. S.B. 5 instead requires the board of education of each city, exempted village, local, and joint vocational school district and the governing board of each educational service center to adopt a policy to provide leave with pay for the employees of the board who are not covered by a collective bargaining agreement.

School Employees Health Care Board – repeal

(R.C. 9.90, 9.901 (repealed), 3311.19, 3313.12, 3313.202 (repealed), 3313.33, and 4117.03)

The bill eliminates the School Employees Health Care Board, which adopts and releases a set of best practices to which public school districts must adhere in the selection and implementation of health care plans. Additionally, the bill repeals the provision that requires all health care benefits provided to persons employed by public school districts to be provided by health care plans that contain best practices established by the Board. Under the bill, the creation of the School Employees Health Care Fund in the state treasury is repealed, which is used to carry out the Board's duties and related administrative costs.

The bill repeals the 18-member Public Schools Health Care Advisory Committee, which makes recommendations to the Board related to the Board's accomplishment of the Board's duties.

Further, the bill repeals a provision that permits any board of education member of a school district and the dependent children and spouse of the member to be covered under any medical plan designed by the Board.

The repeal of the Board eliminates the need for the Board to contract with other state agencies for services as the Board deems necessary, to contract with the Department of Administrative Services for central services, or to hire administrative support staff. The bill also makes conforming changes to remove cross-references to the Board throughout the Revised Code.

Under current law, the Board consists of 12 members appointed by the Governor, the President of the Senate, and the Speaker of the House of Representatives, who serve four-year terms. Members receive compensation fixed by the Director of Administrative Services and are reimbursed from the School Employees Health Care

Fund for actual and necessary expenses incurred in the performance of their official duties.

Presently, the Board generally does the following:

(1) Adopts and releases a set of standards that are considered the best practices to which public school districts must adhere in the selection and implementation of health care plans;

(2) Requires that the health care plans administered by the health plan sponsors make readily available to the public all cost and design elements of the plan;

(3) Prepares and disseminates 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 school district employees and their families;

(4) Contracts, at the Board's discretion, with one or more independent consultants to analyze costs related to employee health care benefits provided by existing public school district plans in Ohio;

(5) Adopts rules for the enforcement of health plan sponsors' compliance with the best practices standards.

VII. School Restructuring

Annual ranking 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, all community schools, and all STEM 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.

Restructuring low-performing 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.[128] 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

[128] R.C. 3311.29.

district must pay tuition to the district of attendance for the students' enrollment.[129] If the resident district fails to enter into or maintain the contract, the State Board of Education must proceed to dissolve the entire district.

Pilot project for parent petitions for school reforms

(R.C. 3302.042)

The bill establishes a pilot project in the Columbus City School District, under which parents may petition the district to make reforms in certain poorly performing schools. Parents may petition for 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.

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:

[129] R.C. 3317.08, 3327.04, and 3327.06 (last section not in the bill).

(1) The Columbus 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.

Evaluation of pilot project

(R.C. 3302.042(F))

The Department of Education must annually evaluate the pilot project and submit a report to the General Assembly, beginning no later than six months after the first petition has been resolved. Each report must contain recommendations regarding the continuation of the pilot project, its expansion to other school districts, or enactment of further legislation establishing the program statewide.

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[130]);

(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

[130] 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 and 3301.16)

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 "Evidence Based Model" (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;[131]

(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. 3302.22)

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

[131] 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 state. The manner by which such schools are to be recognized is at the discretion of the Governor. Schools to be recognized include public (schools operated by school districts, community 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.

VIII. Other Education Provisions

Statewide academic standards

(R.C. 3301.079 and 3301.0710)

Every five years the State Board of Education must adopt statewide academic standards. The standards must specify core academic content and skills. The bill removes the requirement of current law that these standards specify skill sets that relate to the following: (1) creativity and innovation, critical thinking and problem solving, and communication and collaboration, and (2) personal management, productivity and accountability, and leadership and responsibility.

The bill also removes the requirement that the statewide achievement assessments be designed to ensure that high school students demonstrate "skills necessary in the twenty-first century," but retains the requirement that the assessments ensure that high school students demonstrate high school levels of achievement in English language arts, mathematics, science, and social studies.

College and work-ready assessments

(R.C. 3301.0712; conforming changes in R.C. 3301.0711, 3302.02, 3313.603, 3313.61, 3316.611, 3313.612, 3313.614, 3314.36, and 3325.08)

The bill eliminates from the college and work-ready assessments (new high school graduation assessments), to be developed by the State Board of Education, the senior project and a rubric for scoring the senior project. The bill also eliminates the creation of a composite scoring system to assess a student's college and work-readiness, instead relying on requirements as set by the State Board for receiving a high school diploma based on a student's performance on a nationally standardized assessment and end-of-course exams, discussed below.

Background

H.B. 1 of the 128th General Assembly required the State Board, the Superintendent of Public Instruction, and the Chancellor of the Board of Regents to develop a new, multifactored assessment system to replace the Ohio Graduation Tests (OGT) as a graduation requirement from a public or chartered nonpublic high school. Until the new system is implemented, the act retains the OGT as a requirement for high school graduation.

The new assessment system must consist of the following elements:

(1) A nationally standardized assessment that measures competencies in English language arts, math, and science;

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

(3) A senior project. Each student may complete the senior project either individually or with a group of other students. The stated purpose of the senior project is to assess each student's (1) mastery of core knowledge in the chosen subject area, (2) written and verbal communication skills, (3) critical thinking and problem solving skills, (4) real world and interdisciplinary learning, (5) creative and innovative thinking, (6) technology, information, and media skills, and (7) personal management skills such as self-direction, time management, work ethic, enthusiasm, and desire to produce a quality product.

The state Superintendent and the Chancellor must designate the scoring rubrics to be used in evaluating students under the new assessment system. The senior projects must be judged by the student's high school in accordance with the scoring rubrics. In addition, the state Superintendent and Chancellor must establish an overall composite score on the three components that indicates that a student is college or work ready. This composite score is the passing score needed to complete the assessment requirement for a high school diploma.

The new system has not yet been adopted.

Gifted education coordinator

(R.C. 3324.08)

The bill specifically permits any person employed by a school district and assigned to a school as a principal or any other position also to serve as the district's gifted education coordinator, if the principal or person is qualified to do so under rules

adopted by the State Board of Education. Under those rules, coordinators of gifted education must have at least three years of "successful" teaching experience, a master's degree, an Ohio administrative specialist license, if the coordinator is to supervise teachers, and an intervention specialist license for gifted education.[132]

Testing of students with disabilities

(R.C. 3301.0711(C))

The bill requires the individualized education program (IEP) developed for a disabled student by a school district, community school, or STEM school to specify the manner in which the student will participate in the state achievement assessments. As in current law, the IEP may excuse the student from taking a particular assessment, if no reasonable accommodation can be made to enable the student to take the test and the IEP specifies an alternate assessment method.

Calamity day make-up

(R.C. 3313.88 and 3326.11)

Online make-up lessons

The bill permits school districts, STEM schools, community schools, and chartered nonpublic schools to use online lessons to make up some calamity days their schools are closed. To make up days in this fashion, a district or school must submit a plan to the Department of Education by August 1 each year. The plan may specify up to three days, or in the case of a community school a number of hours up to the equivalent of three days, that may be made up using lessons posted to the district's or school's web portal or web site. In the case of a school district or STEM school, the plan must include the written consent of the union that represents the district's or STEM school's teachers.

A plan must require that each classroom teacher, by November 1, will develop a sufficient number of lessons for each course taught by the teacher that school year to cover the number of make-up days or hours specified in the plan. The teacher must designate the order in which the lessons are to be posted in the event of a school closure. Teachers may receive up to one professional development day to create lesson plans for the lessons. Teachers are required, to the extent possible and necessary, to update or replace one or more developed lesson plans based on current instructional progress.

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[132] Ohio Administrative Code 3301-51-15(E)(6).

As soon as practicable after a school closure, the designated lessons for each course that was scheduled to meet on the day of the closure must be available to students on the district's or school's web portal or web site. If a student does not have access to a computer at the student's residence, the student must be permitted to work on the posted lessons at school after school reopens.

Each student must have two weeks to complete an online lesson. The two-week period generally runs from the time the particular lesson is posted. But, in the case of a student who does not have computer access at home and who, therefore, is using the school's computers after the school reopens, the two-week period runs from the time the school reopens, if the lessons were actually posted prior to the school's reopening. Lessons must be graded in the same manner as other lessons. The bill specifies that a student "may" receive an incomplete or failing grade if the lesson is not completed on time.

Blizzard bags

The bill also gives school districts, STEM schools, community schools, and chartered nonpublic schools the option of distributing "blizzard bags," paper copies of the lessons posted online, to students in addition to posting lessons online. If a school opts to use blizzard bags, teachers must prepare paper copies in conjunction with the lessons to be posted online and update the paper copies whenever the teacher updates online lesson plans.

The board of education of a school district or governing authority of a community school or chartered nonpublic school must specify in the plan submitted to the Department the method of distributing lessons. The method of distribution may require distribution of blizzard bags by a specific deadline or prior to any anticipated school closure as directed by the superintendent of a school district, or the principal, director, chief administrative officer, or equivalent, of a school. Blizzard bag assignments must be turned in within the same two-week period granted for online lessons. Students may receive an incomplete or failing grade for lessons not completed on time.

Schools may offer the online lesson make-up day plan in conjunction with or independent of blizzard bags. If a school opts to make up days via online lessons, without the use of blizzard bags, schools must permit students to work on posted lessons at school as discussed above. Regardless of the combination of methods used, a school may only use them to make up a total of three calamity days.

Approval to take GED

(R.C. 3313.617)

The bill requires a person who is 16 to 18 years old to obtain written approval from school officials to take the General Educational Development (GED) tests, passage of which qualifies a person for a high school equivalence diploma. In the case of a person who was last enrolled in a school district, the district superintendent (or a designee) must give the approval. If the person was last enrolled in a community school or STEM school, the approval must be provided by the school principal (or a designee). The bill supersedes an existing administrative rule of the State Board of Education, which requires the person to obtain the approval of the superintendent of the school district in which the person was last enrolled or in which the person currently resides.[133] As under the State Board rule, the bill permits the Department of Education to require a person younger than 18 also to obtain the written approval of the person's parent or a court official in order to take the GED.

When calculating graduation rates for the school district report cards, the bill requires the Department to count a person who receives approval to take the GED as a dropout from the school district in which the person was last enrolled. If the person was last enrolled in a community school or STEM school, the person is never counted as a dropout from the school, regardless of how long the person was enrolled there before electing to take the GED.

Superintendent for state schools

(R.C. 3325.01)

The bill expressly permits the State Board of Education to appoint one person to serve as the Superintendent of both the State School for the Deaf and the State School for the Blind. Under current law, the Superintendent of the State School for the Deaf and the Superintendent of the State School for the Blind are appointed by the State Board of Education, and serve at the pleasure of the State Board.

Pilot project for multiple-track curriculum

(R.C. 3302.30)

The bill requires the Superintendent of Public Instruction to establish a pilot project in Columbiana County under which one or more school districts in that county offers a multiple-track high school curriculum for students with differing career plans.

[133] Ohio Administrative Code 3301-41-01.

The Superintendent must solicit and select districts to participate in the pilot project, but no district can be required to participate. The selected districts must begin offering their career track curricula no later than the school year that begins at least six months after the provision's (90-day) effective date.

The curricula at each participating district must offer at least three distinct career tracks, including a college preparatory track and a career-technical track. Each track must comply with statutory curriculum requirements. The different tracks may be offered at different campuses. Two or more participating districts may offer some or all of their curriculum tracks through a cooperative agreement.

The Department of Education must provide technical assistance to participating districts in developing curriculum tracks. The bill also authorizes part or all of selected curriculum materials or services to be purchased from other public or private sources. Additionally, the bill requires the state Superintendent to apply for private and other nonstate funds, and authorizes the state Superintendent to use other available state funds to support the pilot project.

Each participating school district must report data about the operation and results of the pilot project to the state Superintendent. No later than December 31 of the third school year in which the pilot project is operating, the state Superintendent must submit a report to the General Assembly containing the Superintendent's evaluation of the results of the pilot project and legislative recommendations whether to continue, expand, or make changes to the pilot project.

School district lease to higher education institutions

(R.C. 3313.75)

The bill adds a statement to law that districts may rent or lease facilities to public or nonpublic institutions of higher education for the use in providing evening and summer classes.

Current law authorizes a school district board to allow the use of the district's facilities by others, as long as that use does not interfere with the districts' operation of its schools. The law also states that a district board must have a policy on that use and may charge a reasonable fee. It specifies that this authority applies to the use of school facilities for such purposes as educational programs; religious, civic, social, or recreational meetings; library reading rooms; and polling places.[134]

[134] See also R.C. 3313.77, not in the bill.

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.

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 through June 30, 2017, and provides authority for the implementation of a decentralized program rather than a centralized program as in current law.

- 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 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.

- Extends from June 30, 2012, to June 30, 2013, the expiration date of the 25¢ per-ton fee on the transfer or disposal of solid wastes the proceeds of which must be credited to the Soil and Water Conservation District Assistance Fund.

- 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, 2017. Under the bill, the Director of Environmental Protection may request the Director of Administrative Services to extend the current contract to conduct a centralized E-Check program with the contractor that currently operates the program. That program is operated in seven counties in the Cleveland-Akron area. Upon receiving the request, the Director of Administrative Services must extend the current contract for the centralized program in those counties for a period not to exceed 12 months beginning on July 1, 2011. A centralized program generally refers to a program in which the contractor operates inspection stations that are used exclusively for motor vehicle emissions inspections.

Under the bill, the Director of Environmental Protection, prior to the expiration of the contract extension, may request the Director of Administrative Services to enter into a contract with a vendor to operate a decentralized E-Check program in each county where it is federally mandated through June 30, 2015, with an option for the state to renew the contract through June 30, 2017. A decentralized program generally refers to a program in which motor vehicle inspections are conducted at auto repair facilities and other multi-use facilities. 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 alters the required elements of the E-Check program. The bill provides that for purposes of expanding the number of testing locations for consumer convenience and increased local business participation, the program must include a requirement that the program utilize established local businesses by authorizing existing auto repair facilities to operate as licensed inspection and waiver testing facilities. Further, the bill provides that the program must include a requirement that the tailpipe emissions analyzer utilized for emissions testing be BAR-97 certified and a requirement that the contractor supply proven technology for on-board diagnostic testing equipment to all inspection facilities. The bill eliminates provisions requiring the vendor that is selected to operate the program to provide notification of the program's requirements to each owner of a motor vehicle that is required to be inspected under the 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.

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.

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 EPA to use money in the Hazardous Waste Facility Management Fund for the administration of the hazardous waste program. In addition,

under continuing law, expenditures from the Fund are subject to Controlling Board approval. The EPA may request that approval on an annual basis.

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.

The bill also extends from June 30, 2012, to June 30, 2013, the expiration date of 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.

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.[135]

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

[135] See R.C. 3301.94, not in the bill.

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.[136]

OFFICE OF THE GOVERNOR (GOV)

- Eliminates the specific requirement that the Governor publish the General Assembly apportionment for four consecutive weeks in newspapers in Cincinnati, Cleveland, and Columbus, but retains the general requirement that the Governor publish the apportionment.

Publication of General Assembly apportionment

(R.C. 107.09)

The bill eliminates the specific requirement that the Governor publish the General Assembly apportionment for four consecutive weeks in newspapers in Cincinnati, Cleveland, and Columbus. Article XI, Section 1 of the Ohio Constitution requires the Governor to cause the apportionment to be published no later than October 5 of the year in which it is made, in such manner as is required by law. Under the bill, the Governor is still required to publish the apportionment, but the specific requirements regarding where that publication must be made are eliminated.

DEPARTMENT OF HEALTH (DOH)

- Authorizes the Ohio Department of Health (ODH) to establish a rebate or discount program for its Bureau for Children with Medical Handicaps (BCMH) under which manufacturers of drugs or nutritional formulas are required to enter into rebate or discount agreements with ODH as a condition of having the drugs or formulas covered by BCMH programs.

- Requires the ODH Director to annually apply for federal funds that are made available for abstinence education.

[136] *State v. Perz* (2007) 173 Ohio App.3d 99, 105 (Ct. App. Lucas Cty.).

- 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 provide family-centered parenting education, services, and support.

- Provides that family-centered home visiting services are included in the Help Me Grow Program for families with incomes below 200% of the federal poverty guidelines and with a pregnant woman or a child under age three and for other eligible families.

- Requires providers of home visiting services to deliver services using the Parents as Teachers home visiting model and authorizes the ODH Director to select other home visiting models to be used by providers in addition to that model.

- Requires providers of home visiting services, as a condition of receiving payment, to report to the ODH Director data on Program performance indicators and requires the Director to prepare an annual report on the data received.

- Provides that federally funded "Part C" early intervention services are included in the Help Me Grow Program for infants and toddlers under age three.

- 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.

- Before providing any services under the Help Me Grow Program, requires that ODH obtain written consent from individuals eligible to receive them.

- 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, but specifies that participation in home visiting services is voluntary.

- 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.

- Eliminates a requirement that the Help Me Grow Program include distributing subsidies to counties to provide 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 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.

- Requires ODH to convene an early intervention workgroup to develop recommendations for eligibility criteria for early intervention services to be provided to infants and toddlers who have developmental delays pursuant to Part C of the federal "Individuals with Disability Education Act."

- Provides, in the case of a nursing home that under the terms of its certificate of need (CON) may admit as residents only members of certain religious orders, that (1) the nursing home may also provide care to specified relatives of the members and (2) the nursing home's beds cannot be relocated to another long-term care facility.

- Requires the ODH Director to accept a CON application for a new nursing home if (1) the application is submitted within 180 days after the bill's effective date, (2) the nursing home will be located in a county that had a population between 30,000 and 41,000 in 2000, (3) the nursing home will be located on a campus that has been in operation for at least 12 years and the campus has other specified types of facilities, and (4) the nursing home will have not more than 30 beds.

- Permits the ODH Director to define a "health home" for purposes of any entity authorized to provide care coordination services.

- Adds a representative of the Ohio Council for Home Care and Hospice to the Patient Centered Medical Home Education Advisory Group.

- Prohibits a clinical laboratory services provider from inducing physicians or group practices to refer patients in exchange for remuneration and to split fees.

- Generally prohibits a clinical laboratory services provider from placing laboratory personnel in physician or group practice offices.

- Requires the ODH Director to impose a civil fine of $1,000 to $10,000 for each day a clinical laboratory services provider violates the bill's prohibitions.

- Permits a residential care facility to admit or retain any individual who requires skilled nursing care for more than 120 days in a 12-month period if the facility enters

into a written agreement with (1) the individual or individual's sponsor, (2) the individual's personal physician, (3) unless the individual's personal physician oversees the skilled nursing care, the provider of the skilled nursing care, and (4) if the individual is a hospice patient, a hospice care program.

- Provides for the agreement to include the same provisions that current law requires an agreement between a residential care facility and hospice care program to include, except that an agreement regarding an individual who is not a hospice patient must also include a provision that the individual's personal physician has determined that the skilled nursing care the individual needs is routine.

BCMH rebate or discount 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 or discount 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 or discount agreement with ODH as a condition of having the drug or nutritional formula covered by the programs administered by BCMH. When entering into a rebate or discount agreement, the manufacturer and ODH must negotiate the amount of the rebate or discount. (A rebate is to consist of a refund of a portion of the price of a drug or nutritional formula.) If ODH implements the rebate or discount 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.

Abstinence education

(R.C. 3701.0211)

The bill requires the ODH Director to annually apply to the United States Secretary of Health and Human Services for federal funds each year that funds are made available for abstinence education. The funds are made available through the Maternal and Child Health Services Block Grant (also known as "Title V").[137] The bill requires the ODH Director to use the funds in accordance with any conditions under which the application was approved.

[137] 42 U.S.C. 710.

Help Me Grow Program

(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.

Purpose

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 family-centered parenting education, services, and support that acknowledge and support the vital role of families in ensuring the well-being of children and that promote the optimal social, emotional, cognitive, intellectual, and physical development of children.

Home visiting services

The Help Me Grow Program includes home visiting services. Under current law, home visiting services are provided to eligible newborn infants and their families. The bill provides instead that family-centered home visiting services are provided to families with incomes below 200% of the federal poverty guidelines and with a pregnant woman or a child under age two and to other eligible families.

The bill requires providers of home visiting services to deliver home visiting services using the Parents as Teachers home visiting model, which is an evidence-based model that focuses on parent-child interaction, development-centered parenting, and family well-being. In addition to the Parents as Teachers model, the ODH Director is authorized to select other home visiting models to be used by providers delivering services.

The bill also requires providers of home visiting services, as a condition of receiving payment for the services, to report to the Director data on performance indicators used to assess progress toward achieving the goals of the Program. The report is to include data on the performance indicator of birth outcomes, including risk indicators of low birth weight and pre-term births, and data on all other performance indicators specified in rules adopted by the Director. The providers must report the data in the format and within the time frames specified in the rules. The Director must prepare an annual report on the data received from the providers.

Part C early intervention services

The bill provides for the Help Me Grow Program to include "Part C" early intervention services for infants and toddlers under age three. Part C refers to a portion

of the federal "Individuals with Disabilities Education Act."[138] Under this federal law, the U.S. Department of Education makes grants available to assist each state in maintaining and implementing a statewide, comprehensive, coordinated, multidisciplinary, interagency system to provide early intervention services for infants and toddlers with disabilities and their families.[139]

The Help Me Grow Program's inclusion of Part C services replaces the existing law under which the Program includes services for infants and toddlers under age three who are at risk for, or who have, a developmental delay or disability and their family. The bill specifies that to receive Part C services, infants and toddlers must meet the eligibility requirements established in rules to be adopted by the ODH Director.

Consent

The bill requires ODH to obtain written consent from a pregnant woman or a parent of an infant or toddler before providing any services under the Help Me Grow Program. With respect to home visiting services, the bill eliminates an existing requirement that a request be made by a parent of an eligible infant before ODH can provide the services. The bill, however, specifies that participation in home visiting services is voluntary.

The At Risk Program, which is currently 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.

Interagency agreements and distribution of funds

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 eliminates a requirement that the Program include distributing subsidies to counties to provide Program services.

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[138] 20 U.S.C. 1431 *et seq*.

[139] U.S. Department of Education, Ed.Gov, *Part C—Infants and Toddlers with Disabilities*, <http://idea.ed.gov/explore/view/p/,root,statute,I,C,>.

Rules

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 Part C early intervention services;

(3) Standards and procedures for the provision of early intervention 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) The program performance indicators on which data must be reported by providers of home visiting services, which, to the extent possible, must be consistent with federal reporting requirements for federally funded home visiting services;

(9) The format in which reports regarding data on program performance indicators must be submitted and the time frames within which the reports must be submitted;

(10) Any other rules necessary to implement the Program.

Early intervention workgroup

(Section 291.30)

The bill requires ODH to convene a workgroup to develop recommendations for eligibility criteria for early intervention services to be provided pursuant to Part C of the federal "Individuals with Disability Education Act." The workgroup must base the recommendations on available funds and national data related to the identification of infants and toddlers who have developmental delays or are most at risk for developmental delays and, in either case, would benefit from early intervention services.

Recommendation schedule

The bill requires the workgroup to submit its recommendations for eligibility criteria by October 1, 2011, at which point the workgroup will cease to exist. If recommendations are submitted, the bill permits the ODH Director to accept the recommendations in whole or in part and implement eligibility criteria accordingly.

If the workgroup does not submit recommendations by October 1, 2011, the bill requires the ODH Director to implement eligibility criteria based on available funds and that may include the following categories:

(1) Children who demonstrate a developmental delay at or exceeding 2.0 standard deviations below the mean in one or more areas of development on a norm-referenced tool approved by ODH;

(2) Children who have a medical diagnosis that falls into one or more of the following categories: genetic disorders, sensory impairments, motor impairments, neurological disorders, significant neuro-developmental disorders, medically related disorders, or acquired trauma-related disorders;

(3) Children who are at risk of a delay in their social, emotional, or cognitive development;

(4) Children who, based on informed clinical opinion, are not eligible under any of the categories above – except that any such child may receive services for not more than 180 days.

Workgroup membership

Under the bill, the workgroup is to be facilitated by ODH and composed of the following members:

--A representative from each of the following departments: Developmental Disabilities, Education, Mental Health, and Job and Family Services;

--A representative from the Help Me Grow Advisory Council and a parent member of the Council;

--A representative from the Ohio Family and Children First Cabinet Council;

--A representative from the Ohio Family and Children First Association;

--A county Help Me Grow project director;

--A representative from the Ohio Council of Behavioral Health and Family Services Providers;

--A representative from the Ohio Association for Infant Mental Health;

--A representative from the Ohio Association of County Boards of Developmental Disabilities;

--A representative from the Ohio Superintendents of County Boards of Developmental Disabilities;

--A representative from the Ohio chapter of the American Academy of Pediatrics;

--A public health nurse from a local board of health.

Certificate of Need Program

Authorized residents of nursing homes operated by religious orders

(R.C. 3702.59)

With regard to a nursing home that currently may admit individuals as residents only if they are members of certain religious orders because of the conditions on which the ODH Director granted the nursing home's certificate of need (CON), the bill authorizes the nursing home to provide care also to specified family members. The following relatives of the religious order members are included under the bill: mothers, fathers, brothers, sisters, brothers-in-law, sisters-in-law, and children.

The bill specifies that the long-term care beds in such a nursing home may not be relocated to a new or existing long-term care facility.

Application for a new nursing home

(Section 291.40)

The bill requires the ODH Director to accept a CON application for the establishment, development, and construction of a new nursing home if all of the following conditions are met:

(1) The application is submitted to the Director not later than 180 days after the effective date of this provision of the bill;

(2) The new nursing home is to be located in a county that had, according to the 2000 regular federal census, a population of at least 30,000 and not more than 41,000 persons;

(3) The new nursing home is to be located on a campus that has been in operation for at least 12 years and at least one existing residential care facility with at least 25 residents and at least one existing independent living dwelling for seniors with at least 75 residents are located on the same campus on the effective date of this provision of the bill;

(4) The new nursing home is to have not more than 30 beds, all of which are to be transferred from an existing nursing home in Ohio and are proposed to be licensed as nursing home beds.

The Director is prohibited, in reviewing the CON applications authorized by the bill, from denying an application on the grounds that the new nursing home is to have less than 50 beds, which is the minimum number of beds otherwise required by an existing ODH rule.[140] The Director is also prohibited from requiring an applicant to obtain a waiver of the minimum 50-bed requirement.

Health homes and medical homes

Health home definition

(R.C. 3701.032)

The bill permits the ODH Director to adopt rules that define what constitutes a health home for the purpose of any entity authorized to provide care coordination services. The rules must be adopted in accordance with the Administrative Procedure Act.

While the term "health home" is not used in current law, 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 (see, "**Health homes for Medicaid recipients**").

Patient Centered Medical Home Education Advisory Group

(R.C. 185.03)

The bill adds a representative of the Ohio Council for Home Care and Hospice to the Patient Centered Medical Home Education Advisory Group. The individual is to be appointed by the Council's governing board.

[140] O.A.C. 3701-12-23.

Sub. H.B. 198 of the 128th General Assembly established the Council to implement and administer the Patient Centered Medical Home Education Pilot Project. The Project's purpose is to advance medical education in the patient centered medical home model of care.

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.

Clinical laboratory services providers

(R.C. 3701.94)

The bill specifies two prohibitions applicable to clinical laboratory services providers.[141] These are prohibitions on (1) inducing physicians or group practices to refer patients in exchange for remuneration and to split fees (an anti-kickback/fee-splitting provision) and (2) placing laboratory personnel in physician or group practice offices, subject to an exception for certain contracts with hospitals (an anti-placement provision).

[141] A "clinical laboratory services provider" is any person, or any employee, employer, agent, representative, or other fiduciary of such person, who provides clinical laboratory services. "Clinical laboratory services" are the microbiological, serological, chemical, hematological, biophysical, cytological, or pathological examination of materials derived from the human body for purposes of obtaining information for the diagnosis, prevention, treatment, or screening of any disease or impairment or for the assessment of health. "Clinical laboratory services" also means the collection or preparation of specimens for testing. (R.C. 3701.94(A).)

Anti-kickback and fee-splitting provision

(R.C. 3701.94(B))

The bill's anti-kickback/fee-splitting provision prohibits a clinical laboratory services provider from offering, giving, paying, or delivering, or agreeing to offer, give, pay, or deliver, any remuneration to any physician or group practice to induce the physician or group practice to refer patients to the clinical laboratory services provider or to split fees. The prohibition extends to any direct or indirect action made by the clinical laboratory services provider to accomplish the inducement and includes remuneration made in cash or in kind.

Background – federal anti-kickback statute

The bill's anti-kickback/fee-splitting provision would be in addition to the federal anti-kickback statute. This federal statute prohibits the exchange (or offer to exchange), of anything of value, in an effort to induce (or reward) the referral of federal health care program business.[142] The federal anti-kickback statute is different from the bill's anti-kickback provision, however, because it (1) is a criminal statute that requires the government to show that the violator had improper intent, (2) pertains only to items or services reimbursed by a federal health care program, (3) permits both criminal and civil fines to be imposed, and (4) specifies exceptions where the statute will not apply and so-called "safe harbors" – certain practices that will not be treated as criminal offenses although they could induce prohibited referrals.[143]

(1) Improper intent; penalties. The federal statute makes it a criminal offense for a person to knowingly and willfully offer, pay, solicit, or receive any remuneration to induce or reward referrals of items or services reimbursed by a federal health care program, including Medicare, Medicaid, and programs covering veterans' benefits.[144] *Violations of the law are punishable by up to five years in prison, criminal fines up to $25,000, administrative civil money penalties up to $50,000, and exclusion from participation in federal health care programs.*[145]

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[142] 42 U.S.C. 1320a-7b; *see also* American Health Lawyers Association, *Anti-Kickback Statute* (last visited April 27, 2011), available at <http://www.healthlawyers.org/Resources/Health%20Law%20Wiki/Anti-Kickback%20Statute.aspx>.

[143] 42 U.S.C. 1320a-7b(b).

[144] 42 U.S.C. 1320a-7b(b); *see also* Centers for Medicare & Medicaid Services, *Medicare Fraud & Abuse* (last visited April 27, 2011), available at <www.uthouston.edu/dotAsset/2222435.pdf>.

[145] 42 U.S.C. 1320a-7b(b); *see also* Centers for Medicare & Medicaid Services, Office of the Inspector General, *Fact Sheet: Federal Anti-kickback and Regulatory Safe Harbors* (last visited April 27, 2011), available at <http://oig.hhs.gov/fraud/docs/safeharborregulations/safefs.htm>.

(2) Federal health care programs. The federal statute applies only to Medicare, Medicaid, or other federally funded programs, except for the Federal Employees Health Benefit Program.[146]

(3) Exceptions. The federal statute contains several exceptions where the statute will not apply. One of the more common exceptions is for bona fide employment relationships. That exception simply states that the statute will not apply to "[a]ny amount paid by an employer to an employee (who is in a bona fide employment relationship) for employment in the provision of covered items or services."[147]

(4) Safe harbors. In addition to the several exceptions, the Office of the Inspector General (OIG) of the U.S. Department of Health and Human Services has established numerous "safe harbors" by adopting regulations specifying various payment and business practices that, although potentially capable of inducing referrals of business reimbursable under federal health care programs, would not be treated as criminal offenses under the anti-kickback statute. These include safe harbors for certain investments in practices and other businesses, rental of space and equipment, personal services and management contracts, and price reductions offered to health plans and eligible managed care organizations, among many other arrangements.[148]

Anti-placement of laboratory personnel provision

(R.C. 3701.94(C))

The bill's anti-placement provision prohibits a clinical laboratory services provider from giving to a physician or group practice, supplying the physician or group practice with, or placing in the physician's or group practice's office any individual, including an employee, agent, representative, or other fiduciary of the clinical laboratory services provider (whether paid or unpaid), for the purpose of having that individual perform clinical laboratory services for the physician or group practice. The bill specifies that this prohibition does not, however, prohibit a clinical laboratory services provider from entering into a laboratory management services contract with a hospital, including a contract that requires the clinical laboratory services provider to place employees or agents who perform functions directly related to the provision of

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[146] 42 U.S.C. 1320a-7b(b); *see also* Centers for Medicare & Medicaid Services, Office of the Inspector General, *Fact Sheet: Federal Anti-kickback and Regulatory Safe Harbors* (last visited April 27, 2011), available at <http://oig.hhs.gov/fraud/docs/safeharborregulations/safefs.htm>.

[147] 42 U.S.C. 1320a-7b(b)(3)(B).

[148] 42 C.F.R. 1001.952. Medicare and State Health Care Programs: Fraud and Abuse; Safe Harbor Under the Anti-Kickback Statute For Waiver of Beneficiary Coinsurance and Deductible Amounts, 67 Fed. Reg. 60202 (proposed September 25, 2002).

clinical laboratory services at the hospital, as long as the contract specifies that the hospital will pay fair market value for the laboratory management services rendered.

The bill does not specify how the "fair market value" of laboratory management services rendered by providers of clinical laboratory services for hospitals is to be calculated. The U.S. Centers for Medicare and Medicaid Services (CMS) has suggested that the appropriate method for determining fair market value will depend on the nature of the transaction, its location, and other factors, but that reference to multiple, objective, independently published salary surveys remains a prudent practice for evaluating fair market value.[149]

Penalties

(R.C. 3701.941 (primary) and 3702.31(A))

If the ODH Director determines that a clinical laboratory services provider has violated either the anti-kickback/fee splitting provision or the anti-placement provision, the bill requires the Director to impose a civil penalty of not less than $1,000 and not more than $10,000 for each day that the clinical laboratory violates the prohibition. All moneys collected as civil penalties must be deposited in the Quality Monitoring and Inspection Fund, a fund that exists under current law. The bill includes the ODH Director's administration and enforcement of the bill's requirements among the other required uses of the money in the Fund.

Skilled nursing care in residential care facilities

(R.C. 3721.011 and 3721.04)

A residential care facility, which is popularly known as an assisted living facility, is a facility that provides (1) accommodations for 17 or more unrelated individuals and supervision and personal care services for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment or (2) accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and, to at least one of those individuals, certain limited skilled nursing care.[150] The bill revises the law governing the limited skilled nursing care that a residential care facility may provide.

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[149] McDermott, Will & Emery, *CMS Publishes Phase III Stark Law Rule* (September 2007), available at <www.mwe.com/info/news/wp0907a.pdf>, p. 4.

[150] R.C. 3721.01(A)(7).

The current law regarding limited skilled nursing care that the bill revises permits a residential care facility to admit or retain an individual who needs skilled nursing care for more than 120 days in a 12-month period only if the individual is a hospice patient and the facility has entered into a written agreement with a hospice care program. The agreement must provide for (1) a determination to have been made that the hospice patient's needs can be met at the facility, (2) periodic redeterminations being made according to a schedule specified in the agreement, and (3) the hospice patient being given the opportunity to choose the hospice care program that best meets the patient's needs.

The bill revises this provision by permitting a residential care facility to admit or retain any individual, rather than only a hospice patient, who needs skilled nursing care for more than 120 days in a 12-month period if the facility enters into a written agreement with (1) the individual or individual's sponsor, (2) the individual's personal physician, (3) unless the individual's personal physician oversees the skilled nursing care, the provider of the skilled nursing care, and (4) if the individual is a hospice patient, a hospice care program. The agreement must include the same provisions that current law requires an agreement between a residential care facility and hospice care program to include, except that an agreement regarding an individual who is not a hospice patient must also include a provision that the individual's personal physician has determined that the skilled nursing care the individual needs is routine.

DEPARTMENT OF INSURANCE (INS)

- Abolishes the Health Care Coverage and Quality Council.
- Prohibits any contracting entity from offering, entering into, amending, or renewing any contract with a health care provider, including a hospital, that contains a most favored nation clause.
- Permits existing contracts to retain a most favored nation clause for the duration of the existing contract unless the contract is materially amended, extended, or renewed after the effective date of the amendment.
- Protects rights related to netting agreements and qualified financial contracts under Ohio's Insurer Rehabilitation and Liquidation Law.
- Establishes guidelines for termination, liquidation, acceleration, close out, transfer, and disaffirmance or repudiation of netting agreements or qualified financial contracts.

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.

Most favored nation clauses in health care contracts

(R.C. 3963.11; Section 630.10)

The bill prohibits any contracting entity from offering, entering into, amending, or renewing any contract with a health care provider that contains a most favored nation clause. Under current law, the prohibition on most favored nation clauses does not include contracts offered, entered into, amended, or renewed with a hospital. The bill extends the prohibition to contracts with hospitals.

A "most favored nation clause" in the context of a health care contract is defined to mean a provision that does any of the following:

(1) Prohibits, or grants a contracting entity an option to prohibit, the participating provider from contracting with another contracting entity to provide health care services at a lower price than the payment specified in the contract;

(2) Requires, or grants a contracting entity an option to require, the participating provider to accept a lower payment in the event the participating provider agrees to provide health care services to any other contracting entity at a lower price;

(3) Requires, or grants a contracting entity an option to require, termination or renegotiation of the existing health care contract in the event the participating provider agrees to provide health care services to any other contracting entity at a lower price;

(4) Requires the participating provider to disclose the participating provider's contractual reimbursement rates with other contracting entities.

The prohibition on most favored nation clauses does not apply to contracts in effect on the effective date of the bill, unless those contracts are materially amended, extended, or renewed.

Section 3963.11 of the Revised Code, as it appears in current law, has a delayed effective date of July 1, 2011. As a result, contracts with a health care provider other than a hospital cannot contain most favored nation clauses beginning on that date. The bill removes this delayed effective date language, which has the effect of prohibiting most favored nation clauses with hospitals immediately following the 90-day referendum period.

Netting agreements and qualified financial contracts under the Insurer Rehabilitation and Liquidation Law

The bill protects rights related to netting agreements and qualified financial contracts under Ohio's Insurer Rehabilitation and Liquidation Law. The bill also establishes guidelines for termination, liquidation, acceleration, close out, transfer, and disaffirmance or repudiation of netting agreements or qualified financial contracts.

Protection of rights related to qualified financial contracts and netting agreements

(R.C. 3903.301(A))

The bill prohibits any person from being stayed or prohibited from exercising any of the following rights:

- A contractual right to cause the termination, liquidation, acceleration, or close out of obligations under, or in connection with, a netting agreement or qualified financial contract with an insurer because of the insolvency, financial condition, or default of the insurer at any time or because of the commencement of a rehabilitation or liquidation proceeding under Ohio law;

- Any right under a pledge, security, collateral, reimbursement, or guarantee agreement or arrangement or any similar security arrangement or credit enhancement relating to a netting agreement or qualified financial contract;

- Any right to set off or net out any termination value, payment amount, or other transfer obligation arising under or in connection with a qualified financial contract in which the counterparty or its guarantor is organized under the laws of the United States, a state, or a foreign jurisdiction that the securities valuation office of the National Association of Insurance Commissioners (NAIC) approves as eligible for netting. The bill maintains, however, current law's requirements for set offs.

Termination of a netting agreement or qualified financial contract

(R.C. 3903.301(B) and (C))

If a counterparty to a netting agreement or qualified financial contract with an insurer that is subject to a proceeding under Ohio's Insurer Rehabilitation and Liquidation Law terminates, liquidates, accelerates, or closes out the agreement or contract, the bill requires damages to be measured as of the date or dates of the termination, liquidation, acceleration, or close out. The amount of a claim for damages must be actual direct compensatory damages.

Upon termination of a netting agreement or qualified financial contract, the bill requires any net or settlement amount that a nondefaulting party owes to an insurer against which an application or petition has been filed under Ohio's Insurer Rehabilitation and Liquidation Law to be transferred to, or on the order of, the receiver for the insurer. This requirement applies regardless of whether the insurer is the defaulting party and applies notwithstanding any walkaway clause in the netting agreement or qualified financial contract. Additionally, a limited two-way payment or first method provision in a netting agreement or qualified financial contract with a defaulting insurer is a full two-way payment or second method provision as against the defaulting insurer under the bill. Any property or amount transferred must be a general asset of the insurer except to the extent it is subject to a secondary lien or encumbrance, or to rights of netting or setoff.

Transferring a netting agreement or qualified financial contract

(R.C. 3903.301(D) and (E))

In transferring a netting agreement or qualified financial contract of an insurer that is subject to a proceeding under Ohio's Insurer Rehabilitation and Liquidation Law,

the bill requires the receiver to transfer to one party, other than an insurer subject to a proceeding under that Law, all netting agreements and qualified financial contracts between a counterparty, or any affiliate of the counterparty, and the insurer that is the subject of the proceeding. The transfer must include all rights and obligations of each party under each netting agreement and qualified financial contract, and all property, including any guarantees or other credit enhancement, securing any claims of the parties under each agreement or contract.

As an alternative, the bill allows the receiver who is transferring a netting agreement or qualified financial contract of an insurer that is subject to a proceeding under Ohio's Insurer Rehabilitation and Liquidation Law, to transfer none of the netting agreements or qualified financial contracts, including the rights, obligations, and property associated with those agreements and contracts, with respect to the counterparty and any affiliate of the counterparty.

If a receiver transfers a netting agreement or qualified financial contract, the bill requires the receiver to use its best efforts to notify any person who is a party to the transferred agreement or contract of the transfer by noon, of the receiver's local time, on the business day following the transfer.

Transfer of money or property before a proceeding

(R.C. 3903.301(F))

The bill prohibits a receiver from avoiding a transfer of money or other property that is made before the beginning of a rehabilitation or liquidation proceeding under Ohio law and that arises under or in connection with a netting agreement or qualified financial contract, or any pledge, security, collateral, or guarantee agreement or other similar security arrangement or credit support document relating to a netting agreement or qualified financial contract.

However, the bill allows a receiver to avoid a transfer of property under Ohio's Insurer Rehabilitation and Liquidation Law if the transfer was made with actual intent to hinder, delay, or defraud the insurer, a receiver appointed for the insurer, or existing or future creditors.

Disaffirmance or repudiation of a netting agreement or qualified financial contract

(R.C. 3903.301(G))

In exercising any right of disaffirmance or repudiation with respect to a netting agreement or qualified financial contract to which an insurer is a party, the receiver for the insurer must do either of the following:

- Disaffirm or repudiate all netting agreements and qualified financial contracts between the insurer and a counterparty or any affiliate of the counterparty;

- Disaffirm or repudiate none of those netting agreements or qualified financial contracts with respect to the counterparty or any affiliate of the counterparty.

If a counterparty's claim against the estate of the insurer arising from the receiver's disaffirmance or repudiation of a netting agreement or qualified financial contract has not been previously affirmed in the liquidation or immediately preceding conservation or rehabilitation case, the bill requires that claim to be considered as if it had arisen before the filing date of the petition for liquidation. If a conservation or rehabilitation proceeding is converted to a liquidation proceeding, that claim must be considered as if it had arisen before the filing date of the petition for conservation or rehabilitation. The amount of the claim must be the actual direct compensatory damages determined as of the date of the disaffirmance or repudiation.

Rights of a counterparty

(R.C. 3903.301(H))

Under the bill, a counterparty in an action brought under Ohio's Insurer Rehabilitation and Liquidation Law has the rights granted under current law, and those rights apply to netting agreements and qualified financial contracts entered into on behalf of the general account. Those rights also apply to netting agreements and qualified financial contracts entered into on behalf of separate accounts if the assets of each separate account are available only to counterparties to netting agreements and qualified financial contracts entered into on behalf of that separate account.

Affiliates of the insurer

(R.C. 3903.301(I))

The bill's changes to Ohio's Insurer Rehabilitation and Liquidation Law do not apply to the affiliates of an insurer that is the subject of any rehabilitation or liquidation proceeding under that law.

Definitions

(R.C. 3903.01)

Qualified financial contract

A "qualified financial contract" is any commodity contract, forward contract, repurchase agreement, securities contract, swap agreement, and any similar agreement that the Superintendent of Insurance determines by rule to be a qualified financial contract. "Forward contract," "repurchase agreement," "securities contract," and "swap agreement" are defined under the federal Deposit Insurance Act (12 U.S.C. 1821(e)).

A "commodity contract" is a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a board of trade designated as a contract market by the commodity futures trading commission under the federal "Commodity Exchange Act," or a board of trade outside the United States. A commodity contract also is an agreement that is commonly known to the commodities trade as a margin account, margin contract, leverage account, leverage contract, or commodity option and that is subject to regulation under the federal "Commodity Exchange Act." Any combination of agreements or transactions described above as commodity contracts and any option to enter into an agreement or transaction described above are commodity contracts under the bill.

Netting agreement

A netting agreement is any of the following agreements:

- A contract or agreement, including a master agreement, and any terms and conditions incorporated by reference in that contract or agreement, that provides for the netting, liquidation, setoff, termination, acceleration, or close out under or in connection with a qualified financial contract, or any present or future payment or delivery obligations or entitlements under a qualified financial contract, including liquidation or close-out values relating to those obligations or entitlements;

- A master agreement, together with all schedules, confirmations, definitions, and addenda to the agreement and transactions under the agreement, which must be treated as one netting agreement, and any bridge agreement for one or more master agreements;

- Any security agreement or arrangement, credit support document, or guarantee or reimbursement obligation related to any contract or agreement that is a netting agreement.

Any contract or agreement that is described above as a netting agreement and that relates to agreements or transactions that are not qualified financial contracts are netting agreements only with respect to those agreements or transactions that are qualified financial contracts.

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.

- Requires each contract with a certified type B family day-care provider to specify that the provider will be paid according to an hourly reimbursement rate and, for this purpose, establishes the number of hours considered to be part-time.

- Permits the ODJFS Director to adopt rules specifying exceptions to the eligibility requirements for a family that previously received publicly funded child care but whose eligibility was terminated and is seeking reinstatement.

- 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.

- Requires the ODJFS Director to establish enhanced reimbursement ceilings for providers who participate in the Step Up to Quality Program and maintain quality ratings.

- Requires the Director to weigh any reduction in reimbursement ceilings more heavily against child day-care centers that do not participate in the Program or do not maintain quality ratings.

- Eliminates the requirement that ODJFS notify a child day-care center or type A family day-care home that it is out of compliance with the laws governing centers and homes.

- Eliminates ODJFS's express authority to commence a license revocation action against a child day-care center or type A family day-care home for failing to correct a compliance violation.

- Eliminates a provision that permits ODFJS to refuse to renew a child day-care center or type A family day-care home license under certain circumstances.

- Permits the ODJFS to publish a guide on certification of type B family day-care homes either electronically or otherwise.

- Eliminates the requirement to distribute multiple copies of the guide to county departments of job and family services.

- Exempts students who are home schooled during their last year of instruction or who graduated from a charter school from the current educational requirements for employment at a child day-care center.

- Eliminates the requirement that the ODJFS Director consider the number of available child-care staff members when determining license capacity for licensure or license renewal of a child day-care center or type A family day-care home.

- Permits a child day-care center administrator to meet existing educational requirements by showing the Director evidence that the administrator holds a designation as an "early childhood professional level three" under Step Up to Quality Program.

- Specifies that a child day-care center administrator employed or designated as such on or after the bill's effective date may provide an administrator's credential as an alternative to existing employment standards that must be met after the date of employment or designation but that the administrator must meet this, or the existing

employment standards, within one year of employment or designation, rather than six.

- Eliminates the requirement that child day-care center administrators prepare and distribute an annual roster and telephone contact list of all parents, guardians, or custodians.

- Increases to 2 from 1.5 hours the number of hours during a 24-hour day that the maximum number of napping toddlers or preschool children per child-care staff member may be double the amount established under current law.

- Permits a child day-care center to have on the center premises and readily available a separate staff member who has completed a course in prevention, recognition, and management of communicable diseases approved by the Department of Health.

- Makes optional the existing requirement that the ODJFS Director, when adopting rules for procedures for screening children and employees, include requirements for physical examinations and immunizations.

- Eliminates the requirement that the Director adopt rules regarding procedures for renewing a day-care center or type A home license not provided for under the Administrative Procedure Act and regarding the corresponding renewal license application fees.

- Eliminates the requirements that the Director adopt rules to be used for checking the references of child day-care center and type A family day-care home license applicants and potential employees.

- Replaces a provision that requires the Director to recommend standards to the Governor and General Assembly regarding sanctions to be imposed on persons violating the law governing child care with a provision that permits the Director to adopt rules regarding the sanctions and specifies when the Director is to impose the sanctions.

- Requires the Director to adopt rules establishing incentives for licensed or certified persons and entities that have a history of substantial compliance with licensure or certification standards.

III. Child Support

- Requires ODJFS's Office of Child Support to administer a fund for the deposit of support payments it receives.

- Prohibits a child support enforcement agency (CSEA) from sending a notice to an occupational or professional licensing board, the Bureau of Motor Vehicles (BMV), or the Division of Wildlife regarding a child support default unless: (1) at least 90 days have elapsed since the final and enforceable determination of default, and (2) the obligor has not paid at least 50% of the arrearage by means other than state or federal tax intercept.

- Alters the requirements concerning when a CSEA is required to remove license restrictions because a withholding or deduction notice has been issued to collect current support and any arrearage.

- Requires a CSEA to remove license restrictions if the obligor demonstrates an inability to work due to circumstances beyond the obligor's control.

- Permits a CSEA to direct the Registrar of Motor Vehicles to eliminate from the abstract maintained by the BMV any reference to the suspension of an individual's license due to child support default.

IV. Child Welfare and Adoption

- Requires each public children services agency (PCSA) to prepare and maintain a case plan or family service plan for any child receiving in-home services from the agency pursuant to an alternative response.

- Requires ODJFS to include in its rules requiring PCSAs to maintain case plans or family service case plans for children and their families who are receiving services in their homes requirements for case plans or family service plans for such children and families receiving services from PCSAs pursuant to an alternative response.

- Requires that the differential response approach pursued by a public children services agency include the traditional response pathway and the alternative response pathway.

- Details when the agency must use the traditional response.

- Requires ODJFS, in accordance with the evaluation of the Ohio Alternative Response Pilot Program, to plan the statewide expansion of the pilot program on a county by county basis, through a schedule ODJFS is to determine.

- Provides that the bill's provisions regarding differential response, traditional response, and alternative response are to become effective for a county in accordance with ODJFS's schedule.

- 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.

- Requires the Children's Trust Fund Board to allocate funds to children's crisis care facilities that have been approved by the Board.

- Requires that any funds allocated to a children's crisis care facility be subtracted from the amount allocated to the child abuse and child neglect prevention advisory board that serves the county or multicounty district in which the facility is located.

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 Children's Health Insurance Program (CHIP).

- Requires the ODJFS Director to retain in the Medicaid state plan a federal option under which medical assistance is made available to children during presumptive eligibility periods.

- Requires the ODJFS Director to amend the Medicaid state plan to implement a federal option under which ambulatory prenatal care is made available to pregnant women during presumptive eligibility periods.

- Permits children's hospitals and federally qualified health centers that are eligible to be qualified providers or entities under federal law to serve as qualified providers or entities for purposes of the presumptive eligibility for children and pregnant women options.

- 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 and for services provided under the 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.

- Requires the following if ODJFS does not adopt rules establishing contracting or subcontracting criteria by July 1, 2012: (1) Medicaid managed care organizations must contract with an entity to provide the services and (2) the entity must accept the fee-for-service rate as payment for the services.

- Permits ODJFS, during fiscal years 2012 and 2013, to reduce by 1% the rate it pays Medicaid managed care organizations for administrative expenses and prohibits the organizations from passing the cost of the reduction onto hospitals that are under contract with the organizations.

- 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, rather than permits, that Medicaid managed care coverage of prescription drugs be provided by the health insuring corporations participating in ODJFS's care management system.

- Prohibits the participating health insuring corporations from imposing prior authorization requirements for antidepressants and antipsychotics, if these mental health drugs meet specified criteria.

- 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 and rate reductions that result in payment rates for certain services, as selected by the Director, being at least 2% less than the payment rates 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, 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 July 1, 2011, and ending on the effective date of a rule changing the amount of the fee.

- Requires the ODJFS Director to maintain, for fiscal years 2012 and 2013, the Medicaid reimbursement rates in effect from October 1, 2009 – June 30, 2011 for Medicaid-covered hospital inpatient and outpatient services that are paid under a prospective payment system.

- 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.

- Eliminates the franchise permit fee price center.

- 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.

- 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 federal approval 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.

- Creates the Nursing Facility Capacity Council to study current and future nursing facility capacity in Ohio and to recommend actions for addressing any excess capacity that is identified.

- Requires the Council to issue a written report by June 30, 2012, after which the Council is terminated.

- 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 year 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.

- 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 conduct a study regarding Medicaid reimbursement rates for, and the administration of, ICF/MR services.

- Requires ODJFS and ODODD, at the same time they conduct the study regarding ICF/MR services, to work with the Governor's Office of Health Transformation and persons interested in the issue of ICF/MR services to develop recommendations regarding various ICF/MR issues.

- 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.

- 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.

- Requires the ODA Director to contract with Miami University's Scripps Gerontology Center for an evaluation of the PACE program.

- Permits the ODA Director, in consultation with the ODJFS Director, to expand the PACE program to new regions of Ohio under certain circumstances.

- 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.

- 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 under

an ODODD-administered Medicaid waiver program, rather than requiring that all of the beds be converted.

- Permits ODJFS to seek federal approval for up to 200 (rather than 100) slots for home and community-based services provided and ODODD-administered Medicaid waiver programs for the purpose of the beds that convert from providing ICF/MR services to home and community-based services.

- 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.

- Requires the ODJFS Director to apply for approval to claim federal Medicaid funds for administrative costs that the Department of Health and the Arthur G. James and Richard J. Solove Research Institute of The Ohio State University incur in analyzing and evaluating certain data under the Ohio Cancer Incidence Surveillance System.

- 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

- Prohibits an individual who performs services that substantially consist of services performed in seasonal employment from receiving unemployment compensation benefits for those services in the period between two successive seasonal periods if there is reasonable assurance that the individual will be employed in the later of the seasonal periods.

- Repeals the provision of current law that grants unemployment compensation benefit rights to an individual whose base period employment consists of either seasonal employment with two or more seasonal employers or both seasonal employment and nonseasonal employers.

- 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.[151]

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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[151] 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.

Hourly reimbursement of type B family day-care providers

(R.C. 5104.32)

The bill adds a provision to the current law that requires each contract for publicly funded child care to contain certain information. However, the provision being added by the bill applies only to contracts with certified type B family day-care providers, rather than all providers of publicly funded child care. It requires each contract with a certified type B family day-care provider to specify that the provider will be paid according to an hourly reimbursement rate when day care is provided for 0.10 to 9.90 hours per week. For the purpose of the reimbursement rate, the bill specifies that a part-time week be considered 10 to 24.90 hours of day care.

Reinstatement of publicly funded child care

(R.C. 5104.38)

The bill permits the ODJFS Director to adopt rules specifying exceptions to existing rules that detail procedures and criteria to be used when making certain eligibility determinations for publicly funded child care. The new rules may specify exceptions for a family that previously received publicly funded child care but whose eligibility was terminated and is seeking reinstatement.

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.

Publicly funded child care incentives

(R.C. 5104.30)

ODJFS is required by current law to establish a voluntary child day-care center quality-rating program. ODJFS has implemented this requirement by establishing the Step Up to Quality Program. The bill requires that, in establishing reimbursement ceilings for publicly funded child care, ODJFS must establish enhanced reimbursement ceilings for child day-care centers that participate in the program and maintain quality ratings under the program. ODJFS also is required to weigh any reduction in reimbursement ceilings more heavily against child day-care providers that do not participate in Step Up to Quality or do not maintain quality ratings under the program.

Child day-care centers and type A family day-care homes licensure enforcement

(R.C. 5104.04)

The bill eliminates the current requirements that ODJFS (1) notify a child day-care center or type A family day-care home that it has determined, pursuant to an inspection or investigation, is out of compliance with the laws governing centers and homes, and (2) provide the notice in writing and describe the nature of the violation, what must be done to correct the violation, and by what date the correction must be made. The bill also eliminates ODJFS's express authority to commence a license revocation action if the center or home fails to correct the violation and the specification that the commencement of an action should be considered sufficient notice to the center or home that the correction has not been made.

License renewal of child day-care centers and type A family day-care homes

(R.C. 5104.04)

The bill eliminates a provision that permits ODFJS to refuse to renew a child day-care center or type A family day-care home license if (1) an applicant for a license knowingly makes a false statement on the application, (2) the center or home does not comply with laws governing centers and homes, or (3) the applicant or owner has pleaded guilty to or been convicted of certain criminal offenses.

Publication of type B family day-care homes guide

(R.C. 5104.13)

The bill eliminates the requirement that ODJFS publish a guide describing the laws governing the certification of type B family day-care homes and instead permits ODJFS to publish the guide electronically or otherwise. ODJFS must do so in such a manner that the guide is accessible to the public, including type B home providers. The bill eliminates the requirement that ODJFS distribute the guide to CDJFSs in sufficient number that a copy is available to each type B home provider.

Educational requirements for child day-care staff

(R.C. 5104.011)

With limited exception, all child-care staff members of a child day-care center are required to have (1) graduated from high school, (2) a certification of high school equivalency, or (3) completed a training program approved by ODJFS or the State

Board of Education. The bill exempts from those educational requirements staff members who are receiving or have completed the final year of instruction at home or who have graduated from a charter school.

License capacity

(R.C. 5104.01(AA) and 5104.03 (not in the bill))

The bill eliminates the requirement that the ODJFS Director consider the number of available child-care staff members when determining "license capacity" for the licensure and licensure renewal of child day-care centers or type A family day-care homes. However, the bill retains this requirement for when the Director issues the initial provisional day-care license to a center or home.

Currently, the Director must consider all of the following when determining license capacity: (1) building occupancy limits established by the Department of Commerce, (2) the number of available child-care staff members, (3) the amount of available indoor floor space and outdoor play space, and (4) the amount of available play equipment, materials, and supplies. Upon consideration of all of these factors, the Director will establish the maximum number of children in each age category who may be cared for in the center or home and, if the center or home complies with the laws governing child care, the Director will issue a provisional license, license, or renewed license to the center or home.

Child day-care center administrator qualifications

(R.C. 5104.011(B)(4))

The bill provides an additional option for a child day-care center administrator to meet existing educational requirements by showing the ODJFS Director evidence that the administrator holds a high school diploma and a designation as an "early childhood professional level three" under the Step Up to Quality Program's career pathways model.[152] The career pathways model is defined by the bill as an alternative pathway to meeting the requirements for a child care staff member or administrator that uses one framework to integrate the pathways of formal education, training, experience, and specialized credentials, and certifications, and that allows the member or administrator to achieve a designation as an early childhood professional level one, two, three, four, five, or six. Currently, an administrator must show evidence of holding a high school diploma and having completed at least two years of either of the following: (1) training

[152] The Step Up to Quality Program is established by rule. See Ohio Administrative Code Chapter 5101:2-17. The current rules do not reference either the career pathways model or early childhood professional levels.

at an accredited college, university, or technical college, including courses in child development or early childhood education, or (2) experience in supervising and giving daily care to children attending an organized group program.

In addition to these educational requirements, the bill creates a new requirement that any administrator employed or designated as such on, or after, the bill's effective date, show evidence of at least one of the following not later than one year after the date of employment or designation:

(1) Two years of experience working as a child-care staff member in a center and at least four courses in child development or early childhood education from an accredited college, university, or technical college, except that a person who has two years of experience working as a child-care staff member in a particular center and who has been promoted to or designated as administrator of that center may have one year from the time the person was promoted to or designated as administrator to complete the required four courses;

(2) Two years of training, including at least four courses in child development or early childhood education from an accredited college, university, or technical college;

(3) A child development associate credential issued by the National Child Development Associate Credentialing Commission;

(4) An associate or higher degree in child development or early childhood education from an accredited college, technical college, or university, or a license designated for teaching in an associate teaching position in a preschool setting issued by the State Board of Education;

(5) An administrator's credential as approved by ODJFS.

The bill permits any administrator employed or designated as such *prior* to the bill's effective date to show evidence of an administrator's credential as approved by ODJFS in lieu of, or in addition to, existing educational and training requirements. The evidence of an administrator's credential must be shown to the Director no later than one year after the date of employment or designation.

Child day-care center rosters and contact lists

(R.C. 5104.011(B)(7))

The bill eliminates the existing requirement that child day-care center administrators prepare and distribute a roster of all parents, guardians, or custodians at least once annually. The roster is to include the names and telephone numbers of

parents, custodians, or guardians of each group of children attending the center and, upon request, the administrator must furnish the roster for each group to the parents, custodians, or guardians of the children in that group. Similarly, the bill eliminates the authority of an administrator to prepare a roster of names and telephone numbers of *all* parents, custodians, or guardians of children attending the center and, upon request, furnish the roster to the parents, custodians, or guardians of the children who attend the center.

The bill eliminates the related prohibition that the administrator is not to include in any roster the name or telephone number of any parent, custodian, or guardian who requests the administrator not to include the parent's, custodian's, or guardian's name or number and must not furnish any roster to any person other than a parent, custodian, or guardian of a child who attends the center.

Staff ratios while toddlers or preschool children are napping

(R.C. 5104.011(E)(2))

The bill increases to 2 from 1.5 hours the number of hours during a 24-hour day that the maximum number of napping toddlers or preschool children per child-care center staff member may be double the amount established under current law. The center would continue to be required to meet the following existing requirements: (1) at least one staff member is present in the room, (2) sufficient staff are on the center's premises to meet the maximum number of children per staff member requirements established under current law, and (3) naptime preparations are complete and all napping children are resting or sleeping on cots.

Course requirements for child day-care center staff members

(R.C. 5104.011(C)(1))

The bill permits a child day-care center to have on the center premises and readily available a separate staff member who has completed a course in prevention, recognition, and management of communicable diseases approved by the Department of Health, rather than a staff member who has completed both this course *and* a course in first aid (the center must still have a staff member who has completed a course in first aid).

Rule-making authority

Physical examinations and immunizations

(R.C. 5104.011(A)(5))

The bill makes optional the existing requirement that the ODJFS Director, when adopting rules for procedures for screening children and employees of child day-care centers, include requirements for physical examinations and immunizations.

License renewal for child day-care centers and type A family day-care homes

(R.C. 5104.011(A)(9) and (11) and (F)(9) and (11) and 5104.03 (not in the bill))

The bill eliminates the existing requirements that the ODJFS Director adopt rules regarding the procedures for renewing a day-care center or type A home license not provided for under the Administrative Procedure Act and for setting the corresponding license renewal application fees. The bill does not change existing law that requires an applicant for license renewal to pay the renewal fee established by the Director or the requirement that the Director renew the license if the Director determines that the requirements of the law and rules regarding child care are met.

Reference checks of child day-care center and type A family day-care home license applicants and employees

(R.C. 5104.011(A)(16) and (F)(16))

The bill eliminates the existing requirements that the ODJFS Director adopt rules to be used for checking the references of child day-care center and type A family day-care home license applicants and potential employees.

Sanctions for violating laws governing child care

(R.C. 5104.011(J)(5))

The bill permits the ODJFS Director to adopt rules in accordance with the Administrative Procedure Act regarding sanctions to be imposed on persons or entities violating the laws governing child care rather than the Director having to recommend standards to the Governor and General Assembly regarding sanctions.

The sanctions adopted pursuant to rule may be imposed only for a serious risk noncompliance violation of licensure or certification standards. A serious risk noncompliance violation means a licensure or certification standard violation that leads to the greatest risk of permanent harm to, or death of, a child and is observable, not inferable. Sanctions for a serious risk noncompliance violation identified in a single

licensure or certification visit that does not result in permanent harm to, or death of, a child may include one or more of the following:

(1) Completion of training or technical assistance;

(2) Additional targeted monitoring or extension of a provisional license or certification if applicable.

Incentives for substantial compliance with licensure or certification standards

(R.C. 5104.011(J)(6))

The bill requires the ODJFS Director to adopt rules establishing incentives for persons and entities that are licensed or certified to provide child care and have a history of substantial compliance with licensure or certification standards. The incentives must at least include less frequent or focused licensure or certification visits, participation in the Step Up to Quality rating program, and scholarships for training.

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.

License suspension procedures for defaulting child support obligors

(R.C. 3123.44, 3123.45, 3123.55, 3123.56, 3123.58, 3123.59, 3123.591, 3123.63, 4506.071, 4507.111, 4705.021, 3123.52 (repealed), 3123.61 (repealed), 3123.612 (repealed), 3123.613 (repealed), and 3123.614 (repealed))

Currently, Ohio and federal law require the occupational, professional, motor vehicle, or recreational license or permit of an obligor found in default under a child support order to be denied or suspended, or not be issued or renewed, at the request of a child support enforcement agency (CSEA). "Default" means any failure to pay an amount equal to or greater than the amount payable for one month under a child

support order. When a CSEA identifies a default, it investigates and then sends a default notice containing information on the arrearage and the administrative and court action that will take place if the obligor contests the information in the default notice. When the obligor exhausts the ability to contest the information in the default notice, the default becomes final and enforceable. These licenses also may not be issued or renewed and may be suspended or revoked if the obligor fails to comply with a subpoena or warrant issued by the court or a CSEA with respect to a proceeding to enforce a child support order. The license may not be issued or renewed and must remain suspended or revoked until the obligor complies with the child support order, subpoena, or warrant.

The bill prohibits a CSEA from notifying an occupational or professional licensing board, the Bureau of Motor Vehicles (BMV), or the Division of Wildlife that an obligor is in default unless at least 90 days have elapsed since the final and enforceable determination of default, and, in the preceding 90 days, the obligor has failed to pay at least 50% of the arrearage by means other than federal or state tax refund intercept. It requires ODJFS to adopt rules establishing a uniform pre-suspension notice form to be used by CSEAs that send notice to occupational or professional licensing boards, the BMV, or the Division of Wildlife. The rules must require the contents of the notice to include information about the effect of a license suspension and appropriate steps that an obligor can take to avoid license suspension.

A CSEA that notifies an occupational or professional licensing board, the BMV, or the Division of Wildlife that an obligor is in default is required under current law to send another notice within seven days that the obligor is not in default if:

(1) The obligor makes full payment of the arrearage;

(2) An appropriate withholding or deduction notice or other order is issued to collect current support and the arrearage and the obligor is complying with the notice or order; or

(3) A new child support order has been issued or the order that was in default has been modified to collect current support and the arrearage.

The bill alters the circumstances under which the notice must be sent. Under the bill, the CSEA must send the notice if:

(1) The obligor makes full payment of the arrearage (same as current law);

(2) The obligor has presented the CSEA sufficient evidence of current employment or of an account in a financial institution, confirmed by the CSEA, and a

withholding or deduction notice has been issued to collect current support and any arrearage; or

(3) The obligor presents evidence to the CSEA sufficient to establish that the obligor is unable to work due to circumstances beyond the obligor's control.

The bill also permits a CSEA, pursuant to rules adopted by the Director of Job and Family Services, to direct the Registrar of Motor Vehicles to eliminate from the abstract maintained by the BMV any reference to the suspension of an obligor's license due to default.

IV. Child Welfare and Adoption

Case plan or family service plan for child receiving in-home services from a PCSA

(R.C. 2151.011(B)(4) and 2151.412(B) and (C)(2))

The bill requires each public children services agency (PCSA) to prepare and maintain a case plan or a family service plan for any child receiving in-home services from the agency pursuant to an alternative response. An "alternative response" is a PCSA's response to a report of child abuse or neglect that engages the family in 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 that the rules adopted pursuant to R.C. Ch. 119. requiring PCSAs to maintain case plans for children and their families who are receiving services in their homes from the agencies and for whom case plans are not otherwise required (existing law) must include the requirements for case plans or family service plans maintained for children and their families who are receiving services in their homes from PCSAs pursuant to an alternative response. PCSAs must maintain case plans and family service plans as required by those rules; however, the case plans and family service plans are not subject to any other provision of the law regarding case plans except as specifically required by the rules.

Use of the investigative assessment response and the family assessment response

(R.C. 2151.011(B)(16) and (56) and 2151.429)

Under the bill, the differential response approach pursued by a PCSA must include two pathways, the traditional response pathway and the alternative 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.

The PCSA must use the traditional 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 investigative procedure as identified by rule adopted by ODJFS.

For all other child abuse and neglect reports, an alternative response is the preferred response, whenever appropriate and 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 an alternative response or a traditional response. "Traditional response" means a PCSA response to a report of child abuse or neglect that encourages 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(O))

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 an alternative response or a traditional response.

Cross-references

(R.C. 2151.424 and 2152.72)

The bill makes cross-reference changes in R.C. 2151.424 and 2152.72.

Statewide expansion of the Ohio Alternative Response Pilot Program

(Section 309.50.10)

The biennial budget act of the 128th General Assembly, Am. Sub. H.B. 1, required ODJFS to implement a pilot program in not more than ten counties based on an "alternative response" approach to reports of child abuse, neglect, and dependency. ODJFS was required to assure that the pilot program be independently evaluated and was permitted, if the evaluation recommended statewide implementation of an alternative response approach to child protection, to expand the approach statewide.

The bill requires that ODJFS, in accordance with the evaluation of the Ohio Alternative Response Pilot Program, plan the statewide expansion of the pilot program on a county by county basis, through a schedule ODJFS is to determine. The program is to be known as the differential response approach. The bill's provisions regarding differential response, traditional response, and alternative response are to become effective for a county in accordance with ODJFS's schedule. ODJFS is permitted to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) before the statewide implementation as necessary to carry out its duties regarding the expansion.

Children's Trust Fund Board

(R.C. 3109.14 (not in the bill), 3109.15 (not in the bill), 3109.16, and 3109.17)

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.

In developing and carrying out the state plan, the Board is required to take certain actions, including (1) allocating funds to each child abuse and child neglect prevention advisory board and (2) allocating funds to entities other than child abuse and child neglect prevention advisory boards for the purpose of funding programs that have statewide significance. The bill requires, in addition, that the Board allocate funds to children's crisis care facilities that have been approved by the Board. The Board must

subtract any funds allocated to a children's crisis care facility from the amount allocated to the child abuse and child neglect prevention advisory board that serves the county or multicounty district in which the facility is located.

A "children's crisis care facility" is a facility that has as its primary purpose the provision of residential and other care to either or both of the following: (1) one or more preteens voluntarily placed in the facility by the preteen's parent or other caretaker who is facing a crisis that causes the parent or other caretaker to seek temporary care for the preteen and referral for support services, or (2) one or more preteens placed in the facility by a public children services agency or private child placing agency that has legal custody or permanent custody of the preteen and determines that an emergency situation exists necessitating the preteen's placement in the facility.

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 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).[153] County departments of job and family services (CDJFS) establish Medicaid eligibility for persons living in the county.

[153] 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.

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 CDJFS, the county department is permitted to establish Medicaid eligibility only if authorized under the agreement.

Presumptive eligibility for children and pregnant women

(R.C. 5111.0124 (primary), 5111.013, and 5111.0125)

Federal law permits states to implement options regarding presumptive Medicaid eligibility for children and pregnant women. Under the options, a state may make certain Medicaid services available to a child or pregnant woman during a presumptive eligibility period. A presumptive eligibility period is the period that begins with the date on which a qualified entity or provider determines, on the basis of preliminary information, that the family income of the child or pregnant woman does not exceed the state's applicable eligibility limit and ends with the earlier of (1) the day on which a determination is made with respect to the child's or pregnant woman's eligibility for Medicaid and (2) the last day of the month following the month during which the qualified entity or provider makes the eligibility determination if a Medicaid application for the child or pregnant woman is not filed by that day. The ODJFS Director has adopted a rule to implement the presumptive eligibility for children option but not the presumptive eligibility for pregnant women option.[154]

The bill requires the ODJFS Director to retain the presumptive eligibility for children option in the Medicaid state plan and to submit a Medicaid state plan amendment to the United States Secretary of Health and Human Services to implement the presumptive eligibility for pregnant women option. The bill also permits children's hospitals and federally qualified health centers that are eligible to be qualified entities or providers under federal law to serve as qualified entities and providers for purposes of the options. The ODJFS rule regarding presumptive eligibility for children currently provides that only CDJFS may serve as qualified entities.

The bill eliminates current law that requires the ODJFS Director to do either of the following:

(1) To the extent that federal funds are provided, adopt a plan for granting presumptive eligibility for pregnant women applying for the Healthy Start component of Medicaid;

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[154] O.A.C. 5101:1-38-40.

(2) To the extent permitted by federal Medicaid regulations, adopt a plan for making same day eligibility determinations for pregnant women applying for Healthy Start.

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.

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).[155] 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 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.[156] 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.)

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[155] Section 2001(b) of the Patient Protection and Affordable Care Act (Public Law 111-148).

[156] 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).

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.[157] 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).

The bill does not similarly authorize the Auditor to conduct an audit of an individual public assistance recipient[158] 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.

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[157] 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)).

[158] 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.

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;

(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[159] 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

[159] The provision is codified in 45 C.F.R. 164.502(e)(2).

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.

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.[160] 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.[161] 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.[162] 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

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[160] 42 C.F.R. Part 433, subpart D (2005).

[161] 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>.

[162] 42 U.S.C. 1396a(a)(25).

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.[163]

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.

Care coordination for families and children pending Medicaid managed care enrollment

(Section 309.30.50)

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;

[163] R.C. 5101.573(A)(2) and (4)(a).

(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 and for services provided under the 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.

Health homes for Medicaid recipients

(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.[164]

[164] 42 U.S.C. 1396w-4.

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 U.S. 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.

Medicaid managed care for the aged, blind, or disabled

(R.C. 5111.16)

The bill expands the group of individuals who may be required or permitted to participate in the Medicaid care management system. The expansion applies to individuals who are included in the Medicaid coverage group known as the "aged, blind, and disabled," or "ABD."

In implementing the care management system, ODJFS is required by current law to designate the Medicaid recipient who may or must participate. Although current law requires ABD Medicaid recipients to be designated as participants, several exclusions apply. Specifically, the existing law exclusions apply to an ABD Medicaid recipient who is also (1) under age 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 modifies the existing ABD exclusions by permitting ODJFS, if any necessary waiver of federal Medicaid requirements is granted, to designate any of the following ABD Medicaid recipients 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 the individuals who may or must participate in the Medicaid care management system. Under the bill, the group consisting of ABD Medicaid recipients who are individuals under age 21 may be designated as participants.

If ODJFS receives any necessary federal Medicaid waiver to include ABD individuals under age 21 in the care management system, the bill requires ODJFS to develop a system for the provision of care management services to these individuals. ODJFS is permitted to do one or both of the following to develop the system:

(1) Contract directly with entities to service as pediatric accountable care organizations.

For purposes 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, must incorporate pediatric accountable care organization criteria as established by federal law.[165] 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.

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[165] 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.)

Results of delay in adopting rules

If ODJFS does not adopt rules by July 1, 2012, that establish criteria necessary to implement the two care management options discussed above, an alternate system to provide the care management services for ABD individuals under age 21 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. 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.

Reduction in payment for Medicaid managed care administrative expenses

(Section 309.30.33)

The bill authorizes ODJFS, for fiscal years 2012 and 2013, to reduce by 1% the rate it pays for administrative expenses to Medicaid managed care organizations.[166] If the reduction is made, the managed care organization receiving the reduction is prohibited by the bill from passing the cost of the reduction onto any hospital with which it has a contract to provide services to the Medicaid recipients who are enrolled in the organization.

Medicaid managed care reimbursement rate for non-contracting hospitals and hospital system providers

(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.[167] However, certain hospitals that contracted with Medicaid-participating health insuring corporations before January 1, 2006, are not subject to this fee-for-service

[166] The bill does not specify the purpose of the reduction.

[167] 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).

reimbursement 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,"[168] which includes 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. (Therefore, under the bill, no exemptions from the fee-for-service reimbursement provisions will exist.)

(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

(R.C. 5111.72; Section 309.37.50)

Under the bill, ODJFS must require that Medicaid coverage of prescription drugs be provided by the health insuring corporations (HICs) with which ODJFS contracts for purposes of the Medicaid care management system. To implement this coverage requirement, the bill requires ODJFS to enter into new contracts or amend existing contracts with HICs not later than October 1, 2011.

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[168] 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 within 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.

Under current law, ODJFS is only permitted to require HICs to provide prescription drug coverage. During the 2011-2012 biennium, ODJFS did not implement this authority; instead, prescription drugs coverage has been provided through the Medicaid fee-for-service system.

Mental health drugs excluded from prior authorization

For drugs that are antidepressants or antipsychotics, the bill establishes limitations on the use of prior authorization requirements by HICs. Under the bill, ODJFS cannot permit any HIC to impose such a requirement if all of the following apply to the mental health drug:

(1) The drug is administered or dispensed in a standard tablet or capsule form or, if the drug is an antipsychotic, in a long-acting injectable form;

(2) The drug is prescribed by a physician whom the HIC has credentialed to provide care as a psychiatrist;

(3) The drug is prescribed for a use that is indicated on the drug's labeling, as approved by the U.S. Food and Drug Administration.

120-day continuity period

In addition to the permanent limitations on prior authorization requirements for mental health drugs, the bill specifies other limitations that apply during the 120-day period after ODJFS first implements the bill's requirement for coverage of prescription drugs through Medicaid-participating HICs. Specifically, the bill establishes the following requirements for this 120-day period:

(1) If, immediately before the HIC's coverage becomes effective, a Medicaid recipient enrolled in the HIC was being treating with an antidepressant or antipsychotic in the form specified in the bill, the HIC must provide coverage without a prior authorization requirement.

(2) The HIC must permit the health professional who was prescribing the drug to continue prescribing the drug for the Medicaid recipient, regardless of whether the prescriber is a psychiatrist credentialed by the HIC.

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 its contract with the managed care organization the standards that must be met to receive the payments. In establishing the performance standards, ODJFS is required to use the most recent Healthcare Effectiveness Data and Information Set (HEDIS). HEDIS is a tool developed by the National Committee for Quality Assurance to measure a health plan's performance on specified dimensions of care and service.[169]

When a managed care organization meets the performance standards, ODJFS is required to make payments to the organization. The number of payments and schedule of making payments are to be established by ODJFS. The payments must be discontinued if the organization no longer meets the performance standards. The bill prohibits ODJFS from making or discontinuing payments based on any performance standard that has been in effect as part of an organization's contract for less than six months.

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. The sum of all withholdings cannot exceed 1% of the total of all premium payments made by ODJFS to all Medicaid managed care organizations.

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[169] National Committee for Quality Assurance, *What is HEDIS?*, available at <http://www.ncqa.org/tabid/187/Default.aspx>.

Reduction in Medicaid payment rates 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 and rate reductions that result in payment rates for certain services, as selected by the ODJFS Director, being at least 2% less than the respective payment rates for fiscal year 2011. The requirement does not apply to nursing facility and intermediate care facility for the mentally retarded (ICF/MR) services.

When implementing the purchasing strategies and rate reductions, 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.

If any purchasing strategies or rate reductions are implemented that reduce administrative rate payments made to Medicaid managed care organizations, the bill requires ODJFS to ensure that the organizations do not pass the reductions onto providers under contract with the organizations.

The Director must adopt rules under the Administrative Procedure Act as necessary to implement the bill's requirements regarding purchasing strategies and rate reductions.

Medicaid quality improvement initiatives for children

(Section 309.33.40)

For the purposes of building on the quality improvement work of the Best Evidence for Advancing Child Health in Ohio NOW! (BEACON) Council, the bill permits ODH, ODMH, and ODJFS, in conjunction with the Governor's Office of Health Transformation, to seek assistance from, and work with, 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).[170] 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.[171] ODJFS may adopt rules under the Administrative Procedure Act 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.

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[170] 42 U.S.C. 1396b-1.

[171] 42 U.S.C. 1396b(a)(3)(F) and 1396b(t).

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 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.[172] 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 CHIP program, or (3) a provider who has paid the application fee to a Medicare contractor or another state.[173]

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 amount of the fee is to be set by the ODJFS Director in rules adopted under the Administrative Procedure Act. The fee amount cannot be 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.[174]

The bill generally requires ODJFS to do both of the following when ODJFS determines there is a "creditable allegation of fraud"[175] against a Medicaid provider[176] for

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[172] 42 C.F.R. Part 455; 42 C.F.R. 455.450.

[173] 42 C.F.R. 455.460.

[174] O.A.C. 5101:3-1-17 and 5101:3-1-172.

[175] 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.)

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 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.[177]

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.

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[176] A "provider" is any person, institution, or entity that has a Medicaid provider agreement with ODJFS (R.C. 5111.035(A)(2)).

[177] *See* 42 C.F.R. Part 455.

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.

(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,[178] 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.

[178] An "owner" is any person having at least 5% ownership in a noninstitutional Medicaid provider (R.C. 5111.035(A)(3)).

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.

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,[179] 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;[180]

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[179] Specifically, 42 C.F.R. 455.23(b).

[180] 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;

(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.[181]

- 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.[182]

- 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;[183]

  --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.[184]

- The provider's agreement to participate in Medicare, Medicaid, or the CHIP program of any state was terminated on or after January 1, 2011.[185]

- 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.[186]

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[181] 42 C.F.R. 455.106(c).

[182] 42 C.F.R. 455.23

[183] 42 C.F.R. 416(a).

[184] 42 C.F.R. 416(b).

[185] 42 C.F.R. 455.416(c).

[186] 42 C.F.R. 455.416(d).

- 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.[187]

- The provider failed to permit access to provider locations for any site visits required by federal regulations,[188] unless ODJFS determined that termination or denial of enrollment was not in the best interests of the Medicaid program and ODJFS documents that determination in writing.[189]

- 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.[190]

- Failure to submit to a criminal background check as a condition of enrolling to be a Medicaid provider, as specified in federal regulations.[191]

- Failure to meet screening requirements for Medicaid providers specified in federal regulations.[192]

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

[187] 42 C.F.R. 455.416(e).

[188] 42 C.F.R. 455.432.

[189] 42 C.F.R. 455.416(f).

[190] 42 C.F.R. 455.416(g).

[191] 42 C.F.R. 455.434.

[192] 42 C.F.R. 455.450.

underlining the rates and an opportunity for the public to review and comment on the proposed rates.[193]

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. 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.[194] 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

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[193] 42 U.S.C. 1396(a)(13)(A).

[194] 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.)

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 reimbursement limit for the drug.[195] 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).[196] States generally base their Medicaid reimbursements to a retail pharmacy for a covered outpatient drug on the *lowest* of the following:[197]

(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.)

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[195] 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)).

[196] 42 U.S.C. 1396r-8(e)(4).

[197] 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).

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 July 1, 2011, and ending on the effective date of an ODJFS rule changing the amount of the fee.

Fiscal years 2012 and 2013 hospital Medicaid rates

(Section 309.30.35)

The bill requires the ODJFS Director to amend rules as necessary to continue, for fiscal years 2012 and 2013, the Medicaid reimbursement rates in effect from October 1, 2009, through June 30, 2011, for Medicaid-covered hospital inpatient and outpatient services that are paid under the prospective payment system established in the rules. The rates are to continue to be in effect, notwithstanding any policies or rules the ODJFS Director establishes under the bill's provision that requires the Director to implement purchasing strategies and rate reductions for Medicaid services the Director selects. (See "**Reduction in Medicaid payment rates for fiscal years 2012 and 2013**," above.)

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 812.20)

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. 5111.225)

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.[198]

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;

(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 seek federal approval to create a Medicaid program to be known as Centers of Excellence. The purpose of the Centers of

[198] U.S. Centers for Medicare and Medicaid Services, "Third Party Liability: Overview." https://www.cms.gov/DualEligible/ (accessed 03/27/2011).

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, 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 Capacity Council

(Section 309.30.73)

Overview

The bill creates the Nursing Facility Capacity Council. The Council must study current and future nursing facility capacity in Ohio and recommend actions for addressing any excess capacity that is identified.

Membership

The Council is to consist of the following persons:

--One or more members of the Ohio Health Care Association, appointed by its executive director or chief administrative officer;

--One or more members of the Ohio Academy of Nursing Homes, appointed by its executive director or chief administrative officer;

--One or more members of LeadingAge Ohio, appointed by its executive director or chief administrative officer;

--One or more employees of the Department of Job and Family Services, appointed by its Director;

--One or more members of the Department of Aging, appointed by its Director;

--One or more employees of the Department of Health, appointed by its Director;

--One or more employees of the Governor's Office of Health Transformation, appointed by its Director;

Council members are to serve at the pleasure of their appointing authorities and without compensation, except to the extent that serving is considered part of their regular duties of appointment.

Duties

The Council must examine the current and future capacity of nursing facilities in Ohio and the configuration of that capacity. If the Council identifies excess capacity through its examination, the Council must determine the potential effects of the excess capacity and recommend actions the state or private industry may take to address the excess capacity. For each action the Council recommends, the Council must consider and explain the impact of the action on (1) the excess capacity, (2) the nursing facilities that would be affected, and (3) state revenues and expenditures.

Report

Not later than June 30, 2012, the Council must submit a written report of its findings and recommendations to the Governor and certain members and staff of the General Assembly. Pursuant to existing law governing the submission of reports, recommendations, and similar documents to the General Assembly,[199] the members and staff who are to receive the report are the President of the Senate, the Senate Minority Leader, the Speaker of the House of Representatives, the House Minority Leader, and the Director of the Legislative Service Commission (LSC). LSC is then required to include the report on a list LSC provides each month to all Senate and House members.

Termination

On the Council's submission of the report described above, the Council ceases to exist.

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[199] R.C. 101.68.

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 receives. 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 receive 82.2% of the money. For each fiscal year, the ODODD Operating and Services Fund is to receive 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.

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.

Study of ICF/MR issues

(Section 309.30.80)

The bill requires ODJFS and ODODD to study issues regarding the administration of, and Medicaid reimbursement for, ICF/MR services. In conducting the study, ODJFS and ODODD must examine revising the Individual Assessment Form (IAF) Answer Sheet in a manner that provides a more accurate assessment of the acuity and care needs of individuals who need ICF/MR services, especially the acuity and care needs of such individuals who have intensive behavioral or medical needs. After examining the issue of revising the IAF Answer Sheet, ODJFS and ODODD are to examine, as part of the study, revisions to the Medicaid reimbursement formula for ICF/MR services to (1) ensure that reimbursement for capital costs is adequate for maintaining the capital assets of ICFs/MR in a manner that promotes the well being of the residents, (2) provide capital incentives for reducing the capacity of ICFs/MR as necessary to achieve goals regarding the optimal capacity of ICFs/MR, (3) ensure that wages paid individuals who provide direct care services to ICF/MR residents are sufficient for ICFs/MR to meet staffing and quality requirements, (4) provide incentives for high quality services, and (5) achieve other goals developed for the purpose of improving the appropriateness and sufficiency of Medicaid reimbursements for ICF/MR services. The study also is to include an examination of transferring the powers and duties regarding ICF/MR services from ODJFS to ODODD. A report of the study is due not later than October 1, 2011. The report is to be submitted to the Governor and General Assembly.

At the same time they conduct the study, ODJFS and ODODD are required to work with the Governor's Office of Health Transformation and persons interested in the issue of ICF/MR services to develop recommendations regarding (1) goals regarding the ratio of ODODD-administered home and community-based Medicaid waiver services and ICF/MR services that take into account goals regarding the optimal capacity of ICFs/MR, (2) the roles and responsibilities of ICFs/MR owned and operated by ODODD and providers of services under ODODD-administered Medicaid waiver programs that provide home and community-based services, and (3) simplifying and eliminating duplicate regulations regarding ICFs/MR in a manner that lowers the cost of ICF/MR services.

The bill prohibits the powers and duties regarding ICF/MR services from being transferred from ODJFS to ODODD unless a state law is enacted expressly authorizing the transfer.

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.[200] 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.

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.[201]

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[200] O.A.C. 5101:3-3-16.4(D)(2).

[201] O.A.C. 5101:3-3-16.8(D)(2).

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 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.

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.[202] 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.

[202] 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.[203] 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.

[203] 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. 173.404)

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.

Evaluation and expansion of PACE program

(Section 309.33.50)

The bill requires the ODA Director to contract with Miami University's Scripps Gerontology Center for an evaluation of the PACE program. Under the contract, the Center must collaborate with the ODA Director and PACE providers and must take into account the PACE program's unique features.

The bill also permits the ODA Director, in consultation with the ODJFS Director, to expand the PACE program to additional regions of Ohio beyond the two existing service areas if the following apply: (1) funding is available for the expansion and (2) the directors mutually determine, taking into consideration the results of the Center's evaluation described above, that the PACE program is a cost-effective alternative to nursing home care. The existing two PACE providers in Ohio are 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 carries out the day-to-day administration of the PACE program pursuant to an agreement with ODJFS, which administers Ohio's Medicaid program.

In implementing an expansion, the ODA Director is prohibited from decreasing the number of participants in the PACE program in the existing PACE sites to a number that is below the number of participants in those areas who were enrolled in the program on July 1, 2011.

The bill requires the ODA and ODJFS Directors to use their best efforts to achieve an arrangement with the United States Centers for Medicare and Medicaid Services (CMS) under which CMS agrees to share with the state any savings to the Medicare program resulting from an expansion of the PACE program.

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; Section 309.33.30)

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. If they determine that a program should be terminated, the program is to cease to exist on a date ODJFS and ODA must specify.

If ODJFS and ODA terminate the PASSPORT, Choices, Assisted Living, Ohio Home Care, or Ohio Transitions II Aging Carve-Out program, all applicable statutes, and all applicable rules, standards, guidelines, or orders issued by ODJFS or ODA before the program is terminated, are to remain in full force and effect on and after that date, but solely for purposes of concluding the program's operations, including fulfilling ODJFS's and ODA's legal obligations for claims arising from the program relating to eligibility determinations, covered medical assistance provided to eligible persons, and recovering erroneous overpayments. The right of subrogation for the cost of medical assistance and an assignment of the right to medical assistance continue to apply with respect to the terminated program and remain in force to the full extent provided under law governing the right of subrogation and assignment. ODJFS and ODA are permitted to use appropriated funds to satisfy any claims or contingent claims for medical assistance provided under the terminated program before the program's termination. Neither ODJFS nor ODA has liability under the terminated program to reimburse any provider or other person for claims for medical assistance rendered under the program after it is terminated.

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 and 5111.877)

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.

Currently, the maximum number of slots available for home and community-based services provided under a Medicaid waiver administered by ODODD is 100 for the purpose of beds that are converted from providing ICF/MR services to home and community-based services. 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.[204] 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.

[204] Section 6071 of the Deficit Reduction Act of 2005, Public Law No. 109-171.

The Deficit Reduction Act includes federal appropriations for Money Follows the Person grants through federal fiscal year 2011 (ending September 30, 2011). A state seeking a grant is required to apply to the Secretary. ODJFS submitted an application for a grant in November 2006. Ohio learned in January 2007 that its application was approved.

Ohio Cancer Incidence Surveillance System

(R.C. 5111.83 (primary); R.C. 3701.261 and 3701.262 (not in the bill))

The bill requires the ODJFS Director to apply, no later than January 1, 2012, for approval to claim federal financial participation (i.e., federal Medicaid matching funds) for the administrative costs that the Ohio Department of Health (ODH) and the Arthur G. James and Richard J. Solove Research Institute of The Ohio State University incur in analyzing and evaluating (1) cancer reports under the existing Ohio Cancer Incidence Surveillance System and (2) effects of cancer on Medicaid recipients and other low-income populations. In seeking approval to claim federal financial participation, the bill requires the ODJFS Director to consult with the ODH Director and the Directors to cooperate in seeking the approval to the extent they find the approval necessary for the effective and efficient administration of the Medicaid program.

The existing Ohio Cancer Incidence Surveillance System is a population-based cancer registry, established by ODH, to monitor the incidence of various types of malignant diseases in Ohio, make appropriate epidemiologic studies to determine any causal relations of such diseases with occupational, nutritional, environmental, or infectious conditions, and alleviate or eliminate any such conditions. The Arthur G. James and Richard J. Solove Research Institute provides analysis and evaluation services for ODH in carrying out its duties regarding the System.

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[205] 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

[205] 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)).

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 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); Section 309.33.60; conforming changes in 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 for seasonal employment

(R.C. 4141.33)

The bill prohibits an individual who performs services that substantially consist of services performed in seasonal employment from being paid benefits for those services for any week in the period between two successive seasonal periods if the individual performed those services in the first of the seasonal periods and there is reasonable assurance that the individual will perform those services in the later of the seasonal periods. Reasonable assurance consists of a written, verbal, or implied agreement that the individual will perform services in the same or a similar capacity during the later seasonal period. The bill requires the Director of Job and Family Services to adopt rules for the implementation of this provision.

The bill repeals the provision of current law that grants unemployment compensation benefit rights to an individual whose base period employment consists of either seasonal employment with two or more seasonal employers or both seasonal employment and nonseasonal employment with employers subject to the Unemployment Compensation Law (R.C. Chapter 4141.). The bill also repeals the provision of current law that requires benefit charges for both seasonal and nonseasonal employment to be computed and charged to each employer in the claimant's base period in the proportion to which wages attributable to each employer of the claimant bears to the claimant's total base period wages.

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.

JUDICIARY, SUPREME COURT (JSC)

- 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.

- 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.

- Eliminates the duty of the Clerk of the Supreme Court to file annual reports of the transactions and proceedings of the Court with the Governor, the Secretary of State, and the State Library.

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.[206] 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.

[206] R.C. 2301.19.

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.

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.

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.

Report of Clerk of Supreme Court eliminated

(R.C. 149.01)

The bill eliminates current law's requirement for the Clerk of the Supreme Court to make annually, at the end of each fiscal year, in quadruplicate, a report of the transactions and proceedings of the Court for that fiscal year, except receipts and disbursements unless otherwise specifically required by law. Current law requires the report that is eliminated to contain a summary of the Court's official acts and any suggestions and recommendations that are proper. Under current law, on the first day of August of each year, one of the eliminated reports is required to be filed each with the Governor, the Secretary of State, and the State Library, and one kept in the office of the Clerk.

LEGAL RIGHTS SERVICE (LRS)

- Requires establishment not later than December 31, 2011, of a new nonprofit entity to provide advocacy services and client assistance for people with disabilities.

- Requires, not later than September 30, 2012, the Governor to designate the new nonprofit entity as Ohio's protection and advocacy system and client assistance program for people with disabilities (if the new entity complies with all applicable federal law) and specifies that, on October 1, 2012, the entity becomes the Ohio Protection and Advocacy System.

- Effective October 1, 2012, abolishes the Ohio Legal Rights Service (OLRS), Legal Rights Service Commission, and OLRS Ombudsperson Section.

- Eliminates all statutory provisions regarding the OLRS, Commission, and OLRS Ombudsperson Section, except as follows: (1) provides that the Ohio Protection and Advocacy System is to have the same access to records as the abolished OLRS, (2) provides that all records received by the System are to have the same confidential

status as those records were provided under the abolished OLRS, and (3) provides that the System has the same subpoena power as the administrator of the abolished OLRS.

Ohio Protection and Advocacy System

(Section 319.20 (primary); R.C. 5123.60 and 5123.601 (new); conforming changes in R.C. 3721.16, 5111.709, 5119.221, 5122.01, 5122.02, 5122.27, 5122.271, 5122.29, 5122.31, 5122.32, 5123.092, 5123.19, 5123.191, 5123.35, 5123.61, 5123.63, 5123.64, 5123.69, 5123.701, 5123.86, 5123.99, and 5126.33; R.C. 5123.601, 5123.602, 5123.603, 5123.604, and 5123.605 (repealed))

Overview

No later than December 31, 2011, the bill requires the establishment of a new nonprofit entity to provide advocacy services and client assistance for people with disabilities. Temporarily, the nonprofit entity is to co-exist with the Ohio Legal Rights Service (OLRS), Legal Rights Service Commission, and OLRS Ombudsperson Section. If the nonprofit entity complies with federal law, the Governor must, no later than September 30, 2012, designate it as Ohio's protection and advocacy system and client assistance program for people with disabilities. On October 1, 2012, the nonprofit entity becomes the Ohio Protection and Advocacy System, and OLRS, the Commission, and the OLRS Ombudsperson Section are abolished. Except with regard to access to records, confidentiality of records, and certain notification requirements, the bill eliminates many of the statutory provisions that apply to OLRS.

OLRS is Ohio's designated protection and advocacy system and client assistance program for children and adults with mental disabilities. To receive federal funds for services to persons who are mentally disabled, Ohio is required by federal law to have a protection and advocacy system.[207] 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, which 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.

[207] 42 U.S.C. 15041 *et seq.*; the specific requirement is in 42 U.S.C. 15043.

Timeline for replacement of OLRS

The bill establishes a two stage process under which the new Ohio Protection and Advocacy System is established, designated by the Governor as Ohio's protection and advocacy system and client assistance program, and replaces the existing OLRS.

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 new nonprofit entity to provide advocacy services and a client assistance program for people with disabilities. The existing OLRS is permitted to subcontract with the new entity to perform any functions OLRS is permitted or required to perform. The existing OLRS, Commission, and OLRS Ombudsperson Section continue as under current law until October 1, 2012.

In the second stage, not later than September 30, 2012, if the new entity complies with all federal law regarding a protection and advocacy system and client assistance program, the Governor is to designate it as Ohio's protection and advocacy system and client assistance program.

On October 1, 2012, the bill abolishes the existing OLRS, Commission, and OLRS Ombudsperson Section, and the new entity becomes the Ohio Protection and Advocacy System. The System is thereafter required to serve as Ohio's protection and advocacy system and client assistance program.

The bill does not indicate what is to happen if the new entity does not comply with federal law and, therefore, cannot be designated by the Governor. It does not appear to permit OLRS, the Commission, or the OLRS Ombudsperson Section to continue after September 30, 2012.

Eliminated provisions

In contrast to current law's enumeration of specific powers and duties of OLRS and its administrator, the bill provides that the Ohio Protection and Advocacy System is to provide advocacy services for people with disabilities, as provided under the federal "Developmental Disabilities Assistance and Bill of Rights Act of 2000,"[208] and a client assistance program, as provided under the federal "Workforce Investment Act of 1998."[209] It authorizes the System to establish any guidelines necessary for its operation.

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[208] 42 U.S.C. 15001.

[209] 29 U.S.C. 732.

In establishing a general statutory duty for the Ohio Protection and Advocacy System to provide advocacy services and a client assistance program, the bill eliminates many of the OLRS-related provisions of current law, including the following:

(1) A description of specific populations to be served, including persons with mental illness or developmental disabilities;

(2) A requirement that there be an administrator, including the requirement that the administrator be an attorney;

(3) The administrator's responsibilities, including preparing a budget and submitting it to the General Assembly and obtaining the OLRS Commission's approval before filing any class action lawsuit;

(4) The administrator's membership on the Medicaid Buy-In Advisory Council;

(5) A requirement that the administrator be notified of any proposed major aversive intervention for a mentally ill patient or a resident of an institution for the mentally retarded;

(6) Notice requirements regarding the individuals served by OLRS;

(7) Specific authority for an individual served by OLRS or denied service to file a grievance;

(8) Authority to conduct public hearings;

(9) Authority to ask any governmental agency for cooperation, assistance, services, or data necessary to enable the OLRS to perform its duties;

(10) Indemnification of the administrator, attorneys, and 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;

(11) All functions of the OLRS Ombudsperson Section, which mediates complaints and attempts to resolve disputes at the lowest administrative level appropriate;

(12) Powers and duties related to court proceedings.

Continuing provisions

The bill maintains all of the following as powers and duties of the new Ohio Protection and Advocacy System:

(1) Access to the records of the individuals who may be represented by the System;

(2) Confidentiality of records received or maintained by the System;

(3) Authority to compel testimony by subpoena;

(4) Eligibility for grants or contracts provided through the Ohio Developmental Disabilities Council;

(5) Exemption from the general requirement that reports be made of abuse or neglect regarding persons with mental retardation or other developmental disabilities.

Transition provisions

Any aspect of the function of OLRS, the Legal Rights Service Commission, and the OLRS Ombudsperson Section that are commenced, but not completed on October 1, 2012, are to be completed by the new Ohio Protection and Advocacy System in the same manner, and with the same effect, as if the function 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 Ohio Protection and Advocacy System. 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 Ohio Protection and Advocacy System. In those actions and proceedings the System, on application to the court, is to be substituted as a party.

LOCAL GOVERNMENT (LOC)

- Requires newspaper publishers to establish and charge public officers of a political subdivision government rates for the publication of advertisements, notices, and proclamations.

- Revises the requirements for a newspaper to qualify as a "newspaper of general circulation" in which public notices and advertisements are published, and applies the definition to the entire Revised Code.

- Eliminates the requirement that publication be made in a newspaper *published in* a political subdivision, in two newspapers, or in two newspapers of opposite politics.

- Eliminates the requirement that a newspaper have second-class postal privileges; instead, uses the standard of publishing notices and advertisements in a newspaper of general circulation.

- Authorizes mediation under a program operated by the court of common pleas if a newspaper's qualifications as a newspaper of general circulation are in question.

- Specifies that if a codified statute requires a state agency or political subdivision to publish a notice or advertisement two or more times in a newspaper and the statute authorizes the use of an alternative publication procedure, the state agency or political subdivision may satisfy the multiple publication requirement by publishing the first notice or advertisement in its entirety in a newspaper of general circulation (which may be made in a pre-printed insert), and by publishing a second, abbreviated notice or advertisement in that newspaper and on the newspaper's Internet web site, if any.

- Requires the abbreviated notice to refer to a web site operated and maintained by the state agency or local government, or on the state public notice web site established under the bill, on which web site the entire notice or advertisement must be posted.

- Requires each newspaper to establish a "government rate" for publication of local government public notices and advertisements, which cannot exceed the lowest classified advertising rate and lowest insert rate paid by other advertisers.

- Requires newspapers to post the notices and advertisements free on the newspaper's Internet web site, if the newspaper has one.

- Allows county auditors to charge a land or home owner a flat fee for the cost of publishing the land or home on the delinquent real property or delinquent manufactured home tax lists, and to place the fee as a lien on tax delinquent parcels or manufactured homes if it is not paid.

- Authorizes publication of a succinct summary of a local government's ordinance, resolution, or rule in a newspaper of general circulation, rather than the entire ordinance, resolution, or rule.

- 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.

- Requires political subdivisions that enter into such an agreement to obtain the written consent of a non-participating subdivision before the agreement is performed within that non-participating subdivision.

- Earmarks $50 million of commercial activity tax revenue each year to fund grants to local governments to help cover costs of implementing or enhancing shared services.

- Removes the sunset date for the amendments made to the New Community Authority Law by Sub. H.B. 313 of the 128th General Assembly and makes those changes applicable to all new community authorities.

- Provides that, a new community district not wholly contained in a municipality may be less than 1,000 acres if more than half of it is located within a joint economic development district.

- Provides that a "proximate city" may be any municipal corporation in which any part of the new community district is located or, if more than half of the new community district is or was located within a joint economic development district, the township containing the greatest portion of the new community district.

- Requires a proximate city to affirmatively disapprove a petition on the basis of good cause shown in order to halt the organization proceedings for a new community and revises the time frame within which establishment petitions must be heard and decided.

- Changes the organizational board of commissioners in cases where more than half of the proposed new community district lies within the boundaries of a municipal corporation.

- Requires that certain filings be filed with or given by the clerk of the organizational board of commissioners instead of the clerk of the board of county commissioners when the board of county commissioners is not also the organizational board of commissioners.

- Provides that while an election may be used as an alternative method of selecting successor trustees of the board of a new community authority (NCA), it is not the required method.

- Provides that bonds and notes of an NCA are lawful investments for certain specified private and public entities and are acceptable as security for public moneys.

- Allows a county and an NCA to enter into an agreement that gives the NCA the authority to act on the county's behalf with regard to delinquent lands when a property has overdue community development charges; permits the agreement to authorize the NCA to use the alternative redemption period for a foreclosure on property.

- Provides that, upon dissolution of an authority, the property may vest in a township upon agreement of the township.

- 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.

- Creates a "**fiscal caution**" designation for municipal corporations, counties, and townships (hereinafter, "local governments").

- Requires local governments in **fiscal watch** to provide a financial recovery plan that identifies the actions to be taken, includes a schedule detailing the approximate dates for beginning and completing those actions, and provides a five-year forecast reflecting the effects of those actions.

- With respect to local governments in **fiscal emergency**:

  --Revises the composition of, and reduces the number of members on, a financial planning and supervision commission established upon the occurrence of a fiscal emergency in a local government;

  --Eliminates that current requirement that, upon a fiscal emergency, a financial planning and supervision commission be established for all villages and townships and, instead, specifies that for villages or townships with a population of less than 2,500, the Auditor of State will serve as the financial supervisor with all the powers and responsibilities of a commission;

  --Requires that a local government's financial plan include a five-year forecast reflecting the effects of the actions specified in the plan and that the plan be updated annually;

  --If a local government fails to submit a financial plan, or fails to substantially comply with it, and the commission gives its certification, requires that all state funding (other than benefit assistance to individuals) be escrowed until a plan is submitted or compliance is achieved;

--In addition to its current authority to limit a local government's general fund expenditures, permits a commission to limit expenditures from any other fund if deemed prudent;

--Adds that, if an officer of a local government in fiscal emergency is convicted of certain violations of current law, the officer is ineligible to hold any public office in Ohio or be employed by a public entity in Ohio for seven years after the conviction;

--Provides for the dissolution of municipal corporations, counties, and townships that are in fiscal emergency and meet specified conditions.

- Clarifies that the Auditor of State is to be reimbursed for any expenses incurred relating to a fiscal emergency or fiscal watch, including technical and support services, and that the Controlling Board must provide sufficient funds for this purpose if necessary.

- 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, human resources, revenue collection, and mail operation services.

- 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.

- Authorizes one or more townships to merge into a contiguous township, creating a new township, by resolution of the boards of township trustees of the townships merging, subject to voter referendum.

- Requires merging townships to enter into a merger agreement that contains specific terms and conditions of the merger, but if no agreement is entered into or if only partial agreement is reached, requires the new township to function under default terms and conditions prescribed by the bill.

- Allows the voters of each township to propose a merger by initiative petition.

- Authorizes the boards of township trustees to submit the question of merger to the voters of the townships to be merged, for their approval.

- Authorizes state institutions of higher education to participate in joint projects with a joint recreation district and other contracting subdivisions.

- Adds educational facilities as one of the projects that may be jointly acquired, constructed, operated, or maintained.

- 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.

- 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.

- Authorizes the board also to adopt a three-year spending plan or amended spending plan with a quarterly schedule of expenses and expenditures of appropriations from any county fund, for any county office, department, or division under certain circumstances.

- Allows townships to compensate a township fiscal officer from various township funds, in addition to the township general fund, based on the proportion of time the fiscal officer spends in relation to each fund.

- Permits a board of township trustees to request that expenses incurred by a county board of elections in relation to a township tax levy ballot issue be withheld from a particular township fund credited with tax revenue in a tax settlement.

- Allows general obligation bonds issued by a county to finance the acquisition or construction of real property to have a maximum maturity of up to 40 years if supported by a certification as to the property's estimated useful life.

- Creates, until November 5, 2013, an additional procedure for subdivisions to join a regional transit authority (RTA) that levies a property tax and that includes a county having a population of at least 400,000 by placing the issue on the ballot; until November 5, 2013, allows a subdivision that is a member of such an RTA to withdraw from the RTA by placing the issue on the ballot; and allows a subdivision that withdraws from an RTA after placing the issue on the ballot to contract for the provision of transportation services.

- Expands the scope of the contracting authority of a county sewer district when conveying water supply facilities and sewer facilities to a municipal corporation.

Government notice publication

(R.C. 7.10, 7.11, and 705.16)

The bill requires newspaper publishers to establish and a charge public officer of a political subdivision, but not public officers of the state, a government rate for the publication of advertisements, notices, and proclamations that are required to be published by the public officer. The government rate may not exceed the lowest classified advertising rate and lowest insert rate paid by other advertisers. Under current law, a publisher of a newspaper may charge and receive for such an advertisement, notice, or proclamation, rates charged on annual contracts by them for a like amount of space to other advertisers who advertise in the newspaper's general display advertising columns.

Publication of public notices and advertisements

Sub. H.B. 101 of the 126th General Assembly created the Local Government Public Notice Task Force, consisting of 22 members, and assigned the Task Force the task of reviewing public notice requirements for local governments to decide if the notice requirements are still needed, to determine if there are other methods to fulfill those requirements, and to determine if any changes in the publication methods would enhance public availability and provide cost savings to local governments. The Task Force issued a report of its findings on May 31, 2008. The bill implements some of the Task Force's recommendations. The bill also revises some of the publication requirements for state agencies.

Qualification standards for a "newspaper of general circulation"

(R.C. 7.12(A); over 200 R.C. sections in the bill; repeal of R.C. 7.14 and 701.04)

The bill modifies the requirements for a newspaper to qualify as a "newspaper of general circulation" in which legal publication of notices and advertisements are made as required by law. The bill revises numerous local government notice and advertisement statutes throughout the Revised Code to provide that publication must be made in a newspaper *of general circulation in* a political subdivision, rather than in a newspaper *published in* the political subdivision. The bill eliminates the requirements of publication in newspapers of opposite politics, in two newspapers, or in newspapers with second-class mailing privileges and instead uses the standard of publishing notices and advertisements in a newspaper of general circulation. Except for daily law journals that existed before July 1, 2001, for purposes of the Revised Code, the bill defines a "newspaper" or "newspaper of general circulation" as a publication bearing a title or name that is regularly issued at least once a week, and that:

- Is printed in the English language using standard printing methods, being not less than eight pages in the broadsheet format or 16 pages in the tabloid format.

- Contains at least 25% editorial content, including local news, political information, and local sports.

- Has been published continuously for at least three years immediately preceding legal publication by the state agency or political subdivision.

- Is circulated generally by United States mail or carrier delivery in the political subdivision responsible for legal publication, or in the state, if legal publication is made by a state agency, by proof of a United States Postal Service "Statement of Ownership, Management, and Circulation," PS Form 3526, filed with the local postmaster, or by

proof of an independent audit of the publication performed within the 12 months immediately preceding legal publication.

- Has the ability to add subscribers to its distribution list.

Under existing law, to qualify as a newspaper in which notices and advertisements may be published, the newspaper must be *published in* the political subdivision, or if no newspaper is published in the subdivision, it must be of general circulation therein. If there are less than two newspapers published in the political subdivision, then publication must be made in a newspaper regularly issued at stated intervals from a known office of publication located in the political subdivision. Under existing law, except for daily law journals in which a judge serves legal notices and publishes the court calendar and other matters pending in the court, 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 repeals two provisions[210] that allow publication of notices in a newspaper of general circulation when no newspaper is published in the place designated in a statute or when a publisher refuses to insert a notice in the publisher's newspaper. This "out" is no longer needed because the bill establishes the general standard that notices and advertisements are to be published in a newspaper of general circulation in the political subdivision.

Mediation procedure if newspaper's qualifications are in question

(R.C. 7.12(B))

Any person who questions whether a publication is a newspaper of general circulation in which notices or advertisements may be published may request mediation to determine the matter. Under the bill, the person who questions the newspaper's qualifications may deliver a written request for mediation to the publisher of the publication and to the court of common pleas of the county in which is located the political subdivision in which the publication is circulated, or in the Franklin County Court of Common Pleas if legal publication is required to be made by a state agency.

[210] R.C. 7.14 and 701.04.

The court of common pleas must appoint a mediator, and the parties must follow the procedures of the mediation program operated by the court.

Alternative publication procedure for notices or advertisements

(R.C. 7.16)

In many instances, continuing law requires a state agency or political subdivision to publish notices or advertisements more than twice. The bill establishes an alternative publication procedure that political subdivisions, and, in some cases, state agencies, may choose to follow for publication of notices and advertisements. The bill provides that if a codified statute requires a political subdivision to publish a notice or advertisement two or more times in a newspaper of general circulation *and the statute refers to* the alternative publication procedure, the *first* publication of the notice or advertisement must be made in its entirety in a newspaper of general circulation and may be made in a pre-printed insert in the newspaper. But the *second* publication otherwise required by that codified statute may be made in abbreviated form in a newspaper of general circulation in the state or in the political subdivision, as designated in that statute, and on the newspaper's Internet web site (if any exists). The state agency or political subdivision may eliminate any further newspaper publications required by that codified statute, provided that the second, abbreviated notice or advertisement in the newspaper:

(1) Is published in the newspaper in which it was first published and on that newspaper's Internet web site, if the newspaper has one;

(2) Includes a statement that the notice or advertisement is posted in its entirety on the state agency's or political subdivision's Internet web site, or on the state public notice web site established by the Office of Information Technology[211] (see "**State public notice web site**," above);

(3) Includes the state agency's, political subdivision's, or the state public notice web sites and the newspaper's Internet addresses;

(4) Includes instructions for accessing the notice or advertisement on those Internet web sites; and

(5) Is of sufficient size that it is at least one-fourth of the size of the first publication in the newspaper.

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[211] *See* 125.182 in the bill.

In choosing to use this alternative publication procedure, a notice or advertisement published on a web site must be published in its entirety in accordance with the codified statute that requires publication. And if a state agency or political subdivision does not operate and maintain, or ceases to operate and maintain, an Internet web site, and if the state public notice web site is not operational, the state agency or political subdivision cannot publish a notice or advertisement under this alternative procedure, but instead must comply with the original publication requirements.

The bill does not revise laws that already require a less stringent publication standard whereby a local government may refer to its web site in the first newspaper publication of a notice or advertisement, for example R.C. 307.37, 505.75, or 731.14, among other statutes. The bill also does not eliminate the requirement that a board of elections post election notices on its web site, if any is operated and maintained by the board, for 30 days prior to an election (*see,* for example, R.C. 511.34 or 5705.196).

Government rate for publication and free Internet postings

(R.C. 7.10 and 7.11)

Continuing law allows newspaper publishers to charge the public officers of state and local governments for publication of advertisements, notices, and proclamations, except those relating to proposed amendments to the Ohio Constitution. Under existing law, the publishers may charge the same rates they charge under annual contracts for a like amount of space to other advertisers who advertise in the newspaper's general display advertising columns. The bill requires newspaper publishers to instead establish and charge public officers of a county, municipal corporation, township, school, or other political subdivision (but not public officers of the state) government rates for the publication of advertisements, notices, and proclamations, which must include free publication of them on the newspaper's Internet web site, if the newspaper has one. The government rate cannot exceed the lowest classified advertising rate and lowest insert rate paid by other advertisers. In addition, the government rate must be charged for various types of notices printed in display form, rather than the commercial rate.

The bill also requires that legal advertisements and notices be printed in newspapers of general circulation and be posted on a newspaper's Internet web site, if the newspaper has one.

Costs of publishing delinquent tax lists

(R.C. 319.54, 4503.06(H), and 5721.04)

Continuing law allows county auditors to apportion the costs of publishing delinquent manufactured home tax lists, delinquent personal or real property tax lists, delinquent vacant land tax lists, and display notices among the taxing districts in proportion to the amount of delinquent taxes advertised in each taxing district. The bill creates another method by which county auditors may collect publication costs. Under the bill, a county auditor may charge the owner of a home or land on a list a flat fee for the cost of publishing the list and, if the fee is not paid, may place the fee upon the tax duplicate as a lien on each listed home or land, to be collected as other manufactured home or real property taxes.

Publication of delinquent tax lists

(R.C. 5719.04 and 5721.03)

The bill provides that a delinquent personal property tax list, delinquent tax list, and delinquent vacant land tax list must be published in a "newspaper of general circulation," as defined in the bill, and may be published on a pre-printed insert in the newspaper. Otherwise, the bill does not change the number of times these lists must be published, nor does it allow publication of these lists under the bill's alternative publication procedure.

Under the bill, the cost of the second publication of any one of these lists cannot exceed three-fourths of the cost of the first publication of the list.

Notices pertaining to sales or foreclosures of delinquent land

(R.C. 323.73(A), 2329.26(A), 5721.18(B), 5721.31(C), and 5722.13)

Notices of public auctions of abandoned land or land held by a subdivision under a land reutilization program, of sales of land taken in execution of a judgment, of foreclosures, and of sales of delinquent land tax certificates must continue to be published the number of times required by continuing law and may not be published under the bill's alternative publication procedure. However, the bill requires that these notices be published in a "newspaper of general circulation."

Publishing summaries of local government rules, ordinances, and resolutions

Existing law, for example R.C. 307.791, 705.16, and 731.21, among other statutes, provides that upon passage of a local government's rule, ordinance, or resolution, its

complete text, or a succinct summary of it, must be published in the newspaper or, in some cases, in two newspapers of general circulation. The bill requires that a succinct summary of the rule, ordinance, or resolution be published in a newspaper of general circulation, rather than the entire rule, ordinance, or resolution.

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 prohibits any power from being exercised, any function from being performed, or any service from being rendered by a contracting political subdivision pursuant to an agreement, within a political subdivision that is not a party to the agreement, without first obtaining the written consent of the political subdivision that is not a party to the agreement and within which the power is to be exercised, a function is to be performed, or a service is to be rendered.

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.

Local Government Integrating and Innovation Committees

(R.C. 122.085, 122.088, 122.0810, 122.0816, 122.0819, 122.65, 122.652, 122.653, 122.657, 164.02, 164.04, 164.05, 164.051, 164.06, 164.08, 164.14, 164.21, and 164.30)

Grants to local subdivisions from Local Government Integrating and Innovation Committees

The bill permits counties, municipal corporations, townships, sanitary districts, and regional water and sewer districts ("local subdivisions") to apply to that subdivision's district Public Works Integrating Committee, renamed Local Government Integrating and Innovation Committees under the bill, for grants to pay for the costs of implementing or enhancing "service sharing" between subdivisions. Continuing law charges the committees with allocating state bond-funded infrastructure assistance among local subdivisions (R.C. 164.06). "Service sharing" is not defined.

Allowable costs for purposes of applying for a grant include making a transition to, establishing, or paying for the initial operations of shared services, but such costs do not include the costs for ongoing operation of the shared service. Each application is required to describe the shared services and the costs of the services, as well as anything else required by the committee.

Grants are awarded competitively on the basis of projected cost efficiencies. No more than $250,000 may be awarded to each applicant for each service sharing proposal. At least 20% of grant money must be awarded to townships; up to 30% could be awarded to local subdivisions in fiscal emergency primarily because of reductions in

federal, state, and local revenue since 2008. Fiscal emergency is a status determined by the Auditor of State on the basis of certain fiscal conditions (see R.C. 118.03 and 118.04).

Each application approved by a district committee is to be forwarded to the Director of the Public Works Commission, who, upon a review of the application and after finding that the application was properly approved, finally approves the grant. Up to 3% of the funds allocated to the Integrating and Innovation Fund (see below) may be used by the Public Works Commission to defray the costs of the Commission or Local Government Integrating and Innovation Committees incurred by administering the grant program.

Integrating and Innovation Fund appropriation

The bill creates the Integrating and Innovation Fund, which is funded by revenue collected from the commercial activity tax. The fund provides appropriations to the grant program created under the bill. The bill allocates $50 million to the Integrating and Innovation Fund for each fiscal year beginning with fiscal year 2012. For each fiscal year, the amount allocated to each district committee is proportionate to the amount distributed in the latest program year from the state capital improvements fund to local subdivisions represented by that committee.

New community authorities (NCA)

Removal of sunset date

(R.C. 349.01, 349.03, 349.04, 349.06, 349.09, 349.14, and 349.17)

The bill removes the sunset date for the amendments made to the New Community Authority Law by Sub. H.B. 313 of the 128th General Assembly and makes those changes applicable to all new community authorities. Under the bill, the following apply to all NCAs as a result of the removal of the sunset date, not just to those created between July 7, 2010, and January 1, 2012, as under existing law:

(1) A new community may be planned in relation to an existing community, not necessarily in relation to an existing new community, so that the community includes facilities for conducting community activities.

(2) An NCA may finance, construct, own, and operate various types of community facilities, including town buildings or other facilities, health care and hospital facilities, and off-street parking facilities.

(3) A new community development program undertaken under the bill need not itself exhibit a "well-balanced and diversified" land use pattern so long as such a pattern remain present in the wider new community once the development occurs.

(4) A developer of a proposed new community district must own or control land through leases of at least 40 years.

(5) Any organizational board of commissioners may provide, by resolution, for an alternative means of dissolution of a district, in lieu of dissolution by a majority of the voters of the district.

(6) An NCA is authorized to provide activities and services for visitors to and employees and employers in the district in addition to residents of the community.

(7) An NCA may enter into agreements with political subdivisions providing for revenue sharing, for services, products, and materials, and for the administration, calculation, or collection of community development charges in addition to contracting with local governments.

The bill makes other changes to provisions covered by the sunset date in existing law as well as changes to provisions not affected by the sunset date.

Establishing an NCA

(R.C. 349.01 and 349.03)

Under the bill, the general procedure for establishing an NCA remains the same as under existing law: a developer by petition to a board may establish a new community district that must be approved by a proximate city. The bill makes changes regarding the board that receives the petition, acreage requirements for districts, the definition of a proximate city, the time frame for certain procedures and filings, and the manner of dealing with a petition that is not approved.

In order to organize an NCA, the bill requires that a petition be filed by a developer with the clerk of the organizational board of commissioners, not with the office of the clerk of the board of county commissioners as required by existing law (see "**Organizational board of commissioners**").

If more than half of a proposed new community district is or was contained within a joint economic development district, the bill exempts the proposed new community district from the requirement that the total acreage included in the district be 1,000 acres or more. This exemption is in addition to the continuing exemption for districts that are wholly contained within municipalities.

The bill shortens the time frame for an organizational board of commissioners to schedule a hearing on the petition for the establishment of the proposed NCA to between 30 and 45 days after the petition was filed. Under current law, hearings are

scheduled between 95 and 115 days after the filing date, except in cases where the petition is signed by all proximate cities in the proposed NCA.

The bill requires a proximate city to affirmatively disapprove a petition on the basis of good cause shown in order to halt the organization proceedings for a new community and changes the timeframe for approval or disapproval. Once a notice is published in a newspaper of general circulation and given to the clerk of the legislative authority of each proximate city that did not sign a petition as under continuing law, the bill requires a proximate city that intends to disapprove the establishment of the proposed NCA to deliver an ordinance, resolution, or motion of disapproval to the clerk of the organizational board of commissioners with which the petition was filed. The disapproval must be delivered to the board within 28 days of the proximate city's legislative authority receiving the notice of the petition. A disapproval must be for good cause shown that the proposed district will not be conducive to the public health, safety, convenience, and welfare, and that it is not intended to result in the development of a new community. In order to disapprove the establishment of an NCA under current law, a proximate city is not required to take any action; if an approved petition is not returned within 90 days of the publication of the notice of a public hearing, the proceedings for the establishment of an NCA are terminated.

The bill expands the definition of "proximate city" to include a municipal corporation in which any part of the new community district is located or, if more than half of the new community district is or was located within a joint economic development district, the township containing the greatest portion of the new community district.

Under the bill, if the clerk of the organizational board of commissioners does not receive the disapproval of a proximate city for good cause shown within 28 days of the proximate city's legislative authority receiving the notice of the petition, the NCA is declared organized. Conversely, if the clerk of the organizational board of commissioners has received a disapproval for good cause shown from a proximate city, the petition will be rejected and the proceedings will be terminated. This is in addition to the provision under continuing law that terminates the establishment of an NCA if the board finds that the district will not be conducive to the public health, safety, convenience, or welfare.

Organizational board of commissioners

The bill replaces the term "board of county commissioners" with "organizational board of commissioners" to encompass proposed new community districts where more than half of the district is located within the boundaries of a municipal corporation. In

this case, the bill changes the organizational board of commissioners to the legislative authority of a municipal corporation.

The bill specifies that, after the creation of an NCA, a developer may file an application with an organizational board of commissioners that sets forth a general description of the territory it desires to add or to delete from the district. Current law requires the application be filed with the clerk of the board of county commissioners.

The bill requires that each member of the board of trustees of the NCA file an oath with the clerk of the organizational board of commissioners. Current law requires the oath be filed with the clerk of the board of county commissioners.

Board of trustees

(R.C. 349.04)

The bill, by removing the sunset date, authorizes citizen members of NCAs to be selected by means other than an election if the organizational board of commissioners, by resolution, provides for such alternative means and permits the citizen members to represent present and future employers within a district. Additionally, the bill provides that a means of selection for citizen members may be adopted by petition.

NCA bonds

(R.C. 349.09)

The bill provides that bonds and notes of an NCA are lawful investments for certain specified private and public entities and are acceptable as security for public moneys.

NCA may act as a county regarding delinquent properties

(R.C. 323.78 and 349.17; conforming changes in R.C. 349.07)

The bill permits a county to enter into an agreement with an NCA that gives the NCA the authority to act on the county's behalf with regard to delinquent property within the NCA boundaries and the county when all or a portion of the community development charges related to the property are not paid when due. The agreement may permit an NCA to, on behalf of the county, elect that the alternative redemption period following an adjudication of foreclosure apply to foreclosures of property within the new community district due to nonpayment of community development charges, taxes, or other charges.

Dissolution of an NCA

(R.C. 349.14)

The bill provides that, upon dissolution of an authority, any property of an NCA that is not located within a municipal corporation may vest in the township where the property is located, if the township agrees. This is in addition to continuing law's provision that property from an NCA dissolution may vest in a county. A township may agree to this vesting through acceptance of the property by resolution of the board of township trustees by resolution or petition. If property is vested in a township after dissolution by petition, any funds of the NCA will be transferred to the township, as provided in the resolution or petition for dissolution, in the proportion to the assessed valuation of taxable real property of the NCA within such township as the valuation appears on the current assessment rolls.

Application of amendment to the NCA Law

(Section 803.50)

The amendments made to the NCA Law apply to any pending and in progress proceedings and any proceedings commenced after the amendment's effective date. They also apply to proceedings that are completed on the effective date, notwithstanding applicable law previously in effect or contrary provisions. The amendments provide additional and supplemental provisions for subject matter that may also be the subject of other laws, and the amendments are not in derogation of any authority provided by, derived from, or implied by the Ohio Constitution or any other law.

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.

Local governments in fiscal distress

Fiscal caution

(R.C. 118.025)

The bill creates a "fiscal caution" designation for municipal corporations, counties, and townships (hereinafter, "local governments"). The Auditor of State is to develop guidelines for identifying fiscal practices and budgetary conditions of these local governments that, if uncorrected, could result in a future declaration of a fiscal watch or fiscal emergency as provided in current law. If the Auditor of State determines that a local government is engaging in any of those practices or that any of those conditions exist, the Auditor of State may declare the local government to be under a "fiscal caution."

Upon such a declaration, the Auditor of State must promptly notify the local government and request it to provide written proposals for discontinuing or correcting the fiscal practices or budgetary conditions that prompted the declaration and for preventing it from experiencing further fiscal difficulties that could result in a declaration of fiscal watch or fiscal emergency. The Auditor of State, or a designee, may visit and inspect any local government declared to be under a fiscal caution, provide technical assistance to the local government in implementing proposals to eliminate the designated practices or budgetary conditions, and make recommendations concerning those proposals. The Controlling Board is required to provide sufficient funds for any costs incurred by the Auditor of State in determining if a fiscal caution exists and for providing technical and support services.

If the Auditor of State finds that a local government declared to be under a fiscal caution has not made reasonable proposals or otherwise taken action to discontinue or correct the fiscal practices or budgetary conditions that prompted the declaration, and if the Auditor of State considers it necessary to prevent further fiscal decline, the Auditor of State may determine that the local government should be in a state of fiscal watch.

Fiscal watch

(R.C. 118.023)

The bill requires the mayor of a municipal corporation, the board of county commissioners of a county, or the board of township trustees of a township for which a fiscal watch was declared, within 120 days after that declaration was made, to submit to the Auditor of State a financial recovery plan that identifies the actions to be taken to eliminate all of the conditions that prompted the declaration. The plan must include a schedule detailing the approximate dates for beginning and completing those actions and a five-year forecast reflecting the effects of the actions. For good cause shown, the Auditor of State may extend the amount of time by which a financial recovery plan is required to be filed. The plan is subject to review and approval by the Auditor of State.

If a feasible financial recovery plan is not submitted within the 120-day time period or within any extension of time granted to the local government, the Auditor of State must declare that a fiscal emergency condition exists.

Fiscal emergency

Financial planning and supervision commissions

(R.C. 118.05)

The bill provides an exemption to the current requirement that, upon the occurrence of a fiscal emergency in a local government, a financial planning and supervision commission is established for that local government. Under the bill, a commission is *not* established with respect to any village or township with a population of less than 2,500 as of the most recent federal decennial census. Upon the occurrence of a fiscal emergency in such a village or township, the Auditor of State is to serve as the financial supervisor of the village or township with all the powers and responsibilities of a commission.

The bill also revises the composition of, and reduces the number of members on, a commission. Under the bill, each commission is to consist of the following members:

(1) The Treasurer of State;

(2) The Director of Budget and Management;

(3) In the case of a municipal corporation, the presiding officer of the legislative authority of that municipal corporation; in the case of a county, the president of the board of county commissioners; and in the case of a township, a member of the board of township trustees;

(4) The county auditor or county fiscal officer;

(5) One member, appointed by the Governor, whose residency, office, or principal place of professional or business activity is situated within the municipal corporation, county, or township.

If the member appointed by the Governor fails to attend three consecutive meetings, the bill permits the chairperson of the commission to remove the individual. In that event, the Governor must fill the vacancy in the same manner as the original appointment.

(Under existing law, membership of a commission ranges from five to seven, depending on the size of the municipal corporation, county, or township. If it has a population of 1,000 or more, three members are appointed by the Governor; if the population is less than 1,000, the Governor appoints one member. Each appointed member must have knowledge in financial matters, financial management, or business organization or operations; must be a resident of, or have an office or principal place of

business activity in, the municipal corporation, county, or township; and cannot become a candidate for elected public office while serving as a commission member. All appointments must be made with the advice and consent of the Senate. Each member is to serve during the life of the commission, subject to removal by the Governor for misfeasance, nonfeasance, or malfeasance in office. Except as otherwise described above, the bill eliminates these qualifications for the appointed members and the procedures required for their appointment.)

Financial plans

(R.C. 118.06)

The bill requires that the financial plan of a local government in fiscal emergency include a five-year forecast reflecting the effects of the actions to be taken, and that the plan be updated annually. If a local government fails to submit the required financial plan, or fails to substantially comply with an approved financial plan, upon certification of the financial planning and supervision commission, all state funding for that local government − other than benefit assistance to individuals − must be escrowed until a feasible plan is submitted and approved or substantial compliance with the plan is achieved, as the case may be.

Expenditures

(R.C. 118.12)

If a financial plan is not submitted as required, the bill permits the commission − if the commission considers it prudent − to limit any non-general fund expenditures of the local government. This is in addition to the limitation on general fund expenditures imposed by current law.

The bill permits a local government, after its financial plan is approved, to make expenditures contrary to the plan *if* it receives the advance approval of its financial supervisor. The commission, however, may overrule the decision of the financial supervisor by a majority vote.

Dissolution

(R.C. 118.31)

Upon petition of the financial supervisor of a local government and approval of its commission, if any, the Attorney General must file a court action to dissolve a local government if **all** of the following conditions apply:

(1) The local government has a population of less than 5,000 as of the most recent federal decennial census.

(2) The local government has been under a fiscal emergency for at least two consecutive years.

(3) Implementation of the local government's financial plan cannot reasonably be expected to correct and eliminate all fiscal emergency conditions within five years.

If the court finds that all of those conditions apply, it must enter an order removing the executive and legislative officers of the local government and appoint a receiver to execute all management duties. The receiver, under court supervision, is to wind up the affairs of the local government and dissolve it.

Prohibited actions

(R.C. 118.99)

Officers and employees of a local government under fiscal emergency are currently prohibited from taking certain actions relating to its finances and liabilities. For example, an officer and employee cannot enter into any contract or financial obligation, or transfer or borrow money from one fund of the local government to or for another fund, without the required approval of the financial planning and supervision commission. Upon conviction of an officer or employee for violating any of those prohibitions, the officer or employee must forfeit the office or employment.

The bill adds that, for the seven-year period immediately following the date of conviction, the officer is ineligible to hold any public office or other position of trust, or be employed by any public entity, in Ohio.

Reimbursement of the Auditor of State

(R.C. 118.04)

The bill clarifies that the Auditor of State is to be reimbursed for any expenses incurred relating to a determination or termination of a fiscal emergency or fiscal watch, including technical and support services. If necessary, the Controlling Board must provide sufficient funds for these purposes.

Cost savings and modified work weeks

(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.[212]

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, 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

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

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.

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.

Merger of townships to form a new township

Overview

The bill creates a procedure whereby one or more townships may merge with a contiguous township to create a new township, in the manner provided by the bill. Merger may be accomplished by resolution of the board of township trustees, a decision that is subject to the referendum, or by initiative petition of the voters of the townships to be merged. The boards of township trustees also may submit the question of merger to the voters of the townships proposed to be merged. The resulting new township has all of, and only, the rights, powers, and responsibilities afforded by law to townships.

Continuing law already authorizes a township to merge with a municipal corporation.[213] If merger conditions are approved by the voters, the merger takes effect with no additional action, and the boundaries of previously unincorporated township territory that is merged with the municipal corporation automatically conforms to the boundaries of the municipal corporation.[214] The bill's new merger procedure does not affect such a merger.

Merger proposed by the board of township trustees

(R.C. 523.02)

The bill authorizes the boards of township trustees of two or more townships to propose a merger by adopting resolutions, by a majority vote of each board of each township proposed for merger. The resolutions must state the necessity for merger, the townships that are to merge, the official name by which the new township will be known, and the boundaries of the new township that is to be created as the result of the merger.

A copy of each resolution adopted by a board of township trustees must be filed with the respective township fiscal officer of each township that is subject to the merger. The merger becomes effective on the 60th day after the last such filing is accomplished, unless, prior to the expiration of the 60-day period, a referendum petition is filed by the electors of any township proposed for merger.

Merger decision subject to referendum

(R.C. 523.03)

Not later than 60 days after a resolution proposing merger is filed with the township fiscal officer, a qualified elector of a township proposed for merger may present to the board of township trustees of that township a referendum petition, signed by a number of qualified electors residing in the township, equal in number to not less than 10% of the total vote cast in the township for Governor at the most recent general election at which a Governor was elected, requesting the board to submit the question of the merger to the electors of the township for approval or rejection at a special election to be held on the day of the next primary or general election occurring at least 90 days after the petition is submitted. The referendum petition is governed by the general requirements in existing law for petitions (for example, who may sign a

[213] R.C. 709.43 to 709.48.

[214] *See* Ohio Att'y Gen. Op. No. 2005-024.

petition, how signatures must be affixed, and how each page of the petition must be prepared).[215]

The bill requires that the referendum petition be filed at the office of the township fiscal officer of the township that is the subject of the petition. The person presenting the petition must be given a receipt containing on it the time of the day, the date, and the purpose of the petition. The township fiscal officer must cause the appropriate board of elections to check the sufficiency of signatures on the referendum petition and, if it is found to be sufficient, must present the petition to the board of township trustees at a meeting of the board that occurs not later than 30 days following the filing of the petition. Upon the petition being presented to the board of township trustees, the board is required to promptly certify the petition to the board of elections for the purpose of having the question of the merger placed on the ballot at a special election to be held on the day of the next general or primary election that occurs not less than 90 days after the date of the meeting of the board, the date of which must be specified in the certification.

Signatures on a referendum petition may be withdrawn up to and including the meeting of the board of township trustees certifying the proposal to the appropriate board of elections.

Upon certification of the referendum petition to the appropriate board of elections, the board of elections must make the necessary arrangements for the submission of the question of merger to the qualified electors of the township proposed for merger that is the subject of the petition. The election is to be conducted, canvassed, and certified in the same manner as regular elections in the township for the election of township officers. Notice of the election must be published in a newspaper of general circulation in the township once a week for two consecutive weeks prior to the election. If the board of elections operates and maintains a web site, the board must post notice of the election on the web site for 30 days prior to the election. The notice must state the necessity for merger, the townships that are proposed for merger, the official name by which the new township will be known, the boundaries of the new township created as the result of the merger, and the time and place of the election.

The form of the ballots cast at the election must name all of the townships to be merged, ask the voters whether the townships should be merged to create a new township, and state the name of the new township.

No merger for which a referendum vote has been requested may be put into effect unless a majority of the votes cast on the issue in the township that is the subject

[215] R.C. 3501.38.

of the referendum petition is in favor of the merger. The merger takes effect 60 days after certification by the board of elections that the merger has been approved by the voters.

Merger proposed by initiative petition of townships' electors

(R.C. 523.04)

A resolution for a merger of townships may be proposed by initiative petition by the electors of each township being proposed for merger, and adopted by election by these electors under the same circumstances, in the same manner, and subject to the same penalties as provided in existing law for presenting initiative petitions to municipal corporations, except that all of the following apply:

(1) Each board of township trustees must perform the duties imposed on the legislative authority of the municipal corporation;

(2) Initiative petitions must be filed with the township fiscal officer of each township proposed for merger, who must perform the duties imposed under that existing law upon the city auditor or village clerk;

(3) Initiative petitions must contain the signatures of not less than 10% of the total number of electors in a township proposed for merger who voted for the office of Governor at the most recent general election in the township for that office;

(4) Each signer of an initiative petition must be an elector of the township in which the election on the proposed resolution is to be held.

The merger of the townships takes effect 60 days after certification by the board or boards of elections that the merger has been approved by the electors of each township proposed for merger.

Question of merger may be submitted to the voters

(R.C. 523.05)

Rather than deciding to merge townships by resolution adopted by the boards of township trustees of the townships being merged, the boards may decide to submit the merger question to the voters of the townships. Under the bill, the boards of township trustees of two or more townships, by adopting resolutions by unanimous vote of the board of township trustees of each township, may cause the appropriate board of elections for each township to submit to the electors of each township the question of merger of townships. The question must be voted upon at the next general election occurring not less than 90 days after the certification of the resolutions to the

appropriate board of elections. The board of elections must submit the question in language substantially as set forth in the bill, naming the townships to merge, asking whether they should be merged, and stating the name of the resulting new township.

The merger takes effect 60 days after certification by the board or boards of elections that the merger has been approved by the electors of each township proposed for merger.

Merger agreement

(R.C. 523.06)

Within 60 days after a merger takes effect by resolution of the boards of township trustees, or after approval of the merger by the voters (either by initiative petition or when the boards of township trustees submit the merger question to the voters), each board of township trustees of the townships merged, by adopting a joint resolution approved by a majority of the members of each board, must enter into a merger agreement that contains the specific terms and conditions of the merger. At a minimum, the merger agreement must set forth all of the following:

- The names of the former townships that were merged.
- The name of the new township.
- The place in which the principal office of the new township will be located or the manner in which it may be selected.
- The territorial boundaries of the new township.
- The date on which the merger took effect.
- The governmental organization for the new township, including a plan for electing officers at the next general election that is held not later than 90 days after the merger agreement is finalized.
- A procedure for the efficient and timely transition of specific services, functions, and responsibilities from each township and its respective offices to the new township.
- Terms for the disposition of the assets and property of each township, if necessary.
- The liquidation of existing indebtedness for each township, if necessary.

➢ A plan for the common administration and enforcement of resolutions of the townships merged, and of ordinances, if a township is located in a municipal corporation, to be enforced uniformly within the new township.

➢ A provision that specifies whether there will be any zoning changes as a result of the merger, if applicable.

➢ A plan to conform the boundaries of an existing special purpose district with the new township, to dissolve the special purpose district, or to absorb the special purpose district into the new township. The bill defines "special purpose district" as any geographic or political jurisdiction that was created under law by a township merged.

A copy of the joint resolution and the merger agreement must be filed with the township fiscal officer of the new township. The merger agreement takes effect on the day on which the filing is made.

If no merger agreement, or if only a partial merger agreement, is entered into within the 60-day time period prescribed, the new township must comply with and operate under a merger agreement that contains the default terms and conditions required under the bill.

Default terms and conditions of merger agreement

(R.C. 523.08)

If a merger agreement is entered into by the boards of township trustees of the townships merged, the default terms and conditions of a merger agreement do not have to be followed. If a merger agreement is not entered into, the merger agreement must contain all of the terms and conditions specified below. If a partial merger agreement is entered into, the default terms and conditions apply only to the extent any term or condition that is required by the bill to be addressed in the merger agreement is not addressed in it. The default terms and conditions of the merger agreement are as follows:

♦ All members of each board of township trustees must serve as board members of the new township. At the first general election held after a merger is approved, the electors of the new township must elect three township trustees for an even number of years not to exceed four, with staggered terms of office.

♦ The township fiscal officer of the largest township, by population, is the township fiscal officer for the new township. At the second election held after the merger, the electors must elect a township fiscal officer, whose first term of office must

be modified to an even number of years not to exceed four to allow subsequent elections for that office to be held in the same year as other township fiscal officers.

♦ Voted property tax levies remain in effect for the parcels of real property to which they applied prior to the merger, and the merger does not affect the proceeds of a tax levy pledged for the retirement of any debt obligation. Upon expiration of a property tax levy, the levy may only be replaced or renewed by vote of the electors in the manner provided by law, to apply to real property within the boundaries of the new township. If the millage levied inside the ten-mill limitation of each township merged is different, the board of township trustees of the new township must immediately equalize the millage for the entire new township.

♦ For purposes of the retirement of all debt obligations of each township merged, the township fiscal officer must continue to track parcels of real property and the tax revenue generated on those parcels by the tax districts that were in place prior to the merger, and must provide that information on an annual basis to the board of township trustees of the new township. Debt obligations that existed at the time of the merger are to be retired from the revenue generated from the parcels of real property that made up the township that incurred the debt before the merger.

♦ With respect to any agreement entered into under the Public Employees' Collective Bargaining Law[216] (the Law) that covers any of the employees of the townships merged, the State Employment Relations Board, within 60 days after the date the merger is approved, must designate the appropriate bargaining units for the employees of the new township in accordance with that Law.[217] Notwithstanding the recognition procedures prescribed in existing law,[218] the Board must conduct a representation election with respect to each bargaining unit designated in accordance with existing law. If an exclusive representative is selected through this election, the exclusive representative must negotiate and enter into an agreement with the new township under the Law. Until the parties reach an agreement, any agreement in effect on the date of the merger applies to the employees that were in the bargaining unit that is covered by the agreement. An agreement in existence on the date of the merger is terminated on the effective date of an agreement negotiated with the new township. If an exclusive representative is not selected, any agreement in effect on the date of the merger applies to the employees that were in the bargaining unit that is covered by the agreement and expires on its terms. Each agreement entered into under the Law on or

[216] R.C. Chapter 117.

[217] R.C. 4117.06.

[218] R.C. 4117.05 and 4117.07.

after the bill's effective date involving a new township must contain a provision regarding the designation of an exclusive representative and bargaining units for the new township. In addition to the laws listed in the Law[219] that prevail over conflicting agreements between employee organizations and public employers, this provision of the merger agreement prevails over any conflicting provisions of agreements between employee organizations and public employers that are entered into on or after the bill's effective date pursuant to the Law.

♦ If the boundaries of the new township are coextensive with a special purpose district that existed at the time of the merger, the special purpose district must be dissolved into the new township. (The bill defines "special purpose districts" as any geographic or political subdivision that was created under law by a township merged.) If the boundaries of the new township are not coextensive with a special purpose district, the new township remains in the existing special purpose district as a successor to the original township, unless the special purpose district is dissolved. The board of township trustees of the new township may place a question on the ballot at the next general election held after the merger to conform the boundaries, dissolve the special purpose district, or absorb the special purpose district into the new township on the terms specified in the resolution that places the question on the ballot for approval of the electors of the new township.

♦ Zoning codes that existed at the time of the merger must remain in effect after the merger, and the townships that existed before the merger must be treated as administrative districts within the new township for the purposes of zoning.

New township succeeds to certain interests

(R.C. 523.07)

A new township created by merger under the bill succeeds to the following interests of each township merged:

(1) All money, taxes, and special assessments, whether in the township treasury or in the process of collection;

(2) All property and interests in property, whether real or personal;

(3) All rights and interests in contracts, or in securities, bonds, notes, or other instruments;

(4) All accounts receivable and rights of action;

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[219] R.C. 4117.10(A).

(5) All other matters not included in this list that are not addressed in the merger agreement.

A new township created by merger is liable for all outstanding franchises, contracts, debts, and other legal claims, actions, and obligations of each township merged.

Joint projects by contracting subdivisions

(R.C. 755.16)

The bill authorizes a "contracting subdivision," jointly with one or more other contracting subdivisions, in any combination, to acquire property for, and to construct, operate, and maintain, educational facilities. Current law authorizes a municipal corporation, township, township park district, county, or school district, jointly with one or more other municipal corporations, townships, township park districts, counties, school districts, or educational service centers, in any combination, and a joint recreation district, to acquire property for, and to construct, operate, and maintain, any parks, playgrounds, playfields, gymnasiums, public baths, swimming pools, indoor recreation center, or community centers. The bill defines "contracting subdivision" to include all of the subdivisions specified in the previous sentence that may enter into joint contracts under current law, and adds state institutions of higher education to the list of subdivisions that may be contracting subdivisions.

The bill also adds educational facilities as one of the projects that may be jointly acquired, constructed, operated, or maintained, and authorizes a state institution of higher education to provide, by the erection of a state institution of higher education building or premises, or by the enlargement or improvement of such a building or premises, for the inclusion of parks, recreational facilities, educational facilities, and community centers to be jointly acquired, constructed, operated, and maintained. The law currently only allows school districts or educational service centers to provide, by the erection of any school or educational service center building or premises, or by the enlargement or improvement of such a building or premises, for the inclusion of parks, recreational facilities, and community centers, but not educational facilities, to be jointly acquired, constructed, operated, and maintained.

The bill adds to this law a definition of "school district," which means any of the school districts or joint vocational school districts referred to in an existing law (city school districts, local school districts, exempted village school districts, cooperative education school districts, and joint vocational school districts). The bill also adds a definition of "state institution of higher education," which is any state university or

college, community college, state community college, university branch, or technical college.

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,[220] 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.[221]

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.

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[220] R.C. 755.19 and 755.20, not in the bill.

[221] *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.

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.
- 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.

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. The bill also authorizes a board of county commissioners, during any fiscal year, by resolution, to adopt a spending plan or an amended spending plan setting forth separately a quarterly schedule of expenses and expenditures of appropriations from any county fund, for any county office, department, or division that, during the previous fiscal year, spent 105% or more of the total amount appropriated by the board in its annual appropriation measure. This spending plan or amended spending plan must remain in

effect three fiscal years, or until the county officer of the office for which the plan was adopted is no longer in office, including terms of office to which the county officer is re-elected, whichever is later.

At least 30 days before a resolution for either type of proposed or amended spending plan authorized by the bill is adopted, the board of county commissioners 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.

Township fiscal officer compensation

(R.C. 505.24 and 507.09)

Under continuing law, township fiscal officers receive compensation according to a statutory schedule based on the population of the fiscal officer's township. The compensation is paid on a salary basis, in equal monthly installments. Currently, the Auditor of State recommends that each township pay this compensation from the township's general fund.[222]

[222] The recommendation is included in the Ohio Township Handbook published by the Auditor of State. http://www.auditor.state.oh.us/services/lgs/publications/LocalGovernmentManualsHandbooks/ohio_township_handbook.pdf

The bill specifically authorizes a township to pay its fiscal officer from funds other than the township's general fund. The new alternative allows a board of township trustees to adopt a resolution allowing for payment from other township funds based on the proportion of time that the fiscal officer spends on activities related to each fund. If a board adopts this method of compensation, the fiscal officer must document the amount of time spent in relation to each fund and periodically report that information to the board.

A similar method is available in continuing law for the compensation of township trustees. Trustees are paid on either a salary or per-diem basis; if a trustee is paid on a per-diem basis, a board may allow for payment of that trustee from different township funds based on the proportion of time the trustee spends on activities related to each fund. The trustee must similarly notify the township fiscal officer of the amount of time the trustee spends in regards to each fund.

Township tax levy election expenses

(R.C. 3501.17)

Under continuing law, a county board of elections incurs the costs of conducting elections in a county and subsequently allocates those expenses among each political subdivision that participated in an election. After a board of elections charges a political subdivision with an election expense, the county auditor must withhold the amount of that expense from the subdivision's next tax settlement. (In a tax settlement, the county auditor distributes the property tax revenue that the auditor collected from taxes levied by each subdivision.) Current law does not specify whether the auditor may withhold amounts from a particular fund of a subdivision, such as the subdivision's general fund or a special tax levy or bond fund.

The bill specifies that, when a county board of elections incurs expenses related to a township tax levy ballot issue, the board of township trustees may request that those expenses be withheld from a particular township fund. The request must be in the form of a resolution that specifies the ballot issue, the date of the election on the levy issue, and the township fund from which board of elections expenses should be withheld. The particular township fund must be one that will be credited with tax revenue at a tax settlement.

Maturity of securities issued for real property

(R.C. 133.20)

The bill provides that general obligation bonds issued by a county to finance the acquisition or construction of real property may have a maximum maturity of up to 40

years if supported by a certification as to the property's estimated useful life. The county fiscal officer must certify that the estimated useful life of the property for which the bonds would issue will exceed 30 years, unless the maximum maturity of the bonds is 30 years or fewer, in which case no certification is required.

Under current law, the maximum maturity for subdivisions other than school districts is currently limited to 30 years, and no certification is required.

Regional Transit Authority membership

(R.C. 306.322, 306.55, and 306.551)

Until November 5, 2013, the bill creates a new procedure allowing a county, municipal corporation, or township to join a regional transit authority (RTA) that (1) levies a property tax and (2) includes a county having a population of at least 400,000 according to the most recent federal census. The new procedure is in addition to and an alternative to procedures established in existing law. Under the bill, a subdivision may adopt a resolution or ordinance proposing to join such an RTA for a limited period of three years or without a time limit. The subdivision proposing to join the RTA must submit its resolution or ordinance to the subdivisions that comprise the RTA.

If a majority of the political subdivisions comprising the RTA approve the inclusion of the additional subdivision, the issue of joining the RTA is submitted to the voters in the subdivision proposing to join the RTA. If a majority of the electors approve the ballot issue, the RTA immediately must amend the resolution or ordinance creating the RTA to include the additional political subdivision. The RTA may extend any existing tax levy to the taxable property in the new territory. If the subdivision was added to the RTA for only three years, no further action is needed to reduce the RTA to its previous size and the RTA, as reduced, is entitled to levy and collect any previously authorized and unexpired property taxes, as if the enlargement had not occurred.

Beginning July 1, 2011 and until November 5, 2013, any county, municipal corporation, or township that has created or joined an RTA that (1) levies a property tax and (2) includes a county having a population of at least 400,000 according to the most recent federal census, may withdraw from the RTA by adopting a resolution to place the issue on the ballot. If a majority of the electors of the subdivision proposing to withdraw from the RTA vote to approve doing so, the withdrawal is effective one year from the date of the certification of its passage and the power of the RTA to levy a tax on taxable property in the withdrawing subdivision terminates.

Additionally, any county, municipal corporation, or township that withdraws from an RTA under the procedures established by the bill may enter into a contract with an RTA or other provider of transit services to provide transportation service for

handicapped, disabled, or elderly persons and for any other service the legislative authority of the subdivision determines to be appropriate.

County sewer district contracts

(R.C. 6103.04 and 6117.05)

The bill expands the scope of the contracting authority of a board of county commissioners regarding a county sewer district. It does so by authorizing a board of county commissioners to convey, by mutual agreement, to a municipal corporation any part of water supply or sanitary facilities of the sewer district that are connected to facilities of the municipal corporation. In addition, a board may convey to a municipal corporation water supply or sanitary facilities acquired or constructed by a county for the service of property located in the district that are also located in the municipal corporation or within an area that is incorporated as, or annexed to, the municipal corporation.

Current law provides that any completed water supply or sanitary facilities acquired or constructed by a county for the use of any county sewer district, or any part of those facilities, that are located within a municipal corporation or within any area that is incorporated as, or annexed to, a municipal corporation, or any part of the facilities that provide water or sewer services to a municipal corporation or such an area, may be conveyed, by mutual agreement between the board and the municipal corporation, to the municipal corporation on terms and for consideration as may be negotiated.

STATE LOTTERY COMMISSION (LOT)

- Requires the State Lottery Commission to promulgate rules regarding the type of notices that must appear on a lottery ticket, including one that provides information about the percentage that lottery profits contribute to all education funding in Ohio.

- Requires the same notice to appear on any television advertising for the Ohio Lottery and on the first page of the Ohio Lottery's web site.

- 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.

- 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.

Notices regarding the percentage that lottery profits contribute to all education funding in Ohio

(R.C. 3770.03 and 3770.031)

The bill adds to the list of topics for which the State Lottery Commission must promulgate rules, a requirement that it do so for the type of notices that must appear on a lottery ticket, including one that must appear if the word "education" is used in any advertising for a statewide lottery, which must include information as to the percentage that lottery profits contribute to all education funding in Ohio. The bill also requires this notice to appear on any television advertising for the Ohio Lottery and on the first page of the Ohio Lottery's web site. Section 6 of Article XV of the Ohio Constitution provides that the entire net proceeds of any state lottery must be paid into a fund of the state treasury and used solely to support elementary, secondary, vocational, and special education programs as determined in appropriations made by the General Assembly.

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.

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 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.

MANUFACTURED HOMES COMMISSION (MHC)

- Transfers, from the Department of Health and the Public Health Council to the Manufactured Homes Commission, regulatory authority related to manufactured home parks.
- Replaces the member of the Commission who represents the Department of Health with a member who is a registered sanitarian.
- Requires the Board of Health to issue a report of the inspection of a flood event at a manufactured home park to the Commission.
- Creates the Manufactured Homes Commission Regulatory Fund and requires certain fees to be deposited in that fund.
- Diverts certain fees from the General Operations Fund to the Occupational Licensing and Regulatory Fund for the administration and enforcement of the Manufactured Home Park Law.
- Requires the Commission to develop a policy regarding the maintenance of records for any inspections and specifies that those records are public records.
- Removes the requirement that a manufactured home owner and park operator jointly obtain the permit required for alterations, repairs, or changes to a damaged manufactured home in a flood plain.
- Establishes adjudication procedures for violations of the Manufactured Home Park Law.

Licensing and inspection of manufactured home parks

Transfer of regulatory authority over manufactured home parks

(R.C. 4781.26 to 4781.54, numerous cross-reference changes; Section 737.30)[223]

The bill transfers, from the Department of Health and the Public Health Council to the Manufactured Homes Commission, regulatory authority related to manufactured home parks, including, for example, that the Commission: (1) adopt rules governing the review of plans, issuance of flood plain management permits, and issuance of licenses for manufactured home parks, as well as the location, layout, density, construction, drainage, sanitation, safety, and operation of those parks, and notices of flood events concerning, and flood protection at, those parks, (2) inspect the installation, blocking, tiedown, foundation, and base support systems of manufactured housing in a park, (3) license persons who operate a park, (4) inspect each park for compliance with the Manufactured Home Park Law, (5) approve any development in a park, (6) approve any park development in a 100-year flood plain, (7) receive notification of a flood event and notify the Director of Health (under the bill, the Board of Health will be responsible for causing a post-flood inspection to occur), (8) provide permits for the repair/alteration of homes damaged in a flood event, and (9) compel a county prosecuting attorney, city director of law, or the Attorney General to prosecute to termination, or bring an action for injunction against a person, that has violated Manufactured Home Park Law.

The bill requires the Commission to adopt rules regulating manufactured home parks not later than December 1, 2011. After adopting the rules, the Commission immediately must notify the Director of Health. The rules governing manufactured home parks adopted by the Public Health Council under current law will remain in effect in a health district until the Commission adopts the required rules.

The bill prohibits a board of health of a city or general health district from invoicing or collecting manufactured home park licensing fees for calendar year 2012.

Commission membership

(R.C. 4781.02; Section 747.20)

The bill replaces the member of the Manufactured Homes Commission who represents the Department of Health with a member who is a registered sanitarian, has

[223] R.C. 3733.01 to 3733.20 under current law are renumbered within the range of 4781.26 to 4781.53 by the bill.

experience with the regulation of manufactured homes, and is an employee of a health district.

Board of Health responsibilities

(R.C. 4781.26(D), 4781.04(C), and 4781.33)

Under the bill, the Commission may enter into contracts for the purpose of fulfilling the Commission's annual inspection responsibilities for manufactured home parks. And the bill provides boards of health of city or general health districts the right of first refusal for those contracts.

The bill also provides that the Manufactured Homes Commission's expanded authority does not limit the authority of a board of health to enforce plumbing, sewage treatment, and building standards law.

The Board of Health also is responsible, under current law and under the bill, for causing a post-flood inspection to occur. When a flood event affects a manufactured home park, the park operator must notify the Manufactured Homes Commission in addition to the board of health that has jurisdiction at that location. After receiving notification from the park operator, the Commission must notify the Board of Health, and the Board of Health must cause a post-flood inspection to occur. The Board of Health then must issue a report of the inspection to the Commission within ten days after the inspection is completed.

The bill removes the requirements that a local board of health notify the Director of Health within 24 hours of being notified by a park operator and that the Director of Health cause the inspection to occur within 48 hours after receiving notification from the local board of health.

Manufactured Homes Commission Regulatory Fund

(R.C. 3701.83, 4773.05, 4781.121, 4781.28, and 4781.54; Section 737.30)

The bill establishes in the state treasury the Manufactured Homes Commission Regulatory Fund and requires that the annual manufactured home park licensing fee be credited to that fund and be used for the administration and enforcement of the Manufactured Home Park Law.

Under the bill, any manufactured home park license and inspection fees collected under current law by a board of health prior to the transition of the annual license and inspection program to the Commission as required under the bill in the amount of $2,000 or less may be transferred to the health fund of the city or general health district.

Any of those funds in excess of $2,000 must be transferred to the Commission and deposited in the Manufactured Homes Commission Regulatory Fund.

Occupational Licensing and Regulatory Fund

(R.C. 4743.05, 4781.31, 4781.32, and 4781.34)

Current law establishes the General Operations Fund and also the Occupational Licensing and Regulatory Fund in the state treasury. The former fund is used for various purposes, including, for example, administering and enforcing the Manufactured Home Park Law; the latter fund is used to administer the regulatory provisions of various Revised Code chapters, including the chapters that currently contain the law governing manufactured homes. The bill diverts the deposit of the following fees from the General Operations Fund into the Occupational Licensing and Regulatory Fund and limits their use for administration and enforcement of the Manufactured Home Park Law: (1) fees for reviewing development plans for a manufactured home park and for inspecting plan compliance, (2) fees for the issuance of a permit for development of, or replacement of a mobile or manufactured home in, any portion of a manufactured home park located in a 100-year flood plain, (3) fees for the issuance of a permit for the alteration, change, or repair of a substantially damaged mobile or manufactured home located in a 100-year flood plain or the manufactured home park lot on which the home sits, and (4) fees for inspection for compliance with the permits described in (2) and (3).

Maintenance of records

(R.C. 4781.04)

The bill requires the Commission to develop a policy regarding the maintenance of records for any inspection authorized or conducted under manufactured homes law. Under the bill, those records are public records.

Permits for alterations, repairs, or changes

(R.C. 4781.34)

The bill removes the current law requirement that a manufactured home owner and park operator jointly obtain the permit required for alterations, repairs, or changes to a damaged manufactured home in a flood plain. Under current law, each of the persons to whom a permit is jointly issued is responsible for compliance with the provisions of the approved permit. However, the bill maintains the requirement that a manufactured home owner and park operator obtain a permit to make those alterations, repairs, or changes.

Investigation and adjudication regarding violations of manufactured home and mobile home laws

(R.C. 4781.121 and 4781.09)

The bill authorizes the Manufactured Homes Commission to investigate any person who allegedly has violated the law governing the following: (1) licensure requirements for the installation of manufactured housing, (2) display or sale of manufactured or mobile homes, (3) licensure to operate a manufactured home park, and (4) any rule adopted by the Manufactured Homes Commission.

The bill sets forth the following adjudication procedures for when, after investigation, the Commission determines that reasonable evidence exists that a person has committed a violation. First, within seven days after the Commission makes such a determination, the Commission must send a written notice to that person. The notice must conform with the Administrative Procedure Act (APA), except that it must specify that a hearing will be held and specify the date, time, and place of the hearing.

If the Commission, after a hearing conducted as provided under the APA, determines that a violation has occurred, the Commission, upon an affirmative vote of five of its members, may impose a fine not exceeding $1,000 per violation per day. The Commission's determination is an order that the person may appeal pursuant to the APA.

If the person who allegedly committed a violation fails to appear for a hearing, the Commission may request the court of common pleas of the county where the alleged violation occurred to compel the person to appear before the Commission for a hearing.

If the Commission assesses a person a civil penalty for a violation and the person fails to pay that civil penalty within the time period prescribed by the Commission, the Commission must forward to the Attorney General the name of the person and the amount of the civil penalty for the purpose of collecting that civil penalty. In addition to the civil penalty assessed, the person also will be required to pay any fee assessed by the Attorney General for collection of the civil penalty. The bill stipulates that the authority provided to the Commission, and any fine imposed, will be in addition to, and not in lieu of, all penalties and other remedies provided in the Manufactured Home Park Law.

Any fines collected must be used solely to administer and enforce the Manufactured Home Park Law and the rules adopted under it. Any fees collected must be credited to the Manufactured Homes Commission Regulatory Fund created under

the bill. The fees also must be used only for the purpose of administering and enforcing the Manufactured Home Park Law.

The civil penalty that the bill allows the Commission to assess replaces the authority of the Commission under existing law to impose a civil penalty of not less than $100 or more than $500 per violation of the laws governing manufactured housing installers as an alternative to suspending, revoking, or refusing to renew a manufactured housing installer's license.

DEPARTMENT OF MENTAL HEALTH (DMH)

- Revises the law under which boards of alcohol, drug addiction, and mental health services (ADAMHS boards) receive subsidies from the Ohio Department of Mental Health (ODMH) by (1) requiring ODMH to establish a methodology for allocating to ADAMHS boards, on a district or multi-district basis, the funds appropriated to ODMH for the purpose of local mental health systems of care and (2) permitting ODMH to allocate to ADAMHS boards a portion of the funds appropriated to ODMH for the operation of state hospital services.

- For fiscal years 2012 and 2013, (1) requires, rather than permits, ODMH to allocate to ADAMHS boards a portion of ODMH's appropriation for state hospital services, (2) requires, with certain exceptions, a board to use the funds to pay for expenditures the board incurs in paying for inpatient hospitalization services provided by state regional psychiatric hospitals to persons involuntarily committed to the board, (3) authorizes ODMH, if the amount distributed to a board exceeds the amount that the board needs to pay for such expenditures, to permit the board to use the excess funds for the board's community mental health plan, and (4) authorizes ODMH to permit a board to have a portion of the funds deposited into the ODMH Risk Fund.

- Repeals a law that provides for ADAMHS boards' community mental health plans to constitute applications for funds from ODMH but maintains a law that conditions a board's eligibility for state and federal funding on an approved community mental health plan or relevant part of a plan.

- Eliminates requirements for ADAMHS boards to receive, compile, and transmit to ODMH applications for state reimbursement and ODMH to review, periodically during a year, the budgets and expenditures of the various facilities and community mental health agencies receiving funds.

- Eliminates certain requirements applicable to an ADAMHS board that elects to accept distribution of its allocation, including requirements for the board to pay into the ODMH Risk Fund and to provide ODMH with the board's projected utilization of state hospitals and other state-operated services.

- Requires an ADAMHS board, as a condition of electing not to accept distribution of its allocation, to provide ODMH written confirmation that the board has received input about the impact that the board's election will have on the mental health system in the board's district from certain individuals and entities.

- Eliminates the authority of an ADAMHS board to utilize a part of its budget as approved by ODMH to purchase insurance and to pool with funds of other boards to pay for the costs of utilizing state hospital facilities that exceed the amount of the board's allocation.

- Specifies that an ADAMHS board's use of its allocated funds is subject to audit by county, state, and federal authorities.

- Requires ODMH to charge unreimbursed costs for services that ODMH provides against a board's allocation of funds for state hospital services.

- Permits, rather than requires, ODMH to withhold state or federal funds from an ADAMHS board that denies an available service on the basis of religion, race, color, creed, sex, national origin, disability, or developmental disability and eliminates ODMH's authority to make a withholding on the grounds that a board denies an available service on the basis of the inability to pay.

- Requires each ADAMHS board to develop its community mental health plan, and submit the plan to ODMH, annually rather than requiring each board to submit its plan not later than six months before the conclusion of the fiscal year in which the board's current plan is scheduled to expire.

- Eliminates requirements that (1) an ADAMHS board's community mental health plan include an explanation of how the board intends to make any payments that it may be required to make under the law governing the funds that ODMH allocates to boards and (2) a board submit an allocation request for state and federal funds with its plan.

- Eliminates the deadline by which ODMH must approve or disapprove an ADAMHS board's community mental health plan.

- Permits an ADAMHS board and ODMH to request that a dispute regarding a community mental health plan be submitted to a third-party mediator at any time

while approval remains in dispute rather than having to wait until there are 30 days remaining in the fiscal year in which the board's current plan is scheduled to expire.

- Eliminates a requirement that ODMH, when a community mental health plan is submitted to a third-party mediator, make its final determination regarding approval before the conclusion of that fiscal year.

- Eliminates a law under which an ADAMHS board's amendment to its community mental health plan is considered to have been approved if ODMH fails to approve it within 30 days after it is submitted.

- Eliminates the responsibility of ODMH and ADAMHS boards to pay the nonfederal share for services provided under a component of the Medicaid program that ODMH administers and makes the Ohio Department of Job and Family Services (ODJFS) responsible for paying for such services effective July 1, 2012.

- Requires ODMH, notwithstanding ODJFS's new responsibility, to allocate to ADAMHS boards mental health Medicaid match funds appropriated to ODMH for fiscal year 2012 and requires the boards to use the funds to pay claims for community mental health services provided during that fiscal year under the ODMH-administered Medicaid component and requires the boards also to use all federal financial participation that ODMH receives for claims for such services as the first payment source to pay such claims.

- Requires ODMH to enter into an agreement with each ADAMHS board regarding the issue of paying claims that are for community mental health services provided before July 1, 2011, and submitted for payment on or after that date and requires that such claims be paid in accordance with the agreements.

- Provides for an ADAMHS board to receive the federal financial participation received for claims for community mental health services that were provided before July 1, 2011, and paid by the board.

- Repeals a law that makes the county of residence of an individual with mental illness responsible for (1) the necessary expense of returning the individual to the individual's county of residence and (2) regular probate court fees and expenses incident to an order of hospitalization.

- 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) an ADAMHS board employee being an employee of an agency with which the ADAMHS board contracts for services or facilities unless the ADAMHS board and agency agree in writing, and (4) 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.

- 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, institutions, and other entities 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.

- Provides for ODMH contracts concerning the custody, supervision, care, or treatment of mentally ill persons receiving services elsewhere than within an ODMH hospital also to provide for the evaluation of such persons.

- 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 and in consultation with the boards, a community support system on a district or multi-district basis.

- Eliminates a requirement that ODMH assist in 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.

- 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 the ODMH Director to consult with ADAMHS boards before developing and operating the community mental health information system or systems.

- Requires ODMH to grant certification to a community mental health agency if the agency holds national accreditation from the Joint Commission, the Council on Accreditation of Rehabilitation Facilities, or the Council on Accreditation and specifies that the agency is not subject to further evaluation.

- 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.

- Prohibits ODMH's rules regarding documentation that residential facilities for persons with mental illness and community mental health agencies must submit to ODMH or ADAMHS boards from being more stringent than comparable federal regulations.

- Transfers to ODMH (from the Ohio Department of Aging (ODA)) the administration of the Residential State Supplement Program (RSS).

- Provides that no person receiving payments under RSS is to be affected by the transfer.

- 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.

- 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 ODA) responsibility for the certification of adult foster homes.

- Transfers to ODMH (from the Ohio Department of Health (ODH)) responsibility for licensing adult care facilities, effective July 1, 2011.

- Requires ODMH, rather than the Public Health Council, to adopt rules governing adult care facilities and specifies what the rules are permitted, rather than required, to include.

- Authorizes inspections of adult care facilities to 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 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 (1) 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 and (2) ODMH hospitals, institutions, and facilities, ODMH-licensed hospitals, and community mental health agencies to exchange such records and information with payers.

ODMH allocations of state mental health subsidies

(R.C. 5119.62 (primary), 340.03, 340.08 (repealed), 340.11, 5119.61, 5119.621, 5119.622, 5119.623, and 5122.15; Section 337.20.60)

The bill revises the law under which boards of alcohol, drug addiction, and mental health services (ADAMHS boards) receive subsidies from the Ohio Department of Mental Health (ODMH). Under current law, ODMH is required, after approving a board's community mental health plan, to authorize payment of subsidies to the board from funds appropriated for that purpose. The 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 an allocation methodology, including a formula, for the subsidies. 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 subsidies to be distributed on the basis of the ratio of each ADAMHS district's population to the state's total population.

Allocation of funds for local mental health systems of care

Under the bill, ODMH is required to establish a methodology for allocating to ADAMHS boards the funds appropriated to ODMH for the purpose of local mental health systems of care. ODMH is to establish the methodology after notifying and consulting with relevant constituencies, including consumers of mental health services and their families. The methodology may provide for the funds to be allocated to the boards on a district or multi-district basis.

Allocation of funds for state hospital services

In addition to being required to establish a methodology for allocating local mental health systems of care funds, ODMH is permitted to allocate to ADAMHS boards a portion of the funds appropriated to ODMH for the operation of state hospital services. If ODMH allocates the funds, ODMH is required to do all of the following:

(1) In consultation with the boards, annually determine the unit costs of providing state hospital services and establish the methodology for allocating the funds to the boards;

(2) Determine the type of unit costs of providing state hospital services to be included as a factor in the methodology and include that unit cost as a factor in the methodology;

(3) Allocate the funds in a manner consistent with the methodology and state and federal laws and regulations.

The bill requires, rather than permits, ODMH to allocate to ADAMHS boards a portion of its appropriation for state hospital services for fiscal years 2012 and 2013. ODMH, in consultation with the boards, must establish a methodology to be used for the allocations. 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 (days for which a person receives inpatient hospitalization services in a state regional psychiatric hospital) that each board will incur in fiscal years 2012 and 2013 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 board to provide ODMH with an estimate of the number of bed days the board will incur in fiscal years 2012 and 2013 for that purpose. A board is required to use the funds allocated to it to pay for expenditures the board incurs in fiscal years 2012 and 2013 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 a board exceeds the amount that the board needs to pay for such expenditures, ODMH may permit the board to use the excess funds for the board's community mental health plan. Also, ODMH may permit a board to have a 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 the boards.

Eligibility for, and distribution of, funds

The bill repeals a law that provides for ADAMHS boards' community mental health plans to constitute applications for funds from ODMH. The bill maintains, however, a law that conditions a board's eligibility for state and federal funding on an approved community mental health plan or relevant part of a plan.

Under the bill, boards are no longer required to receive, compile, and transmit to ODMH applications for state reimbursement and ODMH is no longer required to review, periodically during a year, the budgets and expenditures of the various facilities and community mental health agencies receiving funds.

Continuing law requires an ADAMHS board, after ODMH informs the board of the amount of the board's estimated allocation for an upcoming fiscal year, to notify ODMH of whether the board elects to accept distribution of its allocation. The bill

eliminates certain requirements applicable to a board that elects to accept distribution of its allocation, including requirements for the board to pay into the ODMH Risk Fund and to provide ODMH with the board's projected utilization of state hospitals and other state-operated services. ODMH is no longer required to retain and expend funds projected to be utilized for state hospitals and other state-operated services. The bill also adds an additional condition that must be met for a board to be able to elect not to accept distribution of its allocation. The additional condition is that the board must provide ODMH written confirmation that the board has received input about the impact that the board's election will have on the mental health system in the board's district from (1) individuals who receive mental health services and such individuals' families, (2) boards of county commissioners, (3) juvenile and probate judges, and (4) county sheriffs, jail administrators, and other local law enforcement officials. This condition must be satisfied before the board satisfies an existing condition that the board conduct a public hearing on the issue of whether to accept distribution of its allocation.

The bill eliminates the authority of an ADAMHS board to utilize a part of its budget as approved by ODMH to purchase insurance and to pool with funds of other boards to pay for the costs of utilizing state hospital facilities that exceed the amount of the board's allocation.

Audits

The bill specifies that an ADAMHS board's use of its allocated funds is subject to audit by county, state, and federal authorities.

Charges and withholdings of funds

Whereas current law permits ODMH to charge overpayments of state funds against a county and requires ODMH to charge any unreimbursed costs for services that ODMH provides against a board's allocation of funds for local management of mental health services, the bill requires ODMH to charge such unreimbursed costs against a board's allocation of funds for state hospital services.

ODMH is required by current law to withhold, in whole or in part, state and federal funds from an ADAMHS board for any program in the event the program fails to comply with certain state laws or ODMH rules. The bill permits ODMH to withhold, in whole or in part, funds otherwise allocated to a board if the board fails to comply with the state laws or rules. Whereas current law specifies that one of the laws with which boards must comply to avoid a withholding is the state law governing the allocations, the bill specifies instead that one of the laws is a law requiring boards annually to report to ODMH regarding the use of their allocations.

ODMH is also required by current law to withhold state or federal funds from an ADAMHS board that denies an available service on the basis of religion, race, color, creed, sex, national origin, disability, developmental disability, or the inability to pay. The bill permits, rather than requires, ODMH to make such a withholding and specifies that the funds that are subject to a withholding are funds otherwise to be allocated to a board. Denial of an available service on the basis of the inability to pay is removed from the reasons for which a withholding may be made.

Community mental health plans

(R.C. 340.03 and 5119.61)

The bill revises the law governing ADAMHS boards' community mental health plans. Under continuing law, a board's plan is to list the community mental health needs of the board's district and the facilities and community mental health services that will be available under the plan to meet those needs.

Under the bill, ADAMHS boards are to develop their plans and submit the plans to ODMH annually. Current law requires that the plans be developed and submitted not later than six months before the conclusion of the fiscal year in which the boards' current plans are scheduled to expire. The bill eliminates requirements that (1) a board's plan include an explanation of how the board intends to make any payments that it may be required to make under the law governing the funds that ODMH allocates to boards and (2) a board submit an allocation request for state and federal funds with its plan.

The bill eliminates the deadline by which ODMH must approve or disapprove a board's plan. Under current law, ODMH must approve or disapprove the plan within 60 days after determining that the plan is complete. A board and ODMH may request that a dispute regarding a plan be submitted to a third-party mediator at any time while approval remains in dispute rather than, as under current law, having to wait until there are 30 days remaining in the fiscal year in which the board's current plan is scheduled to expire. The bill eliminates a requirement that ODMH, when a plan is submitted to a third-party mediator, make its final determination regarding approval before the conclusion of that fiscal year.

Continuing law establishes a process for a board to seek approval of an amendment to its plan. The bill eliminates a provision of current law that makes the amendment or part of it considered to have been approved if ODMH fails to approve all or part of it within 30 days after it is submitted.

Payment for mental health services provided under Medicaid

(R.C. 5111.912 (primary), 340.03, 5111.023, 5111.025, and 5111.911; Section 337.30.30)

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 makes ODJFS 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.

Notwithstanding ODJFS's new responsibility, the bill requires ODMH to allocate to ADAMHS boards mental health Medicaid match funds appropriated to ODMH for fiscal year 2012 and requires the boards to use the funds to pay claims for community mental health services provided during that fiscal year under the Medicaid component that ODMH administers. The boards are also required to use all federal financial participation that ODMH receives for claims for such services as the first payment source to pay such claims. The bill provides that no board is required to use any other funds to pay for such claims.

ODMH is required by the bill to enter into an agreement with each ADAMHS board regarding the issue of paying claims that are for community mental health services provided before July 1, 2011, and submitted for payment on or after that date. Such claims are required to be paid in accordance with the agreements. A board is to receive the federal financial participation received for claims for community mental health services that were provided before July 1, 2011, and paid by the board.

County of residence responsibilities

(R.C. 5122.36 (repealed))

The bill repeals a law 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 bill 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 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 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) an ADAMHS board employee being an employee of an agency with which the ADAMHS board contracts for services or facilities unless the ADAMHS board and agency agree in writing, and (4) 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.

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, institutions, and other entities 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.

Evaluation of persons receiving services outside an ODMH hospital

(R.C. 5119.01(E))

Current law requires the ODMH Director to contract with persons, organizations, or agencies for the custody, supervision, care, or treatment of mentally ill persons receiving services elsewhere than within an ODMH hospital. The bill provides for the contracts also to provide for the evaluation of such persons.

ODMH forensic services

(R.C. 5119.02(D))

ODMH is required by current law to provide and designate facilities for the care, custody, and special treatment of persons who are charged with a crime and found incompetent to stand trial or not guilty by reason of insanity. The bill eliminates the requirement for ODMH to provide for such facilities. In addition to being required to designate facilities for such individuals, the bill requires ODMH to designate hospitals and community mental health agencies. The bill also requires ODMH to authorize payment for the custody, care, and special treatment provided to such persons.

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 and in consultation with ADAMHS boards, a community support system on a district or multi-district basis. The bill also eliminates a requirement that ODMH assist in 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.

Community mental health information system

(R.C. 5119.61(F))

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. The ODMH Director is required to consult with ADAMHS boards before developing and operating the system or systems.

Certification of community mental health services

(R.C. 5119.611)

Each community mental health agency is required under current law to apply to ODMH for certification of its services. To receive certification, an agency must meet the minimum standards established by ODMH.

The bill requires ODMH to grant certification to a community mental health agency if the agency holds national accreditation from the Joint Commission, the Council on Accreditation of Rehabilitation Facilities, or the Council on Accreditation. The bill specifies that the program is not subject to further evaluation for purposes of the certification.

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.

Documentation submission requirements

(R.C. 5119.222 (primary), 5119.22, 5119.612, 5119.613, 5119.614, 5119.79, and 5119.86)

The bill prohibits an ODMH rule regarding documentation that residential facilities for persons with mental illness and community mental health agencies must submit to ODMH or an ADAMHS board from being more stringent than a comparable documentation submission requirement that applies to such facilities and agencies and is established by the United States Department of Health and Human Services.

Transfer of Residential State Supplement Program

(R.C. 5119.69, 5119.691, and 5119.692; Section 337.30.50; 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.

Under the bill, the transferred RSS program is to be implemented in the same manner as ODA currently administers the program, 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 conditions. For example, the person must reside in an approved living facility. As part of transferring the program to ODMH, the bill eliminates the requirement that facilities be certified by ODA in order for residents to be eligible for RSS 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 adult care facilities, which the bill requires ODMH to license rather than ODH;

(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.

Transition

The bill provides that no person receiving RSS payments when the program is transferred is to be affected by the transfer. The bill specifies that the transferred program is the existing program's successor, assumes the existing program's obligations, and otherwise constitutes a continuation of the program. For purposes of the transition from ODA to ODMH, the bill specifies the following:

(1) Any business regarding the RSS program commenced by ODA but not completed before the transfer is to be completed by ODMH;

(2) No validation, cure, right, privilege, obligation, or liability is lost or impaired by reason of the transfer;

(3) Rules, orders, and determinations pertaining to the RSS program are to continue to be in effect after the transfer occurs, until modified or rescinded by ODMH;

(4) Any action or proceeding related to the RSS program that is pending when the transfer occurs is not affected by the transfer and is to be prosecuted or defended in the name of ODMH.

RSS Home First

Under Home First provisions of current law, each month, RSS administrators are required to 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.

Certification of adult foster homes

(R.C. 5119.692; Section 337.30.75)

As discussed above, one of the living arrangements in which an RSS recipient may reside is an adult foster home, which must be certified. The bill transfers responsibility for the certification of adult foster homes to ODMH (from ODA). In doing so, the bill specifies the following:

(1) Existing adult foster home certificates are deemed to have been issued by ODMH;

(2) Any business regarding the certification of adult foster homes commenced by ODA but not completed before the transfer is to be completed by ODMH;

(3) No validation, cure, right, privilege, obligation, or liability is lost or impaired by reason of the transfer;

(4) Rules, orders, and determinations pertaining to the certification of adult foster homes are to continue to be in effect after the transfer occurs, until modified or rescinded by ODMH;

(5) Any action or proceeding related to the certification process that is pending when the transfer occurs is not affected by the transfer and is to be prosecuted or defended in the name of ODMH.

Adult care facilities

(R.C. 5119.70 to 5119.88 and 5119.99; Section 337.30.80; conforming changes in R.C. 109.57, 109.572, 173.14, 173.21, 173.26, 173.35, 173.36, 173.42, 340.03, 340.05, 2317.02, 2317.422, 2903.33, 3313.65, 3701.07, 3701.74, 3721.01, 3721.02, 3722.99 (repealed), 3737.83, 3737.841, 3781.183, 3791.043, 5101.60, 5101.61, 5111.113, 5119.22, 5119.61, 5119.613, 5119.99, 5123.19, 5701.13, and 5731.39)

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. The transfer becomes effective July 1, 2011. For purposes of the transition from ODH to ODMH, the bill specifies the following:

(1) Existing adult care facility licenses are deemed to have been issued by ODMH;

(2) Any business regarding the licensure of adult care facilities commenced by ODH but not completed before the transfer is to be completed by ODMH;

(3) No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer;

(4) Rules, orders, and determinations pertaining to the licensure of adult care facilities are to continue to be in effect after the transfer occurs, until modified or rescinded by ODMH;

(5) Any action or proceeding related to the certification process that is pending when the transfer occurs is not affected by the transfer and is to be prosecuted or defended in the name of ODMH.

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.[224]

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[225] 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.

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

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[224] 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)).

[225] The RSS Program provides cash supplements to payments made to eligible aged, blind, or disabled adults under the Supplemental Security Income (SSI) program.

individuals authorized to do so under current law are the Director of Health and Director of Aging,[226] 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.

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[227] and have access to facility records, including records pertaining to residents.

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[226] 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.

[227] 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).

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 and payers

(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 and community mental health agencies to exchange psychiatric records and other pertinent information with other providers of treatment and health services if the purpose is to facilitate continuity of care of a patient. The bill authorizes hospitals that are not ODMH hospitals, but are licensed by ODMH, to exchange the records and information with other providers of treatment and health services. The bill also permits ODMH hospitals, institutions, and facilities, ODMH-licensed hospitals, and community mental health agencies to exchange the records and information with payers.

DEPARTMENT OF NATURAL RESOURCES (DNR)

- 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.

- States that the Oil and Gas Law and rules adopted under it constitute a comprehensive plan with respect to all aspects of well stimulation and completion, and adds site construction and the permitting of discharges related to site construction and restoration to the activities that are specifically included.

- Establishes a setback of 50 feet for a new well or a new tank battery of a well from a stream, river, watercourse, water well, pond, lake, or other body of water, and authorizes to the Chief of the Division of Oil and Gas Resources Management to reduce the distance if it is necessary to reduce impacts to the owner of the land or to protect public safety or the environment.

- Allows the surface location of a new well that will be drilled using directional drilling to be located on a parcel of land that is not in the drilling unit of the well, provided that the surface location complies with setback requirements established in current law and the bill.

- Expands the definition of "production operation" in the Oil and Gas Law.

- Authorizes the Chief to issue compliance notices.

- 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 Natural Areas and Preserves, 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.

- 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, beginning July 1, 2011, and ending June 30, 2013, 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 and an amount not to exceed $1.5 million to the Coal Mining Administration and Reclamation Reserve 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). Any revision to a fee schedule must be established in rules adopted under the Administrative Procedure Act. 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.

Oil and Gas Law

(R.C. 1509.02, 1509.01, 1509.021, 1509.022, and 1509.04)

Statewide regulation and comprehensive plan

Current law states that the regulation of oil and gas activities is a matter of general statewide interest that requires uniform statewide regulation and that the Oil and Gas Law and rules adopted under it constitute a comprehensive plan with respect to all aspects of the locating, drilling, and operating of oil and gas wells in Ohio, including site restoration and disposal of wastes from those wells. The bill adds that the Oil and Gas Law and rules adopted under it also constitute a comprehensive plan with respect to all aspects of well stimulation and completion. It then adds site construction and the permitting of discharges related to site construction and restoration to the activities that are specifically included.

Setback of new well or tank battery from water sources

The bill prohibits the location of a new well or a new tank battery of a well from being within 50 feet of a stream, river, watercourse, water well, pond, lake, or other body of water. However, the Chief of the Division of Oil and Gas Resources Management may authorize a distance that is less than 50 feet from such bodies of water if the Chief determines that the reduction is necessary to reduce impacts to the owner of the land on which the well or tank battery of a well is to be located or to protect public safety or the environment. Current law establishes other setbacks governing the surface location of a well, a tank battery, and other surface facilities of a well.

Surface location of new well using directional drilling

The bill allows the surface location of a new well that will be drilled using directional drilling to be located on a parcel of land that is not in the drilling unit of the well, provided that the surface location complies with setback requirements established in current law and the bill (see above).

Definition of "production operation"

The bill expands the definition of "production operation" in the Oil and Gas Law to mean all operations and activities and all related equipment, facilities, and other structures that may be used in or associated with the exploration and production of oil, gas, or other mineral resources that are regulated under that Law, including operations and activities associated with site preparation, site construction, access road construction, well drilling, well completion, well stimulation, well site activities, reclamation, and plugging. Under the bill, it also includes all of the following:

(1) The piping, equipment, and facilities used for the production and preparation of hydrocarbon gas or liquids for transportation or delivery;

(2) The processes of extraction and recovery, lifting, stabilization, treatment, separation, production processing, storage, waste disposal, and measurement of hydrocarbon gas and liquids, including related equipment and facilities; and

(3) The processes and related equipment and facilities associated with production compression, gas lift, gas injection, fuel gas supply, well drilling, well stimulation, and well completion activities, including dikes, pits, and earthen and other impoundments used for the temporary storage of fluids and waste substances associated with well drilling, well stimulation, and well completion activities.

Under current law, "production operation" instead means site preparation, access roads, drilling, well completion, well stimulation, well operation, site reclamation, and well plugging. It also includes all of the following:

(1) The piping and equipment used for the production and preparation of hydrocarbon gas or liquids for transportation or delivery;

(2) The processes of extraction and recovery, lifting, stabilization, treatment, separation, production processing, storage, and measurement of hydrocarbon gas and liquids; and

(3) The processes associated with production compression, gas lift, gas injection, and fuel gas supply.

Compliance notices

The bill authorizes the Chief to issue compliance notices as a part of the Chief's enforcement authority in addition to entering into compliance agreements under current law.

Ohio Natural Heritage Database

(R.C. 1517.02 and 1531.04)

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 Natural Areas and Preserves, 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 prepare and maintain surveys and inventories of natural areas for inclusion in the Database.

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 not a part of the state treasury. 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.

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, Mine Safety, and Coal Mining Administration and Reclamation Reserve Funds

(R.C. 4131.03)

The bill authorizes the Director of Natural Resources, beginning July 1, 2011, and ending June 30, 2013, annually to request the Administrator of Workers' Compensation to transfer to the Mine Safety Fund and to the Coal Mining Administration and Reclamation Reserve 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 to the Mine Safety Fund and an amount not to exceed $1.5 million to the Coal Mining Administration and Reclamation Reserve Fund. 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)

- Eliminates the prorated fee schedule for the optician licensure application and makes the fee $50, regardless of which quarter of the calendar year the 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 eliminates the prorated fee schedule for applicants seeking initial licensure as an optician and makes the fee $50, regardless of which quarter of the calendar year the application is submitted. The current prorated fee schedule for licensure applications is as follows:

--January to March: $50;

--April to June: $37.50;

--July to September: $25;

--October to 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 fee for late completion of continuing optometric education from $75 to $125 and creates a fee of $125 for late submission of the continuing education (or both late completion and late submission).
- Increases the fee for late renewal of one or more expired optometrist certificates from $75 to $125.

Fees for optometrists

(R.C. 4725.34)

The bill increases the following fees charged by the State Board of Optometry to optometrists and licensure applicants:

(1) Initial certificate of licensure: increased to $130 (from $100);

(2) Initial therapeutic pharmaceutical agents certificate: $45 (from $25);

(3) Renewal of certificate of licensure: $130 (from $110);

(4) Renewal of a topical ocular pharmaceutical agents certificate: $45 (from $25);

(5) Renewal of a therapeutic pharmaceutical agents certificate: $45 (from $25);

(6) Late completion of continuing optometric education: $125 (from $75);

(7) Late renewal of one or more expired certificates: $125 (from $75).

The bill creates a fee of $125 for late submission of continuing optometric education. A single fee of $125 is to be charged if the optometrist is late in both completing and submitting the continuing education.

STATE BOARD OF PHARMACY (PRX)

- Authorizes the State Board of Pharmacy to enter into contracts with private entities for accomplishing the Board's duties and requires the Board to have a preference for contracting with Ohio-based companies.
- Requires contract revenue to be placed in the Occupational Licensing and Regulatory Fund and allows the money to be used for any purpose determined by the Board to be relevant to its duties, including the establishment and maintenance of the Ohio Automated Rx Reporting System (OARRS).

Private contracting authority for the State Board of Pharmacy

(R.C. 4729.021)

The bill authorizes the State Board of Pharmacy to enter into contracts with private entities for accomplishing the Board's duties. When entering into these contracts, the Board must give preference to Ohio-based companies.

The bill requires that contract revenue received by the Board for these contracts be placed in the Occupational Licensing and Regulatory Fund. This money may be used for any purpose determined by the Board to be relevant to its duties, including the establishment and maintenance of the Ohio Automated Rx Reporting System (OARRS).

- Restricts the issuance of Freemason license plates to persons who are members in good standing of the Grand Lodge of Free and Accepted Masons of Ohio.
- Allows the Director of Public Safety to approve a course of remedial driving instruction that permits students to take the entire course, rather than only 50% of the course, electronically.
- Repeals a provision in the Motor Vehicle Dealers Law regarding a vehicle repair guarantee.
- Revises the application requirements for a new motor vehicle dealer's license and for a motor vehicle salesperson's license.
- Repeals the exception under current law that permits two or more motor vehicle dealers to sell manufactured or mobile homes in the same manufactured home park without having to agree to joint, several, and personal liability.
- Makes changes to the Motor Vehicle Dealers Law to conform with Am. Sub. H.B. 1 of the 128th General Assembly.

Freemason license plates

(R.C. 4503.70)

The bill restricts the issuance of existing Freemason license plates to persons who are members in good standing of the Grand Lodge of Free and Accepted Masons of Ohio, and requires a person who applies for these license plates to present satisfactory evidence showing that the person is a member in good standing of the Grand Lodge.

Electronic remedial driving courses

(R.C. 4510.037 and 4510.038)

The bill allows the Director of Public Safety to approve a course of remedial driving instruction that permits students to take the entire remedial course via video teleconferencing or the Internet. At present, not more than 50% of the course may be taken electronically; the rest of the course must be attended in person. Under receiving an application with a certificate or other proof of completion of an approved course, the person may apply to the Registrar of Motor Vehicles for a credit of two points on the

person's driving record – unless taking the course was mandated by a court. Not more than one two-point credit may be granted during any one three-year period, and not more than five two-point credits may be granted during a person's lifetime.

(An inadvertent inconsistency exists between the two sections of the bill that allow the entire course to be taken electronically. One section allows the course to be taken via video teleconferencing; the other section allows the course to be taken via video teleconferencing or the Internet. The latter is correct.)

Vehicle repair guarantee repeal

(R.C. 4517.12)

The bill repeals a provision in current law governing motor vehicle dealers that permits the Registrar of Motor Vehicles to require certain applicants for licensure to sell new motor vehicles to demonstrate that such applicants will provide each customer with a binding agreement ensuring that the customer has the right to have the vehicle repaired at a dealer who is licensed to sell the same line of vehicles.

Motor vehicle dealers license

(R.C. 4517.04)

The bill requires a person applying for a new motor vehicle dealer's license to apply biennially instead of annually for a license in each county where the person is doing business.

Motor vehicle salesperson license

(R.C. 4517.09)

The bill requires a person applying for a motor vehicle salesperson's license to apply biennially instead of annually for a license.

Motor vehicle dealer joint liability

(R.C. 4517.24)

The bill repeals the exception under current law that permits two or more motor vehicle dealers to sell manufactured or mobile homes in the same manufactured home park without having to agree to joint, several, and personal liability.

Am. Sub. H.B. 1 of the 128th General Assembly conforming changes

(R.C. 3733.11, 4517.01, 4517.04, 4517.09, 4517.10, 4517.12, 4517.13, 4517.14, 4517.23, and 4517.44)

The bill removes references to manufactured home brokers within the motor vehicle dealers law in order to conform with Am. Sub H.B. 1 of the 128th General Assembly, which transferred licensing of manufactured home dealers to the Manufactured Homes Commission.

PUBLIC UTILITIES COMMISSION (PUC)

- Requires public utilities to do their best to include minority and bilingual consumer outreach.
- Requires the PUCO to recalculate rates, by the end of 2011 for closed rate cases, to reflect the bill's reduced appropriation for the Office of the Consumers' Counsel.

Minority and bilingual community outreach

(R.C. 4905.98)

The bill requires public utilities to do their best to include minority and bilingual consumer outreach, including newspapers.

The outreach requirement applies to a "public utility" as defined in current law. The following chart outlines which entities are included or excluded as public utilities under the definition.[228]

Public utilities	Excluded as public utilities
Telephone company	Electric light company operating not-for-profit
Motor transportation company	Cooperative utility (customer owned and operated and not-for-profit)
Electric light company	Municipally owned or operated utility
Gas or natural gas company	Railroad company

[228] R.C. 4905.02 and 4905.03, not in the bill.

Public utilities	Excluded as public utilities
Pipe-line company transporting natural gas, oil, or coal or its derivatives	Telephone company or any other provider with respect to the provision of advanced, broadband, information, and Internet protocol-enabled service, and certain newer telecommunications services
Water-works company	
Heating or cooling company	
Messenger company	
Street railway company	
Suburban railroad company	
Interurban railroad company	
Sewage disposal system company	

The bill also uses the current law definition of "minority" as established in the law governing projects and initiatives sponsored, funded, encouraged, or otherwise promoted by the Third Frontier Commission. Under that law, a minority means an individual who is a United States citizen and who is a member of one of the following economically disadvantaged groups: Blacks or African Americans, American Indians, Hispanics or Latinos, or Asians.[229]

Requirement to recalculate rates

(R.C. 4909.15(D); conforming change in R.C. 4928.18)

The bill requires the Public Utilities Commission (PUCO) to recalculate the rates of public utilities to reflect the bill's reduced appropriation for the Office of the Consumers' Counsel (OCC). The recalculation must be completed by the end of 2011, unless a utility has a pending rate case.

Because the OCC is funded by public-utility assessments, and those assessments must equal the OCC's appropriation in each fiscal year,[230] the bill's reduced OCC appropriation will result in reduced assessment payments for public utilities. Public utilities include assessment payments in cost-of-service determinations during rate cases, so the payments are factored into rate determinations. But because rate cases may be sought whenever a public utility wishes to change its rates, and are not required to be filed regularly, the reduced payments for OCC assessments would not, without

[229] R.C. 184.17, not in the bill.

[230] R.C. 4911.18, not in the bill.

the bill's requirement of rate recalculation, result in reduced customer bills until a public utility's next rate case.

The bill does not require rate recalculation for a public utility that paid only the minimum OCC assessment of $100 for the period in which the utility's rates were last determined.

STATE RACING COMMISSION (RAC)

- Extends to 11 p.m. the closing time for running horse-racing meetings conducted at a track that is more than 25 miles from an Ohio light harness track, other than a light harness racing at a county fair or independent fair, and that is located less than 25 miles from a track located outside Ohio.

Thoroughbred racing: extended times

(R.C. 3769.07)

The bill allows the 7 and 8 p.m. closing times for horse racing to be extended to 11 p.m. for any running horse-racing meeting conducted between May 15 and September 15 at a track that is located more than 25 miles from a track located in Ohio where a light harness horse-racing meeting, other than a light harness horse-racing meeting at a county fair or independent fair, is being conducted and that is located less than 25 miles from a track located outside Ohio. Under current law, the 7 and 8 p.m. closing times can be extended to 9 p.m. under these conditions.

OHIO BOARD OF REGENTS (BOR)

Term of the Chancellor

- Changes the term of office of the Chancellor from five years to the term of the appointing Governor.

- Changes removal of the Chancellor to the pleasure of the Governor, instead of by the Governor only for specific reasons.

In-state tuition for Ohio high school graduates

- Grants residency status, for purposes of in-state college tuition, to Ohio high school graduates who enroll in a state institution of higher education and re-establish

domicile in Ohio within ten years after high school graduation, regardless of residence prior to enrollment.

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.

- 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.

- Prohibits formation of charter universities, and adoption, amendment, or recission of rules designating charter universities by the Chancellor, until the General Assembly enacts legislation establishing a procedure to designate charter universities.

- Requires each state agency and each state institution of higher education to provide the Chancellor with assistance, upon request, in developing the plan.

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.

- Requires the Chancellor to take steps to (1) facilitate full implementation of digital textbook pilot programs planned at state institutions of higher education and (2) ensure that those pilot programs examine cost savings, efficiencies, and academic benefits of digital content.

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 institution's board of trustees, to include "intellectual property."

Religious student groups

- Prohibits state institutions of higher education from denying benefits to a religious student group based on the group's requirement that its leaders and voting members adhere to its sincerely held religious beliefs or standards of conduct.

Term of office of the Chancellor

(R.C. 121.03 and 3333.03)

The bill changes the term of the Chancellor of the Board of Regents and broadens the Governor's authority to remove the Chancellor from office. Under current law, the Chancellor is appointed by the Governor, with the advice and consent of the Senate, for a five-year term, and may be removed by the Governor only for (1) inefficiency or dereliction of duty, (2) a violation of the Ethics Law, (3) failure to file a financial disclosure statement with the Ohio Ethics Commission or filing a false one, or (4) corruption.

Under the bill, the Chancellor's term of office is the same as that of the appointing Governor, and the Chancellor may be removed at the pleasure of the Governor. (The bill retains the requirement for the Senate's advice and consent in the Chancellor's appointment.) These changes essentially make the Chancellor's appointment, term, and removal the same as for members of the Governor's cabinet.

Finally, the bill adjusts the term of the Chancellor in office on the bill's effective date so that it coincides with that of the Governor. Under current law, the Chancellor's current term would have expired in 2012.

In-state tuition for Ohio high school graduates

(R.C. 3333.31)

The bill grants residency status to Ohio high school graduates who, within ten years after graduation, re-establish domicile in the state. This provision pertains to graduates who move out of state after high school graduation, since those who remain in Ohio retain their residency status. Specifically, if a student graduates from an Ohio high school, and was eligible for in-state tuition at the time of high school graduation, the graduate has a ten-year window to re-establish domicile in Ohio to qualify for in-state tuition. The provision does not explicitly say whether it is intended to be applied retrospectively. Presumably, it could be construed as being retrospective, so that graduates of the high school Class of 2002 and later could qualify after the bill takes effect.

Background

Under current law, the Chancellor establishes rules for residency status for purposes of in-state tuition. The General Assembly has instructed the Chancellor, in statue, to exclude students whose primary purpose for residing in Ohio is to attend a state-supported institution. Generally, an Ohioan loses residency status after living out

of state for 12 months. However, the General Assembly has enacted several statutes over the years granting in-state tuition to the following:

(1) The spouse of a person, or a dependent of a parent or legal guardian, who relocates to Ohio for a full-time job, and not for in-state benefits. (Students must provide proof of spouse or parent/guardian employment and a copy of the lease or closing statement on a residential property in Ohio of which the spouse or parent/guardian is the occupant or owner.)

(2) A veteran, or spouse or dependent of a veteran, who either (a) served one or more years on active military duty and was honorably discharged or medically discharged due to military service or (b) was killed, missing in action, or a prisoner of war while serving on active military duty, if the veteran, spouse, or dependent has established domicile in the state as of the first day of the term of enrollment at an institution;

(3) A nonresident of Ohio who is a member of the armed forces and is stationed in Ohio, or is a member of the Ohio National Guard, and the member's spouse and dependents; and

(4) A resident of a contiguous state who enrolls in an Ohio public two-year college, if the student is employed by an Ohio business and the student's employer both (a) pays the tuition pursuant to a contract with the college and (b) agrees not to charge the student for the tuition.[231]

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. But the bill prohibits institutions from being designated as charter universities until the General Assembly, after considering the Chancellor's plan, has enacted legislation establishing a procedure for making such a designation. The bill further prohibits the Chancellor from adopting, amending, or rescinding rules with respect to designating institutions as charter universities until legislation is enacted.

[231] R.C. 3333.31(B) and (C), 3333.32, and 3333.42 (the last two sections not in the bill).

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.

Three-year baccalaureate degrees

(R.C. 3333.43)

The bill requires the Chancellor 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. 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 take any action 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. Not later than June 30, 2014, institutions must provide statements for 60% of all baccalaureate degrees.

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 summer sessions; or

(5) A foreign language requirement waiver based on a proficiency examination specified by the institution.

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 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."[232] The Chancellor maintains the clearinghouse as the "OhioLearns! Gateway," 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.[233] 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.[234] 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, for the fiscal biennium.

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. It appears that

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[232] R.C. 3333.81.

[233] Section 371.60.70.

[234] R.C. 3333.82(F).

the College in administering the program must take some responsibility for course content.[235]

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." Still, the bill also appears to require a student's district or school to award some amount of credit for a successfully completed course.[236]

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.[237]

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. The Chancellor is also permitted under current law to retain a percentage of a provider's fee.[238] 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 the student's post-secondary college or career plans. 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

[235] R.C. 3333.82(A); Section 371.60.70(B).

[236] R.C. 3333.85(B); Section 371.60.70(C).

[237] Section 371.60.70(E).

[238] R.C. 3333.84(C); Section 371.60.70(D).

to or participation in courses offered through the clearinghouse and from refusing to recognize courses that fulfill the minimum high school curriculum.[239]

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. 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."[240] 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 eTech

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.[241]

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.

(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.

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[239] R.C. 3333.83(A) and 3333.85. See also R.C. 3313.603(C).

[240] R.C. 3333.84(A) and (D).

[241] R.C. 3333.82(F).

(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."[242]

Rules for implementation of the clearinghouse

Current law requires the Chancellor to adopt rules in accordance with the Administrative Procedure 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. And the Chancellor and State Board must consult with the Director of the Governor's Office of 21st Century Education in adopting those rules.[243]

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 or the Chancellor's designee;

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

(3) The Director of the Governor's Office of 21st Century Education or the Director's designee;

(4) Up to six members appointed by the Governor, who must be representatives of school districts or community schools that are "high performing of their type" and have demonstrated the ability to incorporate technology into the classroom successfully; and

[242] R.C. 3333.82.

[243] R.C. 3333.87.

(5) One member each appointed by the Senate President and the Speaker of the House. The bill does not state whether those two members must or may be members of the General Assembly or the public.

All members must be appointed within 60 days after the bill's (immediate) effective date. The Governor must designate the chairperson of the Task Force. Meetings of the Task Force are held at the call of the chairperson.

Issues for study

The bill specifically requires the Task Force to do all of the following:

(1) Request information from textbook publishers about digital textbooks and digital content distribution methods and examine that information;

(2) Examine potential cost savings of using digital textbooks and digital content distribution in primary and secondary schools and in higher education institutions;

(3) Examine the academic benefits of using digital textbooks and digital content distribution, including, but not limited to, the ability to individualize content to specific student learning styles, accessibility for individuals with disabilities, and the integration of formative and other online assessments; and

(4) Examine current digital content pilot programs and state-level initiatives operating in Ohio.

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) Methods for removing redundancy and inefficiency in, and for providing coordination of, all digital learning programs, including the provision of free online instruction to public and nonpublic schools statewide; and

(10) Methods of addressing future changes in technology and learning.

Upon issuing its report, the Task Force will cease to exist.

Electronic textbook programs at state higher education institutions

(Section 371.60.90)

The bill requires the Chancellor, within six months after the bill's (immediate) effective date, to do both of the following:

(1) Facilitate full implementation of digital textbook and content pilot programs currently planned at state institutions of higher education; and

(2) Ensure that those pilot programs examine cost savings, efficiencies, and academic benefits of digital content, including, but not limited to, the ability to individualize content to specific student learning styles, accessibility for individuals with disabilities, and the integration of formative and other online assessments.

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 assigns a number of scholarships to state universities and the Northeast Ohio Medical University (formerly 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 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.

Religious student groups

(R.C. 3345.023)

The bill prohibits a state institution of higher education from denying a religious student group any benefit that any other student group would receive, based on the fact that the religious student group requires its leaders or voting members to adhere to its sincerely held religious beliefs or standards of conduct.

The bill specifies that benefits to which such religious groups must have equal access include recognition by the state institution of higher education and registration of that group. Institutions must also provide these religious student groups access to the institution's channels of communication and funding sources available to any other student group. Finally, these groups must also be able to use the institution's facilities for speaking purposes, but this requirement is subject to the authority institutions have under current law to deny use of facilities to advocates for or members of organizations that advocate the overthrow of the United States government by force, or persons "whose presence is not conducive to high ethical or moral standards or the primary educational purposes and orderly conduct of the functions of the institution."[244]

DEPARTMENT OF REHABILITATION AND CORRECTION (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 (transferred to

[244] R.C. 3345.021, not in bill.

DRC and renamed the North Central Correctional Institution Camp) 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.

- Specifies that any facility described in the second preceding dot point that is transferred must be returned to the county auditor's tax list and duplicate and is subject to all real property taxes and assessments, that no exemption from real property taxation under R.C. Chapter 5709. applies to any such facility that is sold, and that the gross receipts and income of a contractor to whom any such facility is sold that are derived from operating the facility are exempt from gross receipts and income taxes levied by the state and its subdivisions.

- Permits rather than requires the DRC to provide laboratory services to itself and the departments of Mental Health (DMH), Developmental Disabilities, and Youth Services.

- Expands the definition of a DRC "psychiatric hospital" operated for the treatment of inmates to also include a part of a facility.

- Provides that a psychiatric hospital is all or a part of a facility that is operated and managed by DMH pursuant to an agreement with DRC or an accredited psychiatric hospital licensed by DMH and operated and managed by DRC or a contractor of DRC.

- Transfers specified responsibilities related to inmate patient care and treatment from the warden of a psychiatric hospital to DRC.

- Provides that any money received by DRC for agricultural products produced in penal and correctional institutions be deposited into the Ohio Institutional Services 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.

- Eliminates the funding source for the Ohio Penal Industries Manufacturing Fund.

- Limits the ability of employees of community-based correctional facilities and district community-based correctional facilities who were subject to a collective bargaining agreement on June 1, 2005, to collectively bargain with their public employers to allow them to do so only if the public employer only elects to collectively bargain.

- Makes these community-based correctional facilities employees ineligible to serve on the Ohio Elections Commission.

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, jurisdiction of which the bill transfers to DRC. 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.

(c) Upon the sale and conveyance of the facility: (i) the facility must be returned to the tax list and duplicate maintained by the county auditor and is subject to all real property taxes and assessments, (ii) no exemption from real property taxation under

R.C. Chapter 5709. applies to the facility, and (iii) the gross receipts and income of the contractor to whom the facility is conveyed that are derived from operating and managing the facility under the provision are exempt from gross receipts and income taxes levied by the state and its subdivisions, including the taxes levied pursuant to R.C. Chapters 718., 5747., 5748., and 5751.

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, and the North Central Correctional Institution. It also applies to the vacated facility previously operated by DYS that is adjacent to the North Central Correctional Institution, which the bill transfers to DRC and renames the North Central Correctional Institution Camp. The bill identifies the approximate acreage of the authorized land transfer for each of the five identified facilities.

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 and subject to the condition described in the following sentence, 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 the contract is for the transfer of the state's right, title, and interest in the real

property on which the Grafton Correctional Institution is situated and any surrounding land, DRC's Director may transfer to another state correctional institution to be determined by the Director the Braille printing press and related accessories located at the Grafton Correctional Institution and all programs associated with the Braille printing press.

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. 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, in accordance with procedures specified in the bill, and any remaining proceeds after the redemption or defeasance 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), (D)(2), (E), (I), and (J))

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 *all or part of* a facility that is operated *and managed by the Department of Mental Health (DMH) to provide psychiatric hospitalization services pursuant to an agreement between the Directors of DRC and DMH* (added by the bill) or is licensed by the DMH *as a psychiatric hospital accredited by a healthcare accrediting organization approved by the DMH and operated and managed by DRC within a facility operated by DRC, by a contractor for DRC within a facility operated by DRC, or by an entity that has contracted with DRC to provide psychiatric hospitalization services in a community* (added by the bill). The current definition of a psychiatric hospital does not include "part" of a facility. Under current law, a part of a facility otherwise meeting the qualifications of a psychiatric hospital is not a psychiatric hospital.

Under current law, the psychiatric hospital is operated by DRC, rather than by DMH pursuant to an agreement with DRC, and is required to be in substantial compliance with standards set by the Joint Commission on Accreditation of Heathcare Organizations (JCAHO), rather than being required to be accredited by an approved

healthcare accrediting organization. Current law does not specify the entities that may operate and manage the psychiatric hospital.

The bill prohibits inmate patients who are transported or transferred to a psychiatric hospital *within a facility operated by* DRC from being subjected to convulsive therapy, major aversive interventions, unusually hazardous treatment procedures, or psychosurgery. Current law prohibits inmate patients who are transported to a psychiatric hospital from being subjected to these treatments if the patient is in the *physical custody* of DRC.

The bill provides that DRC is responsible for ensuring that inmate patients hospitalized in a psychiatric hospital receive statutorily required care and treatment. Current law places that responsibility on the warden of the psychiatric hospital or the warden's designee. The bill provides that DRC or a designee of DRC may file an affidavit with the probate court prior to the release of an inmate patient from a psychiatric hospital, alleging that the inmate patient is mentally ill and subject to hospitalization by court order or is mentally retarded and subject to institutionalization by court order. Current law permits the warden of the psychiatric hospital to file this affidavit.

Current law requires DRC to set standards for the treatment provided to inmate patients consistent, where applicable, with the standards set by JCAHO. Under the bill, DRC's treatment standards would not be required to be consistent with JCAHO standards.

Deposit into Ohio Institutional Services Fund

(R.C. 5120.28(B))

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 labor and services performed and agricultural products produced (existing law) and articles manufactured in penal and correctional institutions (added by bill) be deposited into the Institutional Services Fund (new name for the Services and Agricultural Fund).

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 DRC (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. 5120.28(C) and 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 DRC.

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. However, the bill removes the requirement that any money received by DRC for articles manufactured in penal and correctional institutions be deposited into the Ohio Penal Industries Manufacturing Fund. Therefore, it appears that the funding source for that fund has been eliminated.

Community-based correctional officer collective bargaining

(R.C. 4117.01(C) and R.C. 4117.03, not in the bill)

The bill limits the ability of employees of community-based correctional facilities and district community-based correctional facilities who were subject to a collective bargaining agreement on June 1, 2005, to collectively bargain with their public employers. Under the bill, these employees can collectively bargain with their public employer only if the public employer elects to do so, similar to current law with respect to community-based correctional facility employees who were not covered by a collective bargaining agreement on that date. The public employer cannot be compelled to bargain with these employees.

Currently, these employees have the right to collectively bargain with their public employer, and thus the public employer is required to do so if certain procedures contained in continuing law are satisfied.

Membership on the Ohio Elections Commission

(R.C. 3517.152, not in the bill)

Because the community-based correctional facilities employees described under "**Community-based correctional officer collective bargaining**" above under the bill are no longer considered to be public employees for purposes of collective bargaining, those employees also become ineligible to serve on the Ohio Elections Commission. Under continuing law, a person or employee excluded from the definition of "public employee" under the Public Employees' Collective Bargaining Law cannot be a Commission member.

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.

- Removes, with respect to funds that ORSC may receive under a third-party funding agreement, the specification that the funds be used by ORSC 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.

With regard to the percentage of funds that ORSC may receive under a third-party funding agreement, the bill removes the existing law specification that ORSC use the funds for administration.

RETIREMENT (RET)

- Permits the largest municipal corporation located in the southwestern portion of Ohio with a retirement system for its employees to enter into an agreement with the retirement system to issue securities for a single payment of its accrued liability to the system.

- Specifies that the agreement may provide for a reduction in the amount of the accrued liability owed the system based on the value to the system of receiving a single payment.

Municipal corporation retirement system securities

(R.C. 717.08)

The bill permits the largest municipal corporation located in the southwestern portion of Ohio with a retirement system for its employees to enter into an agreement with the retirement system board of trustees[245] for a single payment of all or a portion of the municipal corporation's accrued liability to the system.[246] The agreement may provide for a reduction in the amount of the accrued liability owed the system based on the value to the system of receiving a single payment. The municipal corporation's legislative authority is authorized to issue securities, including special obligation securities that pledge taxes, or other revenue to provide the funds required to pay the accrued liability. Current law permits municipal corporations to enter into similar agreements with the Ohio Police and Fire Pension Fund.[247]

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.

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[245] The Cincinnati Retirement System is the state's only municipal retirement system. Most state and local government employees are members of one of the state's public retirement systems.

[246] It appears that this provision applies only to the city of Cincinnati and the Cincinnati Retirement System.

[247] R.C. 717.07 and 742.30(C).

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 a bond issue and tax levy 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.

- Eliminates the prohibition of a school district that is within three fiscal years of eligibility for the Classroom Facilities Assistance Program (CFAP) from participating in the Exceptional Needs Program.

- Codifies and makes permanent an Exceptional Needs sub-program to assist districts to relocate or replace a facility due to environmental contamination.

- Specifies that, when a school district participating in the Expedited Local Partnership Program becomes eligible for state funding for a districtwide project under CFAP, if the district's tangible personal property valuation (not including public utility personal property) made up 18% or more of its total taxable value for tax year 2005, the district's share of its CFAP project cost will be the *lesser* of (1) the percentage locked in under the Expedited Local Partner agreement or (2) the percentage computed using its current wealth percentile rank.

- 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 contracts 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[248] 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. This extension provides a district the same number of levy opportunities as before H.B. 48 of the 128th General Assembly increased the election filing deadline from 75 to 90 days.

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.

[248] 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 revive 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.[249]

The new scope, estimated costs, and estimated millage rate are valid for 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 district 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 is the case under current law for the Accelerated Urban districts and joint vocational districts, the bill authorizes a district to 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

[249] 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.

Eligibility for Exceptional Needs Program

(R.C. 3318.37)

The bill eliminates the stipulation of current law that, regardless of other qualifications, any district reasonably expected to be eligible for CFAP within three fiscal years after its application for assistance under the Exceptional Needs Program is ineligible for the Exceptional Needs Program.

As noted above, the Exceptional Needs Program provides districts in the 1st through 75th wealth percentiles, and districts with territories of more than 300 square miles, with funding in advance of their districtwide CFAP projects to address acute health and safety issues.

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 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.

CFAP shares for Expedited Local Partner districts that had relatively large amount tangible personal property valuation

(R.C. 3318.36)

The bill makes an exception to the general requirement that school districts participating in the Expedited Local Partnership Program "lock in" their local share percentage for when they eventually become eligible for CFAP. Under the bill, when an Expedited Local Partner district becomes eligible for CFAP,[250] if the district's tangible personal property valuation, not including public utility personal property, made up 18% or more of its total taxable value for tax year 2005 (the year the tax on that property began to phase out), the district's share of its CFAP project cost will be the *lesser* of (1) the percentage locked in under the Expedited Local Partner agreement or (2) the percentage computed using its current wealth percentile rank.

Background

The annual wealth percentile rankings of school districts for school facilities funding is based on the "total" taxable value of each district, averaged over three years.

[250] A district's percentile ranking at the time it entered into its expedited agreement is also locked in for purposes of determining priority for funding under CFAP. The bill does not affect this provision.

That total taxable value is the sum of both the district's real property tax valuation and its tangible personal property tax valuation. Beginning in 2005, however, the tax on tangible personal property that is not public utility personal property was phased down over several years, and is now fully phased out.[251] Thus, the value of that tangible personal property is no longer included in a district's current total taxable value. As each district's three-year average adjusted valuation is computed each year, the impact of the tangible personal property valuation will decrease. This decline in total valuation could eventually lower a district's wealth percentile and increase the amount of state funding available for its school facilities projects.

But districts participating in the Expedited Local Partnership Program "lock in" the percentage of their districtwide CFAP projects when they enter into their expedited agreements. Under the Expedited Local Partner Program, a participating district may go ahead with some of its districtwide project using local funds, and apply that local expenditure toward its share when it becomes eligible for CFAP. Since a district's percentage of the total project cost is set in the expedited agreement, changes in the district's valuation (up or down) do not affect its share of the eventual CFAP project. Accordingly, districts that had a relatively higher amount of tangible personal property in their total taxable values when the tax was phased out may experience a negative effect from having locked in the percentages of their local shares of their CFAP projects. That is, their shares may be lower now, if computed using their lower valuations, than they were when the districts entered into their expedited agreements.

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

[251] R.C. 5711.22, not in the bill.

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 School Facilities Commission the authority to request the Director of Administrative Services to debar a contractor from contract awards for classroom facilities projects. 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 a classroom facilities project.

SECRETARY OF STATE (SOS)

- 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.[252] All investment earnings of the fund must be credited to the fund.

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[253] 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

[252] Pub. L. No. 107-252, 116 Stat. 1666.

[253] Title II, Subtitle D, Sections 261 to 265.

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 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.[254] Funds that were transferred to the Secretary of State Business Technology Fund will be retained in the Corporate and Uniform Commercial Code Filing Fund.

[254] R.C. Titles XIII and XVII.

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,[255] which currently sets this fee 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,

[255] R.C. 111.16, not in the bill.

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.

SOUTHERN OHIO AGRICULTURAL COMMUNITY DEVELOPMENT TRUST FUND (SOA)

- Requires grants and loans awarded by the Southern Ohio Agricultural and Community Development Foundation after the bill's effective date to be limited to applicants enrolled in an institution of higher education located in Ohio or within 50 miles of the state's borders.

Southern Ohio Agricultural and Community Development Foundation grants and loans

(R.C. 183.151)

The bill imposes a new requirement on the Southern Ohio Agricultural and Community Development Foundation regarding awards of grants or loans to carry out the Foundation's mandate to develop, through a plan made available to the public, ways for tobacco growers in southern Ohio to transition out of tobacco production.[256] Under the bill, education and training assistance grants or loans awarded by the Foundation after the bill's effective date are limited to applicants enrolled in an eligible institution of higher education located in Ohio or certain institutions located outside of the state. Specifically, eligible institutions of higher education include the following: (1) state institutions of higher education (state universities, community colleges, state community colleges, state university branches, and technical colleges),[257] (2) private, nonprofit colleges and universities that hold certificates of authorization issued by the Ohio Board of Regents,[258] (3) institutions that have a certificate of registration from the

[256] R.C. 183.11 to 183.17, not in the bill.

[257] R.C. 3345.011, not in the bill.

[258] R.C. Chapter 1713., not in the bill.

State Board of Career Colleges and Schools,[259] (4) certain private institutions exempt from regulation by the State Board of Career Colleges and Schools,[260] and (5) institutions of higher education located outside of Ohio, but within 50 miles of the state's borders.

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.

DEPARTMENT OF TAXATION (TAX)

Tax exemptions for privatized state services

- Exempts from taxation private contractors contracting to operate prisons, the turnpike, and the liquor merchandising function (JobsOhio); affected taxes are commercial activity and state and local income and sales/use taxes.

Local Government Fund and Public Library Fund

- 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.

[259] R.C. Chapter 3332., not in the bill.

[260] R.C. 3333.046, not in the bill.

- 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.

- Requires minimum distributions to county LGFs in fiscal years 2012 and 2013, such that a county that received a total distribution of over $500,000 in fiscal year 2011 may not receive less than $500,000, while all other county LGFs must receive at least the same amount the county LGF received 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.

Tangible personal property tax reimbursements

- Decreases the portion of commercial activity tax and kilowatt-hour tax revenue earmarked for reimbursing school districts and other taxing units for business and public utility personal property tax losses, and increases the GRF portion.

- Requires all natural gas distribution tax revenue to be credited to the GRF.

- Replaces the current business and public utility property reimbursement schedules for fixed-rate levy losses with ones that:

  --Over the FY 2012-2013 fiscal biennium, terminate 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 "threshold" percentage of the taxing unit's total resources (a fixed measure of its state aid and local levy revenues);

  --Over the FY 2012-2013 fiscal biennium, reduce 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; and

--After the biennium, reimburse taxing units at FY 2013 (schools) or tax year 2013 (others) levels indefinitely for taxing units that received payments in FY 2013 or tax year 2013.

- Reduces the reimbursements for non-current expense fixed-rate levy losses over the biennium for school districts and municipal corporations. (Other taxing units' non-current expense, fixed-rate levies, if any exist, are disregarded.)

- Retains the current law reimbursements 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.

- Reduces the business personal property 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 business property 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.

- Terminates payments of "surplus" public utility property reimbursement 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.

- 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).

- 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.

Job retention tax credit and other credits

- 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.

- Extends perpetually the credit for rehabilitating an historic building, but reduces the annual credit limit from $60 million to $25 million.

- Allows foreign and domestic insurance company taxpayers to be eligible for a refundable historic rehabilitation tax credit equal to 25% of the dollar amount indicated on a rehabilitation tax credit certificate.

- Extends the final date on which horse racing permit holders are eligible for tax reductions to recover the costs that they incurred in certain renovation, reconstruction, or remodeling projects at their tracks.

Estate tax

- Repeals estate tax for the estates of individuals dying on or after January 1, 2013.

Tax amnesty

- Requires the Tax Commissioner to administer a temporary tax amnesty program from January 1, 2012, to February 15, 2012, with respect to delinquent state taxes, tangible personal property taxes, county and transit authority sales taxes, and school district income taxes.

Tax administration

- 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.

- 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.

- Requires all claims and inquiries regarding the repealed Ohio Inheritance Tax to be submitted to the Department of Taxation before 2013.

Miscellaneous

- Extends by one year the authority of local governments to offer Enterprise Zone economic development incentives, which currently expires on October 15, 2011.

- Specifies that the commercial activity tax applies to the gross receipts of a casino operator without deduction for casino user winnings and payouts.

- Creates an income tax refund "check-off" contribution for the benefit of the Ohio Historical Society.

- Allows school districts to transfer surplus money in a bond fund or bond retirement fund to a specific permanent improvement fund with the approval of the county budget commission.

- Authorizes county treasurers that sell delinquent property tax certificates to shorten the deadline by which certificate holders must initiate foreclosures to as few as three years.

- Authorizes tax certificates being sold at public auction to be advertised electronically.

Tax exemptions for privatized state services

(R.C. 126.60, 126.604, 718.01(A)(1), 5739.02(B)(51), 5747.01(A)(30), and 5751.01(F)(2)(gg))

Privatized state services

The bill provides a municipal and state income tax deduction, a sales tax exemption, and an exclusion from "gross receipts" for the purposes of calculating commercial activity tax for an entity that operates facilities and services previously operated by the state. The three parties covered by the tax exemptions authorized by the bill are the following:

(1) A contractor operating the turnpike under the bill's authority for the state to contract for such services (R.C. 126.60 through 126.605);

(2) A private contractor that enters into a contract to own and operate one of the prisons as authorized by the bill (R.C. 9.06(J));

(3) JobsOhio with regard to the transfer of state liquor merchandising operations as authorized by the bill (R.C. 4313.02).

Tax exemptions

Under the bill, a contractor may deduct, for the purpose of calculating the contractor's state and municipal income tax, any income realized by the contractor from the services provided or prisons operated by the contractor. JobsOhio may deduct income realized from state liquor merchandising operations or the transfer of those operations from JobsOhio's adjusted gross income, assuming JobsOhio or its involved subsidiaries are otherwise subject to such taxes (JobsOhio is to be organized as a nonprofit corporation, although its subsidiaries might not be nonprofit). (R.C. 718.01 and 5747.01.)

A transfer or lease of tangible personal property between a contractor and the state is exempted from state and local sales and use taxes. The transfer of state liquor

merchandising operations to JobsOhio is exempt from state and local sales and use taxes. (R.C. 5739.02.)

Receipts directly attributed to providing highway (i.e., turnpike) services pursuant to a contract with the state are excluded from "gross receipts" for the purpose of calculating a contractor's commercial activity tax. Receipts directly attributed to a transfer agreement regarding state liquor merchandizing operations between JobsOhio and the state and receipts directly attributed to the liquor operations are excluded from JobsOhio's gross receipts. (R.C. 5751.01. As with the income tax deduction, the effect of this provision on JobsOhio, if any, is uncertain because the CAT does not apply to nonprofit organizations.)

Privatized public services and property tax

The bill exempts from property taxation any property used by a contractor under contract with the state to perform highway (i.e., turnpike) services if the property is still owned by the state. (R.C. 126.604.) Also exempted from property taxation is any property transferred to JobsOhio as part of the transfer of the liquor merchandizing operations to the extent the property would be exempted if it had not been transferred. (R.C. 4313.02(A).)

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 through each county's undivided LGF. However, the bill has a limited hold-harmless for some county LGFs in fiscal years 2012 and 2013 that guarantees minimum payments to counties currently receiving relatively little in LGF money. Specifically, any county undivided LGF that received over $500,000 in fiscal year 2011 must receive a minimum of $500,000 in each of those fiscal years, even if the proposed reductions would otherwise result in a lower distribution. Similarly, any county undivided LGF that received $500,000 or less in fiscal year 2011 must continue to receive at least the same amount distributed to the fund in that year.

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 initial 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 initial LGF allocation equals 50% of the allocation made in the corresponding month in fiscal year 2011. If, in any month, the initial LGF allocation is insufficient to make the minimum distributions required for county undivided LGFs, the state LGF must receive an additional allocation of the amount necessary to make those minimum payments.

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 and directly to municipal corporation general funds based on the amounts distributed to those funds in fiscal year 2011. In each month between August of 2011 and June of 2013, the initial revenue credited to the state LGF, before adjustments for minimum distributions, must be distributed to county LGFs and municipal corporations on a pro rata basis based on the proportionate share of state distributions each received in fiscal year 2011. For each county LGF, this initial distribution amount equals the fund's proportionate share of the 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.

A county undivided LGF will receive an additional amount in any month that the fund's initial distribution amount falls below the applicable minimum distribution level. Any county LGF that received total distributions of $500,000 or less in fiscal year 2011 must receive an additional amount calculated to ensure that the fund will receive the same total amount the fund received in that fiscal year. Alternatively, a county LGF that received total distributions of over $500,000 in fiscal year 2011 will receive an additional amount only if the total amount to be distributed to that fund in either fiscal year 2012 or 2013 would be less than $500,000. In such a case, the fund must receive an additional amount calculated to ensure that the fund's total distributions for the respective fiscal year will equal $500,000. The bill's minimum distribution levels do not apply to municipal corporation general funds.

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 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.[261] 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 over the FY 2012-2013 fiscal biennium. It also eliminates the reservation of undistributed SDRF money for "school purposes."

[261] A "tax year" is the same as the calendar year. For example, tax year 2011 means January 1, 2011 through December 31, 2011.

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 and thereafter	~~10.6%~~ 50.0%	~~70.0%~~ 35.0%	~~19.4%~~ 15.0%

(The percentages shown effect the percentage of the CAT revenue remaining after the first $50 million is earmarked for grants to local governments to encourage shared services. See "**Local Government Integrating and Innovation Committees**" under the Local Government section.)

TPP loss reimbursement

Losses experienced by city, local, or exempted village school districts, joint vocational school districts, and other local taxing units for legislated personal property tax reductions 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. 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.")

Over the FY 2012-2013 fiscal biennium, fixed-rate levy loss reimbursements are either reduced or terminated. 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**

For school districts, the threshold percentage is 2% for fiscal year 2012 and 4% for fiscal years 2013 and thereafter. For non-school taxing units, the threshold percentage is 2% for tax year 2011, 4% for tax year 2012, and 6% for tax years 2013 and thereafter.

Reimbursement for fixed-rate levies for purposes other than current expenses (as the bill defines "current expenses") will be reduced by 50% (school districts) or 75% (municipal corporations) over the fiscal biennium. The school district reimbursement is reduced by 25% in FY 2012 and by 50% in FY 2013 and thereafter; the other taxing units' reimbursement is reduced by 25% for tax year 2011, 50% for 2012, and 75% for 2013 and thereafter. 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 2010 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 2010 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;[262] • 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 2010 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:

Total Resources (Joint vocational school districts)
• The district's fiscal year 2010 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.

[262] 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**.")

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.[263] 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.

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:

[263] 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.

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.[264] If a municipality received no distributions in any of such years, its median estate tax distribution equals zero.

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).

[264] Presumably, the distributions will be ordered according to value and not chronologically.

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.
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.[265] In tax year 2002, assessment rates for natural gas property were similarly reduced.[266] 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 tax revenue. Revenue from these taxes is allocated among three funds: the

[265] S.B. 3 of the 123rd General Assembly.

[266] S.B. 287 of the 123rd General Assembly.

General Revenue Fund, the School District Property Tax Replacement Fund, and the Local Government Property Tax Replacement Fund. (Payments are made from the replacement funds.) The bill reallocates the revenue as follows, beginning in FY 2012:

Tax	General Revenue Fund	School District Property Tax Replacement Fund	Local Government Property Tax Replacement Fund
Kilowatt-hour tax	~~63%~~ 88%	~~25.4%~~ 9%	~~11.6%~~ 3%
Natural gas tax	~~0%~~ 100%	~~68.7%~~ 0%	~~31.3%~~ 0%

TPP loss reimbursement

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: 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.[267] 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:

[267] 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.

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.

The bill changes the manner in which fixed-rate levy loss reimbursements are computed. 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.")

Over the FY 2012-2013 fiscal biennium, fixed-rate levy loss reimbursements are either reduced or terminated. 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), one-half of 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 one-half of the taxing unit's S.B. 3 allocation does not exceed a threshold percentage of the unit's total resources, it is no longer entitled to reimbursement for fixed-rate levy losses. If one-half of its S.B. 3 allocation does exceed

the threshold, each reimbursement payment (two per year) equals the difference of one-half 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**.") For school districts, the threshold per cent is 2% for fiscal year 2012 and 4% for fiscal years 2013 and thereafter. For non-school taxing units, the threshold percentage is 2% for calendar year 2011, 4% for 2012, and 6% for 2013 and thereafter.

Reimbursement for school district and municipal corporation fixed-rate levies that are not for current expenses is reduced by 50% (school districts) or 75% (municipal corporations) over the fiscal biennium. The school district reimbursement is reduced by 25% in FY2012 and by 50% in FY2013; the other taxing units' reimbursement is reduced by 25% for tax year 2011, 50% for 2012, and 75% for 2013 and thereafter. 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 one-fourth mill's worth) 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.

Historic building rehabilitation tax credit

(R.C. 149.311)

The historic building rehabilitation tax credit is a credit against the income tax (R.C. Chapter 5747.), corporation franchise tax (R.C. Chapter 5733.), and dealers in intangibles tax (R.C. 5707.03(D) and 5725.15). The credit equals 25% of qualified expenditures made for rehabilitating a building of historical significance, and that meets certain historic preservation criteria as determined by the State Historic Preservation Officer.

Under current law, the credit effectively ends June 30, 2011, the last day on which applications for credits may be filed. The bill removes this deadline, extending the credit perpetually.

Current law limits the amount of credits that may be issued in a fiscal year to $60 million. The bill reduces this amount to $25 million per fiscal year.

Historic rehabilitation tax credit against insurance tax

(R.C. 149.311, 5725.34, 5725.98, 5729.17, and 5729.98)

The bill extends eligibility to foreign and domestic insurance company taxpayers for the existing refundable historic rehabilitation tax credit. A foreign or domestic insurance company would thus be permitted to claim the credit against the insurance company gross premiums taxes, provided the company satisfies all other eligibility requirements.

Under current law, a refundable credit is provided against the dealer in intangibles tax, the corporation franchise tax (on financial firms), or the income tax equal to 25% of the "qualified rehabilitation expenditures" incurred by the property owner in rehabilitating an historic building. "Qualified rehabilitation expenditures" are those paid or incurred during the "rehabilitation period," and before and after that period as determined under federal rehabilitation tax credit law, by an owner of an historic building to rehabilitate the building. The maximum credit amount is $5 million, but not more than $3 million may be taken in a year; any excess above $3 million may be applied to up to five subsequent years' tax liability.

Racing facility capital improvement tax reduction extension

(R.C. 3769.20)

The bill extends to December 31, 2017, from December 31, 2014, the final date on which horse racing permit holders are eligible to take tax reductions to recover the costs holders incur in renovation, reconstruction, or remodeling projects costing at least $6 million, at their race tracks. Under this tax reduction program, the taxes a permit holder pays to the state, in excess of the amounts required to be paid into the PASSPORT Fund, are reduced by 1% of the total amount wagered.

Estate tax repeal

(R.C. 5731.02, 5731.19, and 5731.21)

Estate tax

The bill effectively repeals the Ohio estate tax by limiting its application to estates of decedents dying before January 1, 2013. Estates of persons dying on or after that date would not be subject to the tax.

Overview of estate tax

The tax on Ohio residents' estates is levied on the value of the taxable estate, which generally is the value of all property in which the decedent had an interest on the date of death, minus certain deductions for marital transfers, debts, charitable donations, and administration expenses, among other things. The tax is levied at graduated rates, through six tax brackets, ranging from 2% for taxable estates of $40,000 or less, to $23,600 plus 7% of the excess over $500,000 for estates of more than $500,000.

A credit is allowed in the amount of $13,900, which equates to a deduction of $338,333. Thus, taxable estates worth $338,333 or less (after allowable deductions) owe no tax. If the gross estate does not exceed that threshold, no tax return must be filed.

The nonresident estate tax is levied on the portion of a nonresident's estate that is located in Ohio. The tax is determined by dividing the gross value of the property located in Ohio by the entire gross estate, wherever located. That fraction is then multiplied by the tax the estate would owe if the decedent had been an Ohio resident.

Intangible personal property located in Ohio owned by a nonresident is not taxed unless it is used to carry on a business within Ohio. If it is used to carry on a business within Ohio, it will not be taxed if the state where the nonresident was domiciled would not tax the intangible personal property of decedents domiciled in Ohio.

Estate tax revenues are divided between the state and the local government where the tax is deemed to have originated: 80% is distributed to the local government, and 20% is distributed to the state General Revenue Fund. Origination of a tax depends upon the type of property, its location when the decedent died, and whether it is owned by a resident or by a nonresident.

Temporary tax amnesty program

(Sections 757.40 and 757.41)

Program description

The bill requires that the Tax Commissioner administer a temporary tax amnesty program from January 1, 2012, to February 15, 2012, with respect to delinquent state taxes, tangible personal property taxes, county and transit authority sales taxes, and school district income taxes. The program applies only to taxes that were due and payable as of May 1, 2011, which were unreported or underreported, and which remain unpaid when the program commences. The program does not apply to any tax for which a notice of assessment or audit has been issued, for which a bill has been issued,

or for which an audit has been conducted or is pending. Nor does the program apply to any unpaid tax that pertains to a tax period that ends after the provision's immediate effective date.

If, during the program, a person pays the full amount of delinquent taxes owed by the person and one-half of any interest that has accrued on the taxes, the Commissioner is required to waive or abate all applicable penalties and the other one-half of any interest that accrued on the taxes. The bill authorizes the Commissioner to require a person participating in the program to file applicable returns or reports, including amended returns or reports. Persons owing tangible personal property taxes are required to file a return with the Commissioner listing all taxable personal property not previously listed by the person on a tangible personal property tax return.

In addition to receiving a waiver of penalties and one-half of accrued interest, a person who participates in the program is immune from criminal prosecution or any civil action with respect to the taxes paid through the program. The bill specifies, further, that no assessment may be issued against any person with respect to a tax paid through the program.

The bill requires that the Commissioner issue forms and instructions for the program, and take any other actions necessary to implement the program. The bill directs the Commissioner to publicize the program so as to maximize public awareness of the program and participation in it.

Distribution of taxes collected under the program

Generally, taxes and interest collected under the program will be credited to the General Revenue Fund. However, any tax collected under the program that a taxing district would have received had the tax been timely paid is distributed to that taxing district.

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.

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.

Ohio inheritance tax claims

(Section 757.50)

The Ohio Inheritance Tax was repealed in 1968 and replaced by the Estate Tax (Chapter 5731.). The bill requires all claims and inquiries regarding files for which "ultimate succession" has not been finalized to be submitted to the Department of Taxation before 2013.

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.

Commercial activity tax: casino revenue

(R.C. 5751.01(F)(2)(gg) and 5753.01)

The bill specifies that the commercial activity tax applies to the gross receipts of casino operators without any deduction for casino user winnings and payouts. Further, the bill clarifies that the definition of "gross casino revenue" used for purposes of calculating the operator's casino tax liability is specific to the casino tax and has no relation to the definition of "gross receipts" for the purpose of calculating the operator's commercial activity tax liability.

Existing law imposes the commercial activity tax on the basis of "gross receipts," which is defined to mean "the total amount realized by a person, without deduction for the cost of goods sold or other expenses incurred, that contributes to the production of gross income of the person, including the fair market value of any property and any services received, and any debt transferred or forgiven as consideration." Several categories of specific exclusions are allowed, none of which appear to pertain to casino wagering revenue.

The existing casino-specific wagering tax is imposed on "gross casino revenue," which is defined to mean "the total amount of money exchanged for the purchase of chips, tokens, tickets, electronic cards, or similar objects by casino patrons, less winnings paid to wagerers."

Ohio Historical Society income tax check-off

(R.C. 149.308 and 5747.113)

The bill authorizes taxpayers who are due a refund of overpaid Ohio income tax to specify that all or a part of the refund be paid to the Ohio Historical Society. Contributions are to be credited to the Ohio Historical Society Income Tax Contribution Fund, a fund created by the bill. The Society must use money in the fund in furtherance of its public functions as provided in R.C. 149.30 to 149.31 and other laws (summarized below). In addition to income tax refund contributions, the fund may accept direct contributions. Currently, there are three income tax refund contributions or "check-offs": one for the benefit of the Natural Areas and Preserves Fund; one for the benefit of the Nongame and Endangered Wildlife Fund; and one for the benefit of the Military Injury Relief Fund. The Natural Areas and Preserves Fund and the Nongame and Endangered Wildlife Fund are administered by the Department of Natural Resources. The Military Injury Relief Fund is administered by the Department of Job and Family Services for the benefit of military personnel injured while serving under Operation Iraqi Freedom or Operating Enduring Freedom (Afghanistan).

As with the existing check-offs, the bill's Ohio Historical Society check-off would authorize taxpayers to direct that all or part of their refund be credited to the designated fund. The designation is made on the annual income tax return. The designation may not be revoked once the designation is made and the return is filed.

The bill requires the Ohio Historical Society to submit a biennial report on the effectiveness of the check-off to the General Assembly in January of every odd-numbered year. The report must include information about how the Society spent money from the Ohio Historical Society Income Tax Contribution Fund and the amount of money contributed (including both the amount contributed through the refund check-off and the amount contributed directly). The report must provide this information for each of the five preceding years.

The Department of Taxation is entitled to reimbursement for its costs of administering the check-offs. Reimbursement currently is paid from the existing check-off funds in equal one-third shares. The reimbursement may not exceed 2-1/2% of the total amount contributed. Under the bill, the reimbursement would be divided in equal one-fourth shares among the two DNR funds, the Military Injury Relief Fund, and the Ohio Historical Society Income Tax Contribution Fund. The reimbursement would continue to be limited to 2-1/2% of contributions.

Income tax refunds may be contributed to the Ohio Historical Society beginning with taxable years that begin in or after 2011.

Ohio Historical Society

The Ohio Historical Society is a state-chartered, nonprofit corporation having the purpose of promoting knowledge of history and archeology, and performing any other public functions prescribed by law. (R.C. 149.30.) Among its prescribed functions are the following:

- Holding and maintaining state memorials and certain state-owned properties and making them available for the public, and holding and maintaining other sites;
- Administering state archives and preserving various historical documents;
- Administering the state historical museum;
- Publishing materials and conducting research about history, archeology, and natural sciences;
- Assisting local historical societies;
- Establishing criteria for the designation of historic and archeological sites.

Transfers from school district bond fund or bond retirement fund

(R.C. 5705.14)

Continuing law requires political subdivisions and school districts to establish different funds into which particular types of revenue are deposited, including a general fund, a sinking fund for the retirement of non-serial bonds, a bond retirement fund for the retirement of serial bonds, a special fund for each special tax levy, and a special bond fund for each bond issue. The subdivision or school district may transfer money between its funds only if the type of transfer is specifically authorized in law.

Under current law, surplus money in a bond fund may be transferred only to the sinking fund or bond retirement fund. Similarly, money in a bond retirement fund may be transferred to the sinking fund or, if the subdivision does not have a sinking fund and if the Court of Common Pleas approves the transfer, to any other fund. Surplus money in a bond retirement fund may be transferred only after the retirement of all debt obligations of the fund.

The bill authorizes transfers from a bond fund or bond retirement fund to a permanent improvement fund, even if all of the obligations payable from the fund have not been retired. However, the bill limits the availability of this new option to school districts that receive approval for such a transfer from the county budget commission.

When approving such transfers, a county budget commission must determine that the money to be transferred will not be necessary to meet any outstanding obligations of the fund after considering the amount of outstanding obligations, the balance of the fund, and the fund's revenue sources.

Tax certificate sales

(R.C. 5721.30, 5721.31, 5721.32, 5721.37, 5721.38, and 5721.42)

Continuing law authorizes county treasurers to sell delinquent real estate tax "certificates," which represent a legal claim on delinquent taxes owed on real estate. This authority enables taxing authorities to recover unpaid taxes before the ordinary tax foreclosure proceedings are concluded. The lien for the taxes is essentially transferred to private persons, who then may initiate foreclosure proceedings or request the county treasurer to initiate proceedings on the certificate owner's behalf. The certificates bear interest at a rate of up to 18% per year. The interest rate is set by either bid (for auctioned certificates, with the lowest rate bid the winner) or by negotiation (private sale). The interest accrues until the certificate is redeemed, either by the holder initiating foreclosure or the delinquent taxes being paid.

Foreclosure initiation deadline

Under current law, the certificate holder must initiate a foreclosure action between one year and six years after the date the tax certificate was *sold* if the certificate was sold in a public auction, or not later than six years after the date the certificate was *delivered* if the certificate was sold in a private sale. In effect, there is a five-year period during which a foreclosure must be initiated. The six-year deadline is extended if the certificate holder enters into a payment plan with the property owner or other person entitled to redeem the property (e.g., lienholder). The deadline also is extended if under federal bankruptcy law the property becomes protected by the automatic stay, in which case, the deadline to foreclose is the later of six years or 180 days after the property is no longer property of the bankruptcy estate.

The bill authorizes county treasurers to shorten the five-year period during which foreclosures must be initiated to as little as two years. With respect to certificates sold at public auction, the treasurer may establish a deadline of between three and six years after the certificate is sold. With respect to private sales, the treasurer may negotiate a deadline with the purchaser of between three and six years after the date the certificate is delivered to the purchaser. As under current law, the deadline is extended if the certificate holder enters into a payment plan or if, before the deadline, the property owner files a petition in bankruptcy. If a bankruptcy is filed, the deadline is

extended to the later of the original deadline or 180 days after the property is no longer property of the bankruptcy estate.

Continuing law grants to the holder of a tax certificate a first right of refusal to purchase the next tax certificate issued with respect to the same parcel. Under the bill, if the certificate holder purchases the subsequent certificate, the foreclosure initiation deadline with respect to the subsequent certificate is the same deadline (date) the treasurer established for the certificate giving rise to the first right of refusal.

Payment plans

Current law authorizes the owner of a tax-delinquent parcel subject to a tax certificate and certain other persons (e.g., lienholders) to redeem the parcel by entering into a payment plan with the tax certificate holder. With respect to parcels subject to a tax certificate sold in a private sale, the payment plan may be entered at any time after the certificate is sold, but the last installment required under the plan may not be due after six years after the date the certificate was sold.

The bill provides that the last installment may not be due after the expiration of the deadline by which the certificate holder may initiate a foreclosure action.

Advertisement of public sale

Under continuing law, a tax certificate may be sold in a public auction or in a private sale. When the sale is by public auction, the treasurer must publish notice of the sale by placing an advertisement in a newspaper once a week for two consecutive weeks. The advertisement must include the date, time, and place of the auction; descriptions of the properties; and the names of the property owners of record.

The bill authorizes the public sale to be published alternatively "in an electronic format."

DEPARTMENT OF TRANSPORTATION (DOT)

- Permits the Director of Transportation to enter into agreements with an agency of the United States government for the purpose of dedicating staff to the review of environmentally related documents submitted by the Ohio Department of Transportation (ODOT) that are necessary for the approval of federal permits.

- Creates the Transportation Public-Private Partnership Legislative Oversight Committee, consisting of three members of the Senate and three members of the House of Representatives.

- Requires the Committee to meet at least quarterly and requires ODOT, at each meeting, to make a report to the Committee on public-private partnership matters, including financial and budgetary matters and proposed and ongoing bids, maintenance, repair, and operational projects.

Agreements by the Ohio Department of Transportation regarding federal review of environmentally related documents

(Section 755.10)

The bill allows the Director of Transportation to enter into agreements with the United States or any U.S. department or agency solely for the purpose of dedicating staff to the expeditious and timely review of environmentally related documents submitted by the Ohio Department of Transportation (ODOT), as necessary for the approval of federal permits. Such an agreement may include provisions for advance payment by ODOT for labor and all other identifiable costs of providing services by the United States or any U.S. department or agency as may be estimated by the United States or the department or agency. The bill specifically includes the U.S. Army Corps of Engineers, the U.S. Forest Service, the U.S. Environmental Protection Agency, and the U.S. Fish and Wildlife Service as federal agencies with which the Director may enter into agreements but does not limit the Director's authority to those agencies. The Director must submit a request to the Controlling Board indicating the amount of the agreement, the services to be performed by the United States or the U.S. department or agency, and the circumstances giving rise to the agreement.

This provision was included in early versions of the most recent Transportation Budget bill, Am. Sub. H.B. 114 of the 129th General Assembly, but the Legislative Service Commission inadvertently deleted it from later versions of the bill.

Transportation Public-Private Partnership Legislative Oversight Committee

(R.C. 5501.84)

The bill creates the Transportation Public-Private Partnership Legislative Oversight Committee consisting of the following six members:

(1) Three members of the Senate, no more than two of whom may be members of the same political party, one of whom must be the chairperson of the Committee dealing primarily with highway matters, one of whom must be appointed by the President of the Senate, and one of whom must be appointed by the Minority Leader of the Senate.

The President of the Senate must make the President of the Senate's appointment to the Committee first, followed by the Minority Leader of the Senate, and they must make their appointments in such a manner that their two appointees represent districts that are located in different areas of the state.

(2) Three members of the House of Representatives, no more than two of whom may be members of the same political party, one of whom must be the chairperson of the House of Representatives committee dealing primarily with highway matters, one of whom must be appointed by the Speaker of the House of Representatives, and one of whom must be appointed by the Minority Leader of the House of Representatives. The Speaker of the House of Representatives must make the Speaker of the House of Representatives' appointment to the Committee first, followed by the Minority Leader of the House of Representatives, and they must make their appointments in such a manner that their two appointees represent districts that are located in different areas of the state. The chairperson of the House of Representatives committee must serve as the chairperson of the Committee for the year 2012, and thereafter the chair annually alternates between, first, the chairperson of the Senate committee and then the chairperson of the House of Representatives committee.

Each member of the Committee must serve a term of the remainder of the General Assembly during which the member is appointed or is serving as chairperson of the specified Senate or House of Representatives committee. In the event of the death or resignation of a Committee member, or in the event that a member ceases to be a senator or representative, or in the event that the chairperson of the Senate committee dealing primarily with highway matters or the chairperson of the House of Representatives committee dealing primarily with highway matters ceases to hold that position, the vacancy must be filled through an appointment by the President of the Senate or the Speaker of the House of Representatives or Minority Leader of the Senate or House of Representatives, as applicable. Any member appointed to fill a vacancy occurring prior to the end of the term for which the member's predecessor was appointed must hold office for the remainder of the term or for a shorter period of time as determined by the President of the Senate or the Speaker of the House of Representatives. A member of the Committee is eligible for reappointment.

The Committee must meet at least quarterly and may meet at the call of its chairperson, or upon the written request to the chairperson of not fewer than four members of the Committee. Meetings must be held at sites that are determined solely by the chairperson of the Committee. At each meeting, ODOT is required to make a report to the Committee on public-private partnership matters, including but not limited to financial and budgetary matters and proposed and ongoing bids, maintenance, repair, and operational projects.

The Committee, by the affirmative vote of at least four of its members, may submit written recommendations to the Director of Transportation, the President of the Senate, the Speaker of the House of Representatives, and the Minority Leader of each house describing public-private partnership matters subject to further legislative review.

The members of the Committee must serve without compensation but must be reimbursed by ODOT for their actual and necessary expenses incurred in the discharge of their official duties as Committee members. Serving as a member of the Committee does not constitute grounds for resignation from the Senate or House of Representatives under current law.

TREASURER OF STATE (TOS)

- Provides for the Treasurer of State to supersede and replace the Ohio Building Authority as the issuing authority in all matters relating to the issuance of obligations for the financing of capital facilities for housing branches and agencies of state government and for the financing of community or technical college capital facilities pursuant to the Bond Intercept Program.
- Does not repeal the Ohio Building Authority's current bond issuance authority for these purposes.
- Expands the financial instruments that the Treasurer of State may place with an eligible lending institution under the Small Business Linked Deposit Program for purposes of lending money to eligible small businesses at a rate below the present borrowing rate.

Bond issuance authority of the Ohio Building Authority

(R.C. 154.02, 154.07, 154.24, 154.25, and 3333.90; Section 701.50)

The bill states that, on the effective date of this portion of the bill, the Treasurer of State supersedes and replaces the Ohio Building Authority (OBA) as the issuing authority in all matters relating to the issuance of obligations for the financing of capital facilities for (1) housing branches and agencies of state government and (2) community or technical colleges pursuant to the existing Bond Intercept Program.[268] It provides

[268] R.C. 3333.90.

specifics about the transfer of authority, including with respect to duties, functions, and responsibilities, documents and records, appropriations, leases and agreements, pending judicial and administrative proceedings, and contracts. OBA is authorized to take any action necessary to effect an orderly transition.

The bill does not, however, repeal OBA's current authority to issue bonds for these purposes.[269]

Housing branches and agencies of state government

The bill expressly permits the Treasurer of State to issue revenue bonds in accordance with R.C. Chapter 154. to pay the costs of capital facilities for housing branches and agencies of state government, including capital facilities for the purpose of housing personnel, equipment, or functions that a state agency is responsible for housing and any related parking and storage facilities, and the costs of capital facilities in which one or more state agencies are participating with the federal government, municipal corporations, counties, or other governmental entities and in which the portion of the facility allocated to the participating state agencies is to be used for the purpose of housing branches and agencies of state government. Such participation may be by grants, loans, or contributions to other participating governmental agencies for any of those capital facilities.

The Ohio Public Facilities Commission is permitted to lease the capital facilities to, and make other agreements regarding the use or purchase of them with, any state agency or governmental agency having authority under law to operate such capital facilities.

Community or technical college capital facilities; Bond Intercept Program

Under the bill, the Treasurer of State is expressly authorized to issue, on behalf of a community or technical college district, revenue obligations under Article VIII, Section 2i of the Ohio Constitution and R.C. Chapter 154. for the cost of community or technical college capital facilities, *provided* the issuance of the obligations is subject to the execution of a written agreement under the existing Bond Intercept Program for the withholding and depositing of funds otherwise due the district, or the college it operates, in respect of its allocated state share of instruction. Generally, "community or technical college capital facilities" means auxiliary facilities, education facilities, and housing and dining facilities, and further includes site improvements, utilities, machinery, furnishings, and any separate or connected buildings, structures,

[269] See R.C. Chapter 152.

improvements, sites, open space and green space areas, utilities, or equipment to be used in connection with such facilities.

Small Business Linked Deposit Program investments

(R.C. 135.61, 135.65, and 135.66)

The bill expands the financial instruments that the Treasurer of State may place with an eligible lending institution for the purposes of lending money to eligible small businesses at a rate below the present borrowing rate. Under the bill, the Treasurer may place other financial institution instruments with a lending institution for this purpose. "Other financial institution instrument" has the same meaning as under the Housing Linked Deposit Program.[270] Current law allows the Treasurer to place only certificates of deposit with lending institutions to lend money to small businesses at a reduced rate.

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.

[270] "Other financial institution instrument" means "a fully collateralized product that otherwise would pay market rates of interest approved by the Treasurer of State, for the purpose of providing eligible housing linked deposit participants with the benefits of a housing linked deposit." (R.C. 135.81, not in the bill.)

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)

- Repeals the Interstate Compact on Juveniles and enacts the Interstate Compact for Juveniles.
- 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."
- Requires a county and the juvenile court that serves the county to prioritize the use of the moneys in the county treasury's Felony Delinquent Care and Custody Fund to research-supported, outcome-based programs and services.
- Authorizes the sale of any Department of Youth Services facility that is closed before January 1, 2012, to a private contractor for operation as an adult or juvenile correctional facility.

Interstate Compact for Juveniles

(R.C. 2151.312, 2151.354, 2151.56, 2151.57, 2151.58, 2151.59, 2151.60, 2151.61, and 2152.26)

The Interstate Compact on Juveniles provides procedures for the return of nondelinquent runaway juveniles and delinquent juveniles who abscond or escape. Ohio adopted the compact in 1957. The adopting legislation authorized the Governor to execute a compact with other states that adopted the compact in substantially the same form. In 2008, the new Interstate Compact for Juveniles took effect when the 35th

state ratified it. Ohio is one of a handful of states that have not yet adopted the new compact. The rules of the new compact provide for a transition period during which cooperation between members of the old and new compacts will continue, but the transition period will expire on June 30, 2011. The bill repeals the existing compact and replaces it with the new one. The new compact creates an Interstate Commission for Juveniles to adopt rules for dealing with the return of juveniles, delinquents, and status offenders who are on probation or parole and who have absconded, escaped, or run away from supervision and control and for the safe return of juveniles who have run away from home and left their state of residence.

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.

Prioritization for the use of moneys in a Felony Delinquent Care and Custody Fund

(R.C. 5139.43)

The bill amends current law to require a county and the juvenile court that serves the county to prioritize the use of the moneys in the county treasury's Felony Delinquent Care and Custody Fund to research-supported, outcome-based programs and services. Continuing law specifies uses for the moneys in the Fund. However, current law does not prioritize the use of the moneys in the Fund.

Sale of closed Department of Youth Services facilities to private operators

(R.C. 9.06(J); Section 753.30)

The bill authorizes the Director of Administrative Services and the Director of Youth Services to sell any Department of Youth Services (DYS) facilities that are closed before January 1, 2012, to a private contractor for operation as an adult or juvenile correctional facility. The contract must include provisions that existing law requires for the private operation of adult correctional facilities and in addition must provide for the sale of the state's interest in the real property of the facility, the transfer of personal

property and fixtures necessary for the operation of the facility, preferential hiring of DYS employees displaced by the closure, and plans for the operation of the facility or disposition of the inmates and employees upon termination of the contract or insolvency of the contractor. The contract and deed must also include specified provisions relating to payment of the purchase price and the use of the real property. The bill requires that the proceeds of the sale be deposited into the Adult and Juvenile Correctional Facilities Bond Retirement Fund to retire state bonds that were issued for the transferred facilities. Section 753.30, which authorizes and sets forth the details pertaining to the sale of DYS facilities, expires two years after its effective date.

MISCELLANEOUS (MSC)

- Requires the chairperson of a committee, upon motion, to recess a meeting of the committee to enable members of the committee who are members of the same political party to hold a caucus meeting to discuss matters that have been referred to or are under consideration by the committee.

- Specifies that a caucus meeting is neither a public meeting nor open to the public, unless the caucus determines otherwise.

- Specifies that it is not in order for the committee to take up or dispose of any matter during a recess for the purpose of a caucus meeting.

- Changes the name of the Ohio Community Service Council to the Ohio Commission on Service and Volunteerism.

- Removes the requirement that the bill of costs for the prosecution of a nonindigent felon be presented to and certified by the prosecuting attorney.

- 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.

- Authorizes the conveyance of state-owned real estate in Brown County to Ripley Union Lewis Huntington School District for the construction and operation of a water well.

- Authorizes the conveyance of state-owned real estate in Stark County to Jackson Township.

Caucus meetings during General Assembly committee hearings

(R.C. 101.15)

The bill requires the chairperson of a legislative committee, upon motion, to recess a meeting of the committee to enable members of the committee who are members of the same political party to hold a caucus meeting to discuss matters that have been referred to or are under consideration by the committee. While a committee is recessed for a caucus meeting, it is not in order for the committee to take up or dispose of any matter.

The bill specifies that such a caucus meeting is neither a public meeting nor open to the public, unless the caucus determines otherwise. Currently, the General Assembly Open Meetings Law would require a meeting attended by all members of a committee's majority caucus to be open to the public, since that law requires any formal action to take place in an open meeting, and invalidates actions resulting from deliberations in a nonpublic meeting.

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.

Collection of court costs from a felon

(R.C. 2949.14)

Under existing law, upon conviction of a nonindigent person for a felony, the clerk of the court of common pleas makes and certifies under the clerk's hand and seal of the court a complete itemized bill of the costs made in that prosecution. *That bill of costs must be presented by the clerk to the prosecuting attorney, and the prosecuting attorney must examine each item charged and certify to it if correct and legal. Upon the prosecuting attorney's certification the clerk must attempt to collect the costs from the person convicted.* The bill removes the requirement that the bill of costs be presented to and certified by the prosecuting attorney (removes language in italics).

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.

Land conveyance to Ripley Union Lewis Huntington School District

(Section 753.20)

The bill authorizes the Governor to execute a deed in the name of the state conveying to the Ripley Union Lewis Huntington School District, its successors and assigns, all of the state's right, title, and interest in real estate in Brown County to be used for the construction and operation of a water well.

Consideration for conveyance of the real estate is the mutual benefit accruing to the state and the Ripley Union Lewis Huntington School District from the use of the real estate to construct and operate a water well.

If the Ripley Union Lewis Huntington School District ceases to use the real estate to construct and operate a water well, all right, title, and interest in the real estate immediately reverts to the state without the need for any further action by the state.

The Ripley Union Lewis Huntington School District must pay the costs of the conveyance.

Within 30 days after the effective date of the authority to make the conveyance, the Auditor of State, with the assistance of the Attorney General, must prepare a deed to the real estate. The deed must state the consideration and the condition. The deed must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the office of the Auditor of State for recording, and delivered to the Ripley Union Lewis Huntington School District. The Ripley Union Lewis Huntington School District must present the deed for recording in the office of the Brown County Recorder.

Authority to make this conveyance, expires one year after its effective date.

Authorizes conveyance of Kent State University real estate to Jackson Township

(Section 753.23)

The bill authorizes the Governor to execute a deed in the name of the state, on behalf of Kent State University, conveying all of the state's right, title, and interest in real estate located in Stark County to the Board of Township Trustees of Jackson Township, its successors and assigns.

Consideration for the conveyance is the mutual benefit accruing to the state from Jackson Township's use of the real estate for a fire station. If use of the real estate as a fire station is discontinued, the bill specifies that the real estate reverts to Kent State University, and that Jackson Township is required to raze the building currently on the real estate and to remove from the real estate any contaminants relating to the building's use as a fire station.

The Board of Township Trustees of Jackson Township in Stark County is required to pay the costs of the conveyance.

The Auditor of State, with the assistance of the Attorney General, must prepare a deed to the real estate. The deed must state the consideration and the reverter. The deed must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the Board of Township Trustees of Jackson Township in Stark County. The Board of Township Trustees of Jackson Township must present the deed for recording in the Office of the Stark County Recorder.

Authority to make the conveyance expires one year after its effective date.

NOTE ON EFFECTIVE DATES

(Sections 809.10 and 812.10 to 812.40)

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.

The bill also specifies that an item that composes the whole or part of an *uncodified* section contained in the bill (other than an amending, enacting, or repealing clause) has no effect after June 30, 2013, unless its context clearly indicates otherwise.

HISTORY

ACTION	DATE
Introduced	03-15-11
Reported, H. Finance & Appropriations	05-04-11
Passed House (59-40)	05-05-11

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