



Ohio Legislative Service Commission

Bill Analysis

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Sens. Bacon, Beagle, Coley, Daniels, Faber, Gillmor, Hite, Jones, LaRose, Lehner, Manning, Niehaus, Schaffer, Wagoner, Widener

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

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.

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DEPARTMENT OF ADMINISTRATIVE SERVICES (DAS)

- Abolishes the School Employees Health Care Board and generally transfers its duties and authority to the Department of Administrative Services.
- Requires the Department to design health care plans for employees of political subdivisions, public school districts (including educational service centers), and state institutions of higher education.
- Once the health care plans the Department is to design are released in final form, all health care benefits provided to persons employed by political subdivisions, public school districts, and state institutions of higher education are to be, and to some degree may be, provided by those plans.
- Specifies, however, that if the health care plans designed by the Department do not address or include any health care benefits provided under current law, the benefits provided under current law continue in effect for those benefits.
- Requires the Department to set employee and employer health care plan premiums for the Department's designed plans.
- Requires the Department to submit a report to the General Assembly on the feasibility of certain health care initiatives regarding health care plans covering persons employed by political subdivisions, public school districts, and state institutions of higher education.
- Requires the Department to submit a report to the General Assembly on the feasibility of certain health care initiatives regarding health care plans covering persons employed by political subdivisions and state institutions of higher education.
- Recreates the Public Schools Health Care Advisory Committee under the Department.



- Renames the School Employees Health Care Fund the Political Subdivisions Public Employees Health Care Fund.
- Requires public entities to submit a report to the Director of Administrative Services upon completion of each capital facilities project that is funded wholly or in part using state funds.
- Requires the Attorney General to submit an annual report to the Director on any mediation and litigation costs associated with capital facilities projects for which a judgment has been rendered.
- Requires the Director to incorporate the information received from the reports submitted by public entities and the Attorney General into the Ohio Administrative Knowledge System.
- For state agencies, state institutions of higher education, counties, and school districts utilizing Ohio School Facilities Commission assistance, creates an exception to the current requirement that the multiple-prime contracting method be used for public construction projects, as follows:
 - Increases the minimum project cost threshold for the required use of multiple-prime contracting to projects over \$600,000 and the minimum cost threshold for a single MEP branch or class of work to \$20,000;
 - Permits the use of a general contractor as the sole prime contractor if the cost of the project is \$600,000 or less;
 - Permits the use of two alternative construction delivery methods – construction manager at risk (CMAR) and design-build (D/B);
 - Increases the minimum project cost threshold triggering competitive bidding on state contracts to \$200,000.
- Prohibits the subdivision of public improvement projects in order to avoid the multiple-prime contracting or competitive bidding thresholds.
- Modifies the current life-cycle cost analysis and energy consumption analysis requirements for public improvement projects.
- Mandates that the release of capital appropriations for projects, the contracts of which are awarded by the Department, contain a contingency reserve for payment of unanticipated project expenses.
- Makes various other changes to the law governing public improvements.

- Requires the Director to adopt rules that establish guidelines for the provision of surety bonds by CMARs and D/B firms, and delays the application of the bill's construction reform provisions (that is, those described in the previous five dot points) until the date those rules are adopted.
- Eliminates the requirement that the Director establish a job classification plan and make job classification plan changes by rule.
- Eliminates the requirement that the Director follow the rule-making requirements of the Administrative Procedure Act to establish experimental classification plans; to establish, modify, or rescind a classification plan for county agencies; and to establish an appointment incentive program.
- Requires the Director to send written notice of a proposed modification to a classification or the assignment of classes to appropriate pay ranges to the appointing authorities of the affected employees.
- Makes changes to civil service law with respect to civil service examinations, special examinations, appointments, 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 purchases and leases for office space for the Joint Legislative Ethics Committee (JLEC) from the control and jurisdiction of the Department of Administrative Services.



- Authorizes JLEC and the Department of Administrative Services to contract for the Department to perform statutory services for JLEC that the Department of Administrative Services performs for buildings of certain state agencies under its jurisdiction.
- Transfers the building and facility operations and management functions of the Ohio Building Authority (OBA) under Chapter 152. of the Revised Code to the Department of Administrative Services, effective January 1, 2012.
- Deems references to the OBA in statutes pertaining to OBA's building and facility operations and management functions to be made to the Department of Administrative Services.
- Authorizes OBA employees to be transferred to the Department of Administrative Services if they are necessary for successful implementation of the transfer, and makes employees of OBA who are designated as building and facility operations and management staff, not later than August 1, 2011, eligible to participate in group health plans offered to state employees.
- 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 to annually make a report to the General Assembly regarding the acquisition and disposal of surplus federal property.
- Requires the Department to contract with a vendor to provide drugs and related pharmacy services currently provided by the Ohio Pharmacy Service Center if, through a request-for-proposals process, the Department determines that a vendor is able to provide the drugs and services in a manner that achieves operational efficiencies and 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.
- The bill allows the Office of Risk Management to manage risk for the courts as it does for the state for purposes of the Judicial Liability Program.
- Allows the Risk Management Reserve Fund to be used for the payment of any liability claim that is filed against the state.

- Requires the Department to recommend to the leaders of the General Assembly a state government reorganization plan focused on increased efficiencies in state government operation and a reduced number of state agencies.

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

Department of Administrative Services designed plans

(R.C. 9.901(A)(2) to (K); Section 515.60)

Effective July 1, 2011, the bill abolishes the School Employees Health Care Board and its duties and authority and generally grants its duties and authority to the Department of Administrative Services with regard to health care benefits for employees of public school districts, and expands these duties and authority to include plans for health care benefits for employees of state institutions of higher education and political subdivisions. The bill transfers all equipment, assets, and records of the Board to the Department of Administrative Services. The Department must designate the employee positions, if any, to be transferred to the Department.

The Department of Administrative Services and the Department of Education must enter into an interagency agreement to transfer to the Department of Administrative Services any designated employee positions and all equipment, assets, and records of the Board by July 1, 2011, or as soon as possible thereafter. The interagency agreement can include provisions to transfer property and any other provisions necessary for the continued administration of Board activities under continuing law.

The bill transfers to the Department any employee positions of the Board that the Department designates for transfer, and any equipment assigned to those positions. Any Board employees transferred in positions retain rights regarding layoffs, and any employee transferred to the Department retains the employee's classification, but the Department can reassign and reclassify the employee's position and compensation as the Department determines to be in the interest of office administration.

All the rules, orders, and determinations associated with the Board continue in effect as rules, orders, and determinations associated with the Department until modified or rescinded by the Director of Administrative Services. If necessary to ensure the integrity of the Administrative Code rule numbering system, the Director of the Legislative Service Commission must renumber the rules relating to the Board to reflect their transfer to the Department. No validation, cure, right, privilege, remedy,



obligation, or liability is lost or impaired by reason of the transfer. On and after July 1, 2011, if the Board is referred to in any statute, rule, contract, grant, or other document, the reference is deemed to refer to the Department.

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

Definitions

The bill defines "public school district" for the purposes of health care benefits to mean a city, local, exempted village, or joint vocational school district, a STEM school, and an educational service center. "Public school district" does not mean a community school or a charter school. "Political subdivision" is defined to mean a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission, board of hospital commissioners appointed for a municipal hospital, board of hospital trustees appointed for a municipal hospital, regional planning commission, county planning commission, joint planning council, interstate regional planning commission, port authority, regional council, emergency planning district and joint emergency planning district, joint emergency medical services district, fire and ambulance district, joint interstate emergency planning district, county solid waste management district and joint solid waste management district, community school, the county or counties served by a community-based correctional facility and program or district community-based correctional facility and program, a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated. "Political subdivision" also means any county; municipal corporation; township; township police district; township fire district; joint fire district; joint ambulance district; joint emergency medical services district; fire and ambulance district; joint recreation district; township waste disposal district; township road district; community college district; technical college district; detention facility district; single-county and joint-county juvenile facilities; a joint-county alcohol, drug addiction, and mental health service district; a drainage improvement district; a union cemetery district; a county school financing district; a city, local, exempted village, cooperative education, or joint vocational school district; or a regional student education district, and any public division, district, commission, authority, department, board, officer, or institution of any one or more of those political subdivisions, that is entirely or substantially supported by public tax



moneys. (For a discussion of the "home rule" authority of municipal corporations, see "**Home rule**," below.)

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

Health care benefit plans

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

The bill permits any or all of the health care plans designed by the Department to be self-insured. All self-insured plans must be administered by the Department in accordance with the bill, and must incorporate the best practices adopted by the Department, as described below. A political subdivision, public school district, or state institution of higher education cannot "be required to" offer the health care plans designed by the Department until they have been released in final form by the Department.

Independent consultant recommendations

Before the Department's release of the initial health care plans, the bill requires the Department to contract with an independent consultant to analyze costs related to employee health care benefits provided by existing political subdivisions, public school districts, and state institution of higher education plans. All political subdivisions must provide information requested by the Department that the Department determines is needed to complete this study. (The information requested must be held confidentially by the Department and must not be considered a public record under the Public Records Law. But the Department can release the information after redacting all



personally identifiable information.) The consultant must determine the benefits offered by existing plans, the employees' costs, and the cost-sharing arrangements used by political subdivisions, schools, and institutions participating in a consortium. The consultant must determine what strategies are used by the existing plans to manage health care costs and must study the potential benefits of state or regional consortiums of political subdivisions, public schools, and institutions offering multiple health care plans. Based on the findings of the analysis, the consultant must submit written recommendations to the Department for the development and implementation of a successful program for pooling purchasing power for the acquisition of employee health care plans. The consultant's recommendations must address, at a minimum, all of the following issues:

- (1) The development of a plan for regional coordination of the health care plans;
- (2) The establishment of regions for the provision of health care plans, based on the availability of providers and plans in Ohio at the time;
- (3) The viability of voluntary and mandatory participation by political subdivisions, public schools, and institutions of higher education;
- (4) The use of regional preferred provider and closed panel plans, health savings accounts, and alternative health care plans, to stabilize both costs and the premiums charged to political subdivisions, school districts, and state institutions of higher education and their employees;
- (5) The use of the competitive bidding process for regional health care plans;
- (6) The use of information on claims and costs and of information reported by political subdivisions, school districts, and state institutions of higher education under the Consolidated Omnibus Budget Reconciliation Act (COBRA) in analyzing administrative and premium costs;
- (7) The experience of states that have statewide health care plans for political subdivision, public school district, and state institution of higher education employees, including the implementation strategies used by those states;
- (8) Recommended strategies for the use of first-year roll-in premiums in the transition from political subdivision, district, and state institution of higher education health care plans to department plans;
- (9) The option of allowing political subdivisions, public school districts, and state institutions of higher education to join an existing regional consortium as an alternative to Department plans;

- (10) Mandatory and optional coverages to be offered by the Department's plans;
- (11) Potential risks to the state from the use of the Department's plans;
- (12) Any legislation needed to ensure the long-term financial solvency and stability of a health care purchasing system;
- (13) The potential impacts of any changes to the existing purchasing structure on all of the following: existing health care pooling and consortiums, political subdivision, school district, and state institution of higher education employees, and individual political subdivisions, school districts, and state institutions of higher education;
- (14) Issues that could arise when political subdivisions, school districts, and state institutions transition from the existing purchasing structure to a new purchasing structure;
- (15) Strategies available to the Department in the creation of fund reserves and the need for stop-loss insurance coverage for catastrophic losses.

Geographic regions and consortiums

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

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

In addition, political subdivisions, school districts, or state institutions of higher education offering employee health care benefits through a plan offered by a consortium of two or more political subdivisions, districts, or state institutions of higher education, or a consortium of one or more political subdivisions, districts, or state institutions of higher education and one or more other political subdivisions can

request permission from the Department to continue offering consortium plans to their employees. Granting the permission is at the Department's discretion.

Additional duties for the Department

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

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

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

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

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

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

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

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

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

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

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

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

Nonidentifiable aggregate claim data

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

Provision of plan information

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

Professional insurance services not prohibited

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

Audits

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

Public Health Care Advisory Commission

The bill renames and reconstitutes the advisory committee, which under current law is the Public Schools Health Care Advisory Committee under the School Employees Health Care Board, and which is, under the bill, the Public Health Care Advisory Committee, under the Department. Under the bill, the Committee must make recommendations to the Director of Administrative Services or the director's designee on the development and adoption of best practices. The Committee consists of fifteen members appointed by the Speaker of the House of Representatives, the President of the Senate, and the Governor and must include representatives from state and local

government employers, state and local government employees, insurance agents, health insurance companies, and joint purchasing arrangements currently in existence.

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.

Self-insurance

(R.C. 9.833)

If a self-insurance program is approved by the Department, political subdivisions that provide health care benefits for their officers or employees may establish and maintain an individual self-insurance program with public moneys to provide authorized health care benefits, including, but not limited to, health care, prescription

drugs, dental care, and vision care. Only with the approval of the Department, after establishing an individual self-insurance program (1) a political subdivision may agree with other political subdivisions that have established individual self-insurance programs for health care benefits that their programs will be jointly administered or (2) under a written agreement, a political subdivision may join in any combination with other political subdivisions to establish and maintain a joint self-insurance program to provide health care benefits.

Any agreement made as described above must be in writing and contain best practices established in consultation with and approved by the Department. These best practices must provide standards upon which the program providing benefits adhere in the selection and implementation of the health care plan. The best practices can be reviewed and amended at the discretion of the political subdivisions in consultation with the Department. Detailed information regarding the best practices must be made available to any employee upon that employee's request. The bill permits the Department to adopt rules for the adoption and enforcement of the best practices standards.

Additionally, any self-insurance program established as described above must prepare and maintain a certified audited financial statement and a report of amounts reserved for the program and disbursements made from such funds. The program administrator must provide the report to the Auditor of State under the Auditing Law. The self-insurance program must include a contract with a certified public accountant and a member of the American Academy of Actuaries for the preparation of the written evaluations.

The bill specifies that the provisions regarding the self-insurance programs do not apply to an individual self-insurance program created solely by municipal corporations. For this purpose, "municipal corporation" means all municipal corporations, including those that have adopted a charter under the Ohio Constitution.

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

Home rule

Although the bill confers authority on municipal corporations regarding health care benefits, it is likely municipal corporations already have, and will continue to have,

authority to provide health care benefits, including by self-insurance, under their home rule power of local self-government.¹

Health care plans – best practices

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

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

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

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

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

Under current law, the authority outlined above applies to public institutions of higher education and to the board of education of any school district, except in relation to the provision of health care benefits to employees. Health care benefits provided to

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



employees of the public schools are to be provided through health care plans that contain the best practices established by the School Employee's Health Care Board.

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

Health care plans for counties

(R.C. 305.171)

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

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

Health care plans for townships

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

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

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

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

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

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

Health care plans for park districts

(R.C. 1545.071)

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

Currently, and potentially in the future, the board of park commissioners of any park district can procure and pay all or any part of the cost of group insurance policies that provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, or prescription drugs, or sickness and

accident insurance, or a combination of any of the foregoing types of insurance or coverage for park district officers and employees and their immediate dependents.

Public construction reform

(R.C. 9.33, 9.331, 9.332, 9.333, 9.334, 9.335, 123.011, 126.141, 153.01, 153.012, 153.03, 153.08, 153.50, 153.501, 153.502, 153.503, 153.04, 153.505, 153.51, 153.52, 153.53, 153.54, 153.55, 153.56, 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, 3318.111, 3353.04, 3354.16, 3357.16, 4113.61, 5540.03, and 6115.20; Sections 701.10 and 701.13)

Permissible methods of construction delivery

The bill provides an exception to the current requirement that the multiple-prime contracting method be used by the state, a county, township, municipal corporation, or school district, or any public institution belonging to any of those entities, when contracting for the construction, repair, or alteration of a public improvement. Currently, under the multiple-prime method, if the total cost of the project is \$50,000 or more, the 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, and (3) electrical equipment (collectively referred to as "MEP" – mechanical, electrical, and plumbing). A separate bid and contract for any of those three classes of work is not required, however, if the cost of that particular class of work is less than \$5,000. If the total cost of the project is *less than* \$50,000, the public authority may enter into a single prime contract with a general contractor.

The bill's exception to the required use of multiple-prime contracting applies *only* to a **state agency** (meaning every organized body, office, or agency established by Ohio law for the exercise of any function of state government, except the Ohio Turnpike Commission and any special purpose district of the state), a **state institution of higher education**,² **county**, or **school district utilizing assistance from the Ohio School Facilities Commission** (hereinafter referred to as "**public entities**"). For these public entities, the bill does all of the following:

(1) Increases the minimum project cost threshold for the required use of multiple prime contracting to projects over \$600,000 and the minimum cost threshold for a single MEP branch or class of work to \$20,000;

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

(2) Permits the use of a general contractor as the sole prime contractor if the cost of the project is \$600,000 or less. Such a contract may be awarded, however, only to a bidder that has been certified to bid by the Department of Administrative Services, and has been approved to bid on the contract by the public entity, in accordance with rules adopted pursuant to the bill (see below). A county may approve a bidder who has not been certified, unless the reason the bidder was not certified is that there exists a tax lien or workers' compensation delinquency and the lien or delinquency is unresolved or the bidder is not in compliance with any other law applicable to the award of a public improvement contract.

(3) Permits the use of two alternative construction delivery methods – construction manager at risk and design/build;³

(4) Increases the minimum project cost threshold triggering competitive bidding on state contracts to \$200,000.

Construction manager at risk

(R.C. 9.33 to 9.335, 153.50 to 153.52, and 153.54; Section 701.13(A))

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 entity with a **guaranteed maximum price** utilizing an open book pricing method, whereby the CMAR makes available 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 entity 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 entity, after evaluating proposals submitted by CMARs for a particular project, must select not fewer than three CMARs the public entity considers to be the most qualified to provide the required services.⁴ Each CMAR selected must be given (1)

³ In order for a school district to use a construction manager at risk, design-build firm, or general contractor, the school district must obtain approval from the School Facilities Commission (R.C. 3318.111).

⁴ The public entity may select and rank fewer than three if the public entity determines in writing that fewer than three qualified CMARs are available (R.C. 9.334(A)). For the definition of "qualified," see R.C. 9.33(E).

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 and a staffing chart, 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. A bid guaranty, however, is *not* required to be filed.

The public entity 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 entity determines to be the best value – considering the proposed cost and qualifications. These contract negotiations are to be directed toward:

--Ensuring that the CMAR and public entity mutually understand the essential requirements involved in providing the required construction management services, including the awarding of subcontracts and their terms, the provisions for the use of contingency funds, and the possible distribution of savings in the final costs of the project;

--Ensuring that the CMAR will be able to provide the necessary personnel, equipment, and facilities to perform the construction management services within the time required by the contract;

--Agreeing upon a procedure and schedule for determining a guaranteed maximum price.

If negotiations fail, the public entity must enter into negotiations with the CMAR 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 entity may select additional CMARs to provide pricing proposals or may select an alternative delivery method for the project. Additionally, if a public entity and CMAR fail to agree on a guaranteed maximum price, the public entity may allow the CMAR to provide management services that a construction manager is authorized to provide under current law.

Before construction begins pursuant to a contract with a CMAR, the CMAR must provide a surety bond in accordance with guidelines established by the Director of Administrative Services by R.C. Chapter 119. rules.

Design-build firm

(R.C. 153.50 to 153.52, 153.54, and 153.65 to 153.73; Section 701.13(A))

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 entity for both the design *and* the construction, demolition, alteration, repair, or reconstruction of a public improvement. A public entity planning to contract for D/B services must first obtain the services of a criteria architect or engineer⁵ by either contracting with a professional design firm as provided in current law or by obtaining the services through an architect or engineer who is an employee of the public entity and notifying the Department of Administrative Services before the services are rendered. If a professional design firm is selected as the criteria architect or engineer, and the firm assists the public entity in evaluating the D/B requirements the D/B firm submits to the public entity, the professional design firm cannot provide any D/B services pursuant to the D/B construction contract.

A public entity, in consultation with the criteria architect or engineer, is then to evaluate the statements of qualifications⁶ submitted by D/B firms for a particular project, including the firm's proposed architect of record,⁷ and select not fewer than three D/B firms the public entity considers to be the most qualified to provide the required services.⁸ 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, (7) a request for a fee proposal that is divided into a design services fee and a preconstruction and design-build services fee, and (8) a request for a pricing proposal.

⁵ The criteria architect or engineer is the architect or engineer retained by a public entity to prepare conceptual plans and specifications, to assist the public entity in establishing the design criteria for a D/B project, and, if requested by the public entity, 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(H)).

⁶ For the definition of "qualifications," see R.C. 153.65(D).

⁷ 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(G)).

⁸ The public entity may select and rank fewer than three if the public entity determines in writing that fewer than three qualified D/B firms are available (R.C. 153.693(A)(1)).

⁹ For a description of the guaranteed maximum price, see the relevant discussion under "**Construction manager at risk**," above.

The pricing proposal of each D/B firm must include a list of key personnel and consultants for the project and the firm's staffing chart, 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. A bid guaranty, however, is *not* required to be filed.

The public entity 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 entity determines to be the best value – considering the proposed cost and qualifications. These contract negotiations are to be directed toward:

--Ensuring that the D/B firm and the public entity mutually understand the essential requirements involved in providing the required design-build services, including the awarding of subcontracts, the provisions for the use of contingency funds, and the possible distribution of savings in the final costs of the project;

--Ensuring that the firm will be able to provide the necessary personnel, equipment, and facilities to perform the design-build services within the time required by the contract;

--Agreeing upon a procedure and schedule for determining a guaranteed maximum price.

If negotiations fail, the public entity is to enter into negotiations with the D/B firm 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 entity may select additional D/B firms to provide pricing proposals or may select an alternative delivery method for the project. A public entity 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 in accordance with guidelines established by the Director of Administrative Services by R.C. Chapter 119. rules. Also, a public entity may require the D/B firm to carry contractor's professional liability insurance and any other insurance the public entity considers appropriate.

Awarding of subcontracts by CMARs and D/B firms

(R.C. 153.501, 153.502, and 153.05)

The bill requires CMARs and D/B firms to receive separate bids, and award separate subcontracts, for the MEP classes of work. The bid must be based on complete

plans and specifications of the work to be performed. A subcontract may be awarded only to a bidder who meets the following requirements:

(1) The bidder has been certified to bid on subcontracts by the Department of Administrative Services under rules adopted pursuant to the bill (see below). A county, however, may approve a bidder who has not been certified, unless the reason the bidder was not certified is that there exists a tax lien or workers' compensation delinquency and the lien or delinquency is unresolved or the bidder is not in compliance with any other law applicable to the award of a public improvement contract.

(2) The bidder has been approved by the public entity (pursuant to rules adopted by the Director of Administrative Services, as described below) to bid on the specific subcontract.

(3) The bidder is the lowest responsive bidder after a public bid opening, unless no bid is lower than the estimate in the guaranteed maximum price for that class of work. In that event, the CMAR or D/B firm may either revise the scope of work and rebid or utilize a contingency to pay the excess costs without any increase in the guaranteed maximum price.

A CMAR or D/B firm that intends and is permitted by the public entity to self-perform any class of MEP work must submit a sealed bid *prior* to accepting and opening any bids for that same class of work. If, after a guaranteed maximum price is agreed upon, the sealed bid submitted by the CMAR or firm is no greater than the estimate for that scope of work, a public bid opening is held, *and* no bid is lower than the estimate for that scope of work, the subcontract is to be awarded to the CMAR or D/B firm.

The bill states that any person entering into an MEP subcontract has no contractual remedies against the public entity that enters into the underlying construction management contact with the CMAR, or the underlying design-build contract with the D/B firm, as the case may be. This does not, however, limit certain remedies available under existing law¹⁰ or under the escrow requirements set forth in the subcontract.

Projects requiring competitive bidding

(R.C. 153.01)

For these public entities (other than counties and school districts), the bill increases the minimum project cost threshold triggering the requirement that state

¹⁰ See R.C. 153.56 and 1311.28.

projects be competitively bid to \$200,000. (The current threshold of \$50,000 would continue to apply to all state entities *other than* state agencies and state institutions of higher education, as those terms are defined above.)

Competitive bidding is not required, however, with respect to any work to be performed pursuant to a construction management contract entered into with a CMAR or pursuant to a contract for design-build services entered into with a D/B firm.

Rulemaking by the Department of Administrative Services

(R.C. 153.503 and 153.504; Section 701.10)

The bill requires the Department to adopt R.C. Chapter 119. rules not later than June 30, 2011,¹¹ that do all of the following:

(1) Establish a program to certify bidders on general contracts and on subcontracts awarded by a CMAR, D/B firm, or general contractor. The rules are to include criteria and procedures governing the process of application and certification under the program. The rules are also to require, as a condition to certification on a subcontract the value of which is \$2 million or more, that the bidder certify in writing that:

- The bidder has made and will continue to make irrevocable contributions toward health care insurance and pension or retirement funds, plans, or programs for all skilled trade personnel to be used on the project, and
- All skilled trade personnel to be used on the project relating to MEP work meet at least one of the following requirements: (a) they have been trained in a state or federally approved training program, (b) they have successfully completed a comparable training program, or (c) they have a minimum of three years experience.

This certification requirement would *not* apply, however, if the public entity determines that at least two bidders able to meet the requirement are not readily available.

The Director of Administrative Services is required to commission an independent study of the Department's certification program on July 1, 2013, or as soon as possible thereafter. Upon completion of the study, the Director is to provide a copy of its findings to the Governor, the Speaker of the House, and the Senate President.

¹¹ This is a technical error.

(2) Establish criteria and procedures for public entities to follow in approving bidders on general contracts and on subcontracts awarded by a CMAR, D/B firm, or general contractor. The rules are to be consistent with the factors described in current law for determining whether a bidder is the lowest responsible and responsive bidder.¹²

(3) Establish procedures for the review, in an expedited manner, of any denial of certification or approval to bid. These review procedures supersede those provided under the Administrative Procedure Act (R.C. Chapter 119.), and are to be considered equivalent to adjudicatory proceedings under the Act. The conclusions of a review cannot be overturned or altered in any manner by court order, except on a finding of fraud or collusion.

(4) Prescribe the form for general contracts and for subcontracts. Each form contract and subcontract must provide for the creation of an escrow account for the payment of amounts required to be paid to subcontractors and sub-subcontractors.

The bill also sets forth the procedures that are to be followed when hiring a CMAR, D/B firm, or general contractor *prior* to the implementation of these rules.¹³

Threshold adjustments

(R.C. 153.53)

Five years after the effective date of the construction reform provisions of the bill, the Director of Administrative Services is required to evaluate the monetary thresholds the bill establishes for purposes of competitive bidding, multiple-prime contracting, and general contracting, and adopt rules adjusting the amounts based on the average rate of inflation for each amount during each of the previous five years immediately preceding the adjustment. The Director is to repeat the evaluation every five years thereafter.

Application of other construction-related laws

(R.C. 153.012, 153.03, 153.56, 153.581, 153.80, and 4113.61)

Among other things, 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.

¹² See, for example, R.C. 9.312(A).

¹³ See Section 701.10 of the bill.

A CMAR or D/B firm may reduce any bond filed by a subcontractor, or reduce any funds retained by the CMAR or firm, for partial performance of the subcontract as is provided in current law for contracting authorities. The bill also subjects CMARs and D/B firms to the current drug-free workplace laws by designating them "contractors" for purposes of that law.

Currently, with respect to the award of any contract for the construction, improvement, or repair of a public improvement that is made by the state or in whole or in part by the state, preference must be given to contractors having their principal place of business in Ohio. The bill extends that preference with respect to subcontracts awarded by CMARs or D/B firms.

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.¹⁴ 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.

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 increases that threshold to \$20,000.

Subdivision of public improvement projects

(R.C. 153.55)

The bill prohibits an officer, board, or other authority of the state, a county, township, municipal corporation, school district, or other political subdivision, or any public institution belonging to any of those entities, from subdividing a public improvement project into component parts or separate projects in order to avoid the competitive bidding thresholds or the multiple-prime thresholds, unless the component parts or separate projects that result are conceptually separate and unrelated to each

¹⁴ This threshold also appears to be the multiple-prime threshold, though it is inconsistent with the \$600,000 threshold established in R.C. 153.50.

other, or encompass independent or unrelated needs. Additionally, when calculating the project amounts for purposes of those thresholds, the following are to be included as costs of the project: professional fees and expenses for services associated with the preparation of plans; permit costs, testing costs, and other fees associated with the work; project construction costs; and a contingency reserve fund.

Methods of advertising for bids

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

The bill permits public owners 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, *in addition to* advertising in a newspaper of general circulation as is currently required.

Public authorities planning to contract for professional design services must publicly announce that fact under current law. The announcement is to be sent to either of the following that the public authority considers appropriate:

(1) Each professional design firm that has a current statement of qualifications on file with the public authority and is qualified to perform the required professional design services; or

(2) Architect, landscape architect, engineer, and surveyor associations, the news media, and any publications or other public media.

The bill extends the public announcement requirement to public authorities intending to contract for design-build services. It eliminates the entities described in (1), and instead requires that – *in addition to* sending the announcement to the entities listed in (2) – the intent to enter into a contract for professional design services or design-build services must be provided to D/B firms, including contractors or other entities that seek to perform the work as a D/B firm.

Lastly, 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 owner 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 projects, the contracts of which are awarded by the Department of Administrative Services, contain a contingency reserve for payment of unanticipated project expenses. The amount of the contingency reserve is to be determined by the Department. 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 subdivision¹⁵ 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.

Application of the bill's construction reforms

(Section 701.13)

As mentioned above, the Director of Administrative Services is required by the bill to adopt R.C. Chapter 119. rules to establish guidelines for the provision of surety bonds by CMARs and D/B firms. The provisions of the bill that modify the laws governing the permissible methods of construction delivery for the construction of public improvements (that is, all of the provisions described under "**Public construction reform**" in this analysis) apply only to public improvement projects commencing on or after the date the Director adopts those rules.

OAKS capital project reporting requirements

(R.C. 123.101)

Starting by July 1, 2012, and upon completion of a capital facilities project that is funded wholly or in part using state funds, each public entity must submit a report about the project to the Director of Administrative Services. A "capital facilities project" is the construction, reconstruction, improvement, enlargement, alteration, or repair of a building by a public entity. A "public entity" includes a state agency, county, township, municipal corporation, school district, state institution of higher education, or any other political subdivision of the state.

The report must be submitted in Ohio Administrative Knowledge System (OAKS) capital improvement format or in a manner determined by the Director and not later than 30 days after the project is complete. The bill requires the report to provide

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

the total original contract bid, total cost of change orders, total actual cost of the project, total costs incurred for mediation and litigation services, and any other data the Director requests.

The first report submitted under this requirement must include information about any capital facilities project completed on or after July 1, 2011.

Also, starting by July 1, 2012, and annually thereafter, the Attorney General must report to the Director on any mediation and litigation costs associated with capital facilities projects for which a judgment has been rendered. The report must be submitted in a manner prescribed by the Director, and must contain any information the Director requests related to capital facilities project mediation and litigation costs.

As soon as practicable after the information is made available, the Director must incorporate the information reported by public entities and the Attorney General into OAKS.

Job classification plans and appointment incentive programs not by rule

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

The bill eliminates the requirement that the establishment, modification, and rescission of job classification plans by the Director of Administrative Services be done by rule. Continuing law requires the Director to perform these functions.

The bill also eliminates the requirement that the Director follow the rule-making requirements of the Administrative Procedure Act¹⁶ to establish experimental classification plans; to establish, modify, or rescind a classification plan for county agencies; and to establish an appointment incentive program.

The bill requires the Director to send written notice of a proposed modification to a classification or the assignment of classes to appropriate pay ranges to the appointing authorities of the affected employees, and to send the appointing authorities another notice ten days after the modification occurs. The appointing authorities must notify the affected employees regarding the modification 30 days before it occurs. Current law requires these modifications to be done by rule, and requires the Director to send notice of the proposed rule 30 days before the hearing on the proposed rule. (As noted above the bill eliminates the requirement that these modifications be done by rule.)

¹⁶ R.C. Chapter 119.

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.



Continuing law relocated by the bill provides that each person who qualifies for the veteran's preference, who is a resident of the state, and whose name is on the eligible list for a position is entitled to preference in the original appointment to any such competitive position in the civil service of the state and its civil divisions over all other persons who are eligible for those appointments and who are standing on the relevant eligible list with a rating equal to that of the person qualifying for the veteran's preference. 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.

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 bill¹⁷ 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

¹⁷ 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.

Joint Legislative Ethics Committee authority to contract with the Department of Administrative Services for statutory services related to state agency buildings

(R.C. 123.01)

The bill provides that purchases or leases for, and the custody and repair of, office space used for the purposes of the Joint Legislative Ethics Committee (JLEC) are

not subject to the control and jurisdiction of the Department of Administrative Services. The bill provides, instead, that if JLEC so requests, it may enter into a contract with the Department under which the Department agrees to perform any of the services requested by JLEC that the Department currently has authority to perform related to buildings of state agencies under its jurisdiction. For example, the Department makes contracts for and supervises construction of any projects and improvements, or construction and repair, of buildings under the control of specified state agencies.

Transfer of Ohio Building Authority functions to the Department of Administrative Services

(Section 515.40)

Effective January 1, 2012, the bill transfers the building and facility operations and management functions of the Ohio Building Authority (OBA),¹⁸ and related functions, assets, and liabilities, to the Department of Administrative Services. The Department succeeds to, assumes the powers and obligations of, and otherwise constitutes the continuation of the building and facilities operations and management functions of the OBA. All statutory references to OBA are deemed to be references to the Department.

Any business relating to OBA's building and facilities operations and management functions that was commenced but not completed by OBA before the transfer, is to be completed by the Department, in the same manner, and with the same effect, as if completed by OBA. No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer, and is to be administered by the Department. All of the rules, orders, and determinations related to OBA's building and facilities operations and management functions continue in effect as rules, orders, and determinations of the Department, until modified or rescinded by the Department. No judicial or administrative proceeding to which OBA is party and that relates to its building and facilities operations and management functions that is pending on January 1, 2012, or on a later date established by OBA and the Department is affected by the transfer and is to be prosecuted or defended in the name of the Department.

Employees of OBA may be transferred to the Department as the Department determines to be necessary for successful implementation of the transfer, to the extent possible, with no loss of service credit. Not later than August 1, 2011, employees of the OBA who are designated as building and facility operations management staff are eligible to participate in group health plans offered to state employees.

¹⁸ Chapter 152. of the Revised Code.



If requested by the Department, the bill requires the Director of Budget and Management to make the budget changes made necessary by the transfer. The budget changes may include administrative reorganization, program transfers, the creation of new funds, and the consolidation of funds. Not later than 30 days after the transfer OBA must certify the unexpended balance and location of any funds and accounts designated for building and facility operation and management functions and the custody of those funds and accounts must be transferred to the Department. The Director of Budget and Management may, if necessary, establish encumbrances or parts of encumbrances as needed in fiscal year 2012 in the appropriate fund and appropriation item pertaining to the Department, for the same purpose and payment to the same vendor as formerly pertained to OBA. These encumbrances plus any additional amounts determined to be necessary for the Department to perform the building and facility operations and management functions of OBA are appropriated by the bill.

The bill authorizes OBA, after the effective date of the provisions of the bill requiring the transfer, to meet for the purpose of better accomplishing the transfer of OBA's building and facility operations and management functions to the Department. OBA may take necessary or appropriate actions to effect an orderly transition of its building and facility operations and management functions to the Department.

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.

Ohio Pharmacy Service Center

(R.C. 125.024 and 5119.16)

Request for proposals regarding outsourcing of drug procurement and related services

If the Ohio Pharmacy Service Center (operated by the Department of Mental Health) provides drugs and related pharmacy services to the Center's customers, the bill requires the Department of Administrative Services to issue a request for proposals (RFP) for the purpose of determining whether such goods and services could be provided by a vendor, on the Center's behalf, in a manner that achieves greater operational efficiencies and savings to the state than those that could be achieved if the Center provides the goods and services itself. The initial request for proposals must be issued not later than 60 days after the bill's effective date.

Competitive bidding process

Before issuing an RFP, the bill requires the Department to develop a process to be used in issuing the RFP, receiving responses to the RFP, and evaluating responses on a competitive basis. If the Department determines from a review of the proposals submitted through the RFP process that a vendor is able to provide the goods and services in a manner that achieves greater operational efficiencies and savings to the state than those that could be achieved if the Center provides the goods and services itself, the bill requires the Department to enter into a contract for the provision of the goods and services.

Rulemaking

The bill requires the Department to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) to implement the provisions described above. At a minimum, the rules must specify the duration of a contract and a process for issuing subsequent RFPs, receiving responses to the RFPs, and evaluating the responses on a competitive basis.



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.

Office of Risk Management

(R.C. 9.82 and 9.823)

The bill allows the Office of Risk Management to manage risk for the Supreme Court, the courts of appeals, the courts of common pleas and any division of courts of common pleas, municipal courts, and county courts as it does for the state for purposes of the Judicial Liability Program.

The bill also allows the Risk Management Reserve Fund to be used for the payment of any liability claim that is filed against the state rather than only liability claims that are filed in the Court of Claims.

State government reorganization plan

(Section 701.60)

Within 30 days after the section's effective date, the bill requires the Department of Administrative Services to begin developing recommendations for a state government reorganization plan focused on increased efficiencies in the operation of state government and a reduced number of state agencies. The Department must present its recommendations to the Speaker of the House of Representatives, the President of the Senate, the Minority Leader of the House of Representatives, and the Minority Leader of the Senate by January 1, 2012.

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.
- 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.¹⁹

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.

¹⁹ 42 C.F.R. 412.23(e).



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,²⁰ 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.

(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

²⁰ The many offenses are listed in R.C. 173.394(C)(1)(a).

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.

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)

- Expands existing provisions stating that the Director of Agriculture has sole and exclusive authority to regulate the provision of food nutrition information to include in that information allergens and the designation of food as healthy or unhealthy.
- States that the Director has sole and exclusive authority in Ohio to regulate the provision of consumer incentive items at food service operations, and defines "consumer incentive item."
- Modifies and expands prohibitions against political subdivisions, taking specified actions with regard to food nutrition information and consumer incentive items, including enacting, adopting, or continuing in effect local legislation relating to the provision of consumer incentive items at food service operations.
- Prohibits a political subdivision from enacting, adopting, or continuing in effect local legislation that bans, prohibits, or otherwise restricts a food service operation because that food service operation is characterized as a quick service or fast food restaurant.
- States that the regulation of how food service operations are characterized is a matter of general statewide interest that requires uniform statewide regulation and that the Food Service Operations Law and rules adopted under it constitute a comprehensive plan with respect to all aspects of food service operations in Ohio.
- 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.



- Extends existing rights, privileges, and protections associated with the ownership or use of assistance dogs by mobility impaired persons to persons diagnosed with autism or assistance dogs used by those persons.
- Requires a person proposing to operate a commercially used weighing and measuring device that provides the final quantity and final cost of a transaction and 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.
- Creates the Auctioneer Study Commission, and requires it to examine the scope of practices for the auctioneer profession and make recommendations to the Governor and the General Assembly.

Regulation of food service operations

(R.C. 3717.53 and 3717.54)

Regulation of food nutrition information and consumer incentive items

The bill expands existing provisions stating that the Director of Agriculture has sole and exclusive authority to regulate the provision of food nutrition information at food service operations to include in that information allergens and the designation of food as healthy or unhealthy. Currently, a food service operation is a place, location, site, or separate area where food intended to be served in individual portions is

prepared or served for a charge or required donation. It includes a catering food service operation and vending machine location.

The bill adds that the Director has sole and exclusive authority in Ohio to regulate the provision of consumer incentive items at food service operations. Under the bill, a consumer incentive item is any licensed media character, toy, game, trading card, contest, point accumulation, club membership, admission ticket, token, code or password for digital access, coupon, voucher, incentive, crayons, coloring placemat, or other premium, prize, or consumer product that is associated with a meal served by or acquired from a food service operation.

The bill prohibits a political subdivision from doing any of the following:

(1) Enacting, adopting, or continuing in effect local legislation relating to the provision or nonprovision of food nutrition information or consumer incentive items at food service operations;

(2) Conditioning a license, a permit, or regulatory approval on the provision or nonprovision of food nutrition information or consumer incentive items at food service operations;

(3) Banning, prohibiting, or otherwise restricting food at food service operations based on the food nutrition information or on the provision or nonprovision of consumer incentive items;

(4) Conditioning a license, a permit, or regulatory approval for a food service operation on the existence or nonexistence of food-based health disparities; or

(5) Banning, prohibiting, or otherwise restricting food service operations based on the existence or nonexistence of food-based health disparities.

Currently, a political subdivision is prohibited only from adopting or continuing in effect local legislation relating to the provision of food nutrition information at food service operations. Local legislation includes, but is not limited to, an ordinance, resolution, regulation, rule, motion, or amendment that is enacted or adopted by a political subdivision.

Regulation of fast food restaurants

The bill prohibits a political subdivision from enacting, adopting, or continuing in effect local legislation that bans, prohibits, or otherwise restricts a food service operation because that food service operation is characterized as a quick service or fast food restaurant. It states that the regulation of how food service operations are

characterized is a matter of general statewide interest that requires uniform statewide regulation and that the Food Service Operations Law and rules adopted under it constitute a comprehensive plan with respect to all aspects of food service operations in Ohio.

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.

Assistance dogs

(R.C. 955.011)

For purposes of the statutes governing assistance dogs, the bill revises the definition of "mobility impaired person" to include a person who is diagnosed with autism. As a result, the bill extends existing rights, privileges, and protections associated with the ownership or use of assistance dogs by mobility impaired persons to persons diagnosed with autism or assistance dogs used by those persons. Those rights, privileges, and protections include all of the following:

- (1) Exemption from dog registration fees;
- (2) Entitlement to full use and enjoyment of all places of public accommodation;
- (3) Protection from physical harm through the application of criminal penalties for assaulting an assistance dog;
- (4) Protection from harassment through the application of criminal penalties for harassing an assistance dog; and
- (5) Protection from theft of an assistance dog through the application of criminal penalties for such theft.

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 that provide the final quantity and final cost of a transaction 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.

Auctioneer Study Commission

(Section 747.30)

The bill creates the Auctioneer Study Commission and requires it to examine the scope of practices for the auctioneer profession and make recommendations to the Governor and the General Assembly regarding those practices. Not later than January 1, 2012, the Commission must submit a report of its findings and recommendations to the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate. Upon submission of the report, the Commission ceases to exist.

The bill requires the Commission to consist of the following members:

(1) A representative of the Department of Taxation appointed by the Tax Commissioner;

(2) A representative of the Bureau of Motor Vehicles appointed by the Registrar of Motor Vehicles;

(3) A representative of the Office of the Attorney General appointed by the Attorney General;

(4) A representative of the Department of Agriculture appointed by the Director of Agriculture;

(5) A representative of the State Auctioneers Commission appointed by the Commission;

(6) One member appointed by the Ohio Automobile Dealers Association;

(7) One member appointed by the Ohio Automobile Auction Coalition;

(8) One member representing equipment auctioneers;

(9) One member representing consignment facility auctioneers;

(10) Two members of the House of Representatives appointed by the Speaker of the House of Representatives; and

(11) Two members of the Senate appointed by the President of the Senate.



Members of the Commission must be appointed not later than ten days after the provision's effective date. The member representing the Department of Agriculture must serve as the chairperson. The Commission must hold its first meeting 30 days after the provision's effective date and must hold regular meetings as necessary.

AIR QUALITY DEVELOPMENT AUTHORITY (AIR)

- 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.

DEPARTMENT OF ALCOHOL AND DRUG ADDICTION SERVICES (ADA)

- 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 the Ohio Department of Job and Family Services (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 the responsibility of ODADAS and ADAMHS boards to pay the nonfederal share for services provided under a component of the Medicaid program that ODADAS administers and makes ODJFS responsible for paying for such services effective July 1, 2012.
- Requires ODADAS, notwithstanding ODJFS's new responsibility, to allocate to ADAMHS boards alcohol and drug addiction Medicaid match funds appropriated to ODADAS for fiscal year 2012 and requires the boards to use the funds to pay claims for community alcohol and drug addiction services provided during that fiscal year under the ODADAS-administered Medicaid component and requires the boards also to use all federal financial participation that ODADAS receives for claims for such services as the first payment source to pay such claims.
- Requires ODADAS to enter into an agreement with each ADAMHS board regarding the issue of paying claims that are for community alcohol and drug addiction 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 alcohol and drug addiction services that were provided before July 1, 2011, and paid by the board.
- 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.
- Requires ODADAS to accept from an alcohol and drug addiction program its accreditation from specified national accrediting organizations as evidence that the program satisfies Ohio's standards for state certification of the program, if ODADAS determines that the program's accreditation is current and is appropriate for the services for which the program is seeking certification.

Medicaid elevation for alcohol and drug addiction services

(R.C. 3793.04, 3793.21, 5111.911, and 5111.913; Section 215.20)

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 the Ohio Department of Job and Family Services (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 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 ODADAS to allocate to ADAMHS boards alcohol and drug addiction Medicaid match funds



appropriated to ODADAS for fiscal year 2012 and requires the boards to use the funds to pay claims for community alcohol and drug addiction services provided during that fiscal year under the Medicaid component that ODADAS administers. The boards are also required to use all federal financial participation that ODADAS receives for claims for such services as the first payment source to pay such claims. The bill provides that the boards are not required to use any other funds to pay for such claims.

ODADAS is required by the bill to enter into an agreement with each ADAMHS board regarding the issue of paying claims that are for community alcohol and drug addiction 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 alcohol and drug addiction services that were provided before July 1, 2011, and paid by the board.

Certification of alcohol and drug addiction programs

(R.C. 3793.061 (primary) and 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.

In lieu of a determination by ODADAS of whether an alcohol and drug addiction program satisfies the minimum standards for certification, the bill requires ODADAS to accept national accreditation of an applicant's services as evidence that the applicant satisfies the standards for certification. Acceptance of accreditation applies to an applicant's alcohol and other drug addiction services, integrated mental health and alcohol and other drug addiction services, or integrated alcohol and other drug addiction services and physical health services.

Requirements for acceptance of accreditation

For an applicant's accreditation to be accepted, the following requirements apply:

- (1) The applicant must hold the accreditation from one of the following national accrediting organizations: the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation;
- (2) The accreditation must be for services being provided in Ohio;
- (3) ODADAS must determine that the accreditation is appropriate for the program for which the applicant is seeking certification;

(4) The applicant must meet any other requirements established in rules to be adopted under the bill.

If ODADAS determines that the applicant meets these requirements, the bill requires ODADAS to certify the program. The bill specifies that the certification is to be issued without further evaluation of the program, except for any visit or evaluation otherwise authorized by the bill (see "**Visiting or evaluating a program for cause,**" below). The same process of accepting accreditation of a program applies to ODADAS when the program seeks recertification.

Review of accrediting organizations

The bill authorizes ODADAS to review the national accrediting organizations listed above to evaluate whether the accreditation standards and processes used by the organizations are consistent with service delivery models ODADAS considers appropriate for alcohol and other drug addiction services, physical health services, or both. ODADAS may communicate to an accrediting organization any identified concerns, trends, needs, and recommendations.

Visiting or evaluating a program for cause

ODADAS is authorized by the bill to visit or otherwise evaluate an alcohol and drug addiction program at any time based on cause. Reasons include complaints made by or on behalf of consumers and confirmed or alleged deficiencies brought to the attention of ODADAS.

Notification of accreditation status changes

Under the bill, ODADAS must require an alcohol and drug addiction program to provide notice not later than ten days after any change in the program's accreditation status. The program is permitted to notify ODADAS by providing a copy of the relevant document the program received from the accrediting organization.

Submission of major unusual incident reports and cost reports

Under the bill, ODADAS must require an alcohol and drug addiction program to submit reports of major unusual incidents. The bill authorizes ODADAS to require a program to submit cost reports pertaining to the program.

Rules

The bill requires ODADAS to adopt rules to implement the bill's provisions regarding the acceptance of an alcohol and drug addiction program's accreditation for purposes of state certification. The rules must be adopted in accordance with the

Administrative Procedure Act (R.C. Chapter 119.). In adopting the rules, ODADAS must do all of the following:

(1) Specify the documentation that must be submitted as evidence of holding appropriate accreditation;

(2) Establish a process by which ODADAS may review the accreditation standards and processes used by the national accrediting organizations;

(3) Specify the circumstances under which reports of major unusual incidents and program cost reports must be submitted to ODADAS;

(4) Specify the circumstances under which ODADAS may visit or otherwise evaluate an alcohol and drug addiction program for cause;

(5) Establish a process by which ODADAS, based on deficiencies identified as a result of visiting or evaluating a program, may take a range of corrective actions, with the most stringent being revocation of the program's certification.

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)

- Authorizes a political subdivision to certify past due receivables to the Attorney General for collection.
- Authorizes the Attorney General to file a claim to recover unclaimed funds held by the state for an obligor in default of child support.
- Extends the period of time applicable to providing a reasonable number of repair attempts before a consumer has the option of a replacement vehicle or a refund under Ohio's Lemon Law under specified circumstances.
- Requires the manufacturer to arrange for the use of a vehicle for the consumer if an extension of time is necessary.



- Allows a gasoline purchase card with a value not exceeding \$10 to be awarded as a prize for playing a skill-based amusement machine.

Attorney General Collection of Political Subdivision Debts

(R.C. 131.02)

The bill authorizes a political subdivision to certify a receivable to the Attorney General for collection when the receivable becomes 45 days past due if the Attorney General authorizes such certification. Currently, only receivables of the state may be certified to the Attorney General for collection.

Application of unclaimed funds to claims certified to the Attorney General for collection

(R.C. 131.024)

The bill authorizes the Attorney General to request information from the Director of Commerce, not later than February 1 of each year, about persons who have been certified as owing an unpaid claim to the state. If the information results in identifying unclaimed funds held by the state for an obligor in default of child support, the attorney general may file a claim to recover the unclaimed funds. If the Director allows the claim, the Director must pay the claim directly to the Attorney General, even though the Attorney General is not the owner of the unclaimed funds.

The Director of Commerce must provide the requested information by not later than March 1 of each year. The information provided includes the person's name, address, social security number, if the social security number is available, and any other identifying information for any individual included in a request sent by the Attorney General who has unclaimed funds delivered or reported under the Unclaimed Funds Law.

The bill authorizes the Attorney General, in consultation with the Director, to adopt rules under the Administrative Procedure Act to aid in implementing the provision.

The Attorney General has authority under current law to collect amounts owed to the state that have been certified to the Attorney General as being unpaid and overdue.



Lemon Law

(R.C. 1345.73)

The bill extends the period of time applicable to providing a reasonable number of repair attempts before a consumer has the option of a replacement vehicle or a refund under Ohio's Lemon Law to include any period of time during which the vehicle could not be reasonably repaired due to war, invasion, civil unrest, strike, fire, flood, or natural disaster. Additionally, if an extension of time is necessary, the bill requires the manufacturer to arrange for the use of a vehicle for the consumer whose vehicle is out of service at no cost to the consumer. If the manufacturer utilizes or contracts with a motor vehicle dealer or other third party to provide the vehicle, the manufacturer must reimburse the motor vehicle dealer or other third party at a reasonable rate for the use of the vehicle.

Award of a gasoline purchase card for playing a skill-based amusement machine

(R.C. 2915.01)

The bill establishes that a card for the purchase of gasoline is a redeemable voucher for purposes of the statutory definition of a "skill-based amusement machine" even if the skill-based amusement machine, for the play of which the card is awarded, is located at a place where gasoline may not be legally distributed to the public or the card is not redeemable at the location of, or at the time of playing, the skill-based amusement machine. The value of such a card cannot exceed \$10.

Continuing law specifies requirements for skill-based amusement machines, and requires that winning players be rewarded with only merchandise prizes or with redeemable vouchers for only merchandise prizes. Neither a merchandise prize nor a redeemable voucher can have a value of more than \$10, and must be distributed at the site of the skill-based amusement machine at the time of play.

AUDITOR OF STATE (AUD)

- Removes the requirement that the Director of Budget and Management approve assessments from the Uniform Accounting Network Fund for the Auditor of State's administrative costs for the Uniform Accounting Network.
- Repeals, for audits of local public offices, authority to recover costs from the GRF for State Auditor employees' vacation and sick leave and, from the state treasury, necessary travel and hotel costs of local deputy inspectors and supervisors.



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

OBM approval of costs assessed to Uniform Accounting Network Fund

(R.C. 117.101)

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

Cost recovery for audits of local public offices

(R.C. 117.13)

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

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

OFFICE OF BUDGET AND MANAGEMENT (OBM)

- Prohibits the state from entering into or obtaining a certificate of participation or any similar debt instrument without General Assembly approval.
- 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.
- Modifies the definition of "statewide indirect costs" to include disbursements from other funds (not just the GRF) and thus permits these disbursements to be recovered according to the statewide indirect cost allocation plan.
- 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.
- Authorizes the Director to transfer up to \$60 million in cash to the GRF from non-GRF funds that are not constitutionally restricted to ensure that GRF receipts and balances are sufficient to support GRF appropriations.
- Provides that the Director must not make transfers from a non-GRF fund if more than 30% of the total fund value consists of cash from donations.
- 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.
- Requires state agency employees to use the state-contracted, preferred rental vehicle provider for all vehicle rentals over 100 miles.
- Allows the Director of Budget and Management and the Director of Transportation to make recommendations to the General Assembly on whether to enter into contracts outsourcing to private sector entities or local or regional public entities the provision of highway services.



- Establishes that there can be no action to outsource a turnpike project until the General Assembly approves the consideration of proposals for outsourcing a turnpike project by enacting legislation.
- Allows the Director of Budget and Management to provide compensation to unsuccessful bidders for a proposal to lease the turnpike, up to the value of the proposal.
- Requires the prior approval of the Controlling Board before the Director of Budget and Management may enter into a contract outsourcing turnpike-related highway services.
- Establishes a proposal selection process that requires the Director of Budget and Management, pursuant to authorizing legislation, 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 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, after the enactment of legislation authorizing consideration of proposals, to exercise the powers of the Ohio Turnpike Commission to work with the Director of Budget and Management regarding Turnpike-related outsourcing contracts.
- 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.
- Makes the Ohio Board of Regents subject to internal audit under internal audit programs conducted by the Office of Internal Auditing.
- Requires that all members of the State Audit Committee be external to the management structure of state government.
- Requires all Committee member terms, in the year that they expire, do so on June 30th and alters the terms of currently serving members.
- Requires a Committee member to continue to serve past the end of the member's term until a successor is appointed.
- Repeals the requirement that the Governor's appointee to the Committee be a person who is external to the management structure associated with preparing financial statements of state government.

Legislative approval of certificates of participation

(R.C. 126.10)

The bill prohibits the state from entering into or obtaining a certificate of participation or any similar debt instrument unless the General Assembly expressly provides approval.



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.

The bill expands the definition of "statewide indirect costs" to include operating costs incurred by an agency providing unbilled services to another agency and for which disbursements have been made from funds other than the GRF. Current law only includes disbursements from the GRF as part of the definition. The change permits disbursements made from other funds (and not just from the GRF) to be recovered from any fund of the state according to the statewide indirect cost allocation plan. Under current law, statewide indirect costs are recovered from any fund of the state and then transferred to the GRF by OBM according to this 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.

Transfers to the General Revenue Fund

(Section 512.30)

The bill authorizes the Director of Budget and Management, notwithstanding any law to the contrary, to transfer up to \$60 million in cash to the GRF from non-GRF funds that are not constitutionally restricted during fiscal years 2012 and 2013. These transfers are to be made to ensure that GRF receipts and balances are sufficient to support GRF appropriations in each fiscal year. The bill prohibits the Director from

making transfers from a non-GRF fund if more than 30 percent of the total fund value consists of cash from donations.

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.

State agency control of nonessential travel expenses

(R.C. 126.503)

The bill adds an additional requirement to the current requirements for state agencies to use to control nonessential travel expenses: a requirement for state agency employees to use the state-contracted, preferred rental vehicle provider for all vehicle rentals over 100 miles. Under current law, the Director of Budget and Management cannot reimburse any state agency employee for unauthorized travel expenses. The definition of "state agency" for purposes of this provision does not include elected state officers, the General Assembly, any legislative agency, a court or judicial agency, or a state institution of higher education.²¹

²¹ R.C. 126.50 – in the bill.

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 make recommendations to the General Assembly concerning whether 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.²² "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.²³

However, the bill specifies that its provisions do not authorize the outsourcing of turnpike projects until the General Assembly enacts legislation to approve the consideration of proposals to sell or lease a turnpike project. The legislation may include specific terms and conditions of the sale, lease, or operation that proposals for the turnpike project must contain. Subsequent action by the Director of Budget and Management and the Director of Transportation must be pursuant to this legislation. Additionally, the Director of Budget and Management must have the prior approval of the Controlling Board before entering into any final contract for the sale and lease of the turnpike negotiated after the General Assembly enacts legislation authorizing the consideration of proposals.

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

²² 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)).

²³ Art. XII, Sec. 5a, Ohio Const.

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, 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.²⁴

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.²⁵ 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,

²⁴ 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)).

²⁵ 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 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.

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.²⁶

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.

Compensation to unsuccessful bidders

The bill authorizes the Director of Budget and Management to provide compensation for the preparation of a responsive proposal from unsuccessful bidders for a

²⁶ 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.

proposal to lease the turnpike. The Director is further authorized to establish policies or procedures to determine the amount of compensation to be provided for each project and the method of evaluating the value of the preliminary proposal submitted. The bill specifies that the compensation may not exceed the value of the proposal.

Exemption from the Public Employee Collective Bargaining Law

The bill specifies that the Public Employee Collective Bargaining Law does 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 with the Director of Budget and Management is to be authorized to execute any contract for the provision of highway services.

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.

Board of Regents subject to internal audit

(R.C. 126.45)

The bill makes the Ohio Board of Regents a state agency subject to internal audit under internal audit programs conducted by the Office of Internal Auditing.

Under current law, the Office of Internal Auditing ("OIA") is a division of the Office of Budget and Management. It is required to conduct internal audits of certain



state agencies according to an annual plan, and report the findings and recommendations of the audit to the independent State Audit Committee. Its goal is to improve operations in the areas of risk management, internal controls, and governance.²⁷

Changes to State Audit Committee

(R.C. 126.46)

The bill requires that all members of the State Audit Committee be external to the management structure of state government. The bill also repeals the requirement that the Governor's appointee to the Committee be a person who is external to the management structure associated with preparing financial statements of state government.

The bill requires all Committee members serve three-year terms to begin on July 1, and end on June 30. Members must continue to serve past the end of the member's term until a successor is appointed. The bill also alters the terms of currently serving members as follows:

- The terms of the members appointed by the President of the Senate expire on June 30, 2012.
- The term of the member appointed by the Speaker of the House scheduled to expire on November 17, 2012, expires on June 30, 2013.
- The term of the other member appointed by the Speaker of the House expires on June 30, 2014.
- The term of the member appointed by the Governor expires on June 30, 2014.

Under existing law, the State Audit Committee is a five-member committee with responsibilities that include, for example, ensuring that internal audits conducted by the OIA conform to the Institute of Internal Auditors' code of ethics and international professional practices standards, and reviewing and commenting on the process used by OBM to prepare the state's comprehensive annual financial report. Two of the members are appointed by the President of the Senate, two members are appointed by the Speaker of the House, and one is appointed by the Governor.²⁸

²⁷ R.C. 126.45(B).

²⁸ R.C. 126.46(A) and (B).

CAPITOL SQUARE REVIEW AND ADVISORY BOARD (CSR)

- Designates the Capitol Square Review and Advisory Board as being in the legislative branch of government.
- Generally designates all employees of the Capitol Square Review and Advisory Board (CSRAB) as being in the unclassified service and serving at the pleasure of the board; treats such employees who are not subject to a collective bargaining agreement as employees of the General Assembly for purposes of the Collective Bargaining Law.
- Upon the expiration of any existing collective bargaining agreement, designates those employees of CSRAB who were formerly covered by the agreement to be employees of the General Assembly for purposes of the Collective Bargaining Law.
- 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 (CSRAB), that it is created in the legislative branch of government. The 13-member Board has general authority over capitol square.

The bill generally provides that employees of the board are in the unclassified service and serve at the pleasure of the board. For purposes of the definitional section of the Collective Bargaining Law, the employees of CSRAB are considered to be employees of the General Assembly. Employees of the General Assembly are currently exempt from collective bargaining because they are excluded from the definition of "public employee" for purposes of the Collective Bargaining Law.

Employees of CSRAB who are covered by a collective bargaining agreement on the effective date of the section remain subject to the agreement until it expires; the agreement cannot be extended or renewed. Upon expiration of an agreement, those



employees will be considered employees of the General Assembly for purposes of the definitional section of the Collective Bargaining Law, will be in the unclassified service of the state, and serve at the pleasure of CSRAB.

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 that the chairperson of the Joint Committee on Gaming and Wagering (who is a legislator) be from the opposite house of the chairperson of the Joint Committee on Agency Rule Review (who also is a legislator), rather than from the opposite party.
- Requires the establishment of an in-state hotline Ohio residents may call at any time to obtain problem gambling information.

Chairperson of the Joint Committee on Gaming and Wagering

(R.C. 3772.032)

The bill requires that the chairperson of the Joint Committee on Gaming and Wagering (who is a legislator) be from the opposite *house* of the chairperson of the Joint Committee on Agency Rule Review (who also is a legislator). Current law requires the chairperson of the Joint Committee on Gaming and Wagering to be from the opposite *party* as the chairperson of the Joint Committee on Agency Rule Review.



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 and the State Lottery Commission, 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.

DEPARTMENT OF COMMERCE (COM)

- Removes the requirement that a person not organized under Ohio law, not licensed as a foreign corporation, or that does not have a principal place of business in Ohio submit a consent to service of process when filing for an exemption for a security offered or sold in reliance on Regulation D of the Securities Act of 1933.
- 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, in the same calendar year, they are required to pay an additional fee as a result of federal law changes bringing them under state regulation.
- 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.
- Permits contractors, subcontractors, and public authorities to temporarily exceed continuing law's permissible apprentice-to-skilled-worker ratio.



- Requires labor organizations to file with the Director of Commerce any portion of a collective bargaining agreement, contract, or understanding that governs wages paid to persons and the apprentice to skilled worker ratio under the agreement, contract, or understanding.
- Specifies that any change in the prevailing wage rate on an ongoing project takes effect two weeks after the Director of Commerce becomes aware of the change.
- Exempts contractors and subcontractors from liability for prevailing wage violations in certain circumstances.
- Makes changes regarding interested party complaints and the procedure for investigating those complaints.
- 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 of Commerce 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.
- Modifies the Real Estate Brokers Law as follows:
 - Prohibits a member of the Ohio Real Estate Commission from holding office for more than two consecutive full terms.
 - Limits or changes the exclusion of persons from the definitions of "real estate broker," "real estate salesperson," "foreign real estate dealer," and "foreign real estate salesperson."
 - Allows the Commission to adopt rules for the clarification of the activities that require a license, for specifying standards for the approval of the post-licensure courses required for new licensees, and for the termination of an agency relationship for a licensee to become a principal in the transaction.
 - Requires the Superintendent of Real Estate and Professional Licensing to mail a notice of license renewal for licensed business entities to the business address.
 - Requires the Superintendent to make notice of successful license renewal electronically.

- Permits the Superintendent to issue advisory letters in lieu of initiating disciplinary action or issuing a citation.
- Revises the disciplinary procedures.
- Provides for an initial licensing time period.
- Makes various licensing fees nonrefundable.
- Makes changes to the provisions regarding returned checks and draft instruments.
- Requires any civil penalties collected for operating as a real estate broker or salesperson without a license to be deposited into the Real Estate Operating Fund instead of the Real Estate Recovery Fund.
- Permits, instead of requires as provided in current law, the transfer of excess funds from the Division of Real Estate Operating Fund to the Real Estate Education and Research Fund.
- Increases the limit for Real Estate Education and Research Fund moneys that may be used to advance loans.
- Makes changes to the education requirements for licensees.
- Makes changes to the provisions regarding brokers and salespersons who place their licenses on deposit to participate in the armed forces.
- Permits a licensee to disclose confidential information if the disclosure is to a registered appraiser for specified reasons.
- Makes changes to the regulation of advertisements of salespersons and brokers.
- Changes the procedure that the Ohio Real Estate Commission uses regarding the reversal, vacation, or modification of its own orders.
- Prohibits a salesperson from selling, assigning, or otherwise transferring the salesperson's interest in a commission.
- Prohibits a salesperson or broker from participating in a dual agency relationship in which the licensee is a party to the transaction or an officer in an entity that has an interest in the property that is the subject of the transaction.
- Makes changes to the provisions regarding complaints against licensees and complaints against unlicensed individuals.

--Permits the Commission to take disciplinary action that relates to unlicensed persons and entities.

--Requires a licensee to notify the Superintendent of Real Estate in writing, within 15 days, if the licensee is the subject of certain types of administrative orders.

--Prohibits a cause of action against a licensee on imputed knowledge and for releasing information requested by a registered appraiser assistant or by a licensed or certified appraiser.

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

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

- Transfers the Construction Compliance Section of the Equal Employment Opportunity Office of the Department of Administrative Services to the Department of Commerce.
- 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, in the ordinary course of doing business, to dispose of any regular inventory or tangible personal property.
- Allows an A-1 liquor permit holder to sell beer manufactured on the premises of the permit holder for personal consumption on the premises.
- 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.
- Staggers the terms of the nine members of the Residential Construction Advisory Committee so that only three of the members' terms expire in any given year.
- Requires the Director of Commerce to decide which members will serve shortened terms for terms beginning July 1, 2011, for the purpose of commencing the staggered-term format, after which all members will serve full three-year terms.



- Authorizes spirituous liquor agency stores to sell spirituous liquor tasting samples, and exempts consumption of such tasting samples at agency stores from the Open Container Law.
- Increases the legally permitted content of beer from 12% to 18% of alcohol by volume.

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 1933.²⁹ Regulation D provides exemptions that allow companies to offer and sell their securities without registering them with the SEC.³⁰ 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 if, in the same calendar year, those subject to the fee would be required to pay an additional fee as a result of changes in federal law and regulations requiring them to be subject to state rather than federal regulation. Under the bill, the Division may waive fees by rule or order. This provision applies to investment advisers who are subject to U.S. Securities and Exchange Commission regulation but whose status will change when,

²⁹ R.C. 1707.03(X), not in the bill.

³⁰ Regulation D Offerings. Available at <http://www.sec.gov/answers/regd.htm> (last visited March 24, 2011).



under changes made the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 ("Act"), effective July 1, 2011, they become subject to state regulation by the Division of Securities. The Act raises the assets-under-management threshold used to define which investment advisers are subject to the federal law.³¹ Consequently, jurisdiction over investment advisers managing securities portfolios under the new threshold could change mid-year, and those investment advisers would be subject to an additional fee. Salespersons and dealers of securities and investment adviser representatives, state retirement system investment officers, and the Bureau of Workers' Compensation Chief Investment Officer remain subject to the license, renewal, and notice filing fees in current law and may not be affected by the Act.

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.³²

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, 4115.10, and 4582.12; repealed R.C. 4115.032 and 4582.37; R.C. 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

³¹ 124 Stat. 1576 (2010), 15 U.S.C. 80b-3a (a).

³² R.C. 1332.25, not in the bill.



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 new construction and reconstruction projects that cost \$250,000 or less and \$75,000 or less, respectively. Currently, any new construction on public improvements that costs \$78,258 or less is exempt from the Prevailing Wage Law (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). New construction and reconstruction 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 new construction and reconstruction on public improvements will be subject to the new thresholds, which are not subject to biennial adjustment by the Director. The new threshold for new construction is phased in under the bill so that for the first year after the amendment's effective date the threshold is \$125,000, and for the second year the threshold is \$200,000. For reconstruction, the bill similarly phases in the new threshold so that the threshold is \$38,000 for the first year after the amendment's effective date and \$60,000 for the second year.

Second, the bill removes from the Prevailing Wage Law's requirements certain economic development projects that currently are subject to the Prevailing Wage Law (see "**Department of Development – Payment of prevailing wage on economic development projects**," below).

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. Accordingly, the bill repeals requirements 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 exempts from the Prevailing Wage Law any portion of a public improvement that is undertaken and completely solely with donated labor. The donated labor that is exempt can be donated by (1) the individuals performing the labor, (2) a labor organization and its members, or (3) a contractor or subcontractor that donates all labor and materials for that portion of the public improvement project.



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.

Apprentice-to-skilled-worker ratios under the Prevailing Wage Law

(R.C. 4115.05)

The bill allows contractors, subcontractors, and public authorities on a public improvement to deviate from the apprentice-to-skilled-worker ratio that is permitted under continuing law. Contractors, subcontractors, and public authorities are limited still to an apprentice-to-skilled-worker ratio that is no greater than the ratio allowed in the collective bargaining agreement or understanding on which the prevailing wage rate for the public improvement is based (i.e., the collective bargaining agreements or understandings governing the same trade or occupation in the locality where the public work is being performed). The bill provides, however, that a contractor, subcontractor, or public authority that exceeds the permissible ratio by two or fewer apprentices for not more than two days in any 30-day period is not in violation of the Law with respect to that excess.

Prevailing wage rate

(R.C. 4115.05)

For purposes of establishing prevailing wage rates, which are based on collective bargaining agreements and understandings governing the same trade or occupation in the locality where a particular public work is being performed, the bill requires labor organizations to file with the Director of Commerce all relevant portions of any collective bargaining agreement, contract, or understanding to which the labor organization is a party. This requirement applies only to a labor organization that is a party to a collective bargaining agreement, contract, or understanding, including a successor agreement, contract, or understanding, that establishes wages for a trade or occupation typically employed on public improvements. The filing must occur within 90 days after the agreement, contract, or understanding is executed. If the agreement, contract, or understanding is in effect on the effective date of the amendment, the labor organization must file the relevant portions within 90 days of the effective date of the amendment. Any labor organization that files the relevant portions of a collective bargaining agreement, contract, or understanding as required under the bill must

certify under penalty of law that the filing contains, in full, all provisions of the agreement, contract, or understanding concerning wages and the apprentice-to-skilled-worker ratio.

If, upon receipt of the relevant portions of a collective bargaining agreement, contract, or understanding, the Director determines that the prevailing wage rate has changed in the locality in which an ongoing project is being constructed, the bill requires that any change in that rate take effect two weeks after the Director receives those documents.

Interested party complaints alleging a violation of the Prevailing Wage Law

(R.C. 4115.03, 4115.13, and 4115.16)

The bill makes certain changes regarding the complaints that an interested party can make alleging a violation of the Prevailing Wage Law and the process for investigating those complaints.

First, the bill narrows the scope of persons who can file a complaint as an "interested party." Contractors who submit a bid to secure the award of a contract for construction of a public improvement, their subcontractors, and any labor organization or trade association that has as members such contractors or subcontractors, still can file a complaint with the Director of Commerce, as interested parties, alleging a violation of the Prevailing Wage Law. However, those persons no longer can file such a complaint with respect to any part of the public improvement other than that part involving the contract on which they, their primary contractor, or their members' employer have bid. The bill accomplishes this change by amending the definition of "interested party" to mean the above-mentioned parties with respect only to the particular contract on which they, their primary contractor, or their members' employer have bid. Currently, those parties are "interested parties" with respect to the entire public improvement.

Second, the bill requires an interested party who files a complaint alleging a violation of the Prevailing Wage Law to allege a specific violation against a specific contractor or subcontractor. The complaint must be in writing on a form furnished by the Director and must include sufficient evidence to justify the complaint. If the complaint fails to allege a specific violation or if it lacks sufficient evidence to justify the complaint, the Director is prohibited from investigating the complaint under the bill.

Third, the bill increases the time in which the Director has to make a determination concerning an interested party's complaint before the interested party can file a complaint in court. Currently, an interested party can file a complaint in court alleging a violation of the Prevailing Wage Law if the Director fails to rule on the merits of the complaint within 60 days after the complaint is filed. The bill requires instead



that the Director or the designated representative investigating the complaint conclude the investigation and make a determination not later than 120 days after the complaint is filed. The Director or the designated representative can take up to an additional 90 days to conclude the investigation and make a determination if the parties to the complaint are given notice of the extension before the initial 120-day period expires. The Director or the designated representative can take more time than that if the Director, or the designated representative, and all parties to the complaint agree to a different time frame. After the permissible time expires, the interested party can file a complaint in court as permitted under continuing law.

Liability for failure to comply with the Prevailing Wage Law

(R.C. 4115.10 and 4115.13)

The bill limits contractors' and subcontractors' liability for violations of the Prevailing Wage Law in two particular instances. First, the bill provides that no contractor or subcontractor is responsible for paying the penalties resulting from an underpayment of wages by its subcontractor, if the contractor or subcontractor has made a good faith effort to ensure that its subcontractor complied with the prevailing wage requirements. Second, the bill exempts from any further proceedings under the Prevailing Wage Law a contractor or subcontractor whose underpayment to an employee is less than \$1,000, if the contractor or subcontractor makes full restitution to the affected employee.

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.

The Real Estate Brokers Law

Ohio Real Estate Commission

Limit on number of terms

(R.C. 4735.03)

The bill prohibits a member of the Ohio Real Estate Commission from holding office for more than two consecutive full terms, while existing law allowed a member of the Commission to hold office indefinitely.

Adoption of rules

(R.C. 4735.10 and 4735.59)

The bill allows the Commission to adopt rules for the clarification of the activities that require a license under the Real Estate Brokers Law in addition to the other provisions of existing law.

The bill requires the Commission to adopt rules specifying standards for the approval of the ten hour post-licensure courses required for newly licensed real estate brokers and real estate salespersons as discussed below in "**Education requirements.**" Current law requires the Commission to adopt rules specifying standards for the approval of courses of study required for licenses, or offered in preparation for license examinations, or required as continuing education for licenses.

The bill permits the Real Estate Commission to adopt rules in accordance with the Administrative Procedure Act to require disclosures when a licensee terminates an agency relationship and becomes a principal in the transaction.

Commission orders

(R.C. 4735.19)

The bill changes the procedure that the Real Estate Commission uses regarding the reversal, vacation, or modification of its own orders. Upon application of an interested party, or upon its own motion and notice to the interested parties, the bill permits the Commission to hold a hearing to consider reversing, vacating, or modifying an order. Current law permits the Commission to reverse, vacate, or modify its own orders but does not authorize holding a hearing. The bill requires an application to be filed with the Division within 15 days after the mailing of the notice of the commission to the interested parties, just as required in current law. The bill allows any applicant or respondent dissatisfied with an order of the Commission to appeal in accordance with



the Administrative Procedure Act. Current law allows any applicant, licensee, or complainant, who is dissatisfied with an order to appeal.

The bill also authorizes the Commission to adopt rules regulating when an interested party may request reconsideration.

Superintendent of Real Estate and Professional Licensing

(R.C. 4735.05 and 4735.14)

The bill allows the Superintendent of Real Estate and Professional Licensing to issue advisory letters in conjunction with the enforcement of the Real Estate Brokers Law in lieu of initiating disciplinary action or issuing a citation under continuing law.

The bill requires the Superintendent to appoint a hearing examiner for any proceeding involving disciplinary action that may lead to a civil penalty. This requirement is in addition to the provision in existing law that requires the Superintendent to appoint an examiner for other disciplinary action proceedings.

With regard to licensing, the bill requires that the notice be mailed to the personal residence address of each broker or salesperson, or if the licensee is a partnership, association, limited liability company, limited liability partnership, or corporation, to the brokerage's business address that is on file with the Division. Current law requires the Superintendent to send the notice to the most current address as filed with the Superintendent by the licensee two months prior to the filing deadline. Under the bill, a licensee cannot renew the license any earlier than two months prior to the filing deadline.

The bill requires the Superintendent to make notice of successful renewal available electronically to licensees as soon as practicable, but not later than 30 days after receipt by the Division of Real Estate and Professional Licensing of a complete application and renewal fee.

Licensing

Licensing periods

(R.C. 4735.06 and 4735.09)

Under the bill, the initial licensing period for a real estate broker's license or real estate salesperson's license begins at the time the license is issued and ends on the applicant's first birthday thereafter, unless an applicant for a real estate broker's license was an inactive or active salesperson immediately preceding application for a broker's license. In that case, the initial licensing period begins at the time the license is issued



and ends on the date the licensee's continuing education is due as set when the applicant was a salesperson. Existing law is silent on the initial licensing period.

Placing of broker's licenses on deposit

(R.C. 4735.10)

The bill changes the terminology of existing law regarding brokers who place their licenses on deposit to become salespersons. The bill refers to this as placing a license "in an inactive status" instead of "on deposit." Both current law and the bill allow the Commission to adopt reasonable rules in accordance with the Administrative Procedure Act, necessary for implementing the provisions of the Real Estate Brokers Law relating, but not limited to, this approval.

Education requirements

(R.C. 4735.07 and 4735.09)

The bill requires real estate brokers and salespersons to complete, within 12 months of licensure, ten hours of classroom instruction in schools, seminars, or educational institutions that are approved by the Real Estate Commission, instead of requiring licensees to complete the hours at an institution of higher education or other institution. The bill removes the requirement that a broker's instruction include issues in managing a real estate company or office and that a salesperson's instruction cover current issues regarding consumers, real estate practice, ethics, and real estate law, and instead requires the Commission to approve the curriculum and providers of the courses.

The bill explicitly states that a broker or salesperson licensee may not begin taking instruction to fulfill the ten-hour requirement mentioned above until the date the license is issued to the licensee. Current law is silent on when a licensee can begin instruction.

The bill extends to all salesperson license applicants the requirement that a person who has not been licensed as a broker or salesperson within a four-year period preceding a current application to have successfully completed a pre-licensure classroom instruction within a ten-year period preceding the application. Existing law requires this only for salesperson license applicants who began instruction prior to August 1, 2001.

The bill removes the specific education requirements for applicants for a salesperson's license who began instruction prior to August 1, 2001, and makes the requirements the same for all salesperson's license applicants.



Failure to comply with education requirements

(R.C. 4735.14 and 4735.141)

If the continuing education requirements are not met by an existing licensee within the periods specified, continuing law requires the licensee's license to be suspended automatically. The bill specifies that the Superintendent's manner of notification of the license suspension be sent by regular mail to the personal residence address of the licensee that is on file with the Division of Real Estate and Professional Licensing.

Continuing law requires that if the license of a real estate broker is suspended for failure to comply with the continuing education requirements, the license of a real estate salesperson associated with that broker correspondingly is suspended. The bill requires a sole broker to notify an affiliated salesperson of a suspension for failure to meet the continuing education requirements in writing within three days of receiving the notice described above.

Under the bill, a salesperson whose license is suspended due to association with a broker who failed to comply with the continuing education requirements may have the license reactivated if either of the following occurs:

(1) The associated broker subsequently submits proof to the Superintendent that the broker has complied with the continuing education requirements and requests that the broker's license be reactivated, and the Superintendent reactivates the license.

(2) The salesperson submits an application to leave the association of a suspended broker to associate with a different broker.

In the case of (2) above, the suspended license of the salesperson must be reactivated for no fee. The Superintendent may process the application for reactivation regardless of whether the licensee's license is returned to the Superintendent.

The bill requires any licensee whose license is reactivated, including a salesperson who continues to be associated with a previously suspended broker or who leaves the association of the suspended broker, to comply with the continuing education requirements and to otherwise be in compliance with the Real Estate Brokers Law. Current law requires a licensee who continues to be associated with a previously suspended broker to comply with the continuing education requirements and be in compliance with the Law.

If a licensee fails to comply with the continuing education requirements for existing licensees, the bill prohibits the Superintendent from renewing the licensee's



license, and requires the licensee to pay the penalty fee provided for under current law, which is 50% of the renewal fee.

The bill removes the requirement that a salesperson who has a license reactivated submit proof of completing 30 hours of continuing education, and instead requires a licensee to submit proof of completion of the required continuing education with the licensee's notice of renewal, submitted in the manner provided by the Superintendent. Current law requires proof satisfactory to be submitted to the Superintendent as prescribed by the Ohio Real Estate Commission or on or before the third year following the licensee's birthday occurring immediately after reactivation for any person whose license is reactivated after failing to meet the continuing education requirements.

Members of the armed forces

(R.C. 4735.13)

Continuing law allows a licensee who enters the armed forces to place a license on deposit with the Commission. The bill allows such a licensee, who fails to meet the continuing education requirements because the licensee is in the armed forces, an extension to complete the requirements within 12 months after the licensee's first birthday after discharge. Existing law requires that the requirements be completed within 12 months of the licensee's discharge.

The bill changes who must notify the licensee of the licensee's obligations under the continuing education requirements at the time the licensee applies for reactivation of the licensee's license after discharge. The bill requires the Superintendent of Real Estate and Professional Licensing to notify the licensee, as opposed to the Commission, as under existing law.

Disabled licensees

(R.C. 4735.141)

The bill permits an extension to satisfactorily complete the required 30 hours of continuing education for any licensee who is a disabled licensee at any time during the last three months of the third year of the continuing education reporting period, instead of for "physically handicapped" licensees as under existing law. The bill specifies that the length of the extension will be determined by the Superintendent.

Fees

Nonrefundable fees

(R.C. 4735.06, 4735.09, and 4735.15)

The bill makes the application, reactivation, or transfer fee for a real estate broker's license and a real estate salesperson's license nonrefundable. Current law provides that if an applicant for a broker's or salesperson's license is not admitted and a waiver is not involved, one-half of the application fee will be retained by the Superintendent to cover the expenses of processing the application and the other half will be returned to the applicant.

Unpaid checks or draft instruments

(R.C. 4735.182)

If a check or other draft instrument used to pay any fee required by the Real Estate Brokers Law is returned to the Superintendent unpaid by the financial institution upon which it is drawn for any reason, the bill requires the Superintendent to notify the entity or person that the check or other draft instrument was returned for insufficient funds. Current law applies these provisions to checks or draft instruments returned due to insufficient funds, as opposed to checks or drafts unpaid by the financial institutions upon which they are drawn for any reason.

Additionally, if the check or draft instrument was submitted by a licensee, current law requires the Superintendent to notify the licensee that the licensee's license will be suspended unless the licensee, within 15 days after the mailing of the notice, resubmits the fee and an additional \$100 fee to the Superintendent. If the licensee does not submit both fees within that time period, or if any check or other draft instrument used to pay either of those fees is returned to the Superintendent unpaid by the financial institution upon which it is drawn for any reason, the license must be suspended immediately without a hearing and the licensee must cease activity as a licensee under the Real Estate Brokers Law. The bill extends the requirement for the resubmission fee and the additional \$100 fee to a person or entity applying to qualify foreign real estate or renew a property registration, to an applicant for licensure, and to an education course provider or course provider applicant. Current law is silent in these cases.

If a person or entity fails to submit both fees within 15 days after the mailing of the notice or if any check or other draft instrument used to pay either of those fees is returned to the Superintendent unpaid by the financial institution upon which it is drawn for any reason, then the following apply:

(1) If the check or draft instrument is remitted by a person or entity applying to qualify foreign real estate or renew a property registration, the property registration will be suspended immediately without a hearing and the applicant must cease activity as a licensee.

(2) If the check or draft instrument is remitted by an applicant for licensure, the application will automatically be denied or approval withdrawn.

(3) If the check or draft instrument is remitted by an education course provider or course provider applicant, the application will be denied or approval withdrawn.

Operating and education and research funds

(R.C. 4735.06 and 4735.211)

If the Director of Commerce determines that funds in the Division of Real Estate Operating Fund are in excess of those necessary to fund all the expenses of the Division in any biennium, the bill permits the Director to pay the excess funds to the Real Estate Education and Research Fund. Current law requires the Director to pay the excess funds to the Real Estate Education and Research Fund.

The bill increases the limit for Real Estate Education and Research Fund moneys that may be used to advance loans from \$800, as in current law, to \$2,000. These loans are to applicants for salesperson licenses to defray the costs of satisfying the educational requirements of obtaining a license.

Licensee duties

Notification of misconduct

(R.C. 4735.13)

The bill adds to the types of misconduct of which a broker or salesperson licensee must notify the Superintendent within 15 days and requires the notification to be in writing. If a licensee is the subject of an order by the Department of Commerce, Department of Insurance, or the Department of Agriculture revoking or permanently surrendering any professional license, certificate, or registration or if the licensee is the subject of an order by any government agency concerning real estate, financial matters, or the performance of fiduciary duties with respect to any license, certificate, or registration, in addition to the misconduct described in existing law, the bill requires the licensee to notify the Superintendent.

If a licensee fails to notify the Superintendent of misconduct within the required time, the bill allows the Superintendent to suspend the license of the licensee instead of revoking the license, as allowed under existing law.

Business location

(R.C. 4735.13, 4735.16, and 4735.17)

The bill stipulates that a post office box is not a definite place of business for purposes of the existing requirement that every licensed real estate broker has and maintain a definite place of business in Ohio.

In the case of a change of business location, the bill requires a broker to give notice to the Superintendent on a form prescribed by the Superintendent within 30 days after the change of location. Current law only requires that the broker gives notice in writing to the Superintendent and is silent on the time frame.

The bill moves the requirement that every real estate broker licensed under the Real Estate Brokers Law must have and maintain a definite place of business in Ohio. Continuing law requires a real estate broker to prominently display the broker's license in the office or place of business of the broker.

Licensees as members and officers of entities

(R.C. 4735.13)

The bill requires a licensed real estate broker who is a member or officer of a partnership, association, limited liability company, limited liability corporation, or corporation to only act as a broker for the entity. Current law prohibits a licensed real estate broker from performing any acts other than as the agent of the entity. The bill removes existing law's prohibition against the broker having any real estate salespersons associated with the broker.

Agency disclosure statements

(R.C. 4735.58)

The bill requires a licensee who is a purchaser's agent or a seller's subagent working with a purchaser to indicate the accurate agency relationship on the agency disclosure statement required by existing law.

Termination of duties

(R.C. 4735.74)

The bill creates an exemption to existing law's provision requiring a licensee to maintain confidentiality after the termination of duties. The bill permits the licensee to disclose confidential information received during the course of the transaction if the disclosure is regarding sales information requested by a registered appraiser assistant or a licensed or certified appraiser for the purposes of performing an appraisal. The bill bars any cause of action against a licensee for releasing information for this reason.

Advertising

(R.C. 4735.16)

The bill changes current law's advertising requirements by removing the requirement that a broker or salesperson indicate in an advertisement that the licensee is a broker or salesperson and by requiring different information in advertisements based on whether a real estate broker or salesperson owns or does not own the property being advertised. The bill requires any licensed real estate broker or salesperson who advertises to buy, sell, exchange, or lease real estate, or to engage in any act regulated by the Real Estate Brokers Law, with respect to property the licensee does not own, to be identified in an advertisement by name and to indicate the name of the brokerage with which the licensee is affiliated. With respect to property that the licensee owns, the bill requires the licensed real estate broker or salesperson to be identified in the advertisement by name and indicate that the property is agent owned. If the property is listed with a real estate brokerage, the advertisement must also indicate the name of the brokerage with which the property is listed. In both situations, the brokerage name must be displayed in equal prominence with the name of the salesperson in the advertisement.

The bill defines "brokerage" for purposes of the advertising requirements to mean the name under which the real estate company or sole broker is doing business, or if the real estate company or sole broker does not use such a name, the name of the real estate company or sole broker as licensed.

Current law requires licensed brokers and salespersons, whether or not they own the property being sold, exchanged, or leased, to be identified by name in the advertisement and to indicate that the licensee is a broker or salesperson. Additionally, except for a salesperson who advertises the sale, exchange, or lease of real estate that the salesperson owns and that is not listed for sale, exchange, or lease with a broker, a salesperson who advertises must also indicate the name of the broker under whom the salesperson is licensed and the fact that the salesperson's broker is a broker.

Agency agreements

(R.C. 4735.55)

The bill specifies that each written agency agreement must contain a statement that it is illegal pursuant to the Federal Housing Law, *as amended*, to refuse to make certain housing actions based on protected classes. Current law requires the statement to express that it is illegal pursuant to the Federal Fair Housing Law to make certain housing actions based on protected classes.

Similarly, the bill specifies that each written agency agreement must contain a copy of the U.S. Department of Housing and Urban Development (HUD) equal housing opportunity logotype, *as amended*. Current law requires an agreement to contain a copy of the HUD equal opportunity logotype.

Compliance with federal law

(R.C. 4735.62)

The bill requires a licensee, in the licensee's fiduciary capacity, to use best efforts to further the interest of a client by complying with the Federal Fair Housing Law, *as amended*, in addition to the other requirements contained in existing law. Current law requires the licensee to comply with the Federal Fair Housing Law.

Prohibitions

(R.C. 4735.21 and 4735.71)

Current law prohibits a real estate salesperson or foreign real estate salesperson from collecting any money in connection with any real estate or foreign real estate brokerage transaction, whether as a commission, deposit, payment, rental, or otherwise, except in the name of and with the consent of the licensed real estate broker or licensed foreign real estate dealer under whom the salesperson is licensed. The bill adds the specification that the broker or dealer under whom the salesperson was licensed at the time the salesperson earned the commission must be the broker or dealer who consents.

The bill also prohibits a salesperson licensed under the Real Estate Brokers Law from selling, assigning, or otherwise transferring the salesperson's interest in a commission or any portion thereof to an unlicensed person or entity. If the salesperson does make such a prohibited assignment or transfer, the broker is prohibited from paying the transferee or assignee any portion of the commission. The bill prohibits a cause of action against a broker for not paying an assignee or transferee any portion of the assignment or transfer.

The bill prohibits a salesperson or broker licensed under the Real Estate Brokers Law from participating in a dual agency relationship in which the licensee is a party to the transaction, either personally or as an officer or member of a partnership, association, limited liability company, limited liability partnership, or corporation that has an interest in the real property that is the subject of the transaction or an entity that has an intention of purchasing, leasing, or exchanging the real property. This is in addition to the provisions in continuing law that generally prohibit a licensee or brokerage from participating in a dual agency relationship unless the seller and the purchaser have full knowledge of the representation and that prohibit a brokerage from participating in such a relationship unless the brokerage establishes a procedure regarding confidential information and each licensee to fulfill the licensee's duties exclusively to the licensee's client.

Complaints and investigation procedure

(R.C. 4735.05 and 4735.052)

The bill prohibits the Superintendent from initiating an investigation of a violation for a person who held a license on voluntary hold or a suspended or inactive license under the Real Estate Brokers Law on the date of the alleged violation. Current law prohibits the Superintendent from investigating any person who held a valid license under the Real Estate Brokers Law any time during the 12 months preceding the date of the alleged violation.

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

The bill removes current law's requirement that the notice required above inform the party that a hearing concerning the alleged violation will be held at the next regularly scheduled meeting of the Real Estate Commission, that the notice must contain a statement giving the date and place of that meeting, and that the notice must contain a statement informing the party that the party or party's attorney may appear in person, present evidence, examine witnesses, or submit written testimony. Instead, the bill requires the hearing to be held upon the party's request, before a hearing examiner pursuant to the Administrative Procedure Act.

The bill requires the hearing examiner to file a report of findings of fact and conclusions of law with the Superintendent, the Commission, the complainant, and the parties after the conclusion of formal hearings. The bill allows the parties and the



Division to file written objections to the report within 20 days of receipt of the copy of the written report of findings of fact and conclusions of law. The bill requires the Commission to consider the objections before approving, modifying, or disapproving the report.

The bill requires the Commission to review the hearing examiner's report at the next regularly scheduled Commission meeting, which must be held at least 20 business days after receipt of the hearing examiner's report. At that meeting, the Commission must hear the testimony of the complainant or the parties. If the violation relates to acting as a real estate salesperson or broker without a license, the Commission must decide whether to impose disciplinary sanctions upon a party for that violation.

The bill requires the Commission to keep a record, rather than a transcript, of the hearing.

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

The bill allows the Superintendent to reserve the right to bring a civil action against a party that fails to pay a civil penalty for breach of contract in any court of competent jurisdiction.

Disciplinary action

Licensees

(R.C. 4735.18 and 4735.181)

The bill makes permissive the imposition of disciplinary sanctions on any licensee who, in the licensee's capacity as a broker or salesperson, or in the handling of the licensee's own property, is found guilty of engaging in misconduct as specified in current law (disciplinary sanctions remain mandatory for felonies or crimes of moral turpitude). Current law requires disciplinary sanctions to be mandatory for the misconduct.

In addition to the types of misconduct listed in existing law, the bill allows the imposition of disciplinary sanctions for a licensee who is found guilty of any of the following:

(1) Advertising, in addition to having placed a sign as under current law, on any property offering it for sale or for rent without the consent of the owner or an authorized agent;



(2) Having an unsatisfied lien in any court of record against the licensee arising out of the licensee's conduct as a broker or salesperson;

(3) Failing to comply with the provisions relating to earnest money in the Real Estate Brokers Law.

The bill removes the requirement in current law that the Commission immediately notify the Real Estate Appraiser Board of any disciplinary action taken against a licensee who also is a state certified real estate appraiser under the Real Estate Appraiser Law.

The bill removes the reference to the complaint investigation section of the Real Estate Brokers Law that requires the Ohio Real Estate Commission, when imposing disciplinary sanctions on a licensee, to act pursuant to that section.

The bill prohibits any broker or salesperson from failing to comply with requirements regarding change of address notification and maintenance of salesperson licenses by brokers. This prohibition is in addition to those in current law, which prohibit any broker or salesperson from failing to comply with requirements regarding agency agreements, brokerage policies on agency, and agency disclosure statements. Continuing law permits the Superintendent to initiate disciplinary action against a licensee or to serve a citation and impose sanctions upon a licensee who violates the prohibitions.

Unlicensed persons or entities

(R.C. 4735.32)

The bill permits the Commission to commence an investigation and take disciplinary action that relates to unlicensed persons and entities in addition to licensees.

Compensation for brokers and foreign real estate dealers

(R.C. 4735.20)

The bill expands the exemption that allows licensed real estate brokers or licensed foreign real estate dealers to pay or receive a commission to a broker or dealer of another state, to also include a broker or dealer of another country. This payment must be done in accordance with rules adopted by the Commission.

Liability limitation based on imputed knowledge

(R.C. 4735.68)

The bill prohibits a cause of action against a broker or affiliated or past licensee based on imputed knowledge of any defect, adverse condition, or repair in real property or failure to disclose such information. This is in addition to current law's limitations on liability for a licensee whose client provided false information or a client who made a misrepresentation unless the licensee or client had actual knowledge of such false information or misrepresentation, or the licensee acted with reckless disregard for the truth.

Definitions

(R.C. 4735.01)

The bill changes all occurrences in the Real Estate Brokers Law of "physically handicapped" to "disabled" and changes the definition of "disabled licensee" (formerly "physically handicapped licensee") to include a person who is under a severe disability, instead of a severe physical disability, that prevents the person from being able to attend any instruction lasting at least three hours in duration.

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

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

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



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

(4) Various other specifications unchanged by the bill.

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

The bill changes (2) above and requires that the public officer be a "bona fide" public officer and that the trust agreement, deed of trust, will, or other instrument creating a like bona fide fiduciary obligation be executed in good faith. The bill defines bona fide as made in good faith or without purpose of circumventing license law.

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

The bill limits the exemption of persons, partnerships, associations, limited liability companies, limited liability partnerships, or corporations as provided in (1) above by the legal interest in the real estate held by that person or entity to performing any of the acts or transactions specified in or comprehended by the Real Estate Brokers Law.

Other changes

(R.C. 4735.02, 4735.09, 4735.10, 4735.142, and 4735.32)

The bill makes other non-substantive changes to the Real Estate Broker's Law.

Transfer of Construction Compliance Section to Department of Commerce

(R.C. 126.021; Section 515.50)

The bill transfers the Construction Compliance Section of the Equal Employment Office of the Department of Administrative Services (DAS) to the Department of Commerce (DOC). More specifically, on the effective date of the transfer, all of the functions, together with all of the assets and liabilities, of the section are transferred to DOC. The section as transferred to DOC assumes the obligations of, and otherwise constitutes the continuation of, the section as it was formerly organized in DAS. Any business commenced but not completed by the section as it was formerly organized in DAS is to be completed by the section as transferred to DOC, in the same manner, and with the same effect, as if completed by the section as it was formerly organized in DAS.



Any validation, cure, right, privilege, remedy, obligation, or liability is not lost or impaired by reason of the transfer, and is to be administered by the section as transferred to DOC. The transfer applies in particular to the special budgeting rules that dedicate a minimum percentage of capital appropriations for the work of the section.

All of the rules, orders, and determinations of the section as it was formerly organized in DAS continue in effect as rules, orders, and determinations of the section as transferred to DOC, until they are modified or rescinded by the section as transferred to DOC.

Subject to the lay-off provisions of the Civil Service Act, all employees of the section as it was formerly organized in DAS are transferred to the section as transferred to DOC. The employees retain their positions and all the benefits accruing thereto.

Whenever the section as it was formerly organized in DAS is referred to in any law, contract, or other document, the reference is to be deemed to refer to the section as transferred to DOC.

Any action or proceeding pending on the effective date of the transfer is not affected by the transfer and is to be prosecuted or defended in the name of DOC or in the name of the section as transferred to DOC.

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.³³ 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.

³³ 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.

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 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.³⁴

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:

³⁴ It is unclear what is intended by "all or an interest."



- (1) The acquisition or retention by the state of a residual or reversionary interest in the enterprise acquisition project;
- (2) The participation of any state officer or employee as a member or officer of JobsOhio or any subsidiary of JobsOhio;
- (3) Any regulatory responsibility of an officer or employee of the state, including the authority to collect amounts to be received in connection therewith; 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 regulatory activities.

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 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. 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.

Spirituos 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 Director of Budget and Management, in consultation with the Director of Commerce, may, without need for any other approval, negotiate terms of any documents, including the transfer agreement, necessary to effect the transfer and the acceptance of the transfer of the enterprise acquisition project. The Director of Commerce must execute the transfer agreement on behalf of the state. The Director of Budget and Management 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, in the ordinary course of doing business, to convey, lease, release, or otherwise dispose of any regular inventory or tangible personal property. 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 the state 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, and the Director of Commerce must, subject to the approval of the Controlling Board, 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 must 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 Division of Liquor Control must manage and actively supervise the activities required or authorized under current law establishing the powers and duties of the Division, including, but not limited to, controlling the traffic in beer and intoxicating liquor in the state and fixing the wholesale and retail prices at which the various classes, varieties, and brands of spirituous liquor are sold by the Division.

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.

Finally, the bill requires the transaction regarding and transfer of the enterprise acquisition project to comply with all applicable provisions of the Ohio Constitution.

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 manufactured on the premises 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 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.

Residential Construction Advisory Committee membership

(R.C. 4740.14; Section 747.40)

Under current law, all nine members of the Residential Construction Advisory Committee (RCAC) serve parallel three-year terms. As a result, all members' terms conclude at the same time, requiring the Director of Commerce to either reappoint or appoint members to fill the entire committee every three years.

This bill creates a staggered scheme by which only three members' terms expire in any given year. Beginning with terms to commence July 1, 2011, three members' terms will end on June 30, 2012, three members' terms will end on June 30, 2013, and three members' terms will end on June 30, 2014. The Director of Commerce will decide which members serve shortened terms, within the parameters specified in the bill. After the staggered scheme is begun, all successive members will serve full three-year terms.

Spirituos liquor tasting samples

(R.C. 4301.17 and 4301.62)

The bill authorizes spirituous liquor agency stores to sell tasting samples of spirituous liquor in accordance with rules adopted by the Division of Liquor Control. A tasting sample of spirituous liquor is a small amount of spirituous liquor that is provided in not more than four servings of not more than a quarter ounce of spirituous liquor and one ounce of nonalcoholic mixer each to an authorized purchaser and that

allows the purchaser to determine, by tasting only, the quality and character of the beverage. Spirituous liquor includes all intoxicating liquors containing more than 21% of alcohol by volume. Intoxicating liquor includes all liquids and compounds, other than beer, containing .5% or more of alcohol by volume.

The bill exempts consumption of tasting samples of spirituous liquor at agency stores from the Open Container Law. Currently, a person cannot have an opened container of beer or intoxicating liquor in a state liquor store.

Alcohol content of beer

(R.C. 4301.01)

The bill increases the legally permitted alcohol content of beer from 12% to 18% of alcohol by volume.

OFFICE OF THE CONSUMERS' COUNSEL (OCC)

- Prohibits the OCC from operating a call center for consumer complaints.
- Requires the OCC to follow the policies of the state in current law that involve supporting retail natural gas competition.

Call center prohibition

(R.C. 4911.021)

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 PUCO is currently required to operate a call center for consumer complaints.³⁵

Requirement to follow state natural gas policy

(R.C. 4911.02)

The bill requires the OCC to follow Ohio's policies in current law that involve supporting natural gas competition. These policies include the promotion of diversity

³⁵ R.C. 4905.261, not in the bill.



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. Current law also requires both the PUCO and the OCC to follow these policies in exercising their respective authorities.³⁶

CONTROLLING BOARD (CEB)

- Creates the Controlling Board Emergency Purposes Fund in the state treasury to provide disaster and emergency aid to state agencies and political subdivisions and for other purposes approved by the Controlling Board.
- Permits the Controlling Board to approve a state agency's purchase if the agency (1) substantially complied with one of four specified purchasing requirements and (2) gives the Board a detailed explanation of the agency's competitive selection or evaluation and selection process.
- Prohibits a public office from entering into a contract for a legislative agent with a cost exceeding \$50,000 per year unless the contract is approved by the Controlling Board.
- 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.

Controlling Board Emergency Purposes Fund

(R.C. 127.19; Sections 247.10 and 512.40)

The bill creates the Controlling Board Emergency Purposes Fund in the state treasury. The Fund is to consist of transfers from the General Revenue Fund (GRF) and any other money appropriated by the General Assembly. Moneys in the Fund may be used, at the request of a state agency or the Director of Budget and Management, to provide disaster and emergency aid to state agencies and political subdivisions or for other purposes approved by the Controlling Board.

³⁶ R.C. 4929.02, not in the bill.



The bill eliminates the Controlling Board's current Emergency Purposes/Contingencies appropriation item and related appropriations and instead appropriates \$10 million to the Controlling Board Emergency Purposes Fund in each fiscal year. The bill also transfers up to \$20 million to the Fund from any surplus in the GRF ending balance from fiscal year 2011 to the Emergency Purposes Fund.

Approval of state-agency purchases

(R.C. 127.162)

The bill permits the Controlling Board to approve a purchase, on the request of a state agency or the Director of Budget and Management, as being in full compliance with competitive selection, if the agency satisfies a substantial-compliance requirement. More specifically, the agency must have substantially complied with the current law requirements for one of the following:

- Competitive sealed bidding;
- Competitive sealed proposals;
- Reverse auctions; or
- Evaluation and selection for professional design services.

The agency must also submit with its request a detailed explanation of the type of competitive selection or evaluation and selection process with which it was seeking to comply and the specific requirements with which the agency failed to comply.

The bill permits the Controlling Board, by majority vote, to disapprove or defer a purchase request or request that the agency resubmits the request if substantial compliance has not been demonstrated.

The bill specifies that its new provisions do not modify cumulative purchasing thresholds under existing law.

Public office lobbying contracts

(R.C. 101.711)

The bill prohibits a public office from entering into a contract with a legislative agent, with a cost exceeding \$50,000 in a calendar year, without the approval of the Controlling Board. The prohibition does not apply to an employment contract pursuant to which an individual is employed directly by a public office as a legislative agent.



For purposes of the prohibition: "Public office" means any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by Ohio law for the exercise of any function of government. And "legislative agent" means any individual (except a member or staff of the General Assembly and a state wide elected official) who is engaged, during at least a portion of the individual's time, to actively advocate with regard to legislative matters as one of the individual's main purposes. Certain Ohio Casino Control Commission members and employees are "legislative agents" even if they do not, during at least a portion of their time, actively advocate with regard to legislative matters as one of their main purposes.

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.

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."³⁷

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

DEPARTMENT OF DEVELOPMENT (DEV)

- Eliminates the prevailing wage requirements that apply to certain economic development projects.
- Removes the requirement that an applicant have at least 30% funding from one or more financial institutions or other governmental entities as a requisite criterion for receipt of a loan from the Director of Development to minority business enterprises and others.
- Clarifies that JobsOhio must comply with Ohio's Nonprofit Corporation Law unless the corporation is specifically exempted from a particular provision of that law.
- Removes a requirement that the Governor serves as a member and chairperson of the nine-member JobsOhio board of directors, and instead requires the Governor to appoint all nine directors and designate one of those directors to serve as chairperson.
- Removes a provision that allows the Governor to specify other types of experience that would qualify an individual for appointment to the JobsOhio board of directors as an alternative to the types of experience specifically enumerated in law.
- Requires that any claim alleging the unconstitutionality of the JobsOhio authorizing legislation or of any section governing the proposed sale of the liquor distribution system must be brought in the Franklin County Common Pleas Court within 90 days after the bill's effective date unless the claim is within the original jurisdiction of the Supreme Court or Court of Appeals.
- Requires that any claim alleging the unconstitutionality of an action taken by JobsOhio must be brought in the Franklin County Common Pleas Court within 60

³⁷ O.A.C. 4757-9-05(A)(1).



days after the action taken unless the claim is within the original jurisdiction of the Supreme Court or Court of Appeals.

- Prohibits any business from using "JobsOhio" or "Jobs Ohio" as part of the business' name without the written consent of JobsOhio.
- Removes existing law that allows the Governor to remove a director for misconduct, and instead provides that only a majority of disinterested directors may remove a director.
- Provides that the JobsOhio chief investment officer may be removed from office only by the board of directors, instead of by the Governor as provided in current law.
- 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 working relationships 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 March 31, 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.;³⁸

(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.;³⁹

(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.

³⁸ 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).

³⁹ Projects eligible for such assistance include innovation projects, research and development projects, advanced energy projects, and logistics and distribution projects.



Changes to the law governing JobsOhio

The bill makes several changes to the law governing the formation and operation of JobsOhio, the nonprofit organization authorized by H.B. 1 to perform state economic development, job creation and retention, job training, and business recruitment functions.

Applicability of Ohio Nonprofit Corporation Law

(R.C. 187.01; Section 812.30)

The bill states that, unless specifically exempted from a particular provision, JobsOhio must comply with Ohio's Nonprofit Corporation Law. Continuing law unchanged by the bill exempts the corporation from 34 of the 61 sections of that law that might otherwise apply to nonprofit corporations. The provision is exempted from the referendum and takes immediate effect.

Disposition of liabilities upon dissolution

(R.C. 187.01(I); Section 812.30)

The bill eliminates a provision that requires JobsOhio's articles of incorporation to set forth procedures for how JobsOhio's liabilities would be distributed to the state or to a successor corporation should JobsOhio be dissolved. The bill retains the requirement that the articles provide for how JobsOhio's assets and rights would be so distributed.

Governor membership on board of directors

(R.C. 187.01(A) and (D) and 187.03; Section 812.30)

Under current law, the JobsOhio board of directors must consist of the Governor and eight directors appointed by the Governor. The Governor must also serve as chairperson of the board. The bill removes the Governor as a member of the board, and instead requires that all nine directors be individuals appointed by the Governor. The Governor must appoint one of the nine directors to serve as board chairperson.

Accordingly, the bill adjusts the terms of office for initial board appointees. Current law provides that, of the eight Governor-appointed directors, two directors will serve one year from the date the articles of incorporation are filed, while two directors will serve two years and four directors will serve four years. The bill requires that the ninth Governor-appointed director also serve an initial four-year term, so that a total of five directors will serve initial terms of four years.



The changes are exempted from the referendum and take immediate effect.

Director qualifications

(R.C. 187.02; Section 812.20)

Under current law, to qualify for appointment to the JobsOhio board of directors, an individual must satisfy all of the following: (1) understand generally accepted accounting principles and financial statements, (2) possess the ability to assess the general application of those principles in connection with the accounting for estimates, accruals, and reserves, (3) have experience preparing, auditing, analyzing, or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be presented by JobsOhio's financial statements, or experience actively supervising one or more persons engaged in those activities, (4) understand internal controls and procedures for financial reporting, and (5) understand audit committee functions.

Specific experience demonstrating the qualifications required above can be evidenced by any of the following:

(1) Education and experience as a principal financial officer, principal accounting officer, controller, public accountant or auditor, or experience in one or more positions that involve the performance of similar functions;

(2) Experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor, or person performing similar functions;

(3) Experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing, or evaluation of financial statements; or

(4) Other experience considered relevant by the Governor consistent with the above paragraph.

The bill removes this last provision that allows the Governor, in making an appointment, to consider other types of experience not otherwise listed if the Governor considers the experience relevant. Removal of the provision is exempted from the referendum and takes immediate effect.



Removal of directors for misconduct

(R.C. 187.01(K); Section 812.30)

Under current law, the corporation's articles of incorporation must provide that the governor may remove a member of the board of directors for misconduct. The bill instead requires the articles to authorize the removal of a director for misconduct only through the decision of a majority of disinterested directors. The change is exempted from the referendum and takes immediate effect.

Chief investment officer appointment and removal

(R.C. 187.01(E); Section 812.30)

Under current law, the corporation's articles of incorporation must provide that the corporation's chief investment officer will serve at the pleasure of the Governor. The bill instead requires the articles to state that the CIO will serve at the pleasure of the board of directors.

Existing law also requires the articles to provide for the appointment of the CIO by recommendation of the board of directors and approval of the Governor. The bill additionally requires the articles to specify that, if the CIO position becomes vacant for any reason, the vacancy must be filled as provided in law for the initial appointment. The changes are exempted from the referendum and take immediate effect.

Use of the name "JobsOhio"

(R.C. 187.13)

The bill prohibits any person (other than JobsOhio) from using the name "JobsOhio" or "Jobs Ohio," or words with a similar meaning in another language, as any part of the designation or name of a business the person conducts in the state, unless the person receives the written consent of JobsOhio.

The bill also requires that the name of any subsidiary of JobsOhio must include both the name "JobsOhio" and an additional designation in order to differentiate the subsidiary from other JobsOhio corporations.

Legal actions challenging the constitutionality of JobsOhio or its actions

(R.C. 187.09)

The legislation that authorized the creation of JobsOhio, Am. Sub. H.B. 1 of the 129th General Assembly, vested exclusive, original jurisdiction in the Ohio Supreme Court over any legal action claiming the unconstitutionality of that act, any part of that



act, or any actions taken by the Governor or the corporation under the authority conferred by that act. H.B. 1 also required that any such action be filed within 60 days after the act's effective date, which was February 18, 2011.

The bill proposes a new statute of limitations applicable to such constitutional challenges. Under the bill, any claim alleging the unconstitutionality of any section of Am. Sub. H.B. 1, any section of R.C. Chapter 4313. enacted by the bill (which authorizes the sale of the state's liquor distribution system to JobsOhio), or any part of those sections must be brought in the Franklin County Court of Common Pleas within 90 days after the provision's (90-day) effective date, unless the claim is within the original jurisdiction of the Ohio Supreme Court or Court of Appeals.

The bill similarly provides that any claim, except a claim within the original jurisdiction of the Supreme Court or Court of Appeals, that alleges the unconstitutionality of any action taken by JobsOhio must be brought in the Franklin County Common Pleas Court within 60 days after the action is taken.

Under the bill, the Franklin County Common Pleas Court or a Court of Appeals must give priority to a claim alleging the unconstitutionality of JobsOhio legislation or actions over other civil cases before the court.

JobsOhio appropriation

(Sections 605.10 and 605.11)

Am. Sub. H.B. 1 appropriated an amount not to exceed \$1 million for the "transition and start-up costs" of JobsOhio. The bill specifies that those start-up costs may include the costs of the incorporation and formation of the corporation.

The bill also appropriates any unexpended and unencumbered balance from that \$1 million appropriation remaining at the end of FY 2011 to JobsOhio for FY 2012.

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 programs, and its working relationships. The purpose of the OHSC is to



evaluate all OHFA programs through an objective process to ensure Ohioans receive optimal and measurable 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 State Auditor, or the Auditor's designee, the Director of Commerce, or the Director's designee, the Director of Development, or the Director's designee, and four members of the General Assembly, two selected from each chamber, to be appointed by the Speaker of the House of Representatives and the President of the Senate, respectively. The bill provides that the chairperson of the OHSC will be a member of the Committee selected by the Governor, Speaker of the House of Representatives, and President of the Senate. The OHSC will meet on a reasonable basis 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 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 measurable economic impact and other effects of its programs;
- (4) Review the OHFA's Qualified Allocation Plan development process and underlying policies to understand whether objective and measurable results are achieved to fulfill clearly articulated public policy goals;
- (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 chairperson may include other relevant areas of study as necessary.



The OHSC will commence on the bill's effective date and is required to provide a report expressing its findings and financial, policy, or legislative recommendations to the Governor, the Speaker of the House of Representatives, and the President of the Senate on or before March 31, 2012.

The bill requires that all reasonable expenses incurred by the OHSC in relation to its purpose be paid by OHFA funds, and allows the OHSC to contract with the State Auditor and other independent entities for up to \$200,000 to carry out its responsibilities, including financial- and performance-based audits and other services. The bill allows the Auditor of State to contract with an independent auditor. The bill prohibits an entity that has a financial or vested interest in the OHFA, its affiliates, or its nonprofit partners from contracting with the OHSC for services.

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, in fiscal years 2012 and 2013, 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.
- Revises the law governing waiting lists that county DD boards establish for their services by generally eliminating current statutory requirements for waiting lists and establishing separate requirements for waiting lists for non-Medicaid services and waiting lists for home and community-based services provided under ODODD-administered Medicaid waiver programs.
- Reduces the fee that a county DD board pays regarding home and community-based services provided under a Medicaid waiver program that ODODD administers from 1.5% to 1% of the total value of all Medicaid-paid claims for such services provided to an individual eligible for such services from the board.
- Provides for all of the money raised by the fees to be deposited into the ODDD Administration and Oversight Fund rather than having a portion of the money deposited into the ODJFS Administration and Oversight Fund.
- Provides that the ODJFS Administration and Oversight Fund ceases to exist when ODJFS expends the amount appropriated from the Fund.
- Eliminates ODJFS's duties regarding the fees.
- Provides that money in the ODDD Administration and Oversight Fund may no longer be used for additional duties that ODODD identifies.



- 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.
- Authorizes the Ohio Developmental Disabilities Council to establish a five-year pilot program to allow Council members to remotely attend meetings by teleconference or video conference.

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

(Section 263.20.80)

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. This authority exists only for fiscal years 2012 and 2013.

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. Before authorizing a pilot project, the ODODD Director must consult with entities interested in the issue of developmental disabilities, including the Ohio Provider Resource Association, Ohio Association of County Boards of Developmental Disabilities, and ARC of Ohio.



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 services⁴⁰ for both of the following:

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

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

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

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.

⁴⁰ "Residential services" are services necessary for an individual with mental retardation or a developmental disability to live in the community, including room and board, clothing, transportation, personal care, habilitation, supervision, and any other services ODODD considers necessary for the individual to live in the community (R.C. 5123.18(A)(3)).

County DD boards' waiting lists

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

The bill revises the law governing waiting lists that county DD boards establish for their services. The bill generally eliminates current statutory requirements for waiting lists and establishes separate requirements for waiting lists for non-Medicaid services and waiting lists for home and community-based services provided under ODODD-administered Medicaid waiver programs.

A waiting list for non-Medicaid services is to be established in accordance with the plan each county DD board must develop regarding the facilities, programs, and other services the board makes available with its available resources. A board may establish priorities for placing individuals on a waiting list for non-Medicaid services. The priorities must be consistent with the board's plan and applicable law.

The bill establishes more requirements regarding waiting lists for home and community-based services provided under ODODD-administered Medicaid waiver programs than it does for waiting lists for non-Medicaid services. The bill also requires ODODD to adopt rules governing waiting lists for such home and community-based services but does not require ODODD to adopt rules for waiting lists for non-Medicaid services.

The bill includes provisions regarding the order in which individuals on a waiting list for home and community-based services provided under an ODODD-administered Medicaid waiver program are to receive the services. An individual's date of placement on such a waiting list is to be the date a request is made to the county DD board for the services. A board must provide for an individual who has an emergency status to receive priority status on the waiting list. The bill's definition of "emergency status" is generally the same as current law's definition of "emergency." An individual with mental retardation or developmental disabilities has an emergency status when the individual is at risk of substantial self-harm or substantial harm to others if action is not taken within 30 days. A board also must provide for an individual to receive, in accordance with ODODD's rules, priority status if (1) the individual is receiving supported living, family support services, or adult services for which no federal financial participation is received under the Medicaid program, (2) the individual's primary caregiver is at least 60 years of age, or (3) the individual has intensive needs as determined in accordance with ODODD's rules. If two or more individuals on the waiting list have such priority, a board must use criteria specified in ODODD's rules in determining the order in which the individuals will be offered the services. However, an individual who has priority because the individual has an

emergency status is to have priority over all other individuals on the waiting list who do not have emergency status.

The bill maintains current law that provides that requirements applicable to the Medicaid program override the bill's provisions regarding waiting lists. Specifically, Medicaid rules and regulations, and requirements contained within Medicaid state plan amendments and waiver programs that county DD boards have authority to administer or with respect to which the boards have authority to provide services, take precedence over the bill's waiting list provisions.

County DD board fees for home and community-based services

(R.C. 5123.0412; Section 309.30.15)

The bill reduces the amount of the fee that county DD boards must pay regarding home and community-based services provided under a Medicaid waiver that ODODD administers. Under current law, a county DD board must pay an annual fee equal to 1.5% of the total value of all Medicaid paid claims for such home and community-based services provided during the year to an individual eligible for services from the board. Under the bill, the annual fee is 1% of the total value of such claims.

The bill provides for the fees to be deposited solely into the ODDD Administration and Oversight Fund rather than, as under current law, having a portion of the fees deposited into the ODJFS Administration and Oversight Fund. The ODJFS Administration and Oversight Fund is to cease to exist when ODJFS expends the amount appropriated from the Fund.

Current law requires ODODD and ODJFS to specify, in an interagency agreement, how much of the fees are to be deposited into each fund. The bill eliminates the requirement for the interagency agreement, including the part of the agreement providing for ODODD and ODJFS to coordinate the staff whose costs are paid for with money in the funds. The bill also eliminates ODJFS's responsibility to prepare with ODODD an annual report on how money in the funds is used.

Money raised by the fees is to be used for Medicaid administrative costs (including administrative and oversight costs of Medicaid case management services and home and community-based services) and to provide technical support to county DD boards regarding their local administrative authority over Medicaid-funded home and community based services. Under current law, the administrative and oversight costs must include costs for staff, systems, and other resources needed and dedicated solely to eligibility determinations, training, fiscal management, claims processing, quality assurance oversight, and other duties ODODD and ODJFS identify. The bill

provides that the money raised by the fees may no longer be used for additional duties that the departments identify.

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.⁴¹

⁴¹ See Section 337.30.70 of Am. Sub. H.B. 1 of the 128th General Assembly and Section 337.30.43 of Am. Sub. H.B. 119 of the 127th General Assembly.



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

Use of payments

(R.C. 5126.18(E))

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

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

Eligibility for payments

(R.C. 5126.18(C))

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

(1) Determine the six-month moving average,⁴² population,⁴³ and yield per person⁴⁴ 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.

⁴² "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)).

⁴³ "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)).

⁴⁴ "Yield per person" means the quotient obtained by dividing the six-year moving average of a county by the population of that county (R.C. 5126.18(A)(5)).



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

Certification of the taxable value of property

(R.C. 5126.18(B))

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

General formula for allocating payments

(R.C. 5126.18(D))

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

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

Exceptions to the general formula

First alternative formula – \$20,000 range

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

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



- For fiscal year 2013, one-half of the amount calculated for the eligible county under the general formula plus one-half of the amount of tax equity payments the county received in fiscal year 2011.
- For fiscal year 2014, three-fourths of the amount calculated for the eligible county under the general formula plus one-fourth of the amount of tax equity payments the county received in fiscal year 2011.

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

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

No payments to regional councils

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

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

Audits

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

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

Ohio Developmental Disabilities Council remote attendance pilot program

(Section 263.20.90)

The bill authorizes the Ohio Developmental Disabilities Council to establish a five-year pilot program to allow Council members to remotely attend a public Council meeting by teleconference or video conference in lieu of physically attending the meeting. At each Council meeting that includes members in attendance by teleconference or video conference, at least three Council members must be physically present. The bill permits any Council meeting to be held with members in attendance by teleconference or video conference; however, the Council must hold at least one meeting in each year of the pilot program without permitting members to attend by teleconference or video conference.

The bill specifies that a member who attends a Council meeting by teleconference or video conference must be (1) counted for purposes of determining whether a quorum is present for the transaction of business, and (2) permitted to vote at the meeting.

Report to the General Assembly

If the Council establishes the pilot program, the bill requires the Council to submit a report to the General Assembly not later than four years after the bill's effective date to assist the recipients in determining whether legislation establishing remote attendance by teleconference or video conference for the meetings of other public bodies would be beneficial. The report must include all of the following:

- (1) A description of the effect of teleconferencing or video conferencing on the operation of the Council meetings;
- (2) An accounting of any costs incurred or savings realized by the Council;
- (3) For each Council meeting held during the pilot program, all of the following:
 - (a) the meeting notice, (b) Council member attendance records, (c) a description of public and media attendance, (d) a summary or copy of any comments made by the public or media regarding the use of teleconferencing or video conferencing, (e) the minutes for the meeting, (f) an accounting of the costs incurred for the meeting, and (g) a description of any local media coverage of a teleconference or video conference meeting.

Rule-making authority

The bill permits the Council to adopt any rules it considers necessary to implement the pilot program. The rules must be adopted in accordance with the Administrative Procedure Act and, at a minimum, do the following:



(1) Allow Council members to remotely attend a public Council meeting by teleconference or video conference in lieu of physically attending the meeting;

(2) Establish a method for verifying the identity of a member who remotely attends a meeting by teleconference or video conference;

(3) Establish a policy for distributing and circulating necessary documents to Council members, the public, and the media in advance of a meeting where members attend by teleconference or video conference.

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 each of fiscal years 2012 and 2013, at least as much state operating funding as they received for fiscal year 2011 less the federal stimulus amount for fiscal year 2011.
- Requires the Department to pay an additional subsidy of \$17 per student to school districts and community schools that are rated "excellent with distinction" or "excellent."
- 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 but the newer categories for computing special education transfer payments to community schools, STEM schools, and appears to require use of both the former weights and former categories for transfer payments to 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 and performance 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, (5) percentage of expenditures for classroom instruction, and (6) performance of, and opportunities for, identified gifted students.
- 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.
- Extends from two years to four years the standard period of time for a fiscal emergency school district to reimburse the state for a payment from the School District Solvency Assistance Fund, and grants a district up to ten years for repayment upon approval of the Director of Budget and Management and the state Superintendent.

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.
- Allows Auxiliary Services Funds to be used to purchase or maintain life-saving medical or other emergency equipment for chartered nonpublic schools.

Public schoolhouse exemption

- Specifically exempts from taxation real property used by a school district, STEM school, community school, educational service center, or a nonpublic school for primary or secondary educational purposes.

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.



- Repeals the moratorium on the establishment of new Internet- or computer-based community schools (e-schools), which currently is in effect until the General Assembly enacts standards governing the operation of e-schools.
- Requires the State Board of Education to adopt rules establishing (1) operating standards for e-schools based on standards developed by the International Association for K-12 Online Learning and (2) methods by which the Department of Education must monitor schools' compliance with those standards.
- Grants existing e-schools three years after adoption of operating standards rules to comply.
- Prohibits a new e-school from opening unless, for the three prior years, it operated in another state and performed at a level higher than academic watch, as determined by the Department.

Conversion community schools opening in 2011-2012

- 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.

Location of start-up community schools

- Expands the definition of "challenged school district," where start-up community schools may be located, to include school districts that are ranked by performance index score in the lowest 5% of all districts.
- Permits the establishment of a start-up community school in a district that is not a "challenged school district," if (1) at least 75% of the school's enrollment is disabled students or gifted students, but not both, and (2) the school district in which the school is located, or the Department of Education, certifies that there is need in the region for a school serving that student population.

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) have fewer than 80% of their schools ranked by performance index score in the highest 95% of all public schools for three consecutive years.
- 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.

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

- Revises procedural deadlines for notification, hearing, and appeal associated with a sponsor's decision to terminate or not renew its contract with a community school.
- Requires a community school whose contract is terminated to close at the end of the current school year.

Other provisions regarding community school sponsors

- Allows an organization whose membership consists solely of entities authorized to sponsor community schools to become a sponsor itself, upon approval of the Department of Education.
- Permits an educational service center (ESC) to sponsor a start-up community school in any challenged school district (rather than only in a challenged school district located in a county within the ESC's territory or in a contiguous county, as in current law).
- Grants civil immunity to community school sponsors and their officers, directors, and employees for any action authorized by the Community School Law or the sponsorship contract that is taken to fulfill the sponsor's responsibility to oversee a community school.
- Prohibits a community school sponsor or any officer, director, employee, agent, representative, subsidiary, or independent contractor of the sponsor from selling goods or services to a school sponsored by the sponsor.
- Repeals the requirement that a community school sponsor have a representative located within 50 miles of each school it sponsors.
- Revises the requirement for the sponsor's representative to meet regularly with the community school's governing authority, by (1) requiring the meetings to occur monthly (rather than every two months, as in current law), (2) allowing the meeting to be with the school's fiscal officer instead of the governing authority, and (3) requiring the representative to review the school's enrollment records (in addition to its financial records, as in current law).
- Requires the State Board of Education to adopt rules defining what constitutes "financial records" for the purpose of the representative's review.

Governing authority membership

- 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.

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

- 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.

Laws applicable to community schools

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

E-school expenditures for instruction

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

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

Right to lease unused school district property

- Requires school district boards with real property that has been used for classroom operations since July 1, 1998, but has not been in use for two years, to offer to community schools located within the district the opportunity to lease the property.
- Requires that school district boards lease property to community schools rated in the top 50% by performance index score for \$1, and for fair market value in the neighborhood or community in which the property is located for all other community schools.

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).

Hybrid schools

- Authorizes up to five traditional public or community schools selected by the Department of Education to operate as hybrid schools that provide both remote, technology-based and classroom-based instruction.
- Requires the Department to issue a request for proposals from schools that wish to operate as hybrid schools.
- Requires the Department to conduct a study of the selected hybrid schools in the third school year of operation, after which the Department may issue a second request for proposals and select an additional five schools to operate as hybrid schools.

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 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.

Funding

- Requires the Department of Education to deduct, from the state education aid of the school district in which a college-preparatory boarding school student is entitled to attend school, an amount equal to 85% of the operating expenditure per pupil of that district (including both state and local revenues).
- Requires the Department to pay to each college-preparatory boarding school the amount deducted from a school district's state education aid for each pupil attending the boarding school, plus a state payment of a "per-pupil boarding amount."
- Sets the "per-pupil boarding amount" at \$25,000 per pupil during a college-preparatory boarding school's first fiscal year of operation, with adjustments for inflation in following fiscal years.
- Allows for reductions to the "per-pupil boarding amount" if, in any fiscal year, the college-preparatory boarding school receives funds from the federal government or other outside funding sources.

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, 45-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).
- Eliminates the 10% or 25% income-based reduction required by current law for scholarships under the Cleveland Scholarship Program.
- Allows new students to enter the Cleveland Scholarship Program during high school.

Jon Peterson Special Needs Scholarship Program

- Creates the Jon Peterson Special Needs Scholarship Program to provide scholarships for children with disabilities in grades K through 12 to attend alternative public or private special education programs.
- Requires the Department of Education to develop a document that compares rights under state and federal special education law and rights under the Jon Peterson Special Needs Scholarship Program, and requires school districts to distribute that document to the parents of all special education students.
- Requires the Department of Education to conduct a "formative evaluation" of the Jon Peterson Special Needs Scholarship Program by December 31, 2014.

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.
- Permits an ESC governing board to delay reorganizing its subdistricts, if its territory is divided into subdistricts, until July 1, 2012.
- Permits an ESC governing board to appoint an executive committee to initially organize the territory into subdistricts, rather than the board doing it as under current law, when an ESC is formed by the merger of two or more smaller ESCs.



- Permits an ESC governing board to appoint additional members to the board who are representative of the "city" and "exempted village" school districts having service agreements with the ESC, rather than only those who are voters of "local" school districts of the ESC's territory as provided under current law.
- 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 plans for (1) the integration and consolidation of the publicly supported regional shared services organizations, and (2) encouraging communities and school districts to create regional P-16 councils, and to submit legislative recommendations to the Governor and the General Assembly by January 1, 2012.

VI. Teachers and School Employees

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.
- Specifies that the teacher is not responsible for the cost of retaking an exam.
- Specifies that a teacher who retakes an exam and provides proof of passage to the teacher's employer is not required to retake the exam again for three years.

Alternative and out-of-state licensure

- Makes the alternative resident educator license valid for teaching in grades K to 12 (instead of grades 4 to 12, as in current law).



- Changes the qualifications for obtaining and holding the alternative resident educator license by (1) prohibiting any requirement that applicants have a college major in the teaching area, (2) permitting applicants to complete a summer training institute provided by a nonprofit teacher preparation program that has been approved by the Chancellor of the Board of Regents (instead of the pedagogical training institute otherwise required by current law), and (3) allowing Teach for America participants to satisfy continuing education requirements with professional development provided through the Chancellor-approved program.
- Prohibits the State Board of Education from establishing qualifications for a resident educator license for Teach for America participants beyond those enacted in H.B. 21 of the 129th General Assembly.
- 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.

Career-technical educator licenses

- Requires the State Board of Education's rules on the issuance and renewal of a professional career-technical teaching license to include requirements relating to life experience, professional certification, and practical ability, and prohibits the State Board from requiring completion of a degree as a condition for the license.

Data on graduates of teacher preparation programs

- Requires the Chancellor of the Board of Regents annually to report value-added data for graduates of Ohio teacher preparation programs who teach English language arts or math in grades 4 to 8 in a public school in Ohio.

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.

Termination of school district transportation staff

- Re-enacts a former law that permits a local or exempted village school district (non-Civil Service school districts) to terminate the positions of transportation employees for reasons of economy and efficiency and to contract with an agent to provide student transportation services, if certain conditions are satisfied.

VII. School Restructuring

Restructuring low-performing schools

- Specifies that if a school is ranked in the lowest 5% on the performance index score 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 performance index score 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 schools (school districts, community schools, and STEM schools) based on student performance and cost effectiveness.

VIII. Other Education Provisions

Statewide academic standards

- Requires the State Board of Education to revise its academic standards in English language arts, math, science, and social studies "periodically" (instead of every five years, as in current law).
- Changes the name of a subject area for which the State Board must adopt academic standards from "computer literacy" to "technology."
- Repeals the requirement that the State Board's academic standards specify development of skill sets that (1) relate to creativity, innovation, critical thinking and problem solving, and communication and collaboration and (2) 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.
- Requires the Superintendent of Public Instruction and the Chancellor of the Board of Regents, when selecting end-of-course exams as part of the new high school graduation assessment system, to choose multiple assessments for each subject area, and that those assessments must include nationally recognized subject area tests.
- Changes the terminology for the nationally standardized test portion of the new high school graduation assessment system from a national test that measures competencies in science, math, and English to a national test that measures "college and career readiness."
- Eliminates development of a composite score system for the college and work-ready assessment system.

Competency-based high school credit

- Exempts chartered nonpublic schools from having to comply with a State Board of Education plan for competency-based high school credit.

Public records status of elementary achievement assessments

- Specifies that the achievement assessments administered in grades 3 to 8 in the 2011-2012 school year and later are not public records.

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.

Fees for career-technical education materials

- Permits school districts to charge low-income students for tools, equipment, and materials that are necessary for workforce-readiness training and that may be retained by the students after course completion.

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.

Sale of milk in schools

- Repeals restrictions on the maximum serving size, fat content, and calorie content of milk sold a la carte in school districts, community schools, STEM schools, and chartered nonpublic schools.
- Repeals the requirement that, in public and chartered nonpublic schools, at least 50% of the a la carte beverages available for sale through a school food service program, vending machine, or school store must be water or other beverages that contain no more than 10 calories per 8 ounces.

Intra-district open enrollment

- Specifically permits a school district, under its intra-district open enrollment policy, to grant a student permanent permission to attend a district school outside of the student's attendance area, so that the student does not need to re-apply annually for permission to attend the school.

Interscholastic athletics participation

- Prohibits disqualification of a student from interscholastic athletics solely because the student's parents do not reside in Ohio, if the student attends school in Ohio and



lives in Ohio with a grandparent, uncle, aunt, or sibling who has temporary or legal custody or guardianship of the student.

- Prohibits any school district, school, interscholastic conference, or organization that regulates interscholastic conferences or events from having a conflicting rule.

Homeschooled student participation in district activities

- Requires school districts to allow homeschooled students, who fulfill the same nonacademic and financial requirements as any other participant and specified academic requirements, to participate in extracurricular activities at the school district-operated school to which they otherwise would be assigned.

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, but authorizes postponement of the pilot project if sufficient funds are not available.

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.

Department of Education organization

- Repeals permanent law requiring the Department of Education to establish the State Office of Community Schools, the State Office of School Options, and the State Office of Educator Standards, and permitting the Department to establish the Center for Creativity and Innovation.

Obsolete reference

- Removes an obsolete reference to the Ohio Sailors' and Soldiers' Home in the school district tuition law.

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.⁴⁵ (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.⁴⁶

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.⁴⁷

As a transition from the Building Blocks Model, the EBM guarantees each district a state payment (before deductions for community schools, STEM schools, open enrollment students, scholarship students, and educational service centers) that is, for fiscal year 2010, at least 99% of its previous year's funding base and, for fiscal year 2011, at least 98% of its previous year's base. On the other hand, it also specifies that no school district for either fiscal year 2010 or 2011 may receive a gain in state funds over the previous year that is greater than 3/4 of 1% of the previous year's base.⁴⁸

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

⁴⁵ Repealed R.C. 3306.03 and 3306.13.

⁴⁶ Repealed R.C. 3306.052 and 3306.12.

⁴⁷ Repealed R.C. 3306.051.

⁴⁸ Repealed R.C. 3306.19.

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 each of fiscal years 2012 and 2013 to guarantee each district operating funding in an amount that is equal to at least the amount of state operating funding, less federal stimulus funding, the district received for fiscal year 2011 under the EBM.

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 Senate, published at www.lsc.state.oh.us/fiscal/comparedoc129/default.htm.

Additional subsidy for high performing districts and community schools

(Section 267.30.56)

The bill requires the Department to pay an additional subsidy of \$17 per student to each school district or community school that is currently rated as "excellent with distinction" or "excellent" on the annual district and school academic performance report cards.

A district is rated "excellent" if it meets at least 94% of the state performance indicators or has a performance index score of 100 to 120. However, a district that is otherwise excellent must be downgraded to "effective" if it does not make "adequate yearly progress," as used under federal law, for two or more of the same student subgroups for three or more consecutive years. A district is rated "excellent with distinction" if it otherwise has an "excellent" rating and demonstrates more than a standard year of academic growth for two consecutive years on the value-added progress dimension (which measures student academic growth from one year to the next). The state academic performance indicators are 75% student proficiency on all applicable state achievement assessments, 93% attendance rate, and 90% graduation rate.⁴⁹

⁴⁹ R.C. 3302.01, 3302.021, and 3302.03 (none in the bill) and R.C. 3302.02.



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 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."⁵⁰ Under the EBM, a district's formula ADM generally is based on its October report for the *prior* fiscal year, unless its current average daily membership is more than 2% greater than that of the prior year. In the latter case, under the EBM, the Department must use the district's report for the current fiscal year to derive its formula ADM.

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

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

Special education categories and weights

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

The bill retains and recodifies the EBM's categories and weights for counting of students with disabilities and for future use in funding special education.⁵² However, for fiscal year 2012 and 2013, the bill requires use of the former (fiscal year 2009) Building Blocks weights but the newer disability categories for computing special education transfer payments to community schools and STEM schools. For transfer payments to other school districts for excess special education cost⁵³ or for state payments for catastrophic costs the bill appears to require use of both the former weights and former categories.⁵⁴

Background

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

⁵¹ Separate law enacted at the same time as the EBM also requires that every school district offer all-day kindergarten to each student enrolled in kindergarten beginning in fiscal year 2011, with provisions for a waiver or delay of implementation. The bill does not affect the all-day kindergarten provisions, but H.B. 30 of the 129th General Assembly, effective July 1, 2011, repeals the all-day kindergarten requirement.

⁵² R.C. 3317.013. See also repealed R.C. 3306.02 and 3306.11.

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

⁵⁴ R.C. 3314.088, 3317.018, and 3326.39. Federal special education law requires that states provide a mechanism to fund "high need children." Accordingly, the state distributes additional funds to school districts, community schools, and STEM schools to pay their costs for children whose special education and related services costs exceed a prescribed "catastrophic" threshold amount. Under current law, retained by the bill, the threshold amount is \$27,375, for a child with a disability in categories two through five, and \$32,850, for a child with a category six disability. See R.C. 3314.08(E), 3317.022(C)(3), 3317.16(G), and 3326.34.

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 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.⁵⁵

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

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



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, 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. Community schools and Stem schools also continue to receive the per-pupil base funding supplement as computed for fiscal year 2009 under the Building Blocks Model. That amount is \$50.90.

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. But, the bill requires that students first be grouped into the new disability categories, as re-codified by the bill.

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, 2010.⁵⁶ Thereafter, the Council must submit its subsequent reports by July 1 of each even-numbered year. The Council also must have

⁵⁶ The report is published online at www.education.ohio.gov/GD/Templates/Pages/SFAC/SFACPrimary.aspx?page=760.



a subcommittee on school district-community school collaboration and may have other subcommittees. The Department of Education is required to provide staff to assist the Council.

The Council consists of the following members:

- (1) The Governor, or the Governor's designee;
- (2) The Superintendent of Public Instruction, or the Superintendent's designee;
- (3) The Chancellor of the Board of Regents, or the Chancellor's designee;
- (4) Two school district teachers, appointed by the Governor;
- (5) Two nonteaching, nonadministrative school district employees, appointed by the Governor;
- (6) One school district principal, appointed by the Speaker of the House;
- (7) One school district superintendent, appointed by the Senate President;
- (8) One school district treasurer, appointed by the Speaker of the House;
- (9) One member of a school district board of education, appointed by the Senate President;
- (10) One representative of a college of education, appointed by the Speaker of the House;
- (11) One representative of the business community, appointed by the Senate President;
- (12) One representative of a philanthropic organization, appointed by the Speaker of the House;
- (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 than 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),⁵⁷ 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.

⁵⁷ EMIS is an electronic database of district and school operational, financial, and student data maintained by the Department of Education.

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;

(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 schools, and STEM schools according to each of the following measures:



(1) Performance index score for each school district, community school, and STEM school and for each separate building of a district, community school, or STEM school. 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 applies to all city, exempted village, and local school districts. But it does not apply to some individual schools, because the school does not offer any grades for which an achievement assessment is given (a K to 2 school, for example), or to joint vocational school districts. For that reason, the bill also requires the state Superintendent to develop another measure of student academic performance and use that measure to include such schools and districts in the ranking so that all districts, schools, and buildings may be reliably compared to each other.

(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.⁵⁸

(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.⁵⁹ 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.⁶⁰

(4) Current operating expenditures per pupil;

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

⁵⁸ 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.

⁵⁹ 20 United States Code 2323.

⁶⁰ 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.

(6) Performance of, and opportunities provided to, identified gifted students, using value-added progress dimensions, if applicable, and other relevant measures designated by the state Superintendent.

The Department, by September 1 of each year, must issue a report for each school district, community school, and STEM school, and each separate building showing its rank on each measure.

Under the bill, the performance index score ranking required under (1) above is used in other provisions affecting districts, schools, and their employees. (See "**Location of start-up community schools – Definition of "challenged school district",**" "**Educational Choice scholarship – New eligibility,**" "**Retesting teachers,**" and "**VII. School Restructuring**" below.)

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.

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.⁶¹

Financial recovery plan and oversight commission

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.⁶² While the commission does not replace the district board, it does have substantial powers to influence and direct the district's financial affairs.

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.⁶³ The law also specifies that no appropriation measure may be adopted and no expenditure may be made that conflict with the financial recovery plan.⁶⁴

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

⁶¹ R.C. 3316.03 and 3316.04, neither in the bill.

⁶² R.C. 3316.05 and 3316.09, neither in the bill.

⁶³ R.C. 3316.06.

⁶⁴ R.C. 3316.12, not in the bill.

personnel.⁶⁵ 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.⁶⁶

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

School District Solvency Assistance Fund

(R.C. 3316.20)

To assist a school 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." Under current law, 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.

The bill extends to four years the standard period for a district to repay its advances from the fund. It also allows a district up to ten years for repayment, if the Director of Budget and Management and the state Superintendent approve the extra time.

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.

⁶⁵ R.C. 3316.07, not in the bill.

⁶⁶ R.C. 3316.17, not in the bill.



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.⁶⁷ 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, and library materials, or to

⁶⁷ Repealed R.C. 3315.17 and 3315.171.

provide health or special education services. The bill adds the purchase or maintenance of life-saving medical or other emergency equipment for chartered nonpublic schools as an authorized use of Auxiliary Services Funds.

It also makes several updates to the kinds of education technology hardware and software and digital content that may be purchased with the 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.

Public schoolhouse exemption

(R.C. 5709.07(A)(1); Section 757.80)

The bill specifically exempts from taxation real property used by a school district, STEM school, community school, educational service center, or a nonpublic school for primary or secondary educational purposes. The exemption includes all land as is necessary for the proper occupancy, use, and enjoyment of the real property by the school for primary and secondary school purposes. The exemption does not apply to any portion of the real property not used for primary or secondary educational purposes.

Current law exempts "public schoolhouses," which, under Ohio Supreme Court rulings, means any publicly or privately owned facility used for educational purposes for the benefit of the public. *Anderson/Maltbie Partnership v. Levin*, 127 Ohio St.3d 178, 2010-Ohio-4904, 937 N.E.2d 547, at paragraph 22. To qualify for the exemption, current



law requires that the property not be "leased or otherwise used with a view to profit." Under this language, a facility used for public educational purposes leased pursuant to a for-profit lease does not qualify for the exemption. *Id.*, at paragraph 23. The bill removes this limiting language, effective for tax year 2011 and thereafter.

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

(Repealed R.C. 3314.013; R.C. 3314.20 and 3314.23; conforming changes in R.C. 3314.02(D) and 3314.03)

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

The bill prohibits new internet- or computer-based community schools (e-schools) from opening unless the school has operated in another state for at least three years before opening in Ohio and performed at a level higher than academic watch, as determined by the Department of Education.

The bill also requires the State Board of Education to adopt rules establishing standards for e-schools. These standards must be based on those developed by the International Association for K-12 Online Learning. The rules must also include a method by which the Department must monitor e-school compliance with the standards. The bill grants existing e-schools three years after the initial adoption of the rules to be in compliance.

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 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.

Location of start-up community schools

Definition of "challenged school district"

(R.C. 3314.02(A)(3) and (C)(3))

The bill expands the definition of "challenged school district," where start-up community schools may be located, to include school districts ranked in the lowest 5% of districts based on their performance index scores. This change could enable the establishment of start-up schools in districts where they are currently prohibited. Under current law, a challenged school district is any of the following: (1) a "Big-Eight"



school district (Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown), (2) a school district in academic watch or academic emergency, or (3) a school district in the original community school pilot project area (Lucas County). Once a start-up community school is established in a school district with a low performance index score ranking, the school may continue to operate there even if the district later raises its ranking and is no longer considered "challenged."

Exception for schools serving disabled or gifted students

(R.C. 3314.02(G))

Under the bill, a new start-up community school that primarily serves either disabled students or gifted students is exempt from the requirement to be located in a "challenged school district" under certain conditions. To qualify for the exemption, which allows the school to be located in *any* school district, (1) at least 75% of the school's enrollment must be students with disabilities or at least 75% of the enrollment must be gifted students and (2) either the school district in which the school will be located, or the Department of Education, must certify that there is a need in that region for a school serving the intended student population.

The bill also requires the school, as a condition of qualifying for the exemption, to be established as a "public benefit corporation." However, since all new community schools are already subject to this requirement by continuing law, it does not constitute any additional obligation on the school. 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]."68

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) has had more than 20% of its schools ranked by performance index score in the lowest 5% of all public schools statewide for three consecutive years. The 2009-2010 school year is the first year for which the ranking will count against a sponsor, so the earliest a sponsor will be subject to the prohibition based on school rankings will be after the 2011-2012 school year. The

⁶⁸ R.C. 1702.01(P), not in the bill.

prohibition may apply to a sponsor earlier for failure to comply with reporting requirements.

The bill's prohibition applies to all sponsors, 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

If a community school enters into a sponsorship contract with a sponsor and, before the school opens, the sponsor becomes subject to the bill's prohibition on sponsoring additional schools, the contract is void. The school may still open, but only after contracting with another sponsor.

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.

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

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

⁷⁰ See R.C. 3314.021.



Termination or nonrenewal of school's contract with its sponsor

(R.C. 3314.07(B))

Under continuing law, if the sponsor of a community school intends to terminate the school's contract prior to its expiration or to not renew the contract upon expiration, the sponsor must provide the school with notice of its intent and 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.

The bill retains these procedures, but it revises the deadlines for various actions, as follows:

- First, it requires the sponsor to provide notice of the intent to terminate or not renew the contract by March 1 of the year in which it intends to take the proposed action, rather than 90 days prior to the termination or nonrenewal as currently required.
- Second, it shortens from 70 days to 14 days the period for the sponsor to hold a hearing at the school's request.
- Third, it requires the sponsor to issue its decision whether or not to affirm the termination or nonrenewal within 14 days after the hearing, instead of "promptly following" the hearing as in current law.
- Fourth, if the school appeals the sponsor's decision to terminate the contract, the bill requires the appeal to be filed with the State Board within 14 days of that decision. The State Board must conduct a hearing and issue a written decision, including reasons for upholding or annulling the termination, within 60 days after the filing of the appeal. Current law does not prescribe a deadline for filing the appeal or for the State Board to hold its hearing.
- Fifth, the bill specifies that the contract termination is effective on the date the sponsor originally notifies the school of its intent to terminate or, upon appeal, the date designated by the State Board. Under current law, the termination takes effect 90 days after the sponsor's notification or the date set by the State Board, whichever is later.
- Finally, if the contract is terminated, the bill requires the school to close at the end of the current school year or on another date specified in the sponsor's notification of its intent to terminate.



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. If the contract is terminated, the school may not contract with another sponsor and must permanently close.

New sponsor entity

(R.C. 3314.0210)

The bill allows an organization whose membership consists solely of entities that are currently authorized to sponsor community schools to become a sponsor itself. Under continuing law, any of the following entities may be a community school sponsor and, therefore, could be a member of the new organization: (1) a city, exempted village, local, or joint vocational school district, (2) an educational service center (ESC), (3) a state university board of trustees or a sponsoring authority designated by the board, or (4) an education-oriented, federally tax-exempt entity.⁷¹ Like other new sponsors, the organization must be approved as a sponsor by the Department of Education and enter into an agreement with the Department regarding the manner in which the organization will conduct its sponsorship.

Upon approval, the organization may sponsor new start-up or conversion community schools. In the case of a new conversion school, the organization may sponsor the school only if the building that will be converted into the school is operated by a school district or ESC that is a member of the organization and the district or ESC approves the conversion.

The organization also may assume the sponsorship of community schools sponsored by its members, although each member retains the authority to sponsor schools on its own. When transferring sponsorship of a school from a member to the organization, the transfer may take effect only at the beginning of a school year. If the member's sponsorship contract with the school has expired, the organization must enter into a successor contract with the school to effectuate the transfer. (At the contract's expiration, the school would also have the option of seeking another sponsor, if it does not want the organization to assume sponsorship.) If the member's sponsorship contract has not expired, both the school and the member must adopt resolutions consenting to the transfer occurring prior to the contract's expiration, and the

⁷¹ R.C. 3314.02(C)(1).



organization and the school must amend the contract to reflect the transfer of the school's sponsorship to the organization.

ESC sponsorship of community schools

(R.C. 3314.02(C)(1)(d) and (F)(3))

Under the bill, an educational service center (ESC) may sponsor a start-up community school in any challenged school district statewide. Current law permits an ESC to sponsor a start-up school only in a challenged school district located in a county within the territory of the ESC or in a contiguous county.

Sponsor liability

(R.C. 3314.07(E))

The bill grants civil immunity to a community school sponsor and its officers, directors, and employees for any action taken to fulfill the sponsor's responsibility to oversee and monitor a community school, if the action is authorized by the Community School Law or the school's sponsorship contract.

Selling of services by sponsors

(R.C. 3314.46)

The bill prohibits a community school sponsor from selling goods or services to any school it sponsors. This prohibition applies not only to the sponsor itself, but to any officer, director, employee, agent, representative, subsidiary, or independent contractor of the sponsor. However, if a sponsor (or related party) entered into a contract for the sale of goods or services to a community school it sponsors before the prohibition's (90-day) effective date, the sponsor is not required to comply with the prohibition *with respect to that school* until the contract expires. A sponsor may sell goods or services to a community school it does not sponsor at any time, since it has no responsibility to oversee and monitor that school.

Location of sponsor representative

(R.C. 3314.023)

The bill repeals a provision requiring the sponsor of a community school to have a representative located near the school to provide monitoring and technical assistance. Under current law, the representative must be located within 50 miles of the school or, in the case of an Internet- or computer-based community school (e-school), within 50 miles of the school's central base of operation.



Sponsor meetings with school

(R.C. 3314.023)

The bill makes several changes to the requirement in current law that a representative of a community school's sponsor meet with the school's governing authority and review the school's financial records at least once every two months. First, the bill mandates more frequent reviews by requiring the meetings to occur monthly. Second, it provides the sponsor's representative the option of meeting either with the school's governing authority or its fiscal officer. Third, it requires the representative to review the school's enrollment records, in addition to financial records. Finally, it directs the State Board of Education, within 180 days after the provision's (90-day) effective date, to adopt rules defining which records constitute "financial records."

Governing authority membership

(R.C. 3314.02(E))

The bill prohibits a community school 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 the member's term. This change expands current law, which similarly imposes a one-year waiting period for governing authority members and their immediate relatives with respect to community school operators.

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 <i>two of the three most recent school years</i>
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 <i>two of the three most recent school years</i>

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 Education⁷² 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.⁷³

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.

⁷² See R.C. 3314.36.

⁷³ R.C. 3314.012.

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.

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 requirements. The state Superintendent must grant the waiver upon receipt of the affidavit.⁷⁴

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.

⁷⁴ R.C. 3313.674, not in the bill. S.B. 118, As Passed by the Senate and H.B. 173, As Introduced, propose to make the BMI and weight status category screenings permissive for district and schools, rather than mandatory subject to waiver as under current law.



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.

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.⁷⁵ 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

⁷⁵ R.C. 3314.02(A)(3) and (C)(1).

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.⁷⁶ If applicants for admission exceed the number of openings, students must be admitted by lottery from among all applicants, except that preference must be given to those students who reside in the district where the school is located.⁷⁷

Sharing facilities

(R.C. 3314.05(E))

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

Right to lease unused school district property

(R.C. 3313.41 and 3313.411; conforming change to R.C. 3314.051)

The bill requires school district boards with real property that has been used for classroom operations since July 1, 1998, but has not been in use for two years, to offer to community schools located within the district an opportunity to lease the property. If more than one community school accepts the offer to lease that property, the district board must give priority to the community school that is ranked highest according to performance index score.⁷⁸ For community schools ranked in the top 50% of schools statewide, based on performance index score, the district board only may charge \$1 for the lease. For all other community schools, the district board must charge an amount not higher than the fair market value of the leasehold in the leasehold's neighborhood and community. 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.

Because it conflicts with the new provisions of the bill, the bill also repeals the provision of current law that requires a district to 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

⁷⁶ R.C. 3314.03(A)(19).

⁷⁷ R.C. 3314.06(H).

⁷⁸ R.C. 3302.01, not in the bill.

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

Community school participation in joint educational programs

(R.C. 3313.842)

The bill permits a community school to enter into an agreement with one or more school districts or other community schools to operate a joint educational program, including any class in the graded course of study or a professional development program, in the same manner as districts may do with each other under continuing law. But, whereas continuing law allows a school district participating in the joint educational program to charge fees or tuition to its students who enroll in the program, the bill explicitly prohibits community schools from charging their students for the program. The only exception is for an all-day kindergarten program, for which certain community schools may charge fees under separate law.⁷⁹

Hybrid schools

(R.C. 3301.81)

Request for proposals

The bill allows for the establishment of hybrid schools that provide students with both remote, technology-based and classroom-based instruction. Not later than 60 days after the (90-day) effective date of the provision, the Department of Education must issue a request for proposals from qualifying schools that wish to operate as a hybrid school. A "qualifying school" is either a school operated by a challenged school district or a community school that provides or proposes to provide classroom-based instruction at a site located within a challenged school district or a school district adjacent to a challenged school district.

Each proposal submitted to the Department must have (1) a description of the proposed hybrid nature of the school's instructional program, (2) an academic accountability plan that includes a commitment that the school will evaluate student

⁷⁹ 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.

performance at least three times a year and publish the results of each evaluation, and (3) any other information requested by the Department. The Department must develop a "rigorous" process for evaluating submitted proposals. If the Department receives more than five proposals, it must select finalists from among the qualified responders. The selected finalists must make a public presentation, to a panel of experts selected by the Department, on the merits of the school's plan and the likelihood of student success under the plan.

Within 180 days after issuing the request for proposals, the Department must select up to five schools from the qualified responders. The selected schools may begin operating as a hybrid school in the next school year that commences after the approval of the school's proposal. If a selected school is a new community school established on or after the effective date of the provision, the contract between the governing authority and the sponsor of the school must conform with the provisions of the proposal approved by the Department. If a selected school is a community school established before the effective date, the governing authority and sponsor of the school must amend the existing contract before July 1 of the school year in which the school will begin operating as a hybrid school to conform with the provisions of the proposal.

In the third school year after hybrid schools begin operating, the Department must conduct a study of the academic performance of students attending hybrid schools and determine best practices used by schools. The Department must issue a report on its findings to the Governor, President of the Senate, and the Speaker of the House. At the conclusion of the study, the Department may issue another request for proposals and choose up to five additional schools to operate as hybrid schools. In doing so, the Department may modify the request for proposals or evaluation process based on the results of its study.

Operations

The bill permits the establishment of "hybrid" schools that provide students with a combination of both technology-based instruction, including internet- and classroom-based instruction, and traditional classroom-based instruction. Students enrolled in a hybrid school must receive some percentage of their instruction as traditional classroom-based instruction at a designated site that the board of education of the school district operating a hybrid school or the community school's governing authority must maintain for that purpose. The percentage of each student's instructional time that must be classroom-based is to be determined by the student's education team prior to the beginning of the school year. The student's education team may include, but is not limited to, the principal or chief administrative officer of the school, the student, the student's parent or guardian, and any teacher requested by the principal or chief administrative officer, student, or parent or guardian. The student must spend

instructional time that is not received as classroom-based instruction at home on lessons provided via a technology-based instructional method.

In the case of a community school operating as a hybrid school, the designated site for classroom-based instruction must be located either in a "challenged" school district, where start-up community schools are permitted to open, or in a district adjacent to a challenged school district. If the site is located in an adjacent school district, the challenged school district nonetheless is considered the district in which the school is located for purposes of the community school law, including admission policies of the school.

Hybrid schools as e-schools

The bill contains statements that, for purposes of the community school laws, (1) hybrid schools are not e-schools, but (2) hybrid schools must comply with all requirements of the community school laws, including those that apply only to e-schools, except as otherwise provided in the bill. However, the bill does not explicitly exempt hybrid schools from any e-school requirements. Therefore, it would appear that all e-school requirements, including the requirement to provide each student with a computer to use at home and the limitations on their state payments, would apply to community schools operating as hybrid schools.

Transportation to designated site

Under the bill, students attending a hybrid school are entitled to transportation, provided by their resident school districts, to and from the school's designated site for classroom-based instruction. This entitlement is subject to the parameters of current law with respect to minimum and maximum distances from the location.

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 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 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 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.⁸⁰

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

(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,⁸¹ 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.

⁸⁰ R.C. 3301.07(D)(2) and 3301.16.

⁸¹ 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).

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 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,⁸² 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.

⁸² 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.

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 6. If the number of applicants exceeds the school's capacity, admission must be by lottery.

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);⁸³
- 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

⁸³ 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.

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 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.⁸⁴ 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

⁸⁴ See R.C. Chapter 3323. and 20 United States Code (U.S.C.) 1400 *et seq.*

school curriculum.⁸⁵ 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.

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.⁸⁶ 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,⁸⁷ 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.⁸⁸ 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

⁸⁵ 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.

⁸⁶ See R.C. Chapter 4117.

⁸⁷ R.C. 4117.06(D)(1), not in the bill.

⁸⁸ R.C. 3302.03, not in the bill.

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 Assemblies.⁸⁹ 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.

Funding

(R.C. 3328.31 to 3328.34)

The bill requires each boarding school to report to the Department of Education (1) the total number of students enrolled, (2) the number of students enrolled in the school who are receiving special education and related services under an IEP, (3) the school district in which students enrolled in the boarding school are entitled to attend, and (4) any additional information the Department determines necessary to make payments to the school.

For each student enrolled in a boarding school established under the bill, the Department of Education must pay the sum of the following to the school:

(1) An amount equal to **85% of the "operating expenditure per pupil"** of the student's resident school district. As defined by the bill, the "operating expenditure per pupil" is the "total amount of state payments and other nonfederal revenue spent by the district for operating expenses during the previous fiscal year," divided by the district's formula ADM (average daily membership) for that fiscal year. In other words, it is the per-pupil amount of state and district funds (and, probably, private funds, if any) spent for district operations in the prior fiscal year. This amount is deducted from the resident district's state aid account, after crediting the account with the amount of state funds generated by the student. However, the total amount of state funds deducted for the student may be more than the credited amount, since the deduction also accounts for per-pupil district funds spent on operating expenses. (The school district must

⁸⁹ Article II, Section 22.



count students who are entitled to attend that district, but are enrolled in the boarding school, in the district's ADM and in the district's category one through six special education ADM. In turn, the Department of Education must count those students in the district's formula ADM.)

(2) A "**per-pupil boarding amount**," which is set at \$25,000 for the first fiscal year a school could be established under the bill and is adjusted for inflation each subsequent fiscal year. This amount is not deducted from the resident district's state aid account, but instead is paid directly from the Department's appropriations.

Use of federal funds to offset boarding amount

(R.C. 3328.34(D))

In any fiscal year in which the boarding school's operator receives federal funds to support the school's operations, the amount of those federal funds must be deducted from the total per-pupil boarding amount paid to the school by the Department of Education. Similarly, if the Department receives federal funds to support the school's operations, the Department must use those funds first to cover the total per-pupil boarding amount owed to the school in the applicable fiscal year. In both cases, any remaining boarding amount owed to the school after accounting for the federal funds must be paid from the Department's state appropriations. These provisions essentially lower the state's funding obligation in fiscal years when the Department or the school's operator acquires federal funds for support of the school.

If federal funds received by the operator or the Department are used to offset the state funds paid to cover the total per-pupil boarding amount, the bill directs the Department to comply with all requirements upon which acceptance of the federal funds is conditioned, including any requirements set forth in the funding application and, to the extent sufficient state funds are appropriated to the Department, any requirements related to "maintenance of effort" in expenditures. If the Department applies for the federal funds, it would already be subject to any requirements tied to the funds' acceptance under the federal law authorizing the grant. If the operator applies for the federal funds on its own behalf, it is likely that the related requirements would apply to the operator, as the recipient, rather than to the Department. Therefore, it is not clear whether the bill's language would impose any additional requirements on the Department.⁹⁰

⁹⁰ Some federal grant programs require that the federal funds be used to supplement, rather than supplant, state funding. Under the bill, federal funds would be used to offset the total per-pupil boarding amount that must be paid from state appropriations to a boarding school established under the bill. Since the state's obligation to pay the boarding amount must be met wholly from state funds in any fiscal year

Statements associated with boarding payment

(R.C. 3328.34(C))

Within its provisions prescribing the state per-pupil boarding payment, the bill contains a series of statements:

(a) Authorizing the State Board of Education to "accept funds from federal and state noneducation support services programs for the purpose of funding" the payment;

(b) Directing the State Board, "notwithstanding any other provision of the Revised Code . . . [to] coordinate and streamline any noneducation program requirements in order to eliminate redundant or conflicting requirements, licensing provisions, and oversight by government programs or agencies"; and

(c) Directing "applicable regulatory entities . . . to the maximum extent possible, [to] use independent reports and financial audits provided by the operator and coordinated by the Department of Education to eliminate or reduce contract and administrative reviews."

The meaning and effect of these statements are not clear. A possible interpretation might be that the bill is directing state agencies to streamline noneducation programs and regulations in order to generate state savings that could be used to finance the state per-pupil boarding payment. A narrower interpretation might be that the bill is empowering the State Board of Education to coordinate the activities of other regulatory agencies that would have authority over the boarding school in order to facilitate the school's efficiency. But neither interpretation may be certain.

Title I funds

(R.C. 3328.35)

To the extent permitted by federal law, the Department of Education must include a boarding school established under the bill in its annual allocation of federal Title I funds. Title I, which is the central program of the Elementary and Secondary Education Act of 1965, provides funds for the educational needs of low-income and other at-risk students.

that federal funds are not available, the use of federal funds to offset that amount in other fiscal years might violate a prohibition on supplanting state funds, if such a prohibition were part of the terms of the federal grant.



Other funds

(R.C. 3328.36)

The bill specifies that a boarding school established under the bill is considered a school district for the purpose of applying for state or federal grants available to districts or public schools. The school or its operator also may apply to private entities for funding.

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.⁹¹ 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.⁹²

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

⁹¹ R.C. 3318.01 to 3318.20.

⁹² 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, 2011,⁹³ the bill directs the Department of Education to hold a second, 45-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 45 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

⁹³ 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, 3313.976, 3313.978, and 3313.979; 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 maximum amounts of the Cleveland Scholarship to equal the maximum amounts allowed for Educational Choice Scholarships. For grades K through 8, the maximum amount is \$4,250, up from \$3,450 under current law. For grades 9 through 12, the maximum amount is \$5,000, up from \$3,450 under current law. The new maximums apply beginning in fiscal year 2012.

Further, the bill removes the current stipulation limiting the actual scholarship payment to 90% (for low-income families) or 75% (for other families) of the scholarship amount. As a result, eligible students may receive up to the maximum amount in its entirety to use towards tuition.

In a conforming change, the bill adjusts the parameters by which a private school may or may not charge scholarship students beyond the scholarship amount. Under the bill, for students in grades K through 8 with family incomes at or below 200% of the federal poverty guidelines, private schools must agree not to charge any tuition in excess of the scholarship amount. For students in grades K through 8 with family incomes above 200% whose scholarship amounts are less than the actual tuition charge of the school, and for high school students, private schools must agree not to charge more than the difference between the actual tuition charge of the school and the scholarship amount.

In the current law, a student is eligible for a scholarship of up to either 90% or 75% of the maximum award amount, depending upon family income. The remaining 10% or 25%, respectively, is required to be provided by "a political subdivision, a private nonprofit or for profit entity, or another person."⁹⁴ A school cannot charge any tuition to "low-income families" in excess of 10% of the scholarship amount for students in grades K through 8 who receive the 90% amount. For elementary students who receive the 75% amount, and for high school students, current law permits a private

⁹⁴ R.C. 3313.978(C)(4).



school to charge the difference between the school's actual tuition charge and the student's scholarship amount.

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.

Jon Peterson Special Needs Scholarship Program

(R.C. 3310.51 to 3310.64 and 3323.052; Sections 269.60.30 and 269.60.31)

Background on the Individuals with Disabilities Act (IDEA)

Under the federal Individuals with Disabilities Education Act (IDEA), children identified as disabled are entitled to a "free appropriate public education" that provides special education and related services to enable them to benefit from educational instruction.⁹⁵ Related services include transportation and support services such as speech-language pathology and audiology services, psychological services, physical and occupational therapy, counseling services, and diagnostic medical services. Under both the IDEA and state law, an "individualized education program" (IEP) must be developed for each child identified as disabled. The IEP specifies the services to which the child is entitled and are therefore guaranteed by law. It is developed by a team including representatives of the child's resident school district (or community school or STEM school) and the child's parent or the parent's counsel.⁹⁶ A child's school district or school may provide the services specified in the IEP, or it may enter into an agreement with another public or private entity to provide those services.

The bill

The bill establishes the Jon Peterson Special Needs Scholarship Program to provide scholarships for children with disabilities to attend special education programs other than those offered by their school districts. The program applies to any identified disabled child in grades K through 12. A scholarship may be used to pay the expenses

⁹⁵ See 20 U.S.C. 1400 *et seq.*

⁹⁶ See 20 U.S.C. 1414 and R.C. 3323.011, not in the bill.



of a public or private provider of special education programs for implementation of the child's IEP and other services that are not in the IEP but are associated with educating the child. The bill also permits the "eligible applicant" (generally the child's parent, see below) and the provider to agree to alter the services provided to the child.⁹⁷

While a child is using a scholarship, the school district in which the child would otherwise be enrolled has no obligation to provide the child with a free appropriate public education. But the bill also specifies that if that district has agreed to provide some services for the child, or if the district is required by separate law to provide some services, including transportation services, the district may not discontinue them pending completion of any administrative proceedings regarding those services. (See "**Continuation of some school district services**" below.) The district also has a continuing obligation to develop the child's IEP.⁹⁸

Eligibility

(R.C. 3310.51(C), (F), and (I), 3310.61, and 3310.62)

"Qualified special education child"

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

But, under the bill, a community school is not considered a child's school district of residence. Therefore, any IEP developed by the community school would not qualify the child to receive a scholarship. It is not clear under the bill whether a community school student would need to enroll in a district school to receive a new district-developed IEP prior to receiving a scholarship.

Moreover, a child is not eligible for a scholarship in any school year in which the child has been awarded a scholarship under the Autism Scholarship Program or the Ed

⁹⁷ R.C. 3310.52.

⁹⁸ R.C. 3310.53 and 3310.62(C).

Choice Scholarship program. (See "**Comparison with the Autism Scholarship Program**" below.)

The bill also specifies that a child must remain in compliance with the state's Compulsory Attendance Law. Under that law, the parent of a child who resides in the state who is between 6 and 18 years of age must attend a public or private school that meets the minimum education standards of the State Board of Education unless the student is excused from attendance for home instruction. A child can face juvenile sanctions and a child's parent can face criminal sanctions violations of that law.⁹⁹

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

"Eligible applicant"

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

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

(2) The child's guardian;

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

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

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

⁹⁹ See R.C. Chapter 3321.

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

Annual limit on the number of scholarships

(R.C. 3310.52(B))

The bill limits the number of scholarships that may be awarded each year under the Jon Peterson Special Needs Scholarship Program to not more than 5% of the number of identified disabled students residing in the state during the previous fiscal year.

Alternative providers of special education programs

(R.C. 3310.51(A), 3310.58, and 3310.59)

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

Alternative public providers

An alternative public provider must be either (1) a school district other than the district obligated to educate the disabled child (or the child's resident school district, if different) or (2) another public entity that agrees to enroll the child and implement the child's IEP. In addition, the alternative public provider must be an entity to which the eligible applicant, rather than a school district or other public entity, owes fees for the services provided to the child. In other words, an eligible applicant cannot use a scholarship to enroll a child in a school district or other public entity to which the child's school district would send the child for special education services because, in that case, the child's district would be required to pay the receiving district or entity for the services provided to the child. Nor may an eligible applicant use a scholarship to enroll the child in a community school because the community school, as a public school, would receive state funds to educate the child even without the scholarship. The eligible applicant must use the scholarship to pay for special education and related services provided by a school district or public entity from which the eligible applicant otherwise would not receive those services for the child free of charge.

Registered private providers

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



(1) It must comply with the antidiscrimination provisions of the federal Civil Rights Act of 1964,¹⁰⁰ which prohibits discrimination on the basis of *race, color, or national origin* in the administration of benefits assisted with federal funds. The bill specifies that this antidiscrimination statement applies to a registered private provider regardless of whether the provider receives federal financial assistance. A student's scholarship under the program is not funded with federal money.

(2) It agrees to conduct criminal records checks of applicants for employment and contractors, if it is not already required to do so pursuant to law;¹⁰¹

(3) Its educational program is approved by the Department of Education;

(4) Its teaching and nonteaching staff, including those employed by a subcontractor, must hold credentials determined by the State Board of Education to be appropriate for the qualified special education children enrolled in its program;

(5) It meets applicable health and safety standards;

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

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

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

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

Scholarship amount

(R.C. 3310.51(E) and 3310.56)

Each Special Needs scholarship is worth the *smallest* of:

(1) \$20,000;

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

¹⁰⁰ 42 U.S.C. 2000d.

¹⁰¹ R.C. 109.57, 109.572, 3319.39, 3319.391, and 3319.392 (last two not in the bill).

(3) A maximum amount based on the per pupil amount that would have been computed for payment to a school district for the student under the former Building Blocks Model school funding system. That amount is the sum of:

(a) The "formula amount," which for FY 2012 and 2013 under the bill is \$5,653; plus

(b) The per pupil base funding supplements as they were calculated for FY 2009 (\$50.90); plus

(c) A weighted special education amount, equal to the formula amount multiplied by one of the following weights:

- 0.2892, for a student with a category one disability (speech and language disabled only);
- 0.3691, for a student with a category two disability (specific learning disabled, developmentally disabled, or other health impaired-minor);
- 1.7695, for a student with a category three disability (vision impaired, hearing disabled, or severe behavior disabled);
- 2.3646, for a student with a category four disability (orthopedically disabled or other health impaired-major);
- 3.1129, for a student with a category five disability (multiple disabilities); or
- 4.7342, for a student with a category six disability (autism, traumatic brain injuries, or both visually and hearing impaired).

Before applying these multiples, the bill specifies that they must be adjusted by multiplying them by 0.80 (in other words, 80% of the prescribed weight).

The prescribed weights and categories are the same ones used under the former Building Blocks Model. Under current law and the bill, for all other funding purposes, the special education weights are multiplied by 90%, instead of 80%. Elsewhere, the bill also specifies that special education payments for community school and STEM school students for fiscal years 2012 and 2013 be based on the new categories but on the former weights. (See "**Special education categories and weights**" and "**Community school and STEM school payments**" above.)

Payment of scholarships

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

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

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

Application deadlines

(R.C. 3310.52(C))

In order to qualify for a scholarship, either for the first time or to renew a scholarship an eligible applicant must submit an application in the manner prescribed by the Department of Education and notify the child's school district. The bill prescribes April 15 as the application deadline for academic terms that begin between July 1 and December 31 (the first half of a school year), and November 15 for academic terms that begin between January 1 and June 30 (the second half of a school year).

Continuation of some school district services

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

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

Written notice of rights and informed consent

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

The bill requires the Department of Education to develop, within 60 days after the bill's effective date, and subsequently to revise as necessary, a document that compares a parent's and child's rights under state and federal special education law with their rights under the Jon Peterson Special Needs Scholarship Program, including the scholarship program's statutory application deadlines (see above). It also requires the Department and each school district to distribute the document to parents of disabled children as a part of, appended to, or in conjunction with the procedural safeguards notice required under federal law. It then specifies that an eligible applicant's receipt of the comparison document, as acknowledged in a format prescribed by the Department, constitutes notice that the eligible applicant has been informed of those rights. It further provides that acceptance of a scholarship constitutes the eligible applicant's informed consent to the provisions of the scholarship program.

Background

Federal special education law requires that the parents of disabled children be given notice of the procedural safeguards available to them regarding their children's special education and related services. Specifically, both the state and each school district are obligated to provide a "full explanation" of those safeguards "written in the native language of the parents (unless it clearly is not feasible to do so) and written in an easily understandable manner."¹⁰² That document must be provided once each year and upon referral or request for the child's evaluation, upon the first filing of an administrative complaint, or upon parental request. The federal statute and rules provide an extensive list of items that must be included in the document.

In compliance with this federal requirement, the Ohio Department of Education has developed a document entitled "Whose IDEA is This? A Resource Guide for Parents," written in English, Spanish, and French. School districts must distribute it to parents in accordance with the law, and it also is available on the Department's web site.¹⁰³

¹⁰² 20 U.S.C. 1415(d) and 34 C.F.R. 300.503 and 300.504.

¹⁰³ On the Department's home page (<http://www.ode.state.oh.us>), click on "Learning Supports," then on "Students with Disabilities," then on "Resources and Support," and finally on "Whose IDEA is this?"



Provider profile

(R.C. 3310.521)

Each alternative public provider and each registered private provider that enrolls a child under the program must submit a written "profile" of the provider's services to the eligible applicant. The profile must be in a form prescribed by the Department of Education and must contain a description of the methods of instruction that will be used in providing services to the child and the qualifications of teachers, instructors, and other persons who will provide those services. As a condition of receiving scholarship payments under the program, an eligible applicant must attest, in a form and manner prescribed by the Department, to having received the profile.

Transportation for scholarship students

(R.C. 3310.60)

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

Continuing law requires school districts to provide transportation to nonpublic school students in grades K to 8 who reside in the district and who live more than two miles from the school they attend. Districts may, but are not required to, transport high school students to and from their nonpublic schools. A district, however, is not required to transport students of any age to and from a nonpublic school if the direct travel time by school bus, from the district school the student would otherwise attend to the nonpublic school, is more than 30 minutes. When transportation by the district is impractical, the district may offer payment to a student's parent instead of providing the transportation. On the other hand, in the case of some special education students, transportation might be mandated by their IEPs.¹⁰⁴

Access to data verification codes; privacy of records

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

As is the case under current law for the Ed Choice, Cleveland, and Autism scholarship programs, the bill permits the Department of Education to request the data verification codes of students applying for Jon Peterson Special Needs scholarships from (1) those students' resident school districts, (2) a community school in which a student is enrolled, or (3) the independent contractor hired by the Department to create

¹⁰⁴ See R.C. 3327.01.



and maintain the codes. This authority, which is an exception to the general prohibition against the Department's having access to data verification codes when they could be matched with personally identifiable student data, is limited solely to administering the scholarship programs. School districts and community schools must provide a student's data verification code to the Department or the student's parent, upon request, in a manner specified by the Department. If a student will be entering kindergarten and has not yet been assigned a data verification code, the resident school district must assign a code to the student prior to submission. If the district does not assign the code by a date specified by the Department, the Department must assign the code. Each year, the Department must provide school districts with the name and data verification code of each scholarship student living in the district who has been assigned a code by the Department.

Neither the Department nor a provider may release a student's data verification code to any person, unless such release is otherwise authorized by law. The bill specifies that materials containing both a student's name or other personally identifiable data and the student's data verification code are not public records. Other documents relative to the scholarship program that are held by the Department are public records, but may be released only in accordance with state and federal privacy laws.

State Board rules

(R.C. 3310.64; Section 267.60.30)

The State Board of Education must adopt rules for the Jon Peterson Special Needs Scholarship Program in accordance with the Administrative Procedure Act so that they are in effect not later than 120 days after the bill's effective date. Those rules must include application procedures and standards and procedures for the registration of private providers of special education programs.

Formative evaluation

(Section 267.60.31)

The bill requires the Department of Education to conduct a "formative evaluation" of the Jon Peterson Special Needs Scholarship Program and to report its findings to the General Assembly by December 31, 2014. In doing so, the Department is required to the extent possible to gather comments from parents who have been awarded scholarships under the program, school district officials, representatives of registered private providers, educators, and representatives of educational organizations. The Department also is required to use quantitative and qualitative analyses in conducting its evaluation. The study must include an assessment of the level of the participating student's and parent's satisfaction with the program and the

fiscal impact to the state and resident school districts. The bill also authorizes the Department to contract with one or more qualified researchers who have previous experience evaluating school choice programs to conduct the study and to accept grants to assist in funding the study.

Comparison with Autism Scholarship Program

The Autism Scholarship Program, under current law, pays scholarships to the parents of certain autistic children in grades *pre-kindergarten* to 12.¹⁰⁵ The bill's proposed Jon Peterson Special Needs Scholarship Program contains many of the same concepts of the smaller Autism Scholarship Program and applies those concepts to children of all categories of disability. The bill's larger program does not apply to pre-kindergarten students.

The bill does not affect the Autism Scholarship Program. In fact, neither program changes or conflicts with the provisions of the other, and it appears that the two programs could coexist. However, the bill excludes a student from simultaneously participating in both programs. Nevertheless, children with autism who are in grades K through 12 would be eligible for and their parents could choose either of the two programs. For example, if a parent of a child with autism could not participate in the new program because its 5% cap had been reached, the parent likely could turn to the Autism Scholarship Program, which has no cap. On the other hand, the due process provisions between the two programs are somewhat different. Under the Autism Scholarship Program, a parent may not be awarded a scholarship if there is any pending dispute over the child's IEP. Under the Jon Peterson Special Needs Scholarship Program, the prohibition on award and payment of a scholarship applies only until the child's first IEP is developed.

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."

¹⁰⁵ R.C. 3310.41.

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 in the county or counties of the ESC's service area. It does not include the territory of other districts the ESC might serve.

Currently, there are 56 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 1.¹⁰⁶

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-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

¹⁰⁶ R.C. 3301.011, not in the bill.



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.¹⁰⁷

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 in the county or counties of the ESC's service area.¹⁰⁸ 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.¹⁰⁹ 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. It is also possible that the limits on an ESC's territory prescribed in current law, not changed by the bill, and the bill's repeal of a local district's specific authority to change its ESC creates an ambiguity as to whether a district has the authority to actually leave its current ESC even if it exercises the bill's authority to enter into an agreement with another one.

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.

¹⁰⁷ Repealed R.C. 3311.059.

¹⁰⁸ R.C. 3311.05.

¹⁰⁹ R.C. 3501.02(D), not in the bill.



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."¹¹⁰ 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 governing board subdistricts

(R.C. 3311.054; Section 733.30)

When an ESC is formed by the merger of two or more smaller ESCs, the governing board of the new ESC may divide its electoral territory into subdistricts with each member elected from one of those subdistricts, instead of being elected at large from the ESC's entire territory. However, in order to comply with the constitutional one-person, one-vote principle for popular elections, the law requires each ESC that has subdistricts to reconfigure them every ten years so that each member fairly represents about the same number of people. Current law requires that this redistricting be completed within 90 days after the official announcement of the results of each federal decennial census. If a governing board fails to redistrict its territory by that date, the state Superintendent must redistrict it within 30 days thereafter.

The bill temporarily permits an ESC board to delay its next redistricting until July 1, 2012. The state Superintendent, then, has until August 1, 2012, to redistrict an ESC, if a board fails to do so. This provision also delays the first election for board members under the new organization until November 2013.

The bill also permanently permits the governing board of an ESC newly formed by a merger of two or more smaller ESCs to appoint an executive committee to initially

¹¹⁰ The state Superintendent must appoint "a qualified individual" to implement the Superintendent's order.



organize the ESC's territory into subdistricts, rather than the board itself organizing the subdistricts.

Appointed ESC board members

(R.C. 3311.056)

Current law permits the governing board of an ESC formed by a merger of two or more smaller ESCs, after at least one election for the board of the new ESC has been held, to adopt a plan under which it may "appoint" additional members to the board. The plan may permit the board to appoint a number of members up to one less than the number of elected members on the board, so long as the total number of elected and appointed members is an odd number. Under current law, however, the appointed members, like the elected members, must be voters (electors) of the electoral territory of the ESC. In other words, an appointed member must be a voter of one of the "local" school districts that make up the ESC's territory.

The bill, on the other hand, permits an ESC board to appoint additional members who are representative of the "city" and "exempted village" school districts having service agreements with the ESC.

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 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.¹¹¹

(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.¹¹²

(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.¹¹³

(4) Each ESC may receive a contractually specified amount from each district with which it has a fee-for-service contract.¹¹⁴

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

¹¹¹ R.C. 3317.11(C).

¹¹² R.C. 3317.11(F).

¹¹³ R.C. 3317.11(B).

¹¹⁴ R.C. 3313.845 and 3317.11(D).

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.¹¹⁵ 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 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.

¹¹⁵ R.C. Chapter 4109.

Educational shared services model/P-16 councils

(Section 267.50.90)

The bill requires the Governor's Director of 21st Century Education to develop plans for (1) the integration and consolidation of the publicly supported regional shared services organizations, and (2) encouraging communities and school districts to create regional P-16 councils. The Director is required to submit legislative recommendations to the Governor and the General Assembly by January 1, 2012. The bill's stated goal is to have the plans ready for implementation beginning on July 1, 2012.

In preparing the shared services plan, the Director must recommend organizations to be integrated into a regional shared service center system. Those organizations include ESCs, 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 shared services 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."

In preparing the P-16 plan, the Director must develop a set of model criteria that encourages and permits communities and school districts to create local P-16 councils. Each council must include, but are not limited to, local community leaders in primary and secondary education, higher education, and early childhood education, and representatives of business, nonprofit, and social service agencies. In developing these recommendations, the Director must examine existing P-16 councils in Ohio and identify their successes "in setting short and long-term student achievement and growth targets in their communities, leading cross-sector strategies to improve student-level outcomes, effectively using data to inform decisions around funding, providing intervention strategies for students, and achieving greater systems alignment."



VI. Teachers and School Employees

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, 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. While the bill states that the teacher is not responsible for the cost of retaking an exam, it does not specify who is. Presumably, that cost must be paid by the employer.

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 an employer 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. Once a teacher provides proof of passing an exam to the teacher's employer, the teacher is exempt from having to take the test again for three years, regardless of the ranking of the building to which the teacher is assigned.

Alternative resident educator license

(R.C. 3319.26)

The bill makes several changes regarding the 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.

	Current law	The bill
Grade levels	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.)	Valid for teaching in grades K to 12 in a designated subject area or in the area of intervention specialist.



	Current law	The bill
Qualifications for obtaining license	<p>Under current statute and State Board of Education licensure rules,¹¹⁶ the qualifications for an alternative resident license are:</p> <p>(1) A bachelor's degree;</p> <p>(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;</p> <p>(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.</p> <p>(4) Passage of the Praxis II subject area assessment.</p>	<p>Under the bill, the minimum qualifications for the alternative resident license are:</p> <p>(1) A bachelor's degree;</p> <p>(2) Completion of either (a) the intensive pedagogical training institute required by current law or (b) a summer training institute 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 or better, and (iii) complete a summer training institute.</p> <p>(3) Passage of the Praxis II subject area assessment.</p> <p>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.</p>
Conditions of holding license	<p>(1) Participate in the Ohio Teacher Residency Program, which is a four-year, entry-level mentoring program for classroom teachers;¹¹⁷</p> <p>(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</p> <p>(3) Take the Praxis II assessment of professional knowledge in the</p>	<p>(1) Participate in the Ohio Teacher Residency Program;</p> <p>(2) Show satisfactory progress in taking and completing one of the following:</p> <p>(a) At least 12 additional semester hours of college coursework in the principles and practices of teaching; or</p> <p>(b) Professional development</p>

¹¹⁶ See Ohio Administrative Code 3301-24-19 and 3301-24-21.

¹¹⁷ See R.C. 3319.223.



	Current law	The bill
	second year of teaching under the license.	provided by a nonprofit teacher preparation program that has been approved by the Chancellor above. (3) Take the Praxis II assessment of professional knowledge in the second year of teaching under the license.

Licensure of Teach for America participants

(R.C. 3319.227 and 3319.26(G))

The bill prohibits the State Board of Education from adopting rules establishing any additional licensure qualifications for participants in the Teach for America program beyond those recently enacted in H.B. 21 of the 129th General Assembly (effective July 29, 2011). Under that act, the State Board must issue a resident educator license to a person who is assigned to teach in Ohio as a participant in the Teach for America program, or who has completed two years of teaching in another state through that program, and (1) has a bachelor's degree, (2) has an undergraduate grade point average of at least 2.5 out of 4.0, (3) has passed the Praxis II subject area assessment in the teaching area, and (4) has successfully completed Teach for America's summer training institute. Since H.B. 21 qualifies Teach for America participants for a standard teaching license, this bill makes them ineligible for an alternative resident educator license.

Licensure of out-of-state teachers

(R.C. 3319.228)

The bill creates a process for the State Board of Education to establish a list of states with inadequate teacher licensure standards, for the purpose of enabling certain veteran teachers from states *not* on the list (and, therefore, have satisfactory licensure standards) to obtain automatic licensure in Ohio. To qualify for the automatic licensure, an out-of-state teacher, in addition to being from a state with acceptable licensure standards, must:

- (1) Have a bachelor's degree;
- (2) Have been licensed and employed as a teacher in the other state for each of the preceding 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. 3319.228(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. 3319.228(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. 3319.228(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.

Career-technical educator licenses

(R.C. 3319.229)

The bill requires the State Board of Education's rules for the issuance and renewal of professional educator licenses for teaching career-technical education to include requirements relating to life experience, professional certification, and practical ability. Moreover, it prohibits the State Board from requiring an applicant for a professional career-technical license to complete a degree as a condition of obtaining or renewing the license. The bill would nullify an existing State Board rule requiring a career-technical teacher who did not have an associate's or bachelor's degree at the time of initial licensure to complete a degree applicable to the career field, classroom teaching, or an area of licensure before the second renewal of the professional license.¹¹⁸ This rule applies to all career-technical teachers initially licensed after December 30, 2004.

Data on graduates of teacher preparation programs

(R.C. 3333.0411)

Under the bill, the Chancellor of the Board of Regents annually must report aggregate value-added data for graduates of Ohio teacher preparation programs. Value-added data shows the amount of student academic growth attributable to a

¹¹⁸ Ohio Administrative Code 3301-24-08(B).



particular teacher or school. Since value-added data is only available for public school teachers who teach English language arts or math in grades 4 to 8, when annual state achievement assessments are given in those subjects, the reports will be limited to those teachers. The Chancellor must report the data for each program by graduating class. If a class has ten or fewer graduates, however, the Chancellor must report the data for a three-year group of classes to protect the identity of individual graduates. The Chancellor must issue the first report by December 31, 2012. The bill directs the Department of Education to share any data necessary for the report with the Chancellor.

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.¹¹⁹ The exemption from the records check applies only if the duties of the position for which the person is applying do not involve routine interaction with a child or, during any period of time in which the position does involve routine interaction, another employee will be present in the same room with the child or, if outdoors, will be within a 30-yard radius of the child or have visual contact with the child.

Background – current law

Under current law, all school employees are subject to pre-employment criminal records checks conducted by the Bureau of Criminal Identification and Investigation. Each records check must include records of the Federal Bureau of Investigation (FBI), except that adult education instructors who do not have unsupervised access to children are not required to have an FBI check prior to employment if they have been Ohio residents for the five-year period prior to the date the records check is requested or have been subject to an FBI check during that period.

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

¹¹⁹ See also R.C. 3314.03(A)(11)(d) and 3326.11.

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.

Termination of school district transportation staff

(R.C. 3319.0810; conforming change in R.C. 3319.081)

In provisions that are identical to prior law repealed by the 2009-2011 budget act, H.B. 1 of the 128th General Assembly, the bill authorizes the termination of transportation staff positions for "reasons of economy and efficiency" by the boards of non-Civil Service school districts (local and exempted village school districts and some city school districts). In that case, rather than employ its own staff to transport students, the board must contract with an independent agent to provide transportation services. This provision does not appear to permit the lay off of any board-employed transportation personnel for economic reasons unless the district intends to contract for at least some nonpublic personnel.

Conditions

The bill prescribes conditions for laying off transportation employees and contracting with an independent agent for transportation services. First, any collective bargaining agreement between the board and the labor organization representing the terminated employees must have expired or be scheduled to expire within 60 days after the termination notice, or must contain provisions permitting the termination of positions while the agreement is in force.

Second, the board must permit any employee whose position is terminated to fill any vacancy within the district's organization for which the employee is qualified. In doing so, the board must follow procedures for filling the vacancies established in the collective bargaining agreement with the labor organization representing the terminated employees, if it is still in force and contains such provisions. If the agreement is not in force or does not contain provisions for reemployment of the



terminated employees in new positions, the board must offer reemployment on the basis of seniority.

Third, the board must permit any terminated employee to fill the employee's former position in the event the board reinstates that position within one year after the position is terminated. The bill specifically states that the board need not reinstate an employee under this condition if the collective bargaining agreement with the labor organization representing the terminated employees, if one is in force at the time of the terminations, provides otherwise.

Fourth, the board must permit a terminated employee to appeal, pursuant to the Administrative Procedure Act (R.C. Chapter 119.), the board's decision to terminate the employee, not to reemploy the employee, or not to reinstate the employee.

Fifth, the contract between the board and an independent agent for the provision of transportation services must contain a stipulation requiring the agent to consider hiring the terminated district employees for similar positions.

Sixth, the contract between the board and the independent agent also must require the agent to recognize for purposes of collective bargaining between the former district employees and the agent any labor organization that represented those employees at the time of the terminations, as long as the following additional conditions are satisfied:

(1) A majority of the employees in the former school district bargaining unit agree to representation by that labor organization;

(2) Federal law does not prohibit the representation; and

(3) The labor organization is not prohibited from representing nonpublic employees either under other provisions of law or its own governing instruments.

No employee may be compelled to be included in the bargaining unit represented by that labor organization if there is another one within the agent's organization that is applicable to the employee.

Recourse if district board does not comply with conditions

If the school district board fails to comply with any of the prescribed lay-off conditions, including enforcement of the required contractual obligations, the terminations of transportation staff positions are void. In such instances, the board must reinstate the positions and fill them with the employees who filled those positions just prior to the terminations. The employees must be compensated at their rate of



compensation in those positions just prior to the terminations, plus any increases paid to other nonteaching employees since the terminations. In addition, the employees must receive back pay from the date of the terminations to the date of reinstatement, minus any pay the employees received while the board was in compliance with the bill's provisions.

The bill grants any employee aggrieved by the board's failure to comply with any of the bill's provisions the specific right to sue the board for reinstatement of the employee's former position or for damages in lieu of reinstatement. Suit may be brought in the common pleas court for the county in which the school district is located or, if the district is located in more than one county, in the common pleas court for the county in which the majority of the district's territory is located.

VII. School Restructuring

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 state and local (that is, nonfederal) 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 12.¹²⁰ A district's restructuring action, such as closing a school or reopening a school as a community school, may cause the district to be out of compliance with this requirement. In that case, the district must enter into a contract with another school district to enroll resident students of the missing grades in the other district. The terms of the contract must be agreed to by the respective boards of education and the resident district must pay tuition to the district of attendance for the students' enrollment.¹²¹ 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.

¹²⁰ R.C. 3311.29.

¹²¹ R.C. 3317.08, 3327.04, and 3327.06 (last section not in the bill).



The district must implement the requested reform in the next school year, except in certain circumstances (see below). However, if parents submit a petition to reform a school that is also subject to restructuring by the school district (see "**Restructuring schools**" above), and the district chooses a different restructuring reform than requested in the petition, it is not clear which reform would prevail.

When implementation of reform is prohibited

(R.C. 3302.042(E))

The bill explicitly prohibits the district from implementing the reform requested by the petitioners if:

(1) The 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. 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 Regents¹²²);

(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

(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.

¹²² See R.C. 3301.0712.



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(D)(3) 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;

(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 public schools in the state. The manner by which such schools are to be recognized is at the discretion of the Governor. Schools to be recognized include schools of school districts, community schools, and STEM 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)

Continuing law requires the State Board of Education to adopt statewide academic standards that specify core academic content and skills. The bill repeals the requirement that the standards for English language arts, math, science, and social studies be revised every five years, and instead requires the State Board to update the standards "periodically." These standards were last updated in 2010.

The bill also repeals the requirement that the State Board's 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. Currently, these skills must be included in the standards for the core subject areas, financial literacy and entrepreneurship, fine arts, foreign language, and computer literacy (which the bill renames "technology").



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

College and work-ready assessments (new diploma requirements)

(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 revises the standards for the development of the new "college and work-ready assessments," which the State Board of Education, the Superintendent of Public Instruction, and the Chancellor of the Board of Regents are charged, by current law, with designing. Once developed, the new regimen is to replace the Ohio Graduation Test as a requirement for a high school diploma from a public or chartered nonpublic high school (see "**Background**" below). The following table compares the standards of current law with the bill's changes:

Components of the College and Work-Ready Assessments		
	Current Law	The Bill
1.	A nationally standardized assessment, selected jointly by the state Superintendent and the Chancellor, that measures "competencies in science, mathematics, and English language arts."	A nationally standardized assessment, selected jointly by the state Superintendent and the Chancellor, that measures "college and career readiness."
2.	A series of end-of-course examinations in science, math, English language arts, and social studies, selected jointly by the state Superintendent and the Chancellor in consultation with faculty in the appropriate subject areas at state institutions of higher education.	Same, but further specifies that, for each subject area, the Superintendent and Chancellor must choose multiple assessments that schools may use, and these must include nationally recognized subject area assessments, such as Advanced Placement exams, SAT subject tests, International Baccalaureate exams, and other assessments of college and work readiness.
3.	A senior project, completed by the student individually or as a member of the group, to be scored by the student's high school according to rubrics designed by the state Superintendent and Chancellor.	No provision. The bill eliminates the senior project as a state requirement for a diploma.

The bill also eliminates the requirement that the Superintendent and Chancellor create 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 the nationally standardized assessment and end-of-course exams.

Background

H.B. 1 of the 128th General Assembly required the State Board, the state Superintendent, and the Chancellor to develop the new, multifaceted 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 OGT remains a requirement for a high school diploma.

The state Superintendent and the Chancellor must designate the scoring rubrics to be used in evaluating students under the new assessment system. The senior project 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.

Competency-based high school credit

(R.C. 3313.603(J))

The bill exempts chartered nonpublic schools from having to comply with, and award high school credit under, the State Board of Education's plan for awarding high school credit based on a student's demonstration of subject area competency, rather than classroom instruction.

Background

Current law requires the State Board to have adopted, by March 31, 2009, and phase in a statewide plan for students to earn units of high school credit based on a demonstration of subject area competency, instead of or in combination with completing hours of classroom instruction. The plan must include a standard method for recording demonstrated proficiency on high school transcripts. Under current law, all public schools (school district, community or "charter," and STEM schools) and chartered nonpublic schools must comply with the plan and award high school credit in accordance with the plan.

Public records status of elementary achievement assessments

(R.C. 3301.0711(N))

Under the bill, the state achievement assessments for grades 3 to 8 that are administered in the 2011-2012 school year and later are not public records. Under current law, which the bill makes inapplicable after the 2010-2011 school year, at least 40% of the questions on each assessment that are used to compute a student's score are public records, but questions needed for reuse on a future assessment are not public records and must be redacted from the tests prior to their release. The bill does not affect the Ohio Graduation Tests, which are already prohibited from public release.

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.

Fees for career-technical education materials

(R.C. 3313.642)

Under the bill, school districts may charge low-income students eligible for free lunches for certain career-technical education materials. This authority is an exemption from the general prohibition in current law against charging those students for any materials needed to enable them to participate fully in a course of instruction. The course materials for which districts may charge under the bill are tools, equipment, and materials that are necessary for workforce-readiness training and that may be retained by the students after completion of the course.

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.

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.

Sale of milk in schools

(R.C. 3313.816)

Federal regulations promulgated under the National School Lunch Act prohibit a school participating in the federal school lunch program from "directly or indirectly" restricting the sale of milk "at any time or in any place on school premises or at any school-sponsored event."¹²³ The bill repeals two provisions of Ohio law, which will take effect July 1, 2011, that might be construed to violate this prohibition. First, it repeals limits on the serving size, fat content, and calorie content of a la carte milk available for sale to public and chartered nonpublic school students during the school day. These limits are shown in the table below.

Grades	Time period	A la carte milk restrictions
Schools composed primarily of grades K-4 or grades 5-8	Before January 1, 2014	May sell only 8 ounces or less of low-fat or fat-free milk, including flavored milk, that contains no more than 170 calories per 8 ounces
	Starting January 1, 2014	Same as above, except the milk may contain no more than 150 calories per 8 ounces
Schools composed primarily of grades 9-12	Before January 1, 2014	May sell only 16 ounces or less of low-fat or fat-free milk, including flavored milk, that contains no more than 170 calories per 8 ounces
	Starting January 1, 2014	Same as above, except the milk may contain no more than 150 calories per 8 ounces

¹²³ 7 Code of Federal Regulations 210.10(m)(4).



Second, the bill repeals a provision that restricts the availability of milk in public and chartered nonpublic schools by requiring at least 50% of the a la carte beverage items available for sale through the school food service program, a vending machine (except for one that sells only milk or federally subsidized complete meals), or a school store to be water or other beverages that contain no more than 10 calories per 8 ounces. Public and chartered nonpublic schools may still offer milk for sale to students under the bill, but the schools are not subject to any limits on (1) the size or nutritional content of the milk or (2) the amount of milk that may be offered through various sources.

Background

Beginning July 1, 2011, current law restricts the sale of milk and other beverages to students in school districts, community schools, STEM schools, and chartered nonpublic schools. These restrictions must be observed during the regular school day, as well as during periods before or after the school day in which students are participating in school-sponsored extracurricular activities, academic or enrichment programs, or latchkey programs.

The restrictions apply only to "a la carte" items, which are individually priced beverage items available for sale to students through (1) a school breakfast or lunch program, (2) vending machines located on school property, or (3) a school store. They do not apply to beverages that are part of a complete meal provided through a federally subsidized breakfast or lunch program and are being sold individually in a serving portion of the same size as in the complete meal (in the a la carte line in the cafeteria, for example). They also do not affect beverages sold in connection with a school-sponsored fundraiser or other event held outside of the regular school day or in conjunction with an interscholastic athletic event.¹²⁴

Intra-district open enrollment

(R.C. 3313.97)

Each city, exempted village, and local school district is required to have in place an intra-district open enrollment policy permitting resident students to enroll in district schools other than the ones of their attendance areas. Each district's policy must provide for application procedures, capacity limits, and preference for students living in an attendance area, and procedures to ensure maintenance of racial balancing in the district schools.

¹²⁴ R.C. 3313.816; see also R.C. 3313.814 (not in the bill), 3314.03(A)(11)(d), and 3326.11.



The bill specifically permits a school district to grant a student permanent permission to attend a school outside of the student's attendance area, so that the student does not need to re-apply annually for permission to attend the school. Current law neither permits nor prohibits a district to grant a permanent intra-district transfer.

Interscholastic athletics participation

(R.C. 3313.538)

Under current Ohio High School Athletic Association (OHSAA) bylaw 4-6-3, "a student whose parents reside outside the state of Ohio but within the United States will be ineligible for interscholastic athletics in a member school." The bylaw emphasizes that the student's biological or adoptive parent must reside in Ohio. There are seven exceptions to this rule, however, including one that allows the OHSAA Commissioner's office to declare a student eligible if custody is conferred by "a court of proper jurisdiction" upon a grandparent, aunt, uncle, or sibling who resides in Ohio. In order to declare such a student eligible, the Commissioner must determine that the change in custody "was not for athletic reasons, but purely for the best interest of the student in terms of the student's mental, physical, and educational well being."¹²⁵

The bill enacts a similar, and possibly broader, provision into law. It prohibits disqualification of a student from interscholastic athletics, solely because the parents do not reside in Ohio, if the student attends school in Ohio and lives in Ohio with a grandparent, uncle, aunt, or sibling who has legal or temporary custody of the student, or is the guardian of the student. The student would remain subject to other eligibility requirements of the school and the OHSAA.

Unlike the OHSAA bylaw exception, the bill is silent on reasons behind the transfer of custody and relocation of the student. Since the bill also specifically prohibits any school district, school, interscholastic conference, or organization that regulates interscholastic conferences or events, which would include OHSAA, from having a rule that conflicts with this provision, it appears that the current OHSAA bylaw might not fully comply with the bill's requirements. For example, the bill might not permit OHSAA to continue its policy that the change in custody cannot have been for athletic reasons.¹²⁶

The bill applies definitions from R.C. 2151.011 for the terms "legal custody," "temporary custody," and "guardian." A "guardian" is a person with authority granted

¹²⁵ OHSAA bylaw 4-6-3, Exception 1.

¹²⁶ Article 8, Section 8-1-1 of the OHSAA Constitution allows the OHSAA Board immediately to amend bylaws or the Constitution, subject to member ratification, to comply with state law.



by a probate court to exercise parental rights over a child subject to the court's order and the residual parental rights of the child's parents. "Legal custody" is "a legal status that vests in the custodian the right to have physical care and control of the child and to determine where and with whom the child shall live, and the right and duty to protect, train, and discipline the child and to provide the child with food, shelter, education, and medical care, all subject to any residual parental rights, privileges, and responsibilities." "Temporary custody" is legal custody that can be terminated at any time by the court or the person who executed the custody agreement.

Background

While Ohio law authorizes school districts to implement athletic programs and addresses student eligibility in a few circumstances,¹²⁷ interscholastic athletics are regulated largely by the private OHSAA. The OHSAA regulates and administers interscholastic athletic competition for grades 7 through 12. Founded in 1907, the OHSAA is a voluntary, unincorporated, not-for-profit association of public and private schools. The OHSAA is managed by a Board of Directors and governed by a constitution and bylaws, which must comply with Ohio law.

Homeschooled student participation in district activities

(R.C. 3313.539)

The bill requires school districts to allow homeschooled students the opportunity to participate in extracurricular activities offered at the traditional public school operated by the school district in which the student is entitled to attend school and to which the student otherwise would be assigned. As defined in current law, an "extracurricular activity" is a student activity program that a school or school district operates that is not included in the graded course of study. It also includes an interscholastic extracurricular activity that a school or district sponsors or participates in and that has participants from more than one school or district.¹²⁸

To take advantage of this provision, the student must fulfill the same nonacademic and financial requirements as any other participant in the extracurricular activity. In terms of academic requirements, the student must either: (1) meet any academic requirements established by the State Board of Education for continuation of home instruction, if the student received home instruction in the preceding school year or (2) have met academic standards for eligibility to participate in the activity established by the school district in the preceding year, if the student did not receive

¹²⁷ R.C. 3313.20, 3313.47, 3313.53, 3313.535, and 3313.537, none in the bill.

¹²⁸ R.C. 3313.537, not in the bill.



home instruction in the preceding school year. Any student who starts home instruction after the beginning of the school year who is, at the time the home instruction started, ineligible to participate in extracurricular activities due to failure to meet academic standards or any other requirements of the district cannot participate in extracurricular activities in a school district for the remainder of the school year.

A school or district may not impose fees for a homeschooled student to participate in extracurricular activities that exceed any fees charged to other students for the same activities. No school district, interscholastic conference, or organization that regulates interscholastic conferences or events may impose eligibility requirements that conflict with the bill's provisions.

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. 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. However, if nonstate funds cannot be obtained, or the state Superintendent determines that sufficient funds cannot be obtained to support the pilot project, the Superintendent may postpone implementation until the Superintendent determines that sufficient funds are available.

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.¹²⁹

Department of Education organization

(Repealed R.C. 3301.82, 3314.11, 3314.111, and 3319.62; conforming changes in R.C. 3314.012, 3314.19, and 3314.22)

The bill repeals permanent law that requires the Department of Education to establish (1) the State Office of Community Schools, (2) the State Office of School Options, and (3) the State Office of Educator Standards. The repeal of these sections removes the requirement that the Department have these offices; however, it does not necessarily require the Department to eliminate them.

The bill also repeals the permanent law, enacted by H.B. 1 of the 129th General Assembly, that allows the Department to establish the Center for Creativity and Innovation. Again, the repeal of this section does not necessarily mean that the Department may not have such a unit within its organizational structure.

Obsolete reference in school district tuition law

(R.C. 3313.65)

The bill removes an obsolete reference to the Ohio Sailors' and Soldiers' Home, in the school district tuition law, and replaces it with a reference to residential facilities

¹²⁹ See also R.C. 3313.77, not in the bill.

operated by the Ohio Veterans' Home. Under continuing law, a child who does not reside in the school district in which the child's parent resides must be admitted to the schools of the district in which the child resides if at least one of the child's parents is in a residential facility and the other parent, if living and not in such a facility or placement, is not known to reside in Ohio. The definition of "residential facility" applying to this law includes the Ohio Sailors' and Soldiers' Home.

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 a national pollutant discharge elimination system (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, in Ohio counties in which a program is federally mandated. 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 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, must 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, other multi-use facilities, contractor-operated facilities, or a combination of those 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, the program must include a requirement that the vendor utilize established local businesses, auto repair facilities, or leased properties to operate state-approved inspection and maintenance testing facilities. Further, the bill provides that the program must include a requirement that the vendor comply with testing methodology and supply the required equipment approved by the Director of Environmental Protection as specified in the competitive selection process in compliance with state contracting requirements. The bill also requires the program operating under the new contract to achieve at least the same emission reductions as achieved by the program operated under the extended contract rather than the same ozone precursor reductions as in current law. The bill eliminates provisions specifying that a motor vehicle inspection and maintenance program cannot be implemented in any county in which it is not otherwise authorized or in any county beyond June 30, 2012, without the approval of the General Assembly.



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



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)
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 Environmental Protection Agency (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 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 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 EPA 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.¹³⁰

¹³⁰ See R.C. 3301.94, not in the bill.



ETHICS COMMISSION (ETH)

- Requires the Ohio Ethics Commission to deposit funds received as a result of court orders into the Ohio Ethics Commission Fund.

Court-ordered costs

(R.C. 102.02(G)(2))

The bill requires the Ohio Ethics Commission to deposit investigative or other fees, costs, or other funds it receives as a result of court orders into the Ohio Ethics Commission Fund, which is used to pay for Commission operations. In 2007, an Ohio Court of Appeals found the Ethics Commission was not authorized by Ohio statutory law in effect at that time to receive court-ordered reimbursement for the cost of its investigations.¹³¹

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.

¹³¹ *State v. Perz* (2007) 173 Ohio App.3d 99, 105 (Ct. App. Lucas Cty.).



DEPARTMENT OF HEALTH (DOH)

- Authorizes the Ohio Department of Health (ODH) to establish a drug and nutritional formula discount program for its Bureau for Children with Medical Handicaps (BCMh) under which manufacturers of drugs or nutritional formulas may enter into discount agreements with ODH.
- In lieu of establishing a discount program, authorizes ODH and a drug or nutritional formula manufacturer to discuss donations of drugs, nutritional formulas, or money by the manufacturer to ODH.
- Requires the ODH Director to annually apply for federal funds that are made available for abstinence education.
- Specifies, in addition to the Help Me Grow Program's existing purpose of encouraging prenatal and well-baby care, that the Program's purposes are to (1) provide parenting education to promote the comprehensive health and development of children and (2) provide early intervention services in accordance with federal law.
- Provides that home visiting services under the Help Me Grow Program are provided to eligible families with a pregnant woman or a child under age three (rather than newborn infants and their families).
- Eliminates a requirement that a request for home visiting services be made by a parent of an eligible infant before ODH can provide the services.
- 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.
- 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.
- Requires \$1 of each \$4 of the minimum base fee (\$12) for a certified copy of a vital record or a certification of birth that is transferred by a local board of health to the State Office of Vital Statistics to be distributed to the boards of health in accordance with the same formula used to distribute state subsidy funds to boards of health and local health departments.
- Requires a local registrar of vital statistics (who is not a salaried employee of a city or general health district) to transfer all \$4 of each minimum base fee (\$12) for a certified copy of a vital record or a certification of birth to the State Office of Vital Statistics and requires it to be used to support public health systems.
- Requires a local registrar of vital statistics (who is not a salaried employee of a city or general health district) to charge the same additional \$5 fee currently charged by the State Office of Vital Statistics and local boards of health for certified copies of vital records and certifications of birth and requires the money to be similarly used for operating, modernizing, and automating the state's vital records program.
- 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 a county home to obtain Medicaid or Medicare certification for existing beds without obtaining a CON if (1) the county home is located in a county that has a bed need shortage, (2) no county that borders that county has a bed need excess or bed need shortage, (3) the number of the county home's existing beds for which Medicaid or Medicare certification is sought does not exceed the bed need shortage of the county in which the county home is located, and (4) the county home obtains Medicaid or Medicare certification for the existing beds not later than December 31, 2013.
- 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.
- 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.
- Requires the ODH Director to conduct an initial investigation of a complaint against a nursing home or residential care facility as a desk audit and, if pursuant to the desk audit the Director determines sufficient cause exists for an on-site examination, requires the Director to continue the investigation with an on-site examination.
- Prohibits a solid waste management district from exempting a public sector commercial licensed hauler from a fee that is charged to private sector commercial licensed haulers by the district.
- Includes as a vending machine under the Food Service Operations Law a self-service device at which an individual purchases a predetermined unit serving of food by scanning the bar code of the food that was obtained at the vending machine location.

BCMh 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 drug and nutritional formula discount program for its Bureau for Children with Medical Handicaps (BCMh). Under the program, a manufacturer of a drug or nutritional formula is permitted to enter into an agreement with ODH to provide a discount on the price of the drug or nutritional formula distributed to medically handicapped children participating in a BCMh-administered program. If a manufacturer enters into a discount agreement with ODH, the manufacturer and ODH may negotiate the amount and terms of the discount.

If the program is established, the program must be administered in accordance with rules the bill requires ODH to adopt. The rules must address procedures for administering the program, including criteria and other requirements for participation.

In lieu of establishing a discount program, the bill authorizes ODH and a manufacturer to discuss a donation of drugs, nutritional formulas, or money by the manufacturer to ODH.

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").¹³² The bill requires the ODH Director to use the funds in accordance with any conditions under which the application was approved.

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.

¹³² 42 U.S.C. 710.



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 parenting education to promote the comprehensive health and development of children and provide early intervention services in accordance with Part C of the federal Individuals with Disabilities Education Act.¹³³

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 home visiting services are provided to eligible families with a pregnant woman or a child under age three who meet the eligibility requirements established in rules to be adopted by the ODH Director. The bill eliminates an existing requirement that a request for home visiting services be made by a parent of an eligible infant before ODH can provide the 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."¹³⁴ 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.¹³⁵

¹³³ 20 U.S.C. 1431 *et seq.*

¹³⁴ 20 U.S.C. 1431 *et seq.*

¹³⁵ 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,>>.

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 families. 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.

At Risk Program

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.

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 home visiting services and providers of Part C early intervention services;
- (3) Standards and procedures for the provision of Program services, including data collection, program monitoring, and Program evaluation;
- (4) Procedures for appealing the denial of an application for Program services or the termination of services;
- (5) Procedures for appealing the denial of an application to become a provider of Program services or the termination of ODH's approval of a provider;
- (6) Procedures for addressing complaints;



(7) Criteria for payment of approved providers of Program services;

(8) 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 convene by July 15, 2011. It must present its recommendations for eligibility criteria to the ODH Director by October 1, 2011. After the recommendations are submitted, the bill permits the ODH Director to accept the recommendations in whole or in part and implement eligibility criteria accordingly.

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;

--A representative of the Ohio Developmental Disabilities Council;

--A representative of the County Commissioner's Association of Ohio.

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.¹³⁶ The Director is also prohibited from requiring an applicant to obtain a waiver of the minimum 50-bed requirement.

County home exemption from requirement to obtain a CON

(Section 291.50)

The bill permits a county home to obtain Medicare or Medicaid certification for one or more of its existing beds (beds that are used, or available for use, for skilled nursing care on the effective date of this provision of the bill) without obtaining a CON if certain conditions are met. This authority ends January 1, 2014.

For a county home to be exempt under the bill from the requirement to obtain a CON, all of the following must apply: (1) the county home must be located in a county that has a bed need shortage, (2) no county that borders the county in which the county home is located may have a bed need excess or shortage, (3) the number of the county home's existing beds for which Medicare or Medicaid certification is sought cannot exceed the number of long-term care beds that could be relocated into the county in which the county home is located according to a determination the Director of Health made in calendar year 2010 under the CON law, and (4) the county home must obtain

¹³⁶ O.A.C. 3701-12-23.



Medicare or Medicaid certification for those existing beds not later than December 31, 2013. A county is considered to have a bed need shortage or excess if, according to a determination the Director of Health made under the CON law in calendar year 2010, one or more long-term care beds could be relocated into (in the case of a shortage) or from (in the case of an excess) the county.

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.

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; R.C. 3709.09(A) and 3701.342 (not in the bill))

Local boards of health affiliated with health districts

The bill requires \$1 of each \$4 portion of the minimum base fee (\$12)¹³⁷ for a certified copy of a vital record or a certification of birth that is collected by a board of health of a city or general health district, and transferred to the State Office of Vital Statistics, to be used by the ODH Director to pay subsidies to the boards of health. The subsidies must be distributed in accordance with the same formula the Director currently uses to distribute other state subsidy funds to the boards of health and local health departments. The formula takes into account health district population and performance.

Local registrars of vital statistics not affiliated with health districts

The bill requires the entire portion (\$4) of the minimum base fee (\$12) for a certified copy of a vital record or a certification of birth that is collected by a local registrar of vital statistics (who is not a salaried employee of a city or general health district) to be transferred to the State Office of Vital Statistics. The portions must be transferred not later than 30 days after the end of each calendar quarter and must be used to support public health systems.

The bill also requires such a local registrar of vital statistics to charge an additional \$5 fee to be used by ODH to support the operations, modernization, and automation of the vital records program. This same additional fee is charged by the Office of Vital Statistics and local boards of health under continuing law.

Clinical laboratory services providers

(R.C. 3701.94)

The bill specifies two prohibitions applicable to clinical laboratory services providers.¹³⁸ These are prohibitions on (1) inducing physicians or group practices to

¹³⁷ In addition to the base fee (required by R.C. 3705.24(A)(2) and 3709.09(A)), continuing law permits the following additional fees to be charged for copies of vital records and certifications of birth: fees charged by a local registrar of vital statistics or a clerk of court (under R.C. 3705.24(D) and (G)), some of which vary based on the population of the primary registration district; fees to modernize and automate the vital records system (under R.C. 3705.24(B)); fees charged to benefit the Children's Trust Fund (under R.C. 3109.14); and fees charged to benefit the Family Violence Prevention Fund (under R.C. 3705.242).

¹³⁸ 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



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).

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.¹³⁹ 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.¹⁴⁰

(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

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).)

¹³⁹ 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>>.

¹⁴⁰ 42 U.S.C. 1320a-7b(b).



program, including Medicare, Medicaid, and programs covering veterans' benefits.¹⁴¹ *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.*¹⁴²

(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.¹⁴³

(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."¹⁴⁴

(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.¹⁴⁵

¹⁴¹ 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>.

¹⁴² 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>>.

¹⁴³ 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>>.

¹⁴⁴ 42 U.S.C. 1320a-7b(b)(3)(B).

¹⁴⁵ 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).

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 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.¹⁴⁶

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.

¹⁴⁶ McDermott, Will & Emery, *CMS Publishes Phase III Stark Law Rule* (September 2007), available at <www.mwe.com/info/news/wp0907a.pdf>, p. 4.



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.¹⁴⁷ The bill revises the law governing the limited skilled nursing care that a residential care facility may provide.

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.

¹⁴⁷ R.C. 3721.01(A)(7).



Investigations of complaints against nursing homes and residential care facilities

(R.C. 3721.031 (primary), 1347.08, and 3721.99)

The bill requires the ODH Director, when investigating a complaint against a nursing home or residential care facility, to conduct an initial investigation of the complaint as a desk audit. If the Director determines through the desk audit that sufficient cause exists for an on-site examination, the Director must continue the investigation with an on-site examination.

No fee exemption for public commercial waste haulers by solid waste management districts

(R.C. 3734.577)

The bill provides that, notwithstanding any section of the Revised Code to the contrary, no solid waste management district can exempt a public sector commercial licensed hauler from a fee that is charged to private sector commercial licensed haulers by the solid waste management district. Solid waste management districts have authority to charge a variety of fees, including, among others, transfer or disposal fees, and additional per ton fees assessed for special funds or to defray costs to certain townships and municipalities for maintenance of roads and other public facilities.

Vending machines

(R.C. 3717.01)

The bill includes as a vending machine under the Food Service Operations Law a self-service device at which an individual purchases a predetermined unit serving of food, either in bulk or in package, by scanning the bar code of the food that was obtained at the vending machine location. Under current law, a vending machine location must be licensed as a food service operation unless it is a type that is specifically excluded from licensure. A vending machine location is an area or room where one or more vending machines are installed and operated, except that if the machines within an area are separated by more than 150 feet, each area separated by that distance constitutes a separate vending machine location.



HOUSE OF REPRESENTATIVES (REP)/SENATE (SEN)

- Permits a member of the 129th General Assembly to request a 5% cut in the member's base salary for the remainder of that General Assembly.
- Requires the base salary of any member of the 129th General Assembly who is appointed after July 1, 2011, to be \$57,555 for the remainder of the term to which the member was appointed.
- Requires the clerk of each chamber to request the Office of Budget and Management (OBM) Director to transfer any savings derived as a result of the salary reductions to General Revenue Fund (GRF) appropriation item 600540, Second Harvest Food Banks.
- 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.

Reduction in legislators' salary

(Section 761.10)

The bill permits any member of the 129th General Assembly to request the clerk of their respective chamber to reduce the member's base salary by 5% for the remainder of that General Assembly. The current base salary for a member who is not in leadership is \$60,583.70. Members in leadership earn a higher base salary depending on their position. The bill specifies that the base salary of any member who is appointed to the 129th General Assembly after July 1, 2011, is to be \$57,555 for the remainder of the term to which the member was appointed. The clerk of each chamber is to request the Office of Budget and Management (OBM) Director to transfer all savings derived as a result of the salary reductions to General Revenue Fund (GRF) appropriation item 600540, Second Harvest Food Banks. The bill appropriates the transferred amounts.

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.

DEPARTMENT OF INSURANCE (INS)

- Abolishes the Health Care Coverage and Quality Council.
- Allows life insurers and health insurers to offer wellness or health improvement programs that include rewards and incentives to encourage or reward participation.
- 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.

Wellness programs

(R.C. 3901.56)

The bill allows life and health insurers to offer a wellness or health improvement program that provides rewards or incentives, including merchandise; gift cards; debit cards; premium discounts or rebates; contributions to a health savings account; modifications to copayment, deductible, or coinsurance amounts; or any combination of these incentives, to encourage participation or to reward participation in the program. However, under the bill, the insured may be required to provide verification, such as a statement from their physician, that a medical condition makes it unreasonably difficult or medically inadvisable for the individual to participate in the wellness or health improvement program.

Under the bill, a wellness or health improvement program offered by an insurer cannot be construed to violate Ohio's prohibitions against using gifts or other incentives



to induce a person to purchase insurance if the program is disclosed in the policy or plan. Additionally, under the bill, neither of the following may be construed as prohibiting an insurer from offering a wellness or health improvement program or restricting the amount an employee is charged for coverage under a group policy after the application of any premium discounts or rebates, or modifying otherwise applicable copayments or deductibles for adherence to wellness or health improvement programs:

- Ohio's law that prohibits insurers from charging similarly situated individuals different premiums or other contributions under an employment-related group sickness and accident insurance policy;
- Ohio's law that prohibits employers from excluding an individual from coverage under a plan based on the health status of the individual.

The bill's wellness program provisions apply to life insurers, sickness and accident insurers, health insuring corporations, multiple employer welfare arrangements, and public employee benefit plans.

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.

Effective date

(Section 803.60)

The bill's requirements regarding netting agreements and qualified financial contracts apply only to formal delinquency proceedings that commence under Ohio's Insurer Rehabilitation and Liquidation Law on or after the effective date of this act.

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 or Child Support Enforcement Administrative Fund, as long as the money may be spent for the purposes of that 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) enter into an agreement with the county entity for repayment of the excess amount 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.
- Requires the Ohio Commission on Fatherhood to include with its existing annual report a description, prepared in collaboration with the ODJFS Director, of (1) its expectations for the outcomes of fatherhood-related programs and initiatives and (2) its methods for annually measuring those outcomes.

II. Child Care

- Eliminates provisions under which CDJFSs may contract with and reimburse providers of publicly funded child care.
- 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 ODJFS 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.



- Prohibits an eligible caretaker parent from receiving publicly funded child care from more than one provider without prior approval from the CDJFS based on good cause.
- Provides that fraudulent reporting of enrollment or attendance data by child care providers or parents participating in a swipe card program implemented by ODJFS is grounds for license or certification revocation or loss of eligibility for publicly funded childcare.
- 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.
- Extends the time period for which a provisional license is valid from 6 to 12 months.
- Eliminates the requirement to renew every two years a license for a child day-care center or type A family day-care home.
- Permits 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 CDJFSs.
- 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 ODJFS 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) 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 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.
- Replaces a provision that requires the ODJFS 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 ODJFS Director to make a dispute resolution process available for implementing sanctions.

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 PCSA include the traditional response pathway and the alternative response pathway.
- Details when PCSAs 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.

- Authorizes the Children's Trust Fund Board to solicit gifts, money, and other donations from any public or private source and to develop public-private partnerships.

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.
- Requires the ODJFS Director, not later than 90 days after the effective date of this provision of the bill, to have in place all systems that are necessary to enable a children's hospital and federally qualified health center to serve as a qualified entity or provider for purposes of the presumptive eligibility for children and pregnant women options if the hospital or center is eligible to be a qualified entity or provider under federal law and requests to serve as a qualified entity or provider.
- Requires the ODJFS Director, after the Director determines that the systems are functioning properly, to permit any other entity or provider to serve as a qualified entity or provider for purposes of the presumptive eligibility for children and pregnant women options if the entity or provider is eligible to be a qualified entity or provider under federal law and requests to serve as a qualified entity or provider.
- 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.
- Requires 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 assistance 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 the Health Care Compliance Fund to be used for expenses incurred in implementing or operating health home programs and for the creation,

modification, or replacement of federally funded Medicaid health-care systems in fiscal years 2012 and 2013.

- 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.
- Prohibits ODJFS from including in the Medicaid managed care system, in fiscal years 2012 and 2013, individuals receiving services through the program for medically handicapped children who have certain medical conditions.
- Requires ODJFS to develop a system for providing care management services to individuals under age 21 who are included in the Medicaid managed care system as part of the aged, blind, or disabled eligibility category.
- Requires ODJFS to provide for the care management services by doing both of the following: (1) entering into contracts with children's care networks to serve as pediatric care organizations and (2) requiring Medicaid managed care organizations to enter into subcontracts with children's care networks to provide care coordination and care management services.
- Requires a Medicaid managed care organization to subcontract with a children's care network if the network provides notification to ODJFS of its intent to provide care coordination or care management services.
- Requires ODJFS to adopt rules establishing criteria for a children's care network to serve as a pediatric accountable care organization.
- Provides for ODJFS to adopt either (1) an alternate payment system, or (2) a requirement for a managed care organization to subcontract with a children's care network to provide care management services, if ODJFS does not adopt rules for contracting criteria for children's care networks to act as a pediatric accountable care organization by July 1, 2012.
- 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 hospital and other Medicaid-covered 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 and rate reductions.
- Permits ODJFS, the Ohio Department of Health (ODH), and the Ohio Department of Mental Health (ODMH) in conjunction with the Governor's Office of Health Transformation, to seek assistance from, and work with, the BEACON Council and hospital and other provider groups to identify specific targets and initiatives to reduce the cost, and improve the quality, of medical assistance provided under Medicaid to children.
- Prohibits ODJFS from knowingly making a Medicaid payment for a provider-preventable condition for which federal financial participation is prohibited.
- Authorizes ODJFS to establish an incentive payment program, as authorized by federal law, to encourage the use of electronic health record technology by certain Medicaid providers.
- Specifies procedures for appealing ODJFS's determination regarding the amount or denial of an incentive payment.

- Requires certain Medicaid providers, no later than January 13, 2013, to submit all Medicaid reimbursement claims through an electronic claims submission process and to arrange for receipt of Medicaid reimbursement by electronic funds transfer.
- Excludes the following from the electronic claims submission requirement: nursing facilities, ICFs/MR, Medicaid managed care organizations, and any other providers designated by the ODJFS Director.
- Permits ODJFS, if it chooses to outsource the performance of pediatric Medicaid claims review and analysis, quality assurance functions associated with pediatric Medicaid claims, or both, to enter into a contract with any qualified person, including the Ohio Children's Hospital Solutions for Patient Safety (OCHSPS), to perform the service or services.
- If ODJFS enters into a contract with OCHSPS, provides that OCHSPS may request that ODJFS seek federal financial participation for the costs OCHSPS incurs in performing the service or services covered by the contract.
- 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 "credible 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 ODJFS to establish a process by which a physician assistant may enter into a Medicaid provider agreement and engage in direct billing.
- Authorizes a Medicaid claim for a physician assistant's services to be submitted either by (1) the physician assistant or the physician assistant's designee, or (2) the physician, group practice, clinic, or other health care facility that employs or contracts with the physician assistant.
- 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, effective October 1, 2011, to (1) reduce the first-hour-unit price Medicaid pays for aid services to 97% of the price paid on June 30, 2011, and for nursing services to 95% of the price paid on June 30, 2011, and (2) pay independent providers of aide and nursing services 80% of the price paid providers that are not independent providers.
- Requires ODJFS, for fiscal year 2012, to continue paying Medicaid providers the Medicare copayment amounts that apply to dialysis services for persons eligible for both Medicaid and Medicare, as those copayments were made by ODJFS immediately prior to the bill.
- Permits ODJFS, in fiscal year 2013, to adjust Medicaid payments for dialysis services by an amount sufficient to achieve \$9 million in savings.
- 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 on June 30, 2011 for Medicaid-covered hospital inpatient and outpatient services that are paid under a prospective payment system.
- Requires the ODJFS Director to make, for fiscal years 2012 and 2013, additional Medicaid payments to children's hospitals for inpatient services under a program modeled after the program that was created for fiscal years 2006 and 2007.
- 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.
- Permits ODJFS to continue and modify the existing Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program to provide supplemental Medicaid payments to hospitals for providing Medicaid-covered inpatient and outpatient services to Medicaid recipients.
- Requires ODJFS to apply for federal approval of a Medicaid Managed Care Hospital Incentive Payment Program under which Medicaid managed care organizations are provided funds to increase payments to hospitals under contract with the organizations.
- Prohibits ODJFS from implementing the Medicaid Managed Care Hospital Incentive Payment Program in a manner that reduces either (1) the amounts Medicaid managed care organizations would have otherwise received or (2) the amounts hospitals would have received from the Hospital Assessment Fund if not for the program.
- Requires Medicaid managed care organizations and hospitals, if the Medicaid Managed Care Hospital Incentive Payment Program does not result in \$22 million in

state savings, to pay the state the difference between the amount saved and \$22 million.

- 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 be 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.
- 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.
- 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.
- 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.
- For fiscal year 2012, requires ODJFS to determine modified rates and capped rates for existing ICFs/MR and provides for an existing ICF/MR to be paid a rate that is the average of its modified and capped rates unless the mean of such rates for all existing ICFs/MR is other than \$279.81, in which case the ICF/MR's rate is to be adjusted by a percentage that equals the percentage by which the mean rate is greater or less than \$279.81.
- For fiscal year 2013, requires ODJFS to determine modified rates for existing ICFs/MR and provides for an ICF/MR to be paid its modified rate unless the mean of such rates for all existing ICFs/MR is other than \$280.14, in which case the ICF/MR's modified rate is to be adjusted by a percentage that equals the percentage by which the mean modified rate is greater or less than \$280.14.
- Requires ODJFS and ODODD to conduct a study regarding Medicaid reimbursement rates for 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.
- Requires ODJFS to contract with ODODD for ODODD to assume ODJFS's powers and duties regarding the Medicaid program's coverage of ICF/MR services.
- 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.
- 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.
- 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.
- Establishes Home First processes for the Ohio Home Care Program and unified long-term services and support Medicaid waiver program.
- 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.
- 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.
- Provides that health assistance services that CHIP covers may be furnished through school-based health centers.
- 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.

- Makes an individual injured while in active service as a member of the armed forces of the United States while serving in Operation New Dawn eligible for Military Injury Relief Fund grants.

VI. Unemployment Compensation

- Prohibits, effective October 30, 2011, an individual from being paid unemployment compensation benefits for services performed in seasonal employment during 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.
- 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.¹⁴⁸

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

(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. Rules adopted by ODJFS authorize each county to establish a Child Support Enforcement Administrative Fund in the county treasury for use by any county family service agency (CDJFSs, PCSAs, and CSEAs).

The bill permits the transfer of money from the Public Assistance Fund to the Children Services Fund or the Child Support Enforcement Administrative Fund, as long as the money to be transferred may be spent for the purposes of the receiving 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

¹⁴⁸ Joint Committee on Agency Rule Review, *Procedures Manual* (revised Feb. 2011), available at <<https://www.jcarr.state.oh.us/images/stories/manual.pdf>>.



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.

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) enter into an agreement with the county entity for the entity 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.

Ohio Commission on Fatherhood annual report

(R.C. 5101.342)

The bill requires the Ohio Commission on Fatherhood to collaborate with the ODJFS Director in describing (1) its expectations for the outcomes of fatherhood-related programs and initiatives and (2) its methods for conducting annual measures of those outcomes. The Commission is to include this information its existing annual report that must be submitted to the President and Minority Leader of the Senate, Speaker and Minority Leader of the House of Representatives, Governor, and Chief Justice of the Supreme Court. Under current law, the report must identify resources available to fund fatherhood-related programs and explore the creation of initiatives that fulfill certain goals.



II. Child Care

Payment for publicly funded child care

(R.C. 5104.32, 5104.34, 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.

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.

Prohibition on obtaining publicly funded child care from multiple providers

(R.C. 5104.34 and 5104.38)

Current law contains no restrictions regarding the number of child care providers from whom an eligible caretaker parent can receive publicly funded child care. The bill prohibits a caretaker parent from receiving publicly funded child care from more than one provider during any period without approval from the CDJFS for good cause. It also requires ODJFS to adopt rules establishing procedures for a CDJFS to follow in determining whether there is good cause to permit an eligible caretaker parent to receive publicly funded child care from multiple 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.

Swipe Card Pilot Program

(Section 309.40.70)

ODJFS has entered into a contract for the development and implementation of Ohio Electronic Child Care (ECC). According to ODJFS, ECC will allow child care providers to track the attendance of publicly funded children in their care by requiring caretakers to record attendance using a swipe card to check children in and out of care.

The bill provides that, if ODJFS implements a program that uses a swipe card system and point-of-service device to verify enrollment and attendance and for payment for publicly funded child care, (1) providers that participate in the program and engage in fraud with respect to reporting a child's enrollment or attendance will be subject to license or certification revocation and (2) caretaker parents who participate in the program and engage in fraud with respect to reporting a child's enrollment or attendance will lose eligibility for publicly funded child care.



Child care licensing

Continuous licensure of child day-care centers and type A family day-care homes

(R.C. 5104.04 (primary), 5104.011, 5104.012, 5104.013, 5104.03, 5104.05, and 5104.99)

Current law requires that a child care center or type A family day-care home license be renewed every two years. The bill eliminates this requirement. It also eliminates corresponding provisions related to the renewal process.

Under current law, a center or type A home is initially issued a provisional license, which is valid for six months. The bill extends this time period to 12 months.

If the license of a center or type A home is revoked, current law requires the center or type A home to wait two years before applying for another license. The bill extends the waiting period to five years. It also prohibits the ODJFS Director from issuing a license for a center or type A home if the owner's application for a license has been denied within five years.

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 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 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.

Staff ratios while toddlers or preschool children are napping

(R.C. 5104.011(E)(2))

The bill increases to 2 (from 1.5) 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.

Copy of child care license requirements

(R.C. 5104.03)

Current law requires the ODJFS Director to provide each applicant for a child day-care center or type A family day-care home license a copy of the child care license requirements and the rules governing child care. The bill permits the Director to provide the copy in paper or electronic form.

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.



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.¹⁴⁹ 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 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;

¹⁴⁹ 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.



(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 ODJFS Director no later than one year after the date of employment or designation.

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.

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.

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).



Child day-care center rosters and contact lists

(R.C. 5104.011(B)(7))

The bill eliminates the 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.

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.

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. The bill requires the ODJFS Director to make a dispute resolution process



available for the implementation of sanctions, which may include an opportunity for appeal under the Administrative Procedure Act.

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 ODJFS Director, 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. Chapter 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. In addition to receiving these additional fee amounts, the Board is authorized by current law to obtain other funds, which also are deposited into the Children's Trust Fund. For example, the Board may accept gifts and donations from any source, including individuals, philanthropic foundations or organizations, corporations, or corporation endowments.

The Board is authorized by current law to apply for and accept federal and other funds for the purpose of funding child abuse and child neglect prevention programs. With respect to federal funds, current law specifies that the acceptance or use of the funds does not entail any commitment or pledge of state funds, nor obligate the General Assembly to continue the programs or activities for which the federal funds are made available. The bill authorizes the Board to not only accept gifts and donations, but also solicit them. In addition, the bill permits the Board to solicit and accept money. The bill specifies that the Board may solicit and accept the gifts, money, and other donations from any public or private source.

The bill authorizes the Board to develop private-public partnerships. The partnerships are to be developed to support the mission of the Children's Trust Fund.

Consistent with current law pertaining to the acceptance and use of federal funds, the bill specifies that the Board's acceptance or use of any other funds does not



entail any commitment or pledge of state funds, nor obligate the General Assembly to continue the programs or activities for which the funds are made available.

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.

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).¹⁵⁰ County departments of job and family services (CDJFS) establish Medicaid eligibility for persons living in the county.

The bill permits ODJFS, to the extent permitted by federal law, to enter into agreements with one or more other state agencies, local government entities, or political subdivisions to accept applications, determine and redetermine eligibility, and perform related administrative functions regarding Medicaid and CHIP. If ODJFS enters into

¹⁵⁰ 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.

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. The rule currently provides that only CDJFS may serve as qualified entities.¹⁵¹

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 requires the ODJFS Director, not later than 90 days after the effective date of this provision of the bill, to have in place all systems that are necessary to enable a children's hospital and federally qualified health center to serve as a qualified entity or provider for purposes of the presumptive eligibility for children and pregnant women options if the hospital or center is eligible to be a qualified entity or provider under federal law and requests to serve as a qualified entity or provider. After the ODJFS Director determines that the systems are functioning properly, the Director must permit any other entity or provider to serve as a qualified entity or provider if the entity or provider is eligible to be a qualified entity or provider under federal law and requests to serve as a qualified entity or provider.

The bill eliminates current law that requires the ODJFS Director to do either of the following:

¹⁵¹ O.A.C. 5101:1-38-40.



(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;

(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).¹⁵² 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.¹⁵³ 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 requires 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

¹⁵² Section 2001(b) of the Patient Protection and Affordable Care Act (Public Law 111-148).

¹⁵³ 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).

implementing a revision to an eligibility determination process, the ODJFS Director must obtain, to the extent necessary, the approval of the U.S. Secretary of Health and Human Services in the form of a federal Medicaid waiver, Medicaid state plan amendment, or demonstration grant. ODJFS must comply with the bill's requirement regarding the federal maintenance of effort requirement in implementing any revisions. (See "**Compliance with federal maintenance of effort requirement**," above.)

Medicaid recipient audits

(R.C. 5101.181 and 5101.82; conforming changes in R.C. 145.27, 742.41, 3307.20, 3309.22, 4123.27, and 5505.04)

The bill repeals a provision that requires the State Auditor to determine whether overpayments were made on behalf of every medical assistance recipient and replaces it with one authorizing the Auditor, on the request of the ODJFS Director, to conduct an audit of an individual who receives medical assistance.¹⁵⁴ 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 recipient¹⁵⁵ 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.

¹⁵⁴ 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)).

¹⁵⁵ 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.



Disclosure of information regarding medical assistance recipients

When disclosure is prohibited versus permitted

(R.C. 5101.26, new 5101.271, and 5101.273)

The bill repeals provisions governing ODJFS's or a CDJFS's use or disclosure of information about a medical assistance recipient and replaces them with new provisions.

Under the new provisions, ODJFS or a CDJFS is generally prohibited from using or disclosing information regarding a medical assistance recipient for any purpose not directly connected with the administration of the medical assistance program (this provision is substantially similar to one in current law). The bill specifies that both of the following *are* considered to be purposes directly connected with the administration of the medical assistance program: (1) treatment, payment, or other operations or activities authorized by federal regulations, and (2) any administrative function or duty ODJFS performs alone or jointly with a federal government entity, another state government entity, or a local government entity implementing a provision of federal law.

The bill provides for exceptions to the general prohibition on the use and disclosure of medical assistance recipient information. First, ODJFS may disclose information regarding a medical assistance recipient to any of the following persons:

- (1) The recipient or the recipient's authorized representative;
- (2) The recipient's legal guardian;
- (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 Rule¹⁵⁶ and has been authorized by the recipient, the recipient's authorized representative, or the recipient's legal guardian to receive the recipient's

¹⁵⁶ The provision is codified in 45 C.F.R. 164.502(e)(2).



electronic health records in accordance with rules the bill requires the ODJFS Director to adopt (see "**Rules**," below);

(5) A court, if pursuant to a written order of the court.

Second, ODJFS may disclose information regarding a medical assistance recipient for any of the following purposes:

(1) To the extent necessary to participate as an active member in the Public Assistance Reporting Information System (PARIS), a computer system operated under the auspices of the Administration for Children and Families in the U.S. Department of Health and Human Services that matches public recipients' social security numbers against various federal databases and participating states' databases;

(2) When permitted by rules the bill requires the ODJFS Director to adopt (see "**Rules**," below);

(3) When required by federal law.

Authorization form

(new R.C. 5101.272)

The written authorization that a medical assistance recipient, the recipient's authorized representative, or the recipient's legal guardian must make to give the recipient's attorney access to the recipient's information must be on a form that contains the same components required under current law governing authorization for the release of public assistance recipient information. The form must use language understandable to the average person.

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.¹⁵⁷ To enhance states' ability to identify and obtain payments from liable third parties, the Deficit Reduction Act of 2005 made

¹⁵⁷ 42 C.F.R. Part 433, subpart D (2005).



several changes to these federal provisions.¹⁵⁸ 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.¹⁵⁹ Consistent with this requirement, the General Assembly enacted provisions in the main appropriations act of the 127th General Assembly (Am. Sub. H.B. 119) to do both of the following, among other things: (1) require a third party to respond to an inquiry by ODJFS regarding a Medicaid claim not later than three years after the date of service, and (2) prohibit a third party from denying a claim solely on the basis of the date of submission, type or format of the claim form, or a failure of the Medicaid recipient to present proper documentation at the time of service if the claim was submitted to ODJFS not later than three years after the date of service.¹⁶⁰

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.

¹⁵⁸ 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>>.

¹⁵⁹ 42 U.S.C. 1396a(a)(25).

¹⁶⁰ R.C. 5101.573(A)(2) and (4)(a).



Development of proposal for coordinating medical assistance

As part of their work, ODJFS and ODH must develop a proposal for coordinating medical assistance provided to families and children under Medicaid while they wait to be enrolled in Medicaid managed care. For purposes of developing the proposal, the Departments may do the following:

- (1) Conduct research on the status of families and children waiting to be enrolled, including research on the reasons for the wait and the utilization of medical assistance during the waiting period;
- (2) Conduct a review of ways to help families and children receive medical assistance in the most appropriate setting while they wait to be enrolled;
- (3) Develop recommendations for a coordinated, cost-effective system of helping the families and children find the medical assistance they need during the waiting period;
- (4) Develop recommendations for improving the enrollment processes.

Help Me Grow targeted case management services

As part of its work with ODH, ODJFS may seek federal approval to authorize payment for Medicaid-reimbursable targeted case management services that are provided in connection with the ODH's Help Me Grow Program 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.¹⁶¹

Health Care Compliance Fund

(Section 309.35.73)

The bill permits money in the Health Care Compliance Fund to be used for expenses incurred in implementing or operating health home programs and for the creation, modification, or replacement of federally funded Medicaid health-care systems in fiscal years 2012 and 2013. Under current law, money in that fund is to be used solely (1) to reimburse a Medicaid managed care organization that, after paying a fine for failing to meet a performance standard or other requirement, has come into compliance and (2) to provide financial incentive awards to Medicaid managed care organizations.

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.

¹⁶¹ 42 U.S.C. 1396w-4.



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.

Exclusion of BCMH participants

(Section 309.30.53)

In fiscal years 2012 and 2013, the bill prohibits ODJFS from including in the Medicaid care management system an individual receiving services through the program for medically handicapped children, also known as the Bureau for Children with Medical Handicaps (BCMh), if the individual has one or more conditions specified by the bill. The exclusion of these individuals applies regardless of other laws governing Medicaid managed care, including the bill's provisions authorizing the system to be expanded to additional ABD individuals.



For the exclusion to apply, the individual must have one of the following medical conditions: (1) cystic fibrosis, (2) hemophilia, (3) cancer, (4) diabetes, (5) cranio-facial anomalies, (6) or another other condition that the Director of Health determines is life-threatening. The Director is required to adopt rules defining a "life-threatening" condition. The definition must include any medical condition that requires maintenance drugs or interventions that, if the drugs or interventions are absent, would result in devastating, life-threatening health outcomes.

Pediatric accountable care organizations

(R.C. 5111.161)

As discussed above, ODJFS may designate the individuals who are permitted or required to 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 required to do both of the following to develop the system:

(1) Contract directly with a children's care network to serve as a pediatric accountable care organization. A "children's care network" is a children's hospital, group of children's hospitals, or group of pediatric physicians affiliated with a children's hospital or group of children's hospitals.

For purposes of this requirement, ODJFS is required to adopt rules that specify the minimum criteria that a children's care network must meet to qualify for a contract with ODJFS as a pediatric accountable care organization. The criteria must incorporate pediatric accountable care organization criteria established by federal law.¹⁶² ODJFS's determination of whether to enter into the contract is to be based on evidence or other documentation submitted by the children's care network and required by ODJFS. If ODJFS denies a children's care network a contract, the network may seek another contract, but not earlier than six months after the most recent contract denial.

¹⁶² 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.)

(2) Require that a Medicaid managed care organization enter into a subcontract with a children's care network to provide care coordination and care management services.¹⁶³

For purposes of this requirement, each children's care network seeking a subcontract with a Medicaid managed care organization is required to notify ODJFS of its intention to provide care coordination or care management services. The network may provide those services only in a county in which the network is located.

Results of delay in adopting rules

If ODJFS does not adopt rules by July 1, 2012, that establish criteria necessary for a children's care network to enter into a contract directly with ODJFS, the Department is required to implement one of the following requirements until those rules are adopted:

(1) Under the first requirement, an alternative payment system is to be implemented. Under this system, Medicaid managed care organizations are required to pay children's care networks for providing care coordination services an amount equal to the average cost the managed care organization receives for providing *case management services*,¹⁶⁴ plus an amount equal to the statewide average administrative percentage paid to managed care organizations as a component of their capitation payment that is associated with that service.

(2) Under the second requirement, each Medicaid managed care organization is required to subcontract with a children's care network to provide care management services.¹⁶⁵

Medicaid managed care coverage of prescription drugs

(R.C. 5111.172; 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.

¹⁶³ The bill does not specify what constitutes "care coordination" or "care management" services.

¹⁶⁴ The bill does not specify what constitutes "case management services."

¹⁶⁵ It is unclear how this option is different from the bill's general requirement that Medicaid managed care organizations subcontract with a children's care network to provide care coordination and care management services.

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 or prescribed by a psychiatrist practicing at a community mental health agency certified by the Department of Mental Health;

(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.

Continuity period

The bill specifies limitations that apply during a drug continuity period after ODJFS first implements the bill's requirement for coverage of prescription drugs through Medicaid-participating HICs. Specifically, the bill establishes the following continuity requirements:

(1) For a 90-day period, if, immediately before the HIC's coverage becomes effective, a Medicaid recipient enrolled in the HIC was being treated with a drug prescribed by a physician, the HIC must provide coverage of the drug without using drug utilization or management techniques that are more stringent than the utilization or techniques, if any, the person was subject to before the transfer of drug coverage.

(2) For a 120-day period, with respect to mental health drugs, both of the following apply:

--If, immediately before the HIC's coverage becomes effective, a Medicaid recipient enrolled in the HIC was being treated with an antidepressant or antipsychotic in the form specified in the bill, the HIC must provide coverage without a prior authorization requirement.

--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. 5111.1711; 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.¹⁶⁶

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

¹⁶⁶ National Committee for Quality Assurance, *What is HEDIS?*, available at <<http://www.ncqa.org/tabid/187/Default.aspx>>.



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.

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 hospital and other Medicaid-covered services, as selected by the 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 do both of the following:

(1) Notwithstanding the bill's provision regarding hospitals' Medicaid rates for fiscal years 2012 and 2013 (see "**Fiscal years 2012 and 2013 hospital Medicaid rates,**" below), modernize hospital inpatient and outpatient reimbursement methodologies by (a) modifying the inpatient hospital capital reimbursement methodology, (b) establishing new diagnosis-related groups in a cost-neutral manner, (c) modifying, for hospital discharges that occur during the period beginning October 1, 2011, and ending January 1, 2012, the measures used to determine whether claims for hospital inpatient or outpatient services qualify for cost outlier payments (i.e., charge high trim points), as in effect on January 1, 2011, by a factor of 13.6%, (d) modifying, for hospital discharges that occur during the period beginning January 1, 2012, and ending on the effective date of the first of the new diagnosis-related groups, charge high trim points, as in effect on October 1, 2011, by a factor of 9.72%, and (e) implementing other changes the Director considers appropriate.

(2) Establishing selective contracting and prior authorization requirements for types of medical assistance identified by the Director.

The ODJFS Director must adopt rules under the Administrative Procedure Act as necessary to implement the bill's requirements regarding purchasing strategies and rate reductions.



BEACON quality improvement initiatives for children

(Section 309.33.40)

The bill permits ODH, ODMH, and ODJFS, in conjunction with the Governor's Office of Health Transformation, to seek assistance from, and work with, the Best Evidence for Advancing Child Health in Ohio NOW! (BEACON) Council and hospital and other provider groups to identify specific targets and initiatives to reduce the cost, and improve the quality, of medical assistance provided under Medicaid to children. The targets and initiatives must focus on reducing (1) avoidable hospitalizations, (2) inappropriate emergency room utilization, (3) use of multiple medications when not medically indicated, (4) the state's rate of premature births, and (5) the state's rate of elective, preterm births.

If ODH, ODMH, and ODJFS identify initiatives as described above, the Departments must make the initiatives available on their web sites, along with a list of hospitals and other provider groups involved in the initiatives.

No Medicaid payments for provider-preventable conditions

(R.C. 5111.0214)

The bill prohibits ODJFS from knowingly making a Medicaid payment for a provider-preventable condition for which federal financial participation is prohibited under the Patient Protection and Affordable Care Act (federal health care reform).¹⁶⁷ 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.¹⁶⁸ 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

¹⁶⁷ 42 U.S.C. 1396b-1.

¹⁶⁸ 42 U.S.C. 1396b(a)(3)(F) and 1396b(t).



notification, the provider may make a written request that ODJFS reconsider its determination. After receiving the request, ODJFS is required to reconsider its determination and may uphold, reverse, or modify its original determination. ODJFS must then mail by certified mail a written notice of the reconsideration decision. Not later than 15 days after the decision is mailed, the provider may appeal the reconsideration decision to the Court of Common Pleas of Franklin County.

Electronic claims submission process

(R.C. 5111.052)

The bill requires certain Medicaid providers to use only an electronic claims submission process to submit Medicaid reimbursement claims to ODJFS. The providers are also required to arrange to receive Medicaid reimbursement from ODJFS by means 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.

Outsourcing of pediatric claims review and quality assurance functions

(R.C. 5111.054 (primary) and 127.16; R.C. 5101.10 (not in the bill))

The bill expressly authorizes ODJFS, if it chooses to outsource either or both of the following services, to contract with any qualified person, including the "Ohio Children's Hospital Solutions for Patient Safety" (OCHSPS), to perform the services on ODJFS's behalf:

- (1) The review and analysis of pediatric Medicaid claims in accordance with all state and federal laws governing the confidentiality of patient-identifying information;
- (2) The performance of quality assurance and quality review functions, other than those described in (1), above, related to the provision of medical care to Medicaid



recipients who are children. These may include functions recommended by the Best Evidence for Advancing Child Health in Ohio NOW! (BEACON) Council, a public/private partnership whose mission is to improve the quality of care leading to improved health outcomes of care and reduced cost with a special emphasis on Medicaid-eligible children, youth, and their families.¹⁶⁹

The bill specifies that such a contract is exempt from the competitive bidding requirement that typically applies to contracts involving purchases of \$50,000 or more.

The bill defines OCHSPS as a private, not-for-profit corporation which was formed for the purpose of improving pediatric patient care in Ohio, which performs functions that are included within the functions of a peer review committee, and which consists of all of the following members: Akron Children's Hospital, Cincinnati Children's Hospital Medical Center, Cleveland Clinic Children's Hospital, Dayton Children's Medical Center, Mercy Children's Hospital, Nationwide Children's Hospital, Rainbow Babies & Children's Hospital, and Toledo Children's Hospital.

If ODJFS enters into a contract with OCHSPS to perform either or both of the services described above, the bill specifies that OCHSPS is considered to be a "public entity" for purposes of a provision of law relating to ODJFS's operations. That provision authorizes a public entity that performs a function on behalf of ODJFS to request ODJFS to seek federal financial participation¹⁷⁰ for the costs incurred by the entity in performing the service or services covered by the contract.

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.

¹⁶⁹ Ohio Department of Health, *BEACON Council* (last visited June 6, 2011), available at <<http://www.odh.ohio.gov/ASSETS/78F0EAB110274D50A18E0B21B7F96171/BEACON%20Council%20Projects.pdf>>.

¹⁷⁰ "Federal financial participation" is the federal government's share of expenditures made by an entity implementing the Medicaid program (R.C. 5111.054(A)(1)).



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.¹⁷¹ 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.¹⁷²

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.¹⁷³

¹⁷¹ 42 C.F.R. Part 455; 42 C.F.R. 455.450.

¹⁷² 42 C.F.R. 455.460.

¹⁷³ O.A.C. 5101:3-1-17 and 5101:3-1-172.



The bill generally requires ODJFS to do both of the following when ODJFS determines there is a "credible allegation of fraud"¹⁷⁴ against a Medicaid provider¹⁷⁵ for which an investigation is pending under the Medicaid program: (1) suspend the provider's Medicaid provider agreement and (2) terminate reimbursement to the provider for services rendered to Medicaid recipients.

The bill also authorizes ODJFS to take any of several types of disciplinary action, without a hearing, against an existing Medicaid provider agreement when the action is 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.¹⁷⁶

Suspensions based on credible allegations of fraud

(R.C. 5111.035(B))

In general, the bill requires ODJFS, on determining if there is a credible 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 credible allegation of

¹⁷⁴ The bill generally defines "credible allegation of fraud" consistent with the definition of this term in a federal regulation. Under that definition, modified to conform to Ohio law, a credible 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.)

¹⁷⁵ A "provider" is any person, institution, or entity that has a Medicaid provider agreement with ODJFS (R.C. 5111.035(A)(2)).

¹⁷⁶ See 42 C.F.R. Part 455.



fraud when prescribed by rules adopted by ODJFS or when the provider or owner can demonstrate through the submission of written evidence that the provider or owner did not directly or indirectly sanction the action of its authorized agent, associate, manager, or employee that resulted in the creditable allegation of fraud.

Duration of suspension

(R.C. 5111.035(B)(2))

The bill requires the suspension of a Medicaid provider agreement based on a creditable allegation of fraud to continue in effect until any of the following, as applicable, is the case:

(1) ODJFS or a prosecuting authority determines there is insufficient evidence of fraud by the provider.

(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,¹⁷⁷ 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;

¹⁷⁷ An "owner" is any person having at least 5% ownership in a noninstitutional Medicaid provider (R.C. 5111.035(A)(3)).

(4) Receiving reimbursement in the form of direct payments from ODJFS or indirect payments of Medicaid funds in the form of salary, shared fees, contracts, kickbacks, or rebates from or through any participating provider or risk contractor.

Termination of reimbursements

(R.C. 5111.035(D))

The bill specifies that termination of Medicaid reimbursement based on a creditable allegation of fraud applies only to payments for Medicaid services rendered by a provider subsequent to the date on which a notice required by the bill (see "**Notice**," below) is sent. Claims for Medicaid reimbursement rendered by the provider prior to issuance of the notice may be subject to prepayment review procedures whereby ODJFS reviews claims to determine whether they are supported by sufficient documentation, are in compliance with state and federal statutes and rules, and are otherwise complete.

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,¹⁷⁸ 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:

¹⁷⁸ Specifically, 42 C.F.R. 455.23(b).

(1) State that payments are being suspended based on creditable allegations of fraud and the federal regulation governing such suspensions;¹⁷⁹

(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;

¹⁷⁹ 42 C.F.R. 455.23.



(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.¹⁸⁰
- 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.¹⁸¹
- 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;¹⁸²
 - 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.¹⁸³
- The provider's agreement to participate in Medicare, Medicaid, or the CHIP program of any state was terminated on or after January 1, 2011.¹⁸⁴

¹⁸⁰ 42 C.F.R. 455.106(c).

¹⁸¹ 42 C.F.R. 455.23

¹⁸² 42 C.F.R. 416(a).

¹⁸³ 42 C.F.R. 416(b).

¹⁸⁴ 42 C.F.R. 455.416(c).



- 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.¹⁸⁵
- 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 and 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.¹⁸⁶
- The provider failed to permit access to provider locations for any site visits required by federal regulations,¹⁸⁷ 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.¹⁸⁸
- 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.¹⁸⁹
- Failure to submit to a criminal background check as a condition of enrolling to be a Medicaid provider, as specified in federal regulations.¹⁹⁰
- Failure to meet screening requirements for Medicaid providers specified in federal regulations.¹⁹¹

¹⁸⁵ 42 C.F.R. 455.416(d).

¹⁸⁶ 42 C.F.R. 455.416(e).

¹⁸⁷ 42 C.F.R. 455.432.

¹⁸⁸ 42 C.F.R. 455.416(f).

¹⁸⁹ 42 C.F.R. 455.416(g).

¹⁹⁰ 42 C.F.R. 455.434.

¹⁹¹ 42 C.F.R. 455.450.

Physician assistants and Medicaid claims submissions

(R.C. 5111.053)

The bill requires the ODJFS to establish a process by which a physician assistant may enter into a Medicaid provider agreement. As a result of having a Medicaid provider agreement, a physician assistant may submit a claim for, and receive, reimbursement directly from ODJFS (*i.e.*, engage in "direct billing"). This is in contrast to the current reimbursement method, under which reimbursement for Medicaid services provided by a physician assistant are paid either to (1) the physician, physician group practice, or clinic employing the physician assistant, or (2) a hospital (as part of the facility payment) if the physician assistant works for a hospital.¹⁹²

Although the bill requires ODJFS to establish a process by which a physician assistant may enter into a Medicaid provider agreement, the bill does not require a physician assistant to enter into an agreement. Under the bill, there are two options for submitting a physician assistant's Medicaid claim: either (1) the physician assistant who provided the service or another person the physician designates to submit the claim on the physician assistant's behalf may submit the claim, or (2) the physician, group practice, clinic, or other health care facility that employs or contracts with the physician assistant may submit the claim.

If a physician assistant chooses to submit the claim individually or through a designee, as described in (1) above, the physician assistant must have a valid Medicaid provider agreement. When submitting the claim, the physician assistant or designee may use only the Medicaid provider number ODJFS has assigned to the physician assistant.

Public notice of proposed changes to Medicaid rates

(R.C. 5111.0212)

As necessary to comply with federal law, the bill requires the ODJFS Director to give public notice in the Register of Ohio of any change to a method or standard used to determine the Medicaid reimbursement rate for Medicaid providers. Current federal law requires that the public notice provide information on the methodologies underlining the rates and an opportunity for the public to review and comment on the proposed rates.¹⁹³

¹⁹² O.A.C. 5101:3-4-039(C)(1) and (8); telephone interview with ODJFS representative (April 22, 2011).

¹⁹³ 42 U.S.C. 1396(a)(13)(A).



Maximum Medicaid reimbursement rate

General rule

(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.

Fiscal years 2012 and 2013 Medicaid reimbursement rate for dialysis services

(Section 309.30.32)

The removal of ODJFS's discretion to pay Medicaid providers an amount that exceeds that authorized under the Medicare program has the result of limiting the amounts ODJFS may pay providers for "crossover claims" to Medicaid providers for those dually eligible for Medicaid and Medicare. A crossover claim refers to cost-sharing payments made by ODJFS to providers of Medicaid services to dually eligible individuals. This may include a payment for any copayment or other cost-sharing amount that a Medicare recipient would be required to pay for the service.

For fiscal year 2012, the Medicare copayment amount that applies to dialysis services will continue to be paid by ODJFS to providers at the same rate paid by ODJFS immediately prior to the bill. In fiscal year 2013, the bill permits ODJFS to adjust the Medicaid rates that are paid for dialysis services by an amount sufficient to achieve savings of no more than \$9 million. These reductions in payments may be made regardless of any other requirement of current law or the bill.

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 The Medicaid program's first-hour-unit price for aide services is to be reduced to 97% of the price paid on June 30, 2011. The Medicaid program's first-hour-unit price for nursing services is to be reduced to 95% of the price paid on June 30, 2011. Additionally, ODJFS is to pay for a service that is an aide service or nursing service provided by an independent provider¹⁹⁵ 80% of the price ODJFS pays for the same service provided by a provider that is not an independent provider. These reductions are to be effective October 1, 2011.

The ODJFS Director must adopt rules under the Administrative Procedure Act (R.C. Chapter 119.) as necessary to implement these reductions.

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.¹⁹⁶ 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

¹⁹⁴ For purposes of the bill, "aide services" are 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. "Nursing services" are 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(A)(1) and (4).)

¹⁹⁵ The bill defines "independent provider" as an individual who personally provides aide services or nursing services and is not employed by, under contract with, or affiliated with another entity that provides those services (R.C. 5111.0213(A)(3)).

¹⁹⁶ 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)).



equivalent drug products).¹⁹⁷ States generally base their Medicaid reimbursements to a retail pharmacy for a covered outpatient drug on the *lowest* of the following:¹⁹⁸

- (1) The state's best estimate of the retail pharmacy's acquisition cost for the drug;
- (2) The pharmacy's usual and customary charge for the drug;
- (3) The federal upper limit for the drug, if one applies;

(4) The state's maximum allowable cost (MAC) for the drug, if one applies. (States that administer a Maximum Allowable Cost program publish lists of selected multiple source drugs with the maximum price at which the state will reimburse for those drugs. Generally, state MAC lists include more drugs, and establish lower reimbursement prices, than the federal upper limit list.)

The bill's prohibition does not affect ODJFS's authority to pay an amount lower than the federal upper limit; it only places a ceiling on the amount of the payment.

Medicaid dispensing fee for noncompounded drugs

(Section 309.33.70)

The bill continues to set the Medicaid dispensing fee for each noncompounded drug covered by the Medicaid program at \$1.80 for the period beginning 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 on June 30, 2011, for Medicaid-covered hospital inpatient and outpatient services that are paid under the prospective payment system established in the rules.

¹⁹⁷ 42 U.S.C. 1396r-8(e)(4).

¹⁹⁸ 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).



Children's hospitals supplemental funding

(Sections 309.30.38 (primary) and 309.30.33)

The bill requires the ODJFS Director to make additional Medicaid payments to children's hospitals for inpatient services. The additional payments are for fiscal years 2012 and 2013 and are to compensate children's hospitals for the high percentage of Medicaid recipients they serve. The Director is to model the additional payments after the program that ODJFS was required to create for fiscal years 2006 and 2007 as part of the biennial budget act for those years. The program may be the same as the program the Director used for making payments to children's hospitals for fiscal years 2010 and 2011 under the biennial budget act for those years.

The bill provides that nothing in the bill's provision regarding the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program and the Medicaid Managed Care Hospital Incentive Payment Program (see "**Use of hospital assessments**," below) reduces the additional Medicaid payments to be made to children's hospitals.

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 (see "**Use of hospital assessments**," below).



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.

Use of hospital assessments

(Section 309.30.33)

The bill provides that a portion of the hospital assessments discussed above be used to (1) continue the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program, (2) create the Medicaid Managed Care Hospital Incentive Payment Program, and (3) continue fiscal years 2010 and 2011 hospital payment rates (see "**Fiscal years 2012 and 2013 hospital Medicaid rates**," above).¹⁹⁹

¹⁹⁹ While the bill provides specific appropriations, it also permits the Director of Budget and Management to authorize additional expenditures from the Health Care Federal, Healthcare/Medicaid, and Medicaid-



Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program

Am. Sub. H.B. 1 of the 128th General Assembly required the ODJFS Director to seek federal approval for a Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program. The Program was approved and provides supplemental payments to hospitals for Medicaid-covered inpatient and outpatient services. The bill requires ODJFS to seek federal approval to continue the Program for fiscal years 2012 and 2013.

Medicaid Managed Care Hospital Incentive Payment Program

The bill requires ODJFS to seek federal approval of a Medicaid Managed Care Hospital Incentive Payment Program for the purpose of increasing access to hospital services for Medicaid recipients who are enrolled in Medicaid managed care organizations. If approved, the Program is to provide additional funds to Medicaid managed care organizations to be used by the organizations to increase payments to hospitals for providing services to Medicaid recipients who are enrolled in the Medicaid managed care organizations.

Actuarial study

The bill requires ODJFS, not later than July 1, 2012, to select an actuary to conduct a study of contracted reimbursement rates between Medicaid managed care organizations and hospitals. The actuary is to determine if a reduction in the capitation rates paid to Medicaid managed care organizations in fiscal year 2013 is appropriate as a result of the contracted reimbursement rates between the organizations and hospitals.

Repayment if state savings are insufficient

If the actuary determines that any reduction in the capitation rates paid to Medicaid managed care organizations in fiscal year 2013 will not achieve \$22 million in state savings in that year, the state is to receive from Medicaid managed care organizations and hospitals the difference between what is saved and \$22 million. In consultation with the Ohio Association of Health Plans and the Ohio Hospital Association, ODJFS is to establish a methodology under which the difference is to be paid equally by Medicaid managed care organizations and hospitals.

ODJFS may waive the payment requirement if spending for the Medicaid program in fiscal year 2013 is less than the amount that is budgeted for that fiscal year. If ODJFS does receive payments, the amounts are to be deposited into the Health Care

Hospital line items to implement these programs and the bill's provision regarding hospitals' Medicaid rates for fiscal years 2012 and 2013. The bill specifies that nothing in the programs is to reduce payments that are appropriated to children's hospitals.



Compliance Fund. That Fund provides financial incentive awards to Medicaid managed care organizations that meet or exceed performance standards.

Conditions on program implementation

The bill specifies that the program is to be implemented only under the following conditions:

(1) An actuary certifies that the Program would not violate the actuarial soundness of capitation rates paid to Medicaid managed care organizations.

(2) ODJFS implements the Program in a manner that does not result in a hospital receiving less money from the Hospital Assessment Fund than the hospital would have received if the Program were not implemented.

(3) ODJFS implements the Program in a manner that does not result in a Medicaid managed care organization receiving a lower capitation payment rate solely because funds are made available to the organization under the Program.

(4) The Program is not determined to be an impermissible healthcare-related tax under federal law.

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.²⁰⁰

²⁰⁰ U.S. Centers for Medicare and Medicaid Services, "Third Party Liability: Overview." <https://www.cms.gov/DualEligible/> (accessed 03/27/2011).



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 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.

Medicaid payments to reserve beds in nursing facilities

(R.C. 5111.331 (primary), 5111.20, 5111.22, 5111.221, 5111.222, 5111.224, 5111.232, 5111.25, 5111.251, 5111.254, 5111.255, 5111.258, 5111.259, 5111.262, 5111.27, 5111.29, 5111.291, and 5111.33)

The bill permits ODJFS to make payments to a nursing facility 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 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 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.²⁰¹ 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.

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;

²⁰¹ O.A.C. 5101:3-3-16.4(D)(2).

--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,²⁰² 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.

²⁰² 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 provides for an existing ICF/MR's Medicaid reimbursement rate for fiscal year 2012 to be the average of its modified and capped rates unless the mean of such rates for all existing ICFs/MR is other than \$279.81, in which case the ICF/MR's rate is to be adjusted by a percentage that equals the percentage by which the mean rate is greater or less than \$279.81. An ICF/MR is considered to be an existing ICF/MR if (1) the provider of the ICF/MR has a valid Medicaid provider agreement for the ICF/MR on June 30, 2011, and a valid Medicaid provider agreement for the ICF/MR during fiscal year 2012 or (2) the ICF/MR undergoes a change of operator effective July 1, 2011, the existing operator has a valid Medicaid provider agreement for the ICF/MR on June 30, 2011, and the entering operator has a valid Medicaid provider agreement for the ICF/MR during fiscal year 2012.

An ICF/MR's modified rate is its rate as determined in accordance with Revised Code provisions governing the Medicaid reimbursement rates for ICFs/MR with the following modifications:

(1) In place of the inflation adjustment otherwise made in determining the ICF/MR's rate for other protected costs, its other protected costs, excluding the franchise permit fee component of those costs, from calendar year 2010 is to be multiplied by 1.0164.

(2) In determining the ICF/MR's rate for direct care costs, its maximum costs per case-mix unit is to be the maximum established for its peer group divided by 1.1123 if it has more than eight beds or 1.094 if it has eight or fewer beds.

(3) In place of the inflation adjustment otherwise calculated in determining the ICF/MR's rate for direct care costs, an inflation adjustment of 1.0164 is to be used.

(4) If the ICF/MR has more than eight beds, the maximum rate for the indirect care costs of its peer group is to be divided by 1.0843.

(5) If the ICF/MR has eight or fewer beds, the imputed indirect care ceiling percentage²⁰³ is to be used in place of the 10.3% that is otherwise used in determining

²⁰³ The imputed indirect care ceiling percentage is the percentage above the median indirect care cost that is imputed for ICFs/MR with eight or fewer beds in a manner that causes the following percentages to be

the maximum rate for indirect care costs for its peer group and the amount calculated using the imputed indirect care ceiling percentage is to be divided by 1.07.

(6) In place of the inflation adjustment otherwise calculated in determining the ICF/MR's rate for indirect care costs, an inflation adjustment of 1.0164 is to be used.

(7) The ICF/MR's efficiency incentive used in determining its rate for indirect care costs is to be the following percentage of the maximum rate established for its peer group, as further reduced by 25%: 7.1% if it has more than eight beds or 7% if it has eight or fewer beds.

(8) The ICF/MR's efficiency incentive for capital costs is to be reduced by 50%.

An ICF/MR's capped rate is to be its rate as determined in accordance with Revised Code provisions governing the Medicaid reimbursement rates for ICFs/MR reduced by the percentage by which the mean of such rates for all ICFs/MR, weighted by May 2011 Medicaid days and calculated as of July 1, 2011, exceeds \$279.81.

ODJFS is required by the bill to reduce the amount it pays ICFs/MR for fiscal year 2012 if the U.S. Centers for Medicare and Medicaid Services requires that the ICF/MR franchise permit fee be reduced or eliminated. 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.

FY 2013 Medicaid reimbursement rates for ICFs/MR

(Section 309.33.10)

The bill provides for an existing ICF/MR's Medicaid reimbursement rate for fiscal year 2013 to be paid its modified rate unless the mean of such rates for all existing ICFs/MR is other than \$280.14, in which case the ICF/MR's modified rate is to be adjusted by a percentage that equals the percentage by which the mean modified rate is greater or less than \$280.14. An ICF/MR is considered to be an existing ICF/MR if (1) the provider of the ICF/MR has a valid Medicaid provider agreement for the ICF/MR on June 30, 2012, and a valid Medicaid provider agreement for the ICF/MR during fiscal year 2013 or (2) the ICF/MR undergoes a change of operator effective July 1, 2012, the existing operator has a valid Medicaid provider agreement for the ICF/MR on June 30,

the same: (1) the percentage of ICFs/MR with eight or fewer beds that have indirect care costs from calendar year 2010, adjusted for inflation in accordance with the bill, that are at or below the indirect care costs ceiling that applies to the ICFs/MR and (2) the percentage of ICFs/MR with more than eight beds that have indirect care costs from calendar year 2010, adjusted for inflation in accordance with the bill, that are at or below the indirect care costs ceiling that applies to the ICFs/MR.

2012, and the entering operator has a valid Medicaid provider agreement for the ICF/MR during fiscal year 2013.

An ICF/MR's modified rate is its rate as determined in accordance with Revised Code provisions governing the Medicaid reimbursement rates for ICFs/MR with the following modifications:

(1) In place of the inflation adjustment otherwise made in determining the ICF/MR's rate for other protected costs, its other protected costs, excluding the franchise permit fee component of those costs, from calendar year 2011 is to be multiplied by the overall consumer price index (CPI) inflation adjustment.²⁰⁴

(2) In determining the ICF/MR's rate for direct care costs, its maximum costs per case-mix unit is to be the maximum established for its peer group divided by 1.1123 if it has more than eight beds or 1.094 if it has eight or fewer beds.

(3) In place of the inflation adjustment otherwise calculated in determining the ICF/MR's rate for direct care costs, the overall CPI inflation adjustment is to be used.

(4) The maximum rate for the indirect care costs of the ICF/MR's peer group is to be divided by 1.0843 if it has more than eight beds or 1.07 if it has eight or fewer beds.

(5) In place of the inflation adjustment otherwise calculated in determining the ICF/MR's rate for indirect care costs, the overall CPI inflation adjustment is to be used.

(6) The ICF/MR's efficiency incentive used in determining its rate for indirect care costs is to be the same as its efficiency incentive for indirect care costs for fiscal year 2012.

(7) The ICF/MR's efficiency incentive for capital costs is to be reduced by 50%.

ODJFS is required by the bill to reduce the amount it pays ICFs/MR for fiscal year 2013 if the U.S. Centers for Medicare and Medicaid Services requires that the ICF/MR franchise permit fee be reduced or eliminated. 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.

²⁰⁴ The overall CPI inflation adjustment is the amount of buying power that \$100 in calendar year 2010 has in calendar year 2011, as determined using the U.S. Bureau of Labor Statistics' CPI inflation calculator available on its web site, divided by 100.

Study of ICF/MR issues

(Section 309.30.80)

The bill requires ODJFS and ODODD to study issues regarding 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. 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.

Transfer of ICF/MR services to ODODD

(R.C. 5111.226 (primary) and 5111.211; Section 309.33.20)

The bill requires that ODJFS enter into an interagency agreement with ODODD that provides for ODODD to assume the powers and duties of ODJFS with regard to the Medicaid program's coverage of ICF/MR services. The interagency agreement is subject to the approval of the U.S. Secretary of Health and Human Services if such approval is



needed. The interagency agreement must include a schedule for ODODD's assumption of the powers and duties. No provision of the interagency agreement may violate a federal law or regulation governing the Medicaid program, unless otherwise authorized by the U.S. Secretary. Once the interagency agreement goes into effect and to the extent necessary to implement the terms of the interagency agreement, ODODD is to be considered ODJFS, and the ODODD Director is to be considered the ODJFS Director, for purposes of state law that gives ODJFS and the ODJFS Director powers and duties regarding ICFs/MR.

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.²⁰⁵ The

²⁰⁵ Section 10202 of the Patient Protection and Affordable Care Act (Public Law 111-148).



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.

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.²⁰⁶ 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

²⁰⁶ For example, see Section 209.20 of Am. Sub. H.B. 1 of the 128th General Assembly.

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.

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.

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. PACE, or the Program of All-Inclusive Care for the Elderly, is a managed care system that provides participants

with coverage of all of needed health care, including care in both institutional and community settings. It is funded by both Medicaid and Medicare.²⁰⁷

In order to effectively administer and manage growth within the PACE program, the bill permits the ODA Director, in consultation with the ODJFS Director, to expand the PACE program to additional regions of Ohio beyond the two existing service areas if the following apply: (1) funding is available for the expansion, (2) the directors mutually determine, taking into consideration the results of the Scripps Gerontology Center's evaluation described above, that the PACE program is a cost-effective alternative to nursing home care, and (3) the United States Centers for Medicare and Medicaid Services agrees to share with the state any savings to the Medicare program resulting from an expansion of the PACE program. In implementing an expansion, the bill prohibits the ODA Director from decreasing the number of participants in the PACE program in the existing PACE sites to a number that is below the number of individuals in those areas who were participants in the program on July 1, 2011.

The two existing 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.

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.

²⁰⁷ Ohio Department of Aging, *About PACE* (last visited June, 11, 2011) available at: <<http://aging.ohio.gov/services/PACE/>>.



Ohio Home Care and Ohio Transitions II Aging Carve-Out programs codified

(R.C. 5111.861, 5111.863, 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. 5111.864 (primary), 173.40, 173.401, 173.403, 5111.861 (repealed and new enactment), 5111.862, 5111.863, 5111.865, 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 obtained. 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.

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.

The bill requires ODJFS to establish a Home First process for the Ohio Home Care Program unless the program is terminated. ODJFS also must establish a Home First process for the unified long-term services and support Medicaid waiver program if



federal permission is obtained for the program. The Home First processes for the programs are to be similar to the Home First processes for the PASSPORT, Assisted Living, and PACE programs.

An individual is to qualify for the Ohio Home Care Program or the unified long-term services and support Medicaid waiver program under the Home First process if the individual has been determined eligible for the program and at least one of the following applies:

(1) The individual has been admitted to a nursing facility;

(2) A physician has determined and documented in writing that the individual has a medical condition that, unless the individual is enrolled in home and community-based services, will require the individual to be admitted to a nursing facility within 30 days of the physician's determination;

(3) The individual has been hospitalized and a physician has determined and documented in writing that, unless the individual is enrolled in home and community-based services, the individual is to be transported directly from the hospital to a nursing facility and admitted;

(4) In the case of the Home First process for the unified long-term services and support Medicaid waiver program, the individual is the subject of a report regarding abuse, neglect, or exploitation of an adult over age 60 or the individual has made a request to a CDJFS for adult protective services and a CDJFS and area agency on aging (AAA) jointly document in writing that, unless the individual is enrolled in home and community-based services, the individual should be admitted to a nursing facility;

(5) In the case of the Home First process for the unified long-term services and support Medicaid waiver program and only if individuals residing in a residential care facility are eligible for the program, the individual has resided in a residential care facility for at least six months immediately before applying for the program and is at risk of imminent admission to a nursing facility because the costs of residing in the residential care facility have depleted the individual's resources such that the individual is unable to continue to afford the residential care facility.

Under the Home First processes for the Ohio Home Care Program and unified long-term services and support Medicaid waiver program, CDJFSs and, in the case of the Home First process for the unified long-term services and support Medicaid waiver program, AAAs must identify, on a monthly basis, individuals who are eligible for the Home First process. When a CDJFS or AAA identifies such an individual, the CDJFS or AAA must determine whether the Ohio Home Care Program or unified long-term

services and support Medicaid waiver program is appropriate for the individual and whether the individual would rather participate in the program than continue or begin to reside in a nursing facility. If the CDJFS or AAA makes that determination, the CDJFS or AAA must so notify ODJFS. On receipt of the notification, ODJFS must approve the individual's enrollment in the Ohio Home Care Program or unified long-term services and support Medicaid waiver program regardless of the waiting list for the program, unless the enrollment would cause the program to exceed any limit on the number of individuals who may be enrolled in the program as specified in the federal waiver authorizing the program.

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.²⁰⁸ The projects are to be designed to achieve the following objectives with respect to institutional and home and community-based long-term care services under a state's Medicaid program:

(1) Increase the use of home and community-based, rather than institutional, long-term care services;

(2) Eliminate barriers or mechanisms that prevent or restrict the flexible use of Medicaid funds to enable Medicaid-eligible individuals to receive support for appropriate and necessary long-term services in the settings of their choice;

(3) Increase the ability of a state's Medicaid program to assure continued provision of home and community-based long-term care services to eligible individuals who choose to transition from an institution to a community setting;

(4) Ensure that procedures are in place to provide quality assurance for eligible individuals receiving Medicaid home and community-based services and to provide for continuous quality improvement in such services.

The Deficit Reduction Act includes federal appropriations for Money Follows the Person grants through federal fiscal year 2011 (ending September 30, 2011). A state seeking a grant is required to apply to the Secretary. ODJFS submitted an application for a grant in November 2006. Ohio learned in January 2007 that its application was approved.

Dual eligible integrated care demonstration project

(R.C. 5111.981 (primary) and 5111.944; Section 309.35.30)

The bill permits the ODJFS Director to seek federal approval to implement a demonstration project to test and evaluate the integration of the care that dual eligible individuals²⁰⁹ receive under the Medicare and Medicaid programs. The federal approval must be from the United States Secretary of Health and Human Services in the

²⁰⁸ Section 6071 of the Deficit Reduction Act of 2005, Public Law No. 109-171.

²⁰⁹ 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)).

form of a federal Medicaid waiver, Medicaid state plan amendment, or demonstration grant. If approval is granted, the demonstration project must be implemented in accordance with the approval's terms, including those terms regarding the project's duration. The demonstration project is not subject to any provision of the Ohio's 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.

School-based health centers as CHIP providers

(R.C. 5101.50, 5101.504, 5101.5110, 5101.5111, and 5101.5210)

The federal "Children's Health Insurance Program Reauthorization Act of 2009"²¹⁰ provides that nothing in federal law is to be construed to limit the ability of states to furnish health assistance services covered under CHIP through school-based health centers.²¹¹ The bill implements this authority by permitting health assistance services that CHIP covers to be furnished through school-based health centers. The ODJFS Director is required by the bill to adopt rules, not later than July 1, 2012, establishing billing, reimbursement, and data collection requirements for school-based health centers through which such health assistance services are furnished.

²¹⁰ Public Law No. 111-3.

²¹¹ Under federal law, a "school-based health center" is defined as a health clinic that (1) is located in or near a school facility of a school district or board or of an Indian tribe or tribal organization, (2) is organized through school, community, and health provider relationships, (3) is administered by a sponsoring facility, (4) provides through health professionals primary health services to children in accordance with state and local law, and (5) satisfies other requirements as a state may establish for the operation of a health clinic (42 U.S.C. 1397jj (c)(9)).

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.

Military Injury Relief Fund

(R.C. 5101.98)

The bill provides that an individual injured while in active service as a member of the armed forces of the United States while serving in Operation New Dawn is eligible for Military Injury Relief Fund grants. Operation New Dawn is the current name for the United States military operation in Iraq.



Under continuing law, the Director of Job and Family Services grants money from the Military Injury Relief Fund to individuals injured while in active service as a member of the armed forces of the United States while serving under Operation Iraqi Freedom or Operation Enduring Freedom, and to individuals diagnosed with post-traumatic stress disorder while serving or after having served in those operations. The bill, as explained above, expands grant eligibility also to include individuals involved in Operation New Dawn.

VI. Unemployment Compensation

Unemployment compensation for seasonal employment

(R.C. 4141.33)

Effective October 30, 2011, the bill prohibits unemployment compensation benefits from being paid to individuals on the basis of any services performed in seasonal employment for any week that commences during the period between two successive seasonal work periods if the individual performed services in the first of the seasonal works periods and there is reasonable assurance that the individual will perform those services in the later of the seasonal work 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 ensuing seasonal work period. The bill requires the Director of Job and Family Services to adopt rules concerning individuals' eligibility for benefits under this provision.

The bill limits 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 with respect to seasonal unemployment as described above.

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.

JOINT COMMITTEE ON AGENCY RULE REVIEW (JCR)

- Provides that the new business rule review process established by S.B. 2 of the 129th General Assembly does not apply to proposed rules that are pending on January 1, 2012, and first applies to proposed rules, the original versions of which are filed on or after January 1, 2012.
- Clarifies how existing rules being reviewed under the Cyclical Review of Rules Act are to be reviewed in light of the new business rule review process.



New businesses rule review process: first applicability

(Sections 610.30 and 610.40)

The bill provides that the new business rule review process established by S.B. 2 of the 129th General Assembly does not apply to a proposed rule that is pending for review before the Joint Committee on Agency Rule Review on January 1, 2012. Instead, such a proposed rule will continue to be reviewed under the former small business rule review process (which is repealed by S.B. 2) until the rule-making proceedings are completed.²¹²

New business rule review process: application under Cyclical Review of Rules Act

(R.C. 119.032; Sections 610.30 and 610.40)

The bill also clarifies a standard, added by S.B. 2 of the 129th General Assembly, that agencies are required to apply in evaluating an existing rule under the periodic, five-year review schedules of the Cyclical Review of Rules Act (CRRA). Under the bill, an agency will be required to determine whether an existing rule it is reviewing under the CRRA has an adverse impact on businesses, reviewing the existing rule *as if* it were a draft rule under the provisions of S.B. 2 that define when a draft rule has an adverse impact on business and that require the Common Sense Initiative Office to prepare a business impact analysis instrument.

Agencies are required by S.B. 2 to apply the definition and business impact analysis instrument to *draft* rules to determine whether the draft rules have an adverse impact on business. But the CRRA applies to *existing* rules and not to draft rules. The bill therefore requires agencies to apply the definition and business impact analysis instrument in reviewing existing rules under the CRRA, applying the definition and instrument to the existing rules *as if* they were draft rules. And, if an agency thus determines under the CRRA that an existing rule has an adverse impact on business, the agency will be expected to amend or rescind the rule as is appropriate to remedy the adverse impact. (Such an amendment or rescission will be subject to the new business rule review process of S.B. 2.) If, however, the agency concludes there is not such an impact, and none of the other CRRA review standards have an adverse effect, then the agency can file the rule as a "no change" rule. A no-change rule, as its name implies, indicates there is no need to amend or rescind the rule and that it can be left as it is.

²¹² R.C. 121.24, not in the bill (repealed by S.B. 2).

The new CRRA review standard, both as enacted by S.B. 2 and as clarified by the bill, first applies to existing rules that are subjected to review under the CRRA on or after January 1, 2012.

JUDICIARY, SUPREME COURT (JSC)

- 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.
- Increases from 100 to 150 the population that a municipal corporation other than Georgetown in Brown County, Mount Gilead in Morrow County, or Batavia in Clermont County must have in order to establish a mayor's court.
- Moves the jurisdiction over the Village of West Millgrove from the Fostoria Municipal Court to the Bowling Green Municipal Court.
- Modifies the experience qualification for a municipal judge, a judge of the court of common pleas, a judge of the court of appeals, and the Chief Justice and a justice of the Supreme Court to hold judicial office by removing the requirement that the minimum of six years of prior practice of law be in Ohio.
- Requires that at least two of the six or more years of prior practice of law or prior service as a judge of a court of record in any jurisdiction in the United States that qualify the judge, Chief Justice, or justice specified in the preceding dot point have been in Ohio.
- Modifies the experience qualification generally for a county court judge to hold judicial office by removing the requirement that the minimum of six years of prior practice of law be in Ohio, requiring that the prior practice of law be in any jurisdiction in the United States, and requiring that at least two of the years of prior practice of law have been in Ohio.
- Adds six synthetic derivatives of cathinone that have been found in bath salts to the list of Schedule I controlled hallucinogenic substances.
- Eliminates the State Criminal Sentencing Commission.
- Classifies formaldehyde as a Schedule II controlled substance and enacts the offense of trafficking in formaldehyde.



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 ODMH 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 ODMH 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 ODMH, 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 ODMH for the defendant's placement by the ODMH 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 ODMH 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 ODMH 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.

Municipal court jurisdiction over West Millgrove

(R.C. 1901.02)

Existing law provides that the Fostoria Municipal Court has jurisdiction within Perry Township, which includes the municipal corporation of West Millgrove. The bill moves West Millgrove to the jurisdiction of the Bowling Green Municipal Court.

Mayor's court jurisdiction in ordinance cases and traffic violations

(R.C. 1905.01)

Existing law provides that, except in Georgetown in Brown County, in Mount Gilead in Morrow County, and Batavia in Clermont County, all other municipal corporations must have a population of 100 in order to establish a mayor's court. The bill increases this population requirement to 150.

Qualifications of judges and justices

(R.C. 1901.06, 1907.13, 2301.01, 2501.02, and 2503.01)

The bill modifies one of the qualifications under existing law for a municipal judge, a judge of the court of common pleas, a judge of the court of appeals, and the Chief Justice and a justice of the Supreme Court to hold judicial office by providing that the judge, Chief Justice, or justice has been, for a total of at least six years preceding appointment or the commencement of the judge's, Chief Justice's, or justice's term, engaged in the practice of law (the bill eliminates "in this state") or served as a judge of a court of record in any jurisdiction in the United States, or both. The bill requires that at least two of the six or more years of prior practice of law or prior service as a judge that qualify the judge, Chief Justice, or justice have been in Ohio.²¹³

The bill also revises one of the qualifications under existing law for a county court judge to hold judicial office by providing that the judge has been engaged, for a total of at least six years preceding the judge's appointment or the commencement of the judge's term, in the practice of law (the bill eliminates "in this state") *in any jurisdiction in the United States* (added by the bill). The bill requires that at least two of the six or more years of prior practice of law that qualify the judge have been in Ohio. The bill retains the exception under current law that the six-year legal practice

²¹³ R.C. 1901.06, 2301.01, 2501.02, and 2503.01.



requirement does not apply to a county court judge who is holding office on July 2, 2010, and who subsequently is a candidate for that office.²¹⁴

List of Schedule I controlled hallucinogenic substances

(R.C. 3719.41)

The bill adds the following six synthetic derivatives of cathinone that have been found in bath salts to the list of Schedule I controlled hallucinogenic substances: methydone (3,4-methylenedioxy-methcathinone); MDPV (3,4-methylenedioxy-pyrovalerone); mephedrone (4-methylmethcathinone); 4-methoxymethcathinone; 4-fluoromethcathinone; and 3-fluoromethcathinone.

Continuing law compiles controlled substances in five schedules. Drug offenses involving schedule I controlled substances are subject to the severest penalties.

Criminal Sentencing Commission

(R.C. 181.21, 181.22, 181.23, 181.24, 181.25, 182.26, and 2953.08)

The bill would eliminate the State Criminal Sentencing Commission. Under current law, the State Criminal Sentencing Commission of the Ohio Supreme Court studies the existing criminal statutes and law of Ohio, sentencing patterns throughout Ohio, and available correctional resources.

Formaldehyde in list of Schedule II controlled substances

(R.C. 2925.03 and 3719.41)

The bill classifies formaldehyde as a Schedule II controlled hallucinogenic substance and enacts the offense of trafficking in formaldehyde. Trafficking in formaldehyde prohibits a person from: (1) knowingly selling or offering to sell formaldehyde and (2) knowingly preparing for shipment, shipping, transporting, delivering, preparing for distribution, or distributing formaldehyde when the offender knows or has reasonable cause to believe that the formaldehyde is intended for sale or resale by the offender or another person. If the amount of the drug involved in trafficking in formaldehyde is more than 20 grams, the offense is (1) a fourth degree felony or (2) if the offense was committed in the vicinity of a school or juvenile, a third degree felony. If the amount of the drug involved in trafficking in formaldehyde is 20 grams or less, the offense is a minor misdemeanor on a first offense and a third degree misdemeanor on a subsequent offense.

²¹⁴ R.C. 1907.13.



LAKE ERIE COMMISSION (LEC)

- Adds five members appointed by the Governor to the Ohio Lake Erie Commission in addition to the Directors of Environmental Protection, Natural Resources, Health, Agriculture, and Transportation, or their designees, who comprise the Commission under current law.

Ohio Lake Erie Commission

(R.C. 1506.21)

The bill adds five members appointed by the Governor to the Ohio Lake Erie Commission and specifies that the new members serve at the pleasure of the Governor. Under current law, the Directors of Environmental Protection, Natural Resources, Health, Agriculture, and Transportation, or their designees, comprise the Commission. The bill also specifies that six members of the Commission constitute a quorum rather than three members under current law.

Under current law, the Commission has a variety of duties including: (1) ensuring the coordination of state and local policies and programs pertaining to Lake Erie water quality, toxic pollution control, and resource protection, (2) reviewing and making recommendations concerning the development and implementation of policies, programs, and issues for long-term, comprehensive protection of Lake Erie water resources and water quality that are consistent with the Great Lakes Water Quality Agreement and the Great Lakes Toxic Substances Control Agreement, (3) recommending policies and programs to modify Ohio's coastal management program, and (4) taking other specified actions regarding Lake Erie and the Lake Erie basin.

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.
- Requires the class represented in any class action lawsuit brought by OLRs and, starting on October 1, 2012, the Ohio Protection and Advocacy System to include only persons who are mentally ill, mentally retarded, or developmentally disabled.
- Requires that the compensation that may be awarded in a class action lawsuit pursued by OLRs and, starting on October 1, 2012, the Ohio Protection and Advocacy System for the work of OLRs and the System's attorneys or attorneys employed by another agency or political subdivision of the state be limited to the actual hourly rate of pay for that legal work.

Ohio Protection and Advocacy System

(Sections 319.20 (primary) and 120.20 to 120.23; R.C. 5123.60, 5123.601 (new), and 5123.602 (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.²¹⁵ 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.

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

²¹⁵ 42 U.S.C. 15041 *et seq.*; the specific requirement is in 42 U.S.C. 15043.



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,"²¹⁶ and a client assistance program, as provided under the federal "Workforce Investment Act of 1998."²¹⁷ It authorizes the System to establish any guidelines necessary for its operation.

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;

²¹⁶ 42 U.S.C. 15001.

²¹⁷ 29 U.S.C. 732.



(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.

OLRS and Ohio Protection and Advocacy System class action lawsuits

(R.C. 5123.60 and 5123.602)

The bill establishes the following requirements for class action lawsuits brought by the existing OLRs:

(1) Requires the class represented in any class action lawsuit brought by OLRs to include only persons who are mentally ill, mentally retarded, or developmentally disabled;

(2) Requires that the compensation that may be awarded in a class action lawsuit pursued by OLRs for the work of OLRs attorneys or attorneys employed by another agency or political subdivision of the state be limited to the actual hourly rate of pay for that legal work.

The bill extends these requirements to the Ohio Protection and Advocacy System on October 1, 2012.

LOCAL GOVERNMENT (LOC)

- 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 or administrative rule requires a state agency or political subdivision to publish a notice or advertisement two or more times in a newspaper and the statute or rule 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 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.
- Requires all legal advertisements and notices to be printed in a newspaper of general circulation and on the state public notice web site.
- 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.
- 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.
- Authorizes a regional council of governments to enter into unit price contracts related to buildings or structures on behalf of member political subdivisions.
- Authorizes a board of county commissioners to enter into a sale and leaseback agreement with regard to a county-owned building.
- Authorizes one or more boards of county commissioners to create a Lake Facilities Authority (LFA), a body politic and corporate, for the purpose of remediating



watersheds declared by the Director of Natural Resources to be a "watershed in distress."

- Creates an LFA board of directors consisting of the county commissioners of each county with territory in the "impacted lake district" – i.e., the territory of all townships and municipal corporations with territory in the distressed watershed.
- Requires the creation of an advisory council for each LFA consisting of the appointee of each political subdivision with territory in the impacted lake district, to consult with the board of directors.
- Authorizes an LFA to levy a property tax with voter approval for current expenses, debt charges, permanent improvements, and parks and recreation, not to exceed one mill.
- Authorizes an LFA to impose a charge, with voter approval, against property within the distressed watershed to be based on the benefit conferred or the relative pollution or other harm caused by the property owner, not to exceed one-half per cent of a parcel's true value.
- Authorizes an LFA to levy a lodging tax with voter approval, the rate of which may not cause the aggregate rate of lodging taxes applicable in the impacted lake district to exceed 5%.
- Authorizes an LFA to charge user fees, including dock and campsite fees, in a distressed watershed in a state park with approval by the Director of Natural Resources.
- Authorizes an LFA to issue general obligation securities for the remediation of a distressed watershed and related permanent improvements, not to exceed one-tenth per cent of the total value of property in the impacted lake district.
- Authorizes an LFA to issue revenue bonds and anticipation bonds and notes.
- Prohibits the creation of any new special district that would overlap with an LFA district (e.g., conservancy district) if the new district would have powers or duties that are the same as the LFA's.
- Prohibits any taxing authority from levying a property tax in the territory of an LFA if the purpose of the tax is similar to the purpose of a tax that the LFA is authorized to levy.

- Authorizes the Director of Natural Resources to transfer real property to an LFA to promote wetland mitigation banking, wildlife, or sporting activities, and authorizes the Division of Wildlife to enter agreements with an LFA to establish wetland or natural areas to benefit wildlife or sporting activities.
- Requires competitive bidding for LFA construction projects in excess of \$25,000 except under certain circumstances.
- Permits, but does not require, an LFA to apply prevailing wage requirements to public improvements it undertakes or contracts for.
- Specifies that energy or fuel derived from algae or manure from an impacted lake district is a "renewable energy resource" for the purposes of electricity generation alternative energy resource portfolio requirements of current law.
- 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**:
 - Eliminates the 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 1,000, 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 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, fiscal watch, or fiscal caution, including technical and support services, and that the Controlling Board may 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.
- Defines and limits the human resource services that a board may centralize.
- Prohibits the board from centralizing certain purchasing, printing, and collection 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.
- Requires a county recorder to attend and successfully complete at least 15 hours of continuing education courses during the first year of the recorder's term of office,

and at least another eight hours of continuing education courses each year of the remaining term.

- Requires a county recorder, for subsequent terms of office, to attend and successfully complete at least eight hours of continuing education courses in each year of a subsequent term of office.
- Requires the Ohio Recorders' Association to approve continuing education courses, administer the continuing education requirements, and to send a list to the Auditor of State of the courses and number of hours each county recorder has successfully completed.
- Requires that the Association issue an informational "failure to complete notice" to any county recorder who fails to successfully complete the required number of hours of continuing education courses.
- Requires the board of county commissioners to approve, from money appropriated to the county recorder, a reasonable amount requested by the county recorder to cover the recorder's costs of continuing education.
- Authorizes boards of township trustees and the legislative authorities of one or more contiguous municipal corporations, by adoption of a joint resolution, to create a joint police district comprising all or any part of the townships or municipal corporations as are mutually agreed upon, rather than a joint township police district.
- Creates a joint police district board to govern the joint police district.
- Grants the powers of a joint township police district board to a joint police district board, such as the power to levy a property tax for the district's expenses in providing police protection and to issue bonds for buying police equipment.
- Authorizes a township or municipal corporation to join or to withdraw from an existing joint police district.
- Eliminates a date restriction and applies a township noise regulation to any business or industry regardless of when it came into existence.
- Increases specific competitive bidding thresholds for townships and villages.
- Adds, as one of the methods by which a limited home rule township may meet the requirement to provide law enforcement for the township, by designating one or more police constables.



- Authorizes one or more townships to merge into a contiguous township, creating a new township, by initiative petition of the voters of each township proposed for merger.
- 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.
- Authorizes the boards of township trustees to submit a question of merger to the voters of the townships to be merged, for their approval.
- Prohibits a merger from being proposed again for at least three years if the merger was disapproved by the voters.
- 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.
- 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 two-year spending plan or amended spending plan with a quarterly schedule of expenses and expenditures of appropriations for personal services and payrolls from any county fund, for any county office, department, or division under certain circumstances.

- Allows townships to compensate the township fiscal officer and township trustees from various township funds, in addition to the township general fund, based on the proportion of time the fiscal officer or township trustee spends providing services related to each fund.
- Requires the township fiscal officer and township trustees to certify the percentage of time spent working on matters to be paid from the township general fund and other township funds.
- 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 alternative procedure for municipal corporations and townships to join a regional transit authority (RTA) that levies a property tax and that includes in the RTA membership, political subdivisions that are located in a county having a population of at least 400,000 by placing the issue on the ballot; until November 5, 2013, allows a municipal corporation or township that is a member of such an RTA to withdraw from the RTA by placing the issue on the ballot; and allows a municipal corporation or township that withdraws from an RTA after placing the issue on the ballot to contract for the provision of transportation services.
- Creates a new procedure whereby one or more municipal corporations, whether or not adjacent to one another, may merge with an adjacent municipal corporation, the unincorporated area of a township may merge with one or more municipal corporations, or one or more municipal corporations, whether or not adjacent to one another, may merge with an adjacent unincorporated area of a township.
- Requires the legislative authorities of the municipal corporations and the township to enter into a merger agreement that specifies the conditions of the proposed merger in identical ordinances and resolutions that are adopted by a simple majority vote of each legislative authority, subject to voter referendum.
- Authorizes the legislative authorities of the municipal corporations and township, if any, proposed for merger to present the question of merger to the voters before merging.

- Mandates that a municipal corporation merging into a township has only the rights, powers, and responsibilities afforded by law to townships, and that all other authority ceases to exist on the effective date of the merger.
- Permits the board of county commissioners to adopt a resolution requiring the County Automatic Data Processing Board to assume the duties of the County Records Commission and the County Microfilming Board, which resolution must specify the date on which the duties will be transferred.
- Requires, if such a resolution is adopted to expand the duties of the County Automatic Data Processing Board, the prosecuting attorney, county engineer, county coroner, sheriff, and a judge of the court of common pleas to be added to the membership of the board.
- Specifies that, after such a resolution is adopted, no county office may purchase, lease, operate, or contract for the use of any automatic data processing equipment, software, or services; microfilming equipment or services; records center or archives facilities; or any other image processing or electronic data processing or record-keeping equipment, software, or services without prior approval of the board.
- Specifies that, if such a resolution is adopted, the functions, powers, duties, and obligations of the County Records Commission and the County Microfilming Board are transferred and assigned to, devolved upon, and assumed by the County Automatic Data Processing Board, and the County Automatic Data Processing Board must be deemed to constitute the continuation of the County Records Commission and the County Microfilming Board.
- Permits the county automatic data processing board to establish an automatic data processing center, microfilming center, records center, archives, and any other centralized or decentralized facilities it considers necessary to fulfill its duties, and specifies that these centralized facilities must be used by all county offices.
- Requires the county auditor to prepare an annual estimate of the revenues and expenditures of the county automatic data processing board and submit it to the board of county commissioners, and specifies that the board's funds are to be disbursed by the county auditor's warrant drawn on the county treasury five days after receipt of a voucher approved by a majority of that board and by a majority of the board of county commissioners.
- Permits a county automatic data processing board to enter into a contract with the legislative authority of a political subdivision or special district, with the board of county commissioners or the automatic data processing board or microfilming

board of any other county, or with any other federal or state governmental agency to provide microfilming, automatic data processing, or other image processing or electronic data processing or record-keeping services to any of them.

- Expands the authority of a county microfilming board to include other image processing equipment, software, or services.
- For a county automatic data processing board that is not expanded by resolution, expands its authority to include electronic data processing or record-keeping equipment, software, or services.
- Repeals the statutes that require the Public Health Council to adopt rules governing the licensure and inspection of marinas.
- Instead requires a board of health within whose jurisdiction a marina is located to adopt rules governing the inspection of and issuance of licenses for marinas, and requires the rules to require at a minimum annual inspections.
- Authorizes a board of health to levy a fee for a marina license in accordance with procedures established in the Health Districts Law.
- Establishes procedures for the transition from the operation of the Public Health Council rules governing marinas in a health district in which a marina is located on the provision's effective date to the applicable board of health's rules.
- Repeals the statutes that require the Public Health Council to adopt rules governing the licensure and inspection of agricultural labor camps.
- Instead requires a board of health within whose jurisdiction an agricultural labor camp is located to adopt rules governing the inspection of and issuance of licenses for agricultural labor camps, and requires the rules to require at a minimum annual inspections.
- Authorizes a board of health to levy a fee for an agricultural labor camp license in accordance with procedures established in the Health Districts Law.
- Establishes procedures for the transition from the operation of the Public Health Council rules governing agricultural labor camps in a health district in which an agricultural labor camp is located on the provision's effective date to the applicable board of health's rules.
- Expands the scope of the contracting authority of a county sewer district when conveying water supply facilities and sewer facilities to a municipal corporation.

- Prohibits the pay ranges for a county public defender and a joint county public defender from exceeding the pay ranges for county prosecutors.
- Declares that whenever any portion of a regional water and sewer district is incorporated as, or annexed to, a municipal corporation, the area incorporated or annexed remains under the jurisdiction of the district for purposes of the acquisition, construction, or operation of a water resource project until the project's completion or abandonment.
- Establishes new contracting authority for regional water and sewer districts regarding the conveyance of water resource projects to municipal corporations.
- Prohibits the use of political subdivision funds, with limited exception, for paying the costs, premiums, or charges associated with a health care policy, contract, or plan that provides coverage, benefits, or services related to nontherapeutic abortion.
- Defines "nontherapeutic abortion" to be any abortion that is performed when the life of the mother would not be endangered if the fetus was carried to term, or the pregnancy was not the result of a reported rape or incest.
- Allows for the use of political subdivision funds to pay for the costs, premiums, or charges associated with a health care policy, contract, or plan that includes a rider or other provision offered on an individual basis that allows an individual to obtain a nontherapeutic abortion if the individual pays all of the costs associated with the rider or other provision.
- Authorizes a political subdivision to certify past due receivables to the Attorney General for collection.
- Exempts from public records law usage information, including the names and addresses of specific residential and commercial customers of municipally owned or operated utilities.
- Applies a provision allowing journalists to request the address of certain government employees to journalistic requests for customer information maintained by a municipally owned or operated public utility, other than private financial information.
- Consolidates, into one provision of law, the records retention procedure that currently applies recurrently to municipal corporations, school districts, educational service centers, libraries, special taxing districts, and townships.



- Revises and clarifies the procedure used by the Ohio Historical Society for selecting records of continuing historical value before the entities described above dispose of records.
- Expands the training or educational programs the Attorney General may offer to include the records retention procedure.
- Moves the date for meetings of a county microfilming board from the third Monday in January to the second Monday in January.
- Prohibits the use of any institution, structure, equipment, or physical asset that is owned, leased, or controlled by the state or any political subdivision, with limited exception, for performing or inducing a nontherapeutic abortion.
- Establishes procedures for the exclusion of a municipal corporation from the territory of a sanitary district established solely for the reduction of biting arthropods.
- Authorizes boards of township trustees to make and enforce all needful rules and regulations for burial, interment, reinterment, or disinterment in the township cemetery.
- Specifies that notices of sheriff sales must be published at least once a week for three consecutive weeks before the day of the sale.
- Specifies that disbursements of certain fees collected by local trial courts are subject to appropriation by the board of county commissioners or, in the case of certain fees collected by municipal courts that are not county-operated, subject to appropriation by the legislative authority of the municipal corporation.

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 a few 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 provisions²¹⁸ 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. 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 and various R.C. sections in the bill)

In many instances, continuing law or an administrative rule 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 or administrative rule requires a political subdivision to publish a notice or advertisement two or more times

²¹⁸ R.C. 7.14 and 701.04.



in a newspaper of general circulation *and the statute or rule 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 or administrative rule 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 or rule, 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 or administrative rule, 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 title, followed by a summary paragraph or statement that clearly describes the specific purpose of the notice or advertisement, and a statement that the notice or advertisement is posted in its entirety on the state public notice web site established by the Office of Information Technology²¹⁹ (see "**State public notice web site**," above). The notice or advertisement also may be posted on the state agency's or political subdivision's web site.

(3) Includes the Internet addresses of the state public notice web site, and of the newspaper's and state agency's or political subdivision's web site, if the notice or advertisement is posted on those web sites, and the name, address, telephone number, and e-mail address of the state agency, political subdivision, or other party responsible for the publication.

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 or administrative rule 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

²¹⁹ See R.C. 125.182.



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) a government rate 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 all legal advertisements and notices be printed in newspapers of general circulation and be posted on the state public notice web site and 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.

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. This limitation does not apply to agreements for the shared collection, enforcement, or administration of taxes. Similarly, the bill does not limit the ability of subdivisions to create and operate joint economic development districts or joint economic development zones.

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.



Regional councils of governments

(R.C. 167.081)

The bill permits a regional council of governments²²⁰ to enter into a contract that establishes a unit price for, and provides upon a per unit basis, materials, labor, services, overhead, profit, and associated expenses for the repair, enlargement, improvement, or demolition of a building or structure if the contract is awarded pursuant to a competitive bidding procedure of a county, municipal corporation, or township or a special district, school district, or other political subdivision that is a council member; a statewide consortium of which the council is a member; or a multistate consortium of which the council is a member. The bill specifies that purchases under such a contract are exempt from any competitive selection or bidding requirements otherwise required by law.

Additionally, the bill permits a county, municipal corporation, or township and a special district, school district, or other political subdivision that is a council member to participate in such a contract. However, such a council member is not entitled to participate in such a contract if it has received bids for the same work under another contract, unless participation in the council's contract will enable the council member to obtain the same work, upon the same terms, conditions, and specifications, at a lower price.

The bill specifies that a public notice requirement pertaining to the contract must be considered to have been met if the public notice is given once a week for at least two consecutive weeks in a newspaper of general circulation within a county in Ohio in which the council has members and if the notice is posted on the council's Internet web site for at least two consecutive weeks before the date specified for receiving bids.

²²⁰ Chapter 167. of the Revised Code permits political subdivisions to enter into an agreement creating a regional council of government to, among other powers, promote cooperative arrangements and coordinate action among its members, contract among its members and other governmental agencies and private entities to address problems common to its members, and "perform. . . functions and duties as are performed or capable of performance by the members and necessary or desirable for dealing with problems of mutual concern." Governmental council members, the state, and the federal government may give the regional council moneys, real and personal property, and services. Any political subdivision may contract with the regional council to provide a service to or receive a service from the council, or authorize the council to perform any function or render any service on behalf of the political subdivision.



Sale and leaseback agreements for county buildings

(R.C. 307.093)

The bill authorizes a board of county commissioners to enter into a sale and leaseback agreement under which the board agrees to convey a county-owned building to a purchaser who is obligated, immediately upon closing, to lease the building back to the board. The sale and leaseback agreement is to obligate the lessor to make improvements to the building, including renovations, energy conservation measures, and other measures that are necessary to improve the functionality and reduce the operating costs of the building. This authority is not subject to the limitations imposed by current law with respect to the sale and lease of county property.

Lake Facilities Authority

(R.C. 353.01 to 353.17 and 5705.55 with conforming changes in R.C. 133.01, 135.80, 309.09, 4928.01, 5705.01, 5709.19, and 5739.026)

Authorization and creation

(R.C. 353.01 and 353.02)

The bill authorizes one or more boards of county commissioners of one or more counties that contain property in a "distressed watershed" to create by resolution a Lake Facilities Authority (LFA or Joint LFA) to rehabilitate, improve, or promote the watershed. The resolution must contain a finding that the watershed is a "distressed watershed." A distressed watershed is one that meets all of the following conditions:

(1) The last resolution necessary to create the LFA is adopted by the end of the second calendar year following the year in which the watershed was designated by the Director of Natural Resources as a "watershed in distress" pursuant to R.C. 1511.02.²²¹

(2) The watershed contains territory in a state park that has averaged at least 400,000 visitors per year for the four calendar years immediately preceding the year in which the last resolution is adopted.

(3) The watershed contains a natural or man-made lake of at least one-half square mile that, within the last two years, has experienced levels of microcystin toxins in excess of 80 ppb, as measured by the Ohio EPA.²²²

²²¹ In a report dated January 18, 2011, DNR's Division of Soil and Water Resources designated the Grand Lake St. Mary's Watershed as a watershed in distress under this statute. The watershed is located primarily in Mercer County with some territory in Western Auglaize County.



Within 60 days after the creation of an LFA, the county engineer of each county with territory in the distressed watershed is required to prepare a survey denoting the distressed watershed's boundaries in the county. (The territory of a watershed is determined by the U.S. Geological Survey.) The cost of the survey may be paid by the LFA if requested by all county engineers conducting the survey. Each participating county may advance funds to the LFA for that purpose.

Once an LFA is created, no special district with powers or duties similar to the LFA's may be created if the district would include territory in the "impacted lake district," which is defined to mean the territory of all townships and municipal corporations with any territory in the distressed watershed.

Governance and regulation

(R.C. 353.04)

An LFA is governed by a board of directors, consisting of the county commissioners of each county with territory in the impacted lake district. Its fiscal officer and legal advisor are the county auditor and county prosecutor, respectively, of the county with the greatest amount of territory in the distressed watershed. The county prosecutor is required to prosecute and defend all suits and actions the LFA directs or to which the LFA is a party.

The LFA board is subject to open meetings and public records laws. The board may hold closed meetings and protect confidential information under the same circumstances as authorized for a community improvement corporation under R.C. 1724.11 (generally, financial or proprietary information submitted by a business in relation to the relocation or expansion of the business is confidential). Laws regarding sovereign immunity for public employees apply to the LFA.

The board is required to consult with an advisory council, consisting of one appointee from each political subdivision with territory in the impacted lake district. The board must provide notice of the LFA's existence and the process for the appointment of an advisory council to each such political subdivision within 60 days after the LFA's creation.

²²² Microcystin toxins are released by microcystis, or cyanobacterium, which are single-celled blue green alga that occur naturally in surface waters. Microcystis can proliferate to form dense blooms and mats under certain conditions. Ingestion of water or algal cells containing microcystin has produced adverse effects in fish, dogs, cats, livestock and humans. See State of California, Office of Health Hazard Assessment, <http://oehha.ca.gov>.

Each year, the board is required to prepare an annual report of its activities and make it available to the public.

General powers

(R.C. 353.03)

In addition to the authority to incur and pay the costs of activities that remediate, rehabilitate, enhance, foster, aid, improve, provide, or promote a distressed watershed, the bill grants the following general powers to an LFA. The LFA may:

- Acquire, improve, or sell real and personal property;
- Adopt and enforce reasonable rules governing the use of distressed watersheds;
- Employ managers, administrative officers, agents, engineers, architects, attorneys, contractors, sub-contractors, and employees, and require bonds to be given by any such persons and by officers of the authority for the faithful performance of their duties;
- Sue and be sued;
- Make and enter into contracts and agreements and execute instruments (see "**Construction contracts; prevailing wage**");
- Accept aid or contributions;
- Apply for and accept grants, loans, or commitments of guarantee or insurance, including any guarantees of its bonds and notes;
- Procure insurance;
- Maintain funds or reserves as it considers necessary for the efficient performance of its duties;
- Enforce any covenants running with the land, of which the lake facilities authority is the beneficiary;
- Waive, reduce, or terminate any LFA development charge to the extent not needed (see "**Property charge**");
- Appropriate land, easement, rights, rights-of-way, franchises, or other property in the distressed watershed;



- Issue general obligation bonds or notes for the remediation of a distressed watershed if approved by electors residing in the impacted lake district, not to exceed one mill per dollar of taxable value (0.1%) of all property within the impacted lake district;
- Issue revenue bonds beyond the limit of bonded indebtedness provided by law (see "**LFA revenue bonds**");
- Advise and provide input to political subdivisions within the impacted lake district with respect to zoning and land use planning within the impacted lake district;
- Enter into agreements for the management, ownership, possession, or control of lands to be used for wetland mitigation banking;
- With the approval of the Director of Natural Resources with respect to a state park, charge user fees within the distressed watershed, including, but not limited to, dock fees and campsite fees.

Construction contracts; prevailing wage

(R.C. 353.03(F))

With respect to contracts for the construction of buildings, structures, or other improvements exceeding \$25,000, the LFA is required to use a competitive bidding process and to select the lowest responsive and responsible bidder, who must be determined in accordance with a general law governing the factors to be applied in determining responsive and responsible bids (R.C. 9.312). In certain circumstances, the board may decline to use the competitive bidding process:

- There exists a real and present emergency that threatens damage to property or injury to persons of the lake facilities authority or other persons.
- A commonly recognized industry or other standard or specification does not exist and cannot objectively be articulated for the improvement.
- The contract is for any energy conservation measure.
- With respect to material to be incorporated into the improvement, only a single source or supplier exists.
- A single bid is received.



With respect to any construction contract, the LFA may choose to subject the project to prevailing wage requirements.

LFA revenue sources

In addition to issuing general obligation bonds and charging dock fees (see "**General powers**"), the bill authorizes an LFA to generate revenue by means of a property tax, property charge, lodging tax, revenue bonds, and anticipation bonds and notes. In addition, a county is authorized to levy any unused sales tax authority or re-designate the purpose of a sales and use tax it currently levies to provide funds to an LFA.

Property tax

(R.C. 353.05 and 5705.55)

The LFA board of directors, by vote of two-thirds of all its members, may levy a property tax on all taxable property in the impacted lake district. The tax must be approved by impacted lake district electors. The tax may be levied for current expenses, permanent improvements, debt charges, or park and recreation purposes. The tax rate may not exceed one mill per dollar of taxable value (0.10%). The levy's duration may not exceed five years unless the tax is levied for debt purposes, in which case it must be levied for the duration of the bond indebtedness. The resolution proposing the tax must be certified by the LFA to the county board of elections at least 90 days before the election. Ongoing law regarding the submission of a property tax to voters applies to the LFA tax.

If an LFA levies a property tax for a tax year, no other taxing authority may levy a tax on property in the impacted lake district in the same year if the purpose of the levy is "substantially the same as" the purpose for which the LFA was created. (The bill does not address how this would be determined or by whom.)

Property charge

(R.C. 353.06)

An LFA board of directors may levy a "development charge" on property within the distressed watershed for any purpose for which the LFA was created. The charge must be approved by the electors of the distressed watershed. The charge may be apportioned to each parcel according to the benefit conferred on the property by the LFA remediation efforts or by the measurable pollution or other harm caused by the property owner. In no case, however, may the charge exceed one mill per dollar (0.1%) of the true value of the property. The charge may be levied for up to 30 years.



The LFA board must prepare a list of all properties to be subject to the charge and the estimated amount of the charges. Not later than 30 days before the election, the board must place the listing on file in the LFA office and give notice by publication to property owners to be assessed. If voters approve the charge, at least 30 days after the election the board must provide a final assessment notice by mail to each property owner for the first year of the charge, which the property owners must then pay. Thereafter, the charge will be collected in the same manner as property taxes. Unpaid charges are subject to a 10% penalty and interest at the same rate as is charged for late property tax payments.

LFA lodging tax

(R.C. 353.07)

The resolution creating the LFA may authorize it to levy a lodging tax in the impacted lake district with voter approval. The tax would apply to all transaction by which lodging in a hotel or rental of a public or private campground is furnished to transient guests. The tax may be levied to pay the cost of permanent improvements, to pay debt charges on LFA tax anticipation bonds, or for LFA current expenses. The rate of the tax, when added to the aggregate rate of all other lodging taxes applicable in the impacted lake district, may not cause the total aggregate rate to exceed 5%.

Anticipation bonds and notes

(R.C. 353.09)

The bill authorizes an LFA that levies a property tax or development charge to anticipate the proceeds of the tax or charge by issuing anticipation bonds. In anticipation of the bond proceeds, the LFA also may issue anticipation notes. The notes appear required to mature not later than 20 years after their issuance, and the bonds appear required to mature not later than 40 years after issuance. Bond proceeds are to be pledged to the payment of the notes, and proceeds from the tax or charge are to be pledged to the payment of the bonds. The bill states that the anticipation bonds and notes satisfy the Constitution's "sinking fund" requirement that prohibits debt issuance unless a tax is levied sufficient to meet ongoing debt charges.

LFA revenue bonds

(R.C. 353.10 to 353.17)

The bill authorizes an LFA to issue revenue bonds in such amounts as the LFA considers necessary. The bonds are to be paid out of the revenues of the LFA that are pledged for such payment. The LFA may retire revenue bonds with revenue refunding bonds. Revenue bonds issued in the form of a note must mature not later than five



years after issuance, and bonds must mature not later than 45 years from the date of issuance. The bonds may be sold at a public auction or through a private sale. The bonds and notes do not constitute a debt, or a pledge of the full faith and credit, of the state or any political subdivision.

Wetland mitigation banking

(R.C. 353.08)

The bill authorizes the Director of Natural Resources to transfer real property owned by the state to an LFA for the purpose of promoting wetland banking, wildlife, or sporting activities. Also, the Division of Wildlife within the Department of Natural Resources may enter into an agreement with an LFA to establish wetland or natural areas to benefit wildlife or sporting activities.

Alternative energy portfolio requirements

(R.C. 4928.01)

The bill specifies that energy or fuel derived from algae or manure from an impacted lake district is a "renewable energy resource" for purposes of alternative energy resource portfolio requirements for electricity generation under current law. Those requirements generally require electric distribution utilities to generate increasingly greater portions of their overall generating capacity using renewable energy resources.²²³

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."

²²³ R.C. 4928.64, not in the bill.



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.

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

Changes regarding 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 with commission



membership determined by the size of the local government. Under the bill, a commission is *not* established with respect to any village or township with a population of less than 1,000 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.

With regard to commissions for local governments with a population exceeding 1,000, the bill removes the express authorization for a mayor serving on a commission to designate a responsible official or the fiscal officer of the municipal corporation to attend commission meetings when the mayor is absent or unable to attend. Additionally, if a 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 current law, a five-member financial planning and supervision commission must be established for local governments with populations of less than 1,000; a seven-member commission must be established for local governments with a population of 1,000 or more.

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.

Municipal corporation or township 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 municipal corporation or township if **all** of the following conditions apply:

(1) The municipal corporation or township has a population of less than 5,000 as of the most recent federal decennial census.

(2) The municipal corporation or township has been under a fiscal emergency for at least four consecutive years.

(3) Implementation of the municipal corporation's or township'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 appoint a receiver. The receiver, under court supervision, is to work with executive and legislative officers of the municipal corporation or township to wind up the affairs of the municipal corporation or township and dissolve it in accordance with the current law governing village dissolution and township boundary changes.

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, fiscal watch, or fiscal caution including technical and support services. If necessary, the Controlling Board may 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.²²⁴

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.

²²⁴ Ohio Constitution, Article XVIII, Sec. 3; see *Northern Ohio Patrolmen's Benevolent Ass'n v. Parma* (1980), 61 Ohio St.2d 375.



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, veterans service commission, clerk of the juvenile court, clerks of court for all divisions of the courts of common pleas, including the clerk of the court of common pleas, clerk of a county-operated municipal court, and clerk of a county court, and any agency, department, or division under the authority of, or receiving funding in whole or in part from, any of those county offices.

The bill defines and limits the types of human resources services that a board of county commissioners may centralize. "Human resources" is defined as any and all functions relating to human resource management, including civil service, employee benefits administration, collective bargaining, labor relations, risk management, workers' compensation, unemployment compensation, and any human resource management function required by state or federal law, but "human resources" does not authorize a board of county commissioners to adopt a resolution establishing a centralized human resource service that requires any county office to conform to any classification and compensation plan, position description, or organizational structure; to determine the rate of compensation of any employee appointed by the appointing authority of a county office or the salary ranges for positions of a county office within the aggregate limits set in the board's appropriation resolution; to determine the number of or the terms of employment of any employee appointed by the appointing authority of a county office within the aggregate limits set in the board's appropriation resolution; or to exercise powers relating to the hiring, qualifications, evaluation, suspension, demotion, disciplinary action, layoff, furloughing, establishment of a modified work-week schedule, or the termination of any employee appointed by the appointing authority of any county office.

Before adopting a resolution establishing a centralized service, the board of county commissioners, in a written notice, must inform any county office that will be impacted by the resolution of the board's desire to establish a centralized service or services. The written notice must include a statement that provides the rationale and the estimated savings anticipated in centralizing a service or services.

In addition, the board may request any other county office to serve as the agent and responsible party for administering a centralized service or services. That county office may enter into an agreement with the board of county commissioners to administer the centralized service or services under the terms and conditions included in the agreement. However, nothing in the centralized service provision authorizes the board of county commissioners to require a county office to serve as the agent and



responsible party for administering a centralized service or services at the board's request.

The resolution establishing a centralized service or services must specify all of the following:

(1) The name of the county office that will be the agent and responsible party for administering a centralized service or services, and if the agent and responsible party is not the board of county commissioners, the designation of the county office that has entered into an agreement with the board to be the agent and responsible party;

(2) Which county offices are required to use the centralized services;

(3) If not all of the centralized services, which centralized service each county office must use;

(4) A list of rates and charges the county office must pay for the centralized services;

(5) 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.

The bill prohibits the board of county commissioners from centralizing services regarding: (1) purchases made with moneys from the special fund designated as "general fund moneys to supplement the equipment needs of the county recorder," from the real estate assessment fund, or from the funds that are paid out of the county general fund for the furtherance of justice, (2) purchases of financial software used by the county auditor, (3) the printing of county property tax bills, (4) the collection of any taxes, assessments, and fees the county treasurer is required by law to collect, or (5) purchases of computers, software, and micrographic equipment used by the county recorder.

The bill provides that nothing in the centralized service provision authorizes the board of county commissioners to have control or authority over funds that are received directly by a county office under another statute, or to control, or have authority regarding, the expenditure or use of these funds.



Continuing education requirements for county recorders

(R.C. 317.06)

The bill requires a county recorder who is newly elected to a full term of office to attend and successfully complete at least 15 hours of continuing education courses during the first year of the recorder's term of office, and to complete at least another eight hours of those courses each year of the remaining term. If elected to a subsequent term of office, the bill requires the county recorder to attend and successfully complete at least eight hours of continuing education courses in each year of that subsequent term of office. In 86 counties, county recorders are elected for a term of four years.²²⁵ Summit and Cuyahoga counties, which have charters, do not have county recorders but instead have officers that function like county recorders. It appears that under both charters, those officers would have to comply with the bill's continuing education requirements.²²⁶

Approval of continuing education courses

To be counted toward the continuing education hours, a course must be approved by the Ohio Recorders' Association. (According to its web site, the Ohio Recorders' Association is composed of a president, vice president, treasurer, and secretary, all of whom are county recorders.)²²⁷ Any county recorder who teaches an approved course is entitled to credit for the course in the same manner as if the county recorder had attended the course. Under the bill, the Association must record and, upon request, verify the completion of the required course work for each county recorder and issue a statement to each county recorder of the number of continuing education hours the county recorder has successfully completed. Each year, the Association must send to the Auditor of State a list of the continuing education courses and the number of hours each county recorder has successfully completed. The Association also must provide a copy of this list to any other individual who requests it.

Failure to complete notices

The bill requires that the Association issue a "failure to complete notice" to any county recorder who is required to complete continuing education courses but fails to successfully complete:

²²⁵ R.C. 317.01, not in the bill.

²²⁶ Section 5.02, Charter of Cuyahoga County; Section 4.01(2), Charter of Summit County, Ohio.

²²⁷ The web site is www.ohiorecorders.com.



◆ At least 15 hours of continuing education courses during the first year of the county recorder's first term of office, or a total of at least 39 hours of those courses by the end of that term, including the 15 hours completed in the first year of the first term;

◆ At least eight hours of continuing education courses each year of any subsequent term of office or a total of at least 32 hours of courses by the end of that subsequent term.

The notice is for informational purposes only and does not affect any individual's ability to hold the office of county recorder.

Costs of continuing education

Under the bill, each board of county commissioners must approve, from money appropriated to the county recorder, a reasonable amount requested by the county recorder to cover the costs the county recorder must incur to meet the continuing education requirements, including registration fees, lodging and meal expenses, and travel expenses.

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.

Joint police districts

(R.C. 505.482, 505.483, 505.484, 505.51, and 505.551; R.C. 109.64, 109.71, 109.801, 133.01, 311.29, 311.31, 504.16, 505.105, 505.106, 505.107, 505.108, 505.109, 505.172, 505.267, 505.43, 505.48, 505.481, 505.483, 505.484, 505.49, 505.491, 505.492, 505.493, 505.494, 505.495, 505.50, 505.511, 505.52, 505.53, 505.54, 505.541, 505.61, 505.67, 509.15, 511.235, 511.236, 737.04, 737.041, 737.40, 955.012, 1533.83, 1545.131, 1545.132, 1547.30, 1547.301, 1547.302, 1547.303, 1547.304, 1907.53, 2151.3515, 2305.232, 2901.01, 2917.40, 2929.71, 2935.01, 2935.03, 2981.11, 2981.13, 3719.141, 3737.73, 3743.06, 3743.19, 3743.52, 3743.53, 3743.54, 3743.64, 3767.32, 3937.41, 4117.01, 4513.39, 4513.60, 4513.61, 4513.62, 4513.63, 4513.64, 4513.66, 4549.17, 4931.40, 5502.52, 5502.522, 5502.61, 5502.68, and 5705.01)

Composition and governance of the district

The bill authorizes boards of township trustees of one or more contiguous townships and the legislative authorities of one or more contiguous municipal corporations, whether or not within the same county, to create, by adopting a joint resolution, a joint police district comprising all or any part of the townships or municipal corporations as are mutually agreed upon. Under current law, boards of township trustees of two or more contiguous townships may form themselves into a joint township police district. The bill's new joint police district replaces that entity, but retains the ability of boards of township trustees of two or more contiguous townships to form a joint police district, instead of a joint township police district. The bill does not affect the authority of a township to create a township police district under continuing law.

The joint police district is formed within 30 days after the favorable vote by the last board of township trustees or the members of the legislative authority of the last municipal corporation joining the district. The governing body of the joint police district is a joint police district board composed of either all of the township trustees of each township and all of the members of the legislative authority of each municipal corporation in the district, as agreed to in the joint resolution, or of an odd number of members as is agreed to in the joint resolution, as long as the members are representatives from each board of township trustees of each township and from the legislative authority of each municipal corporation in the joint police district. The joint police district board organizes in the same manner as is currently required for a joint township police district board, by electing a president, secretary, and treasurer.

The bill requires the treasurer of the joint police district board to execute a bond payable to the state, in the amount and with surety to be approved by the joint police district board, conditioned for the faithful performance of all the official duties required



of the treasurer. The bond must be deposited with the president of the board, and a copy of the bond, certified by the president, must be filed with the county auditor.²²⁸

Members of the joint police district police force

The bill requires the joint police district board, by a majority vote, to appoint a chief of police for the district, to determine the number of patrol officers and other personnel required by the district, and to establish salary schedules and other conditions of employment for the joint police district.²²⁹ This is consistent with how a joint township police district currently functions. The members of the joint police district police force are required to take peace officer training, are the law enforcement officers of the joint police district, and have the same arrest authority and powers as municipal or township police officers.²³⁰

Duties of the joint police district board

The joint police district board has the same powers as a joint township police district board has under current law, including, among other various powers, the power to do the following:

(1) Issue bonds and notes to buy police equipment;²³¹

(2) Levy a property tax on property in the joint police district to defray the district's expenses in providing police protection;²³²

(3) Purchase or otherwise acquire police apparatus, equipment, including a public communications system, or materials that the joint police district requires, and build, purchase, lease, or lease with an option to purchase any building, buildings, or building site or sites necessary for the police operations of the district;²³³

(4) Establish a parking enforcement unit;²³⁴

²²⁸ R.C. 505.484.

²²⁹ R.C. 505.49.

²³⁰ R.C. 109.71 and 505.172.

²³¹ R.C. 133.01, 505.52, and 505.53.

²³² R.C. 505.51 and 5705.01.

²³³ R.C. 505.50.

²³⁴ R.C. 505.541.



(5) Purchase insurance policies to indemnify the chief of police, patrol officers, and other employees of a joint police district against liability arising from the performance of their duties;²³⁵ and

(6) Provide police protection to other political subdivisions as provided by law.

Joining or withdrawing from the joint police district

The bill authorizes a township or municipal corporation, or parts thereof, to join an existing joint police district by adopting a resolution or ordinance, as appropriate, by the entity requesting participation in the district, and upon approval of the existing joint police district board.²³⁶

A township or municipal corporation may withdraw from a joint police district by adopting a resolution or an ordinance, respectively, ordering withdrawal. On or after January 1 of the year following the withdrawal resolution or ordinance, the township or municipal corporation withdrawing ceases to be a part of the district, and the power of the district to levy a property tax in the withdrawing township or municipal corporation terminates. However, the district must continue to levy and collect taxes for the payment of indebtedness in the territory of the district as it was comprised at the time the indebtedness was incurred.

The bill requires that when a township or municipal corporation withdraws from a joint police district, the county auditor must ascertain, apportion, and order a division of the funds on hand and of taxes in process of collection, except for taxes levied for the payment of indebtedness, credits, and real and personal property, on the basis of the valuation of the respective tax duplicates of the withdrawing township or municipal corporation and the remaining territory of the joint police district.

When there is only one township or municipal corporation remaining in the joint police district, the district ceases to exist, and the funds, credits, and property remaining after apportionments to the withdrawing townships or municipal corporations are assumed by the one remaining township or municipal corporation. When the district ceases to exist and an indebtedness remains unpaid, the board of county commissioners must continue to levy and collect taxes for payment of the indebtedness within the territory of the joint police district as it was comprised at the time the indebtedness was incurred.²³⁷

²³⁵ R.C. 505.61.

²³⁶ R.C. 505.482.

²³⁷ R.C. 505.551.



Township noise regulations

(R.C. 505.172)

Under current law, a regulation or order to control noise that is adopted by a board of township trustees applies to any business or industry existing and operating on October 20, 1999, and applies to any new operation or expansion of that business or industry that results in substantially increased noise levels from those generated by that business or industry on that date. The bill eliminates this date restriction and the operation and expansion applicability, and applies a township noise regulation or order to any business or industry, regardless of when it came into existence.

The bill makes it permissive, rather than mandatory, for a board of township trustees to seek an injunction against a person who violates a regulation or order controlling noise.

Township and village competitive bidding thresholds

(R.C. 511.01, 511.12, 515.01, 515.07, 521.05, 731.14, and 5549.21)

The bill increases from \$25,000 to \$50,000 a township's competitive bidding thresholds for all of the following: (1) constructing a memorial building, monument, statue, or memorial, (2) providing artificial lights for any road, highway, public place, or building under its supervision or control when the board of township trustees determines that public safety or welfare requires lighting, (3) lighting improvements for streets and public ways, (4) repairing or maintaining private sewage collection tiles, and (5) purchasing or leasing machinery and tools used on roads and culverts. Current law requires that if the total estimated cost of doing (1) to (5) above exceeds \$25,000, the contract must be let by competitive bidding.

The bill increases from \$10,000 to \$50,000 the threshold for submitting a question to the electors of the township regarding building, improving, enlarging, or removing a town hall.

The bill increases from \$25,000 to \$50,000 the competitive bidding threshold for expenditures of a village, other than the compensation of persons employed in the village, or except where the equipment, services, materials, or supplies are to be purchased under a contract with a regional planning commission or the Department of Administrative Services, or when the equipment, services, materials, or supplies are available, or are required by law to be purchased, from a qualified nonprofit agency. Current law requires contracts made by the legislative authority of a village to be competitively bid when an expenditure exceeds \$25,000.



Police constables – limited home rule township

(R.C. 504.16)

The bill adds, as one of the methods by which a limited home rule township may meet the requirement to provide law enforcement for the township, by designating one or more police constables under continuing law. Under current law, each township that adopts a limited home rule government may also, to fulfill this requirement, establish a police district, establish a joint township police district, or contract to obtain police protection services.

Merger of townships to form a new township

Overview

(R.C. 523.01 to 523.06 and 523.09)

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 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.²³⁸ 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.²³⁹ The bill's new merger procedure does not affect such a merger.

Merger proposed by initiative petition of townships' electors

(R.C. 523.02)

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:

²³⁸ R.C. 709.43 to 709.48.

²³⁹ See Ohio Att'y Gen. Op. No. 2005-024.



(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 120 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. 523.03)

The boards of township trustees may decide to submit a 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 the 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 120 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. 523.04)

Within 120 days 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 operations and organization of 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, 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 120-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. 523.06)

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 the merger agreement. 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 for township officers occurring not less than 90 days after a merger is approved, the electors of the new township must elect three township trustees with staggered terms of office. The first terms following the election must be modified to an even number of years not to exceed four to allow subsequent elections for the office to be held in the same year as other township officers.

- ◆ The township fiscal officer of the largest township, by population, is the township fiscal officer for the new township. At the first general election for township officers occurring not less than 90 days 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 Law²⁴⁰ (the Law) that covers any of the employees of the townships merged, the State Employment Relations Board, within 120 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.²⁴¹ Notwithstanding the recognition procedures prescribed in existing law,²⁴² 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 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 Law²⁴³ 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 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

²⁴⁰ R.C. Chapter 117.

²⁴¹ R.C. 4117.06.

²⁴² R.C. 4117.05 and 4117.07.

²⁴³ R.C. 4117.10(A).



bill defines "special purpose district" as any geographic or political subdivision that was created under law by a township merged.) 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. 523.05)

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;
- (5) All other matters not included in this list that are not addressed in the merger agreement.

A new township created by merger is legally obligated for all outstanding franchises, contracts, debts, and other legally binding obligations of each township merged into the new township. A new township is legally responsible for maintaining, defending, or otherwise resolving any and all legal claims or actions of each township merged into the new township.

Waiting period to again propose a merger

(R.C. 523.09)

If a merger is disapproved by a majority of those voting on it in the townships proposed to be merged, an identical merger cannot be considered for at least three years after the date of the disapproval.



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,²⁴⁴ and may enter into contracts for the improvement of the park grounds and the erection of bridges and structures therein.

Board of health

(R.C. 3709.341)

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 for personal services and payrolls from any county fund, for any county office, department, or division that,

²⁴⁴ R.C. 755.19 and 755.20, not in the bill.



during the previous fiscal year, spent 110% 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 two 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.²⁴⁵

²⁴⁵ 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 the township general fund or from other township funds based on the proportion of time that the fiscal officer spends providing services related to each fund. The fiscal officer must document the amount of time spent providing services related to each fund by certification specifying the percentage of time spent working on matters to be paid from the township general fund or other township funds in such proportions as the kinds of services performed.

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 in such proportions as the kinds of services performed may require. The trustee must similarly notify the township fiscal officer of the number of days spent serving the township and the kinds of services rendered on those days. And, under the bill, if a trustee is paid on a salary basis, the trustee must certify the percentage of time spent working on matters to be paid from the township general fund and other township funds in such proportions as the kinds of services performed.

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 municipal corporation or township to join a regional transit authority (RTA) that (1) levies a property tax and (2) includes in its membership political subdivisions that are located in 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, an eligible municipal corporation or township 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 addition is effective six months from the date the result is certified. 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 municipal corporation or township that has created or joined an RTA that (1) levies a property tax and (2) includes in its membership political subdivisions that are located in 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 six months 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 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.

Merger procedures for municipal corporations or municipal corporations and a township

Who may merge

(R.C. 709.43 and 709.44)

The bill authorizes the merger under a new, abbreviated merger procedure of one or more municipal corporations, whether or not adjacent to one another, and an adjacent municipal corporation; the unincorporated area of a township and one or more municipal corporations; or one or more municipal corporations, whether or not adjacent to one another, and an adjacent unincorporated area of a township. Under current law, the territory of one or more municipal corporations, whether or not adjacent to one another, may merge with an adjacent municipal corporation, and the unincorporated area of a township may merge with one or more municipal corporations under a procedure whereby a petition proposing a merger is filed with the board of elections and the electors choose a commission to draw up a statement of conditions for merger.²⁴⁶ This "commission process" for merging is not affected by the bill, other than that the bill now authorizes one or more municipal corporations, whether or not adjacent to one another, and an adjacent unincorporated area of a township to also use the existing commission process to propose a merger, as well as the new, abbreviated merger procedure.

²⁴⁶ R.C. 709.45, not in the bill.



The new merger procedure

(R.C. 709.451)

In lieu of filing a petition for merger under the commission process, if the legislative authorities of each political subdivision that may be merged under the bill agree to a merger and adopt, by a two-thirds vote of each legislative authority, an ordinance or resolution approving a merger, the new merger procedure may be used, and no election of a commission to draw up a statement of conditions for merger of the political subdivisions is held. Instead, the legislative authorities of those political subdivisions have 120 days to enter into a merger agreement that specifies the conditions of the proposed merger, in identical ordinances or a resolution that are adopted by a simple majority vote of each legislative authority. At a minimum, the proposed merger agreement must include all of the following:

(1) The names of the municipal corporations and township, if any, agreeing to the merger;

(2) The territorial boundaries of the resulting municipal corporation or township;

(3) The date that the merger will take effect;

(4) A procedure for the efficient and timely transition to the resulting municipal corporation or township of specified services, functions, and responsibilities from each municipal corporation or township and its respective departments and agencies;

(5) A transition plan and schedule.

A merger becomes effective on the 120th day after the adoption of the last ordinance or resolution supporting the proposed merger unless, prior to the expiration of the 120-day period, a referendum petition is filed.

Merger under the new procedure subject to referendum

(R.C. 709.451(C))

A qualified elector of a municipal corporation or township proposed for merger, not later than 120 days after the last merger ordinance or resolution is adopted, may present to the legislative authority of that municipal corporation or township a referendum petition, signed by a number of qualified electors residing in the municipal corporation or township, equal in number to not less than 10% of the total vote cast in the municipal corporation or township for the office of Governor at the most recent general election at which a Governor was elected, requesting the legislative authority to



submit the question of the merger to the electors of the municipal corporation or 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 continuing law.²⁴⁷

The referendum petition must be filed with the clerk of the legislative authority of the municipal corporation that is the subject of the petition and the township clerk 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 day, the date, and the purpose of the petition. The clerk causes the appropriate board of elections to check the sufficiency of signatures on the referendum petition, and if the signatures are found to be sufficient, must present the petition to the legislative authority at a meeting of the legislative authority that occurs not later than 30 days following the filing of the petition.

Upon presentation of the petition to the legislative authority, the legislative authority must 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 legislative authority, 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 legislative authority 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 municipal corporation or 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 municipal corporation or township for the election of officers. Notice of the election must be published in a newspaper of general circulation in the municipal corporation or 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 also 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 municipal corporations and township, if any, that are proposed for merger, the boundaries of the entity created as the result of the merger, and the time and place of the election.

²⁴⁷ R.C. 3501.38, not in the bill.



The form of the ballots cast at the election is prescribed by the bill and asks whether a merger should occur, naming the merging municipal corporations and township, if any.

A merger for which a referendum vote has been requested cannot be put into effect unless a majority of the votes cast on the issue in the municipal corporation or township that is the subject of the referendum petition are in favor of the merger. Upon certification by the board of elections that the merger has been approved by the electors, the merger takes immediate effect.

Question of merger may be submitted to electors

(R.C. 709.452)

The legislative authority of each municipal corporation or township proposed for merger that adopts a merger agreement under the bill's new merger procedure may submit the question of merger to the electors of the municipal corporations and township proposed for merger. The legislative authorities may certify the ordinances or resolution that adopted the merger agreement to the board or boards of elections (if the territory proposed for merger is located in more than one county) directing the submission of the question of merger to the electors of the municipal corporations and township proposed for merger at a special election to be held on the day of the next primary or general election in the county or counties that occurs not less than 90 days after the ordinances or resolution are certified to the board or boards of elections. The question is to be put on the ballot and voted upon, separately, in each municipal corporation or township proposed for merger.

The ordinances or resolution specifying the merger conditions agreed to by the municipal corporations and township proposed for merger must be posted on the web sites of those municipal corporations and township, and must be published in a newspaper of general circulation in the municipal corporations and township once a week for two consecutive weeks prior to the election.

If the merger is approved by a majority of those voting on it in each municipal corporation or township proposed to be merged, the merger agreement takes immediate effect.



Powers of the merged entity; conflict with charter

(R.C. 709.451(D) and (E) and 709.452(D))

On the effective date of the merger, a municipal corporation merging into a township only has the rights, powers, and responsibilities afforded by law to townships, and all other authority ceases to exist.

If an existing charter of a municipal corporation proposed for merger conflicts with the bill's new, abbreviated merger processes and procedures whereby merger is approved by the legislative authorities or when they submit the question of merger to the electors, the processes and procedures for merger addressed in the municipal corporation's charter apply.

County Automatic Data Processing Board

(R.C. 307.847)

Replacement of county records commission and county microfilming board

In lieu of having a county records commission and a county microfilming board, the bill permits a board of county commissioners, by resolution, to require the county automatic data processing board to coordinate the management of information resources of the county, the records and information management operations of all county offices, and the various records and information technologies acquired and operated by county offices. The resolution requiring the board to assume these duties must specify the date on which the county records commission and the county microfilming board no longer exist.

For counties that do not, by resolution, require the county automatic data processing board to assume additional duties, the bill expands the board's authority to include electronic data processing equipment.²⁴⁸

Current law authorizes a board of county commissioners to establish a county microfilming board to coordinate the use of all microfilming equipment in use throughout the county offices. And, current law establishes a county records commission in each county to provide rules for retention and disposal of records of the county and to review applications for one-time disposal of obsolete records and schedules of records retention and disposition submitted by county offices. The bill permits these functions to be merged into the county automatic data processing board,

²⁴⁸ R.C. 307.84, 307.842, 307.843, and 307.846.

which may be established under current law to coordinate the use of all automatic data processing equipment in use throughout the county offices.

For those counties that do not merge its functions under the authority in the bill, the bill expands the authority of a county microfilming board to include other image processing equipment, software, or services.²⁴⁹

Membership of the board

If the duties of the county automatic data processing board are so expanded, the prosecuting attorney, county engineer, county coroner, sheriff, and a judge of the court of common pleas selected by a majority vote of all judges of the court must be added to the membership of the board. Any of these additional members may designate a representative to serve on that member's behalf.

These new members would be added to the members of the automatic data processing board, as specified in current law. Those current members include the county treasurer or the county treasurer's representative, the county recorder or the county recorder's representative, the clerk of the court of common pleas or the clerk's representative, a member or representative of the board of county commissioners chosen by the board, two members or representatives of the board of elections chosen by the board of elections (one of whom shall be a member of the political party receiving the greatest number of votes at the most recent general election for the office of Governor and one of whom shall be a member of the political party receiving the second greatest number of votes at such an election), if the board of elections desires to participate, and the county auditor or the county auditor's representative, who serves as secretary of the board. Additionally, current law permits the members of the county automatic data processing board to add to the board any additional members whose officers use the facilities of the board, by majority vote of the board.

New duties of the county automatic data processing board

After a resolution is adopted under the bill's provisions, no county office is permitted to purchase, lease, operate, or contract for the use of any of the following, without prior approval of the board:

- Automatic data processing equipment, software, or services;
- Microfilming equipment or services;²⁵⁰

²⁴⁹ R.C. 307.80, 307.802, 307.803, and 307.806.

- Records center or archives facilities; or
- Any other image processing or electronic data processing or record-keeping equipment, software, or services.

The board is permitted to adopt rules as it considers necessary for its operation, but no rule may derogate the authority or responsibility of any county elected official. The board's rules may include any regulations or standards the board wishes to impose.

Transfer of duties

In the resolution expanding the duties of the county automatic data processing board, the board of county commissioners is required to designate the date on which all equipment, records, files, effects, and other personal property; contractual obligations; and assets and liabilities of the county records commission and the county microfilming board will be transferred to the county automatic data processing board.

For purposes of succession to the functions, powers, duties, and obligations of the county records commission and the county microfilming board transferred to the county automatic data processing board, the county automatic data processing board is deemed to constitute the continuation of the county records commission and the county microfilming board, as applicable. Any business, proceeding, or other matter undertaken or commenced by the county records commission or the county microfilming board pertaining to or connected with the functions, powers, duties, and obligations transferred or assigned and pending on the date of the transfer of duties to the county automatic data processing board must be conducted, prosecuted or defended, and completed by the county automatic data processing board in the same manner and with the same effect as if conducted by the county records commission or the county microfilming board. In all such actions and proceedings, the county automatic data processing board is to be substituted as a party.

All rules, acts, determinations, approvals, and decisions of the county records commission or the county microfilming board pertaining to the functions transferred and assigned to the county automatic data processing board that are in force at the time of the transfer or assignment are required to continue in force as rules, acts, determinations, approvals, and decisions of the county automatic data processing board until they are duly modified or repealed by the board.

²⁵⁰ This provision does not apply to a county hospital when the county hospital uses microfilming to record and store for future access physical and psychiatric examinations or treatment records of its patients. However, the county hospital is required to participate, at the request of the county automatic data processing board, in purchasing film and equipment and in entering into contracts for services for microfilming.

Wherever the functions, powers, duties, and obligations of the county records commission or the county microfilming board are referred to or designated in any law, contract, or other document, the reference or designation must be deemed to refer to the county automatic data processing board, as appropriate. No existing right or remedy of any character is lost, impaired, or affected by reason of the transfer of duties to the county automatic data processing board, except insofar as those rights and remedies are administered by the county automatic data processing board.

Centralized and decentralized facilities

The bill permits the county automatic data processing board to establish an automatic data processing center, microfilming center, records center, archives, and any other centralized or decentralized facilities it considers necessary to fulfill its duties. Any such centralized facilities must be used by all county offices. The establishment of either centralized or decentralized facilities is contingent on the appropriation of funds by the board of county commissioners. And, the county auditor will be the chief administrator of either centralized or decentralized facilities.

Revenues and expenditures

The bill requires the county auditor to prepare an annual estimate of the revenues and expenditures of the county automatic data processing board for the ensuing fiscal year and submit it to the board of county commissioners. The estimate must be sufficient to take care of all the needs of the county automatic data processing board, including, but not limited to, salaries, rental, and purchase of equipment.

The board's funds must be disbursed by the county auditor's warrant drawn on the county treasury five days after receipt of a voucher approved by a majority of that board and by a majority of the board of county commissioners.

On the first Monday in April of each year, the county auditor must file with the county automatic data processing board and the board of county commissioners a report of the operations of each center and a statement of each center's receipts and expenditures during the preceding calendar year.

Contracts for the provision of services to other entities

With the approval of the board of county commissioners, the bill permits the county automatic data processing board to enter into a contract with the legislative authority of any municipal corporation, township, port authority, water or sewer district, school district, library district, county law library association, health district, park district, soil and water conservation district, conservancy district, other taxing district, or regional council, or with the board of county commissioners or the automatic



data processing board or microfilming board of any other county, or with any other federal or state governmental agency, to provide microfilming, automatic data processing, or other image processing or electronic data processing or record-keeping services to any of them. The board is required to establish a schedule of charges upon which the cost of providing such services will be based. All moneys collected by the board for services rendered pursuant to such contracts must be deposited in the county general fund, although these moneys may be segregated into a special fund in the county treasury until the end of the calendar year. County offices also may be charged for such services and the appropriations of those offices so charged and the appropriation of the county automatic data processing board so credited.

Licensing and inspection of marinas

(R.C. 3709.09, 3733.21, 3733.22 (repealed), 3733.23 (repealed), 3733.24 (repealed), 3733.25 (repealed), 3733.26 (repealed), 3733.27 (repealed), 3733.28 (repealed), 3733.29 (repealed), 3733.30 (repealed), and 3733.99; R.C. 3701.83 and 3709.092 (for cross-references); Section 737.15)

The bill repeals the statutes governing the licensure and inspection of marinas, including the requirement that the Public Health Council adopt rules for that purpose. It instead requires a board of health within whose jurisdiction a marina is located to adopt rules governing the inspection of and issuance of licenses for marinas. The rules must require at a minimum annual inspections. In addition, the rules may include provisions for the levying of a fee for a marina license. The fee must be established in accordance with the Health Districts Law. The bill establishes procedures for the transition from the operation of the Public Health Council rules governing marinas in a health district in which a marina is located on the provision's effective date to the applicable board of health's rules.

The bill retains current law stating that a marina is a boat basin that has docks or moorings for seven or more watercraft. A dock is a structure or platform designed to provide access to or an area to secure a watercraft.

Current law

Currently, the Public Health Council must adopt rules governing the licensure and inspection of marinas in order to ensure that the marinas provide adequate sanitary facilities and that marinas are operated in a sanitary manner. Current law prohibits a person from constructing or altering a marina unless the Director of Health has approved the plans as providing adequate sanitary facilities. In addition, a person cannot operate a marina without a license issued by the board of health of the health district in which the marina is located. However, the Director of Health may become



the licensor in a health district if the Director determines that the board of health is not complying with the Marinas Law and rules adopted under it. A license may be denied, suspended, or revoked.

A board of health must determine any fee for the license in accordance with the Health Districts Law. The fee must include any additional amount determined by rule of the Public Health Council, which must be credited to the existing General Operations Fund. The portion of any fee retained by the health district must be paid into a special fund of the health district. The money from the fee must be used by the Director and the board for the administration of the Marinas Law and rules adopted under it.

A board annually must inspect each marina, keep a record of the inspection, and require each marina to comply with the Marinas Law and rules adopted under it. A board also must certify to the Director that a marina has been licensed and is in satisfactory compliance with that Law and the rules. Finally, current law provides for enforcement of that Law and the rules.

Licensing and inspection of agricultural labor camps

(R.C. 3733.42 (repealed and reenacted), 3733.41, 3733.43 (repealed), 3733.431 (repealed), 3733.44 (repealed), 3733.45 (repealed), 3733.46 (repealed), 3733.47 (repealed), 3733.471 (repealed), 3733.48 (repealed), 3733.49 (3733.43), 3733.99; R.C. 3701.83, 3733.41, 4141.031, and 5321.01 (for cross-references); Section 737.11)

The bill repeals most of the statutes governing the licensure and inspection of agricultural labor camps, including the requirement that the Public Health Council adopt rules for that purpose. It instead requires a board of health within whose jurisdiction an agricultural labor camp is located to adopt rules governing the inspection of and issuance of licenses for agricultural labor camps. The rules must require at a minimum annual inspections. In addition, the rules may include provisions for the levying of a fee for an agricultural labor camp license. The fee must be established in accordance with the Health Districts Law. The bill establishes procedures for the transition from the operation of the Public Health Council rules governing agricultural labor camps in a health district in which an agricultural labor camp is located on the provision's effective date to the applicable board of health's rules.

The bill retains the Office of the Migrant Agricultural Ombudsperson under the Director of Job and Family Services. It also retains the description of an agricultural labor camp as an area established or used as temporary living quarters for two or more families, or five or more people, who are engaged in agriculture or food processing.

Current law

Currently, the Public Health Council must adopt rules having a uniform application throughout the state governing the issuance of licenses, location, layout, construction, approval of plans, sanitation, safety, operation, use, and maintenance of agricultural labor camps. The rules must include minimum standards of habitability. The rules also must establish additional voluntary standards of habitability for those camps and priorities for those additional standards.

The Director of Health is responsible for the administration and enforcement of the Agricultural Labor Camps Law and rules adopted under it. However, the Director may delegate the Director's authority to the local board of health within whose jurisdiction an agricultural labor camp is located.

A person who intends to operate an agricultural labor camp annually must apply for a license from the Director of Health or a local board of health, as applicable. The application must be accompanied by a \$75 license fee and any plans for the camp required in rules. The applicant also must submit a fee of \$10 for each housing unit in the camp. A license may be denied, suspended, or revoked.

The Director of Health or the local board of health, as applicable, must inspect an agricultural labor camp at least once a year. The applicable inspector must issue an annual report of the inspections conducted at each agricultural labor camp. The report must include the number of inspections, the number of violations found, and any action taken in regard to violations. Finally, current law provides for enforcement of the Agricultural Labor Camps Law and rules adopted under it.

County sewer district and regional water and sewer district contracts

(R.C. 6103.04, 6117.05, 6119.061)

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.

The bill also establishes new requirements applicable to regional water and sewer districts. Similar requirements exist regarding county sewer districts in current law and are established by the bill.

Under the bill, whenever any portion of a regional water and sewer district is incorporated as, or annexed to, a municipal corporation, the area so incorporated or annexed must remain under the jurisdiction of the district for purposes of the acquisition, construction, or operation of a water resource project until the project has been acquired or completed or is abandoned by the district. The board of trustees of the district, unless and until a conveyance is made to a municipal corporation (see below), must continue to have jurisdiction in the area so incorporated or annexed with respect to the management, maintenance, and operation of all water resource projects so acquired or completed or previously acquired or completed, including the right to establish rules and rates and charges for the use of, and connections to, the projects. The incorporation or annexation of any part of a district cannot affect the legality or enforceability of any public obligations issued or incurred by the district to provide for the payment of the cost of acquisition, construction, maintenance, or operation of any water resource project or the validity of any assessments levied or to be levied on properties within the area to provide for the payment of the cost of acquisition, construction, maintenance, or operation of the project.

The bill authorizes the board of trustees of a regional water and sewer district to convey, by mutual agreement, to a municipal corporation any completed water resource project acquired or constructed for the use of, or service of property located in, the regional water and sewer district, or any part of that project to which any of the following applies:

- (1) The project is located within the municipal corporation or within any area that is incorporated as, or annexed to, the municipal corporation.
- (2) The project serves the municipal corporation or any area that is located within or that is incorporated as, or annexed to, the municipal corporation.
- (3) The project is connected to water supply or sanitary, drainage, prevention, or replacement facilities of the municipal corporation.



The conveyance must be completed with terms and for consideration that may be negotiated. Upon and after the conveyance, the municipal corporation must manage, maintain, and operate the water resource project in accordance with the agreement. The board of trustees may retain the right to the joint use of all or part of any project so conveyed for the benefit of the district. Neither the validity of any assessment levied or to be levied, nor the legality or enforceability of any public obligations issued or incurred, to provide for the payment of the cost of the acquisition, construction, maintenance, or operation of the project or any part of the project is affected by the conveyance.

County public defender salaries

(R.C. 120.40)

Existing law prohibits the pay ranges established by a board of county commissioners for a county public defender and staff, and the pay ranges established by a joint board of county commissioners for the joint county public defender and staff from exceeding the pay ranges assigned under Ohio law for comparable positions of the Ohio Public Defender and staff. The bill retains this provision for the staff of a county public defender and a joint county public defender but prohibits the pay ranges established for a county public defender and a joint county public defender from exceeding the pay ranges assigned for county prosecutors.

Political subdivision funds and nontherapeutic abortions

(R.C. 124.85 (renumbered as 9.04))

The bill prohibits the use of political subdivision funds, other than those of municipal corporations and certain counties that have adopted a charter under Article X, Section 3 of the Ohio Constitution and are exercising local self-government powers, from being expended, directly or indirectly, to pay for any health care policy, contract, or plan that provides coverage, benefits, or services related to nontherapeutic abortion. "Nontherapeutic abortion" is defined to be any abortion that is performed or induced when the life of the mother would not be endangered if the fetus were carried to term, or when the pregnancy was not the result of a rape or incest reported to law enforcement. Continuing law provides this same prohibition for state funds.

The bill does not prohibit the use of political subdivision funds from being used to pay for a health care policy, contract, or plan that includes a rider or other provision offered on an individual basis that allows an individual who accepts the offer of the rider or other provision to obtain a nontherapeutic abortion if the individual pays for all of the associated costs.



Attorney General collection of political subdivision debts

(R.C. 131.02)

The bill authorizes a political subdivision to certify a receivable to the Attorney General for collection when the receivable becomes 45 days past due if the Attorney General authorizes such certification. Currently, only receivables of the state may be certified to the Attorney General for collection.

Records of municipally owned or operated utilities

(R.C. 149.43)

The bill exempts from public records law usage information, including the names and addresses of specific residential and commercial customers of municipally owned or operated utilities. The bill also states that current public records law permitting journalists to request the address of certain government employees applies to journalistic requests for customer information maintained by a municipally owned or operated public utility. The bill prohibits journalists from requesting private financial information of customers, such as credit reports, and Social Security numbers.

Under current public records law, a "journalist" is a person working for any news medium (such as a newspaper, a radio or television station, or a similar medium) for the purpose of gathering, processing, transmitting, compiling, editing, or disseminating information for the general public.

Consolidation of records retention procedure

(R.C. 149.38, 149.381, 149.39, 149.41, 149.411, 149.412, 149.42, 1901.41, and 3313.29)

The bill consolidates into one provision of law the records retention procedure that currently applies recurrently to municipal corporations, school districts, educational service centers, libraries, special taxing districts, and townships. Under this procedure, records may be disposed of pursuant to an approved schedule of records retention and disposition approved by the appropriate records commission. When the records commission has approved any application for one time disposal of obsolete records or any schedule of records retention and disposition, the commission must send that application or schedule to the Ohio Historical Society for its review. Within a period of 60 days, the Society must complete its review and send the application to the Auditor of State to approve or disapprove within another 60-day period.

Under continuing law, before records are disposed of (the bill clarifies "pursuant to an approved schedule of records retention and disposition") the county records



commission must inform the Ohio Historical Society of the disposal through the submission of a certificate of records disposal (the bill clarifies "for only the records required by the schedule to be disposed of") and must give the society 15 business days to select for its custody those records, from the certificate submitted, that it considers to be of continuing historical value. Thereafter, public libraries and other specified entities must be notified and given an opportunity to select records of continuing historical value. The bill provides that notified entities are responsible for the cost of notification and transportation of the records.

The bill's consolidated procedure incorporates the clarifications above and also provides that during the 60-day review period, the Ohio Historical Society may select for its custody from the application for one-time disposal of obsolete records any records it considers to be of continuing historical value, and must denote upon any schedule of records retention and disposition any records for which it will require a certificate of records disposal before their disposal.

The bill states that the Ohio Historical Society may not review or select for its custody any record (1) the release of which is prohibited by the public record law pertaining to library patron information, (2) containing personally identifiable information concerning public school children without the written consent of the parent of a minor pupil or without the written consent of a pupil who is 18 or over, (3) the release of which would disqualify an educational institution from receiving federal funds under the Family Educational Rights and Privacy Act of 1974.

Attorney General's training programs

(R.C. 109.43(F))

The bill expands the training or educational programs the Attorney General may offer about Ohio's "Sunshine Laws" under current law to include the records retention procedure set forth in the bill.

County Microfilming Board

(R.C. 307.801)

The bill changes the date for meetings of a county microfilming board from the third Monday in January to the second Monday in January.



Use of public facilities for nontherapeutic abortions

(R.C. 5101.57)

The bill prohibits the use of any public facility for performing or inducing a nontherapeutic abortion. "Nontherapeutic abortion" means any abortion that is performed when the life of the mother would not be endangered if the fetus was carried to term or when the pregnancy was not the result of a rape or incest reported to law enforcement. "Public facility" means any institution, structure, equipment, or physical asset that is owned, leased, or controlled by the state or any political subdivision of the state. Included in the definition of "public facility" is any state university, state medical college, health district, joint hospital, or public hospital agency. Municipal corporations, and counties that have adopted a charter under Article X, Section 3 of the Ohio Constitution and are exercising local self-government powers, are exempt from the definition of political subdivision.

Exclusion of municipal corporation from sanitary district established for reduction of biting arthropods

(R.C. 6115.321)

Enactment of ordinance; election

The bill authorizes the legislative authority of a municipal corporation whose territory is included within the territory of a sanitary district that is established solely for the reduction of biting arthropods to enact an ordinance to submit to the electors the question of whether the territory that is currently included in the district should be excluded. If such an ordinance is enacted, the clerk of the legislative authority must transmit a certified copy of it to all applicable boards of elections.

Each applicable board of elections then must submit the proposed question to the electors of the municipal corporation at the next general election occurring subsequent to 90 days after the clerk so certifies the ordinance. A board of elections must publish the full text of the proposed question one time in a newspaper of general circulation in the municipal corporation at least 15 days before the election. If a majority of electors voting on the question vote in favor of the exclusion, the clerk of the legislative authority of the municipal corporation must transmit a copy of the certified election results to the court of common pleas that entered the order that established the sanitary district and the county auditor and county treasurer of each county in which territory of the municipal corporation is located.



Order excluding municipal corporation from sanitary district

The bill requires the applicable court of common pleas, on receipt of a copy of the certified election results, to enter an order on the docket excluding the territory of the municipal corporation from the territory of the sanitary district. The exclusion takes effect on January 1 or July 1, whichever is earlier, following the vote in favor of the exclusion.

Assessments

The bill requires a county auditor, on receipt of a copy of the certified election results, to remove any assessment levied by or for the benefit of the sanitary district under the Sanitary Districts Law on real property that is located within the territory of the municipal corporation that is to become due on or after January 1 or July 1, whichever is earlier, following the vote in favor of the exclusion. It also prohibits a county treasurer, on receipt of a copy of the certified election results, from collecting after January 1 or July 1, whichever is earlier, following the vote any assessment levied by or for the benefit of the sanitary district under that Law on real property that is located within the territory of the municipal corporation.

Township cemeteries

(R.C. 517.06)

The bill authorizes boards of township trustees to make and enforce all needful rules and regulations for burial, interment, reinterment, or disinterment in the township cemetery. Continuing law authorizes the township trustees to make and enforce all needful rules and regulations for the division of the cemetery into lots, for the allotment of lots to families or individuals, and for the care, supervision, and improvement of the lots.

Sheriff sales

(R.C. 2329.26)

The bill requires notices of sheriff sales to be published at least once a week for three consecutive weeks before the day of the sale, rather than, as under current law, at least three weeks before the day of the sale. Under continuing law, lands and tenements taken in execution may not be sold until the officer taking the lands and tenements gives public notice of the date, time, and place of the sale.



Disbursement of court filing fees to be appropriated

(R.C. 1901.261, 1901.262, 1907.261, 1907.262, 2101.162, 2151.541, 2301.031, and 2303.201)

The bill makes certain funds collected by local trial courts subject to appropriation by the local legislative authority.

When a municipal court, a county court, a probate court, a juvenile court, a court of common pleas domestic relations division, or a court of common pleas makes a determination that additional fees are required to computerize the court, to make available computerized legal research services, or to do both, the fees collected, or, if there is a surplus in the fees collected, the surplus, cannot be disbursed without an appropriation by the board of county commissioners in addition to the court order or declaration of surplus required by continuing law. However, in the case of a municipal court that is not county-operated, the fees collected or surplus cannot be disbursed without an appropriation by the legislative authority of the municipal corporation in which the court sits.

Similarly, when a municipal court or county court establishes a fee to defray the cost of establishing dispute resolution procedures, the fees collected, or, if there is a surplus in the fees collected, the surplus, cannot be disbursed without an appropriation by the board of county commissioners in addition to the court order required by continuing law. However, in the case of a municipal court that is not county-operated, the fees collected or surplus cannot be disbursed without an appropriation by the legislative authority of the municipal corporation in which the court sits.

Finally, when a court of common pleas determines that, for the efficient operation of the court, additional fees need to be collected for special projects of the court, the fees collected cannot be disbursed without an appropriation by the board of county commissioners in addition to the court order required by continuing law. And if the additional fees for a special project are terminated, they cannot be transferred to a similar project without an appropriation by the board of county commissioners in addition to the court order required by continuing law.

STATE LOTTERY COMMISSION (LOT)

- Requires the Director of Budget and Management to compare and analyze alternatives in order to convert the state lottery from a state-run entity to a commercially run enterprise.



- Requires the Director to develop a competitive selection process for the selection of an entity or entities to operate and manage the lottery, and permits the Director to hire appropriate experts who are qualified in lottery evaluation and management to assist with this task.
- Requires the Director to report to the General Assembly the Director's proposal for the operation and management of the lottery, and then to propose a request for proposals process to the General Assembly that outlines the appropriate terms and conditions for the operation and management of the lottery.
- Allows the General Assembly to approve or reject the terms and conditions outlined in the request for proposals by joint resolution initiated in the Senate, and, in the absence of such action, permits the Director to move forward with the request for proposals.
- 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.

Operation and management of lottery

(Section 737.40)

The bill requires the Director of Budget and Management to compare and analyze alternatives in order to convert the state lottery from a state-run entity to a commercially run enterprise. The Director must develop a competitive selection process in compliance with the competitive selection procedures of continuing law for the selection of an entity or entities to operate and manage the lottery. The request for proposals must include a provision that the proceeds payable to the bidder are subject to all ordinary taxes.

In completing this task, the Director can hire appropriate experts who are qualified in lottery evaluation and management. However, no entity or advisor is to be paid based upon any contingency contract, agreement, or the value to the state of any subsequent lottery management or operating agreement. Also, no such entity or consultant can bid or participate on any subsequent request for proposals or proposal for operation or management of the lottery.

By December 15, 2011, the Director must report to the General Assembly the Director's proposal for the operation and management of the lottery. The Director's proposal must include methods for realizing optimum value of the lottery for the state



when considering all appropriate factors, including, but not limited to, improvement in the present value of the anticipated existing lottery stream, past performance, anticipated growth, as well as any future growth guarantees, up-front payments, and overall return.

Based upon this report, the Director, by January 15, 2012, must propose a request for proposals process to the General Assembly that outlines the appropriate terms and conditions for the operation and management of the lottery.

Within 90 days of receipt of the Director's proposal, the General Assembly can approve or reject the terms and conditions outlined in the request for proposals by a joint resolution initiated in the Senate. If, however, the General Assembly does not act during this period, the Director can move forward with the request for proposals.

Lottery sales agent licenses

(R.C. 3770.05(G))

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)²⁵¹

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.

²⁵¹ R.C. 3733.01 to 3733.20 under current law are renumbered within the range of 4781.26 to 4781.53 by the bill.

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 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.
- Eliminates a requirement that ADAMHS boards audit all programs and services for which the boards contract.
- 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.
- Provides that a prohibition against an ADAMHS board member being an employee of an agency with which the board contracts for services or facilities does not apply if the board member's employment duties with the agency consist of providing, only outside the district the board serves, services for which the Medicaid program pays.
- 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 if the contracts are for services provided to individuals with mental illness by agencies, institutions, and other entities not owned or operated by ODMH.



- 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 the ODMH Director to accept from a community mental health agency its accreditation from specified national accrediting organizations as evidence that the agency satisfies Ohio's standards for state certification of the agency's services, if the Director determines that the agency's accreditation is current and is appropriate for the services for which the agency is seeking certification.
- Requires the Directors of ODMH and ODADAS, not later than December 31, 2011, and in consultation with persons interested in the issues of residential facilities and community behavioral health services and programs, to identify areas of duplicative documentation requirements, align the documentation standards of ODMH and ODADAS, streamline Ohio's standards regarding facilities and services with federal standards, and promote the integration of behavioral and physical health services.

- Requires ODMH to use money in its Trust Fund to pay for expenditures that ODMH incurs in performing any of its duties under state law rather than for specific mental health purposes.
- Transfers to ODMH (from 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 and continues the requirement that employees in direct care positions undergo criminal records checks.
- Transfers to ODMH (from the Ohio Department of Health (ODH)) responsibility for licensing adult care facilities.
- 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 the ODA Director and 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.
- Requires criminal records checks on applicants for employment with an adult care facility in a position involving direct care to "adult residents," rather than only those positions involving direct care to "older adults" (persons 60 or older).
- 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.
- Authorizes the conveyance of state-owned real estate to the Board of County Hospital Trustees of The MetroHealth System in Cuyahoga County.
- Requires the Director of Mental Health to disburse \$3.4 million from capital appropriation item C58010, Campus Consolidation, to the grantee within 30 days after the conveyance to pay for demolishing the building situated on the real estate.

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.

ADAMHS boards' audit duties

(R.C. 340.03 (primary), 9.03, 340.033, 340.091, 5119.61, 5119.611, 5119.613, 5119.69, 5119.70, 5119.84, and 5119.86; Section 337.20.60)

The bill eliminates a requirement that each ADAMHS board, at least annually, audit all programs and services provided under contract with the board. Under current law, an ADAMHS board, in auditing programs and services, may contract for or employ the services of private auditors. In eliminating the auditing requirement, the bill also eliminates a requirement that a copy of a fiscal audit report be provided to the ODMH Director, State Auditor, and county auditor of each county in the board's district.

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 establishes an exception to a prohibition in current law against an ADAMHS board member from being an employee of any agency with which the board has entered into a contract for the provision of services or facilities. Under the bill, the prohibition does not apply if the board member's employment duties with the agency consist of providing, only outside the district the board serves, services for which the Medicaid program pays.



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. Under the bill, such contracts are not subject to state law governing the state's purchases of services if the contracts are for services provided to individuals with mental illness by agencies, institutions, and other entities not owned or operated by ODMH.

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. 5119.612 (primary) and 5119.611)

Each community mental health agency is required under current law to apply to the ODMH Director for certification of its services. To receive certification, an agency must meet the minimum standards established by the Director.

In lieu of a determination by the ODMH Director of whether a community mental health agency satisfies the minimum standards for certification, the bill requires the Director to accept national accreditation of an applicant's services as evidence that the applicant satisfies the standards for certification. Acceptance of accreditation



applies to an applicant's mental health services, integrated mental health and alcohol and other drug addiction services, or integrated mental health and physical health services.

Requirements for acceptance of accreditation

For an applicant's accreditation to be accepted, the following requirements apply:

(1) The applicant must hold the accreditation from one of the following national accrediting organizations: the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Accreditation;

(2) The accreditation must be for services being provided in Ohio;

(3) The ODMH Director must determine that the accreditation is appropriate for the services for which the applicant is seeking certification;

(4) The applicant must meet any other requirements established in rules to be adopted under the bill.

If the Director determines that the applicant meets these requirements, the bill requires the Director to certify the applicant's services. The bill specifies that the certification is to be issued without further evaluation of the services, except for any visit or evaluation otherwise authorized by the bill (see "**Visiting or evaluating a program for cause**," below).

Review of accrediting organizations

The bill authorizes the ODMH Director to review the national accrediting organizations listed above to evaluate whether the accreditation standards and processes used by the organizations are consistent with service delivery models the Director considers appropriate for mental health services, physical health services, or both. The Director may communicate to an accrediting organization any identified concerns, trends, needs, and recommendations.

Visiting or evaluating a program for cause

The ODMH Director is authorized by the bill to visit or otherwise evaluate a community mental health agency at any time based on cause. Reasons include complaints made by or on behalf of consumers and confirmed or alleged deficiencies brought to the attention of the Director.



Notification of accreditation status changes

Under the bill, the ODMH Director must require a community mental health agency to provide notice not later than ten days after any change in the agency's accreditation status. The agency is permitted to notify the Director by providing a copy of the relevant document the agency received from the accrediting organization.

Submission of major unusual incident reports and cost reports

Under the bill, the ODMH Director must require a community mental health agency to submit reports of major unusual incidents. The bill authorizes the Director to require an agency to submit cost reports pertaining to the agency.

Rules

The bill requires the ODMH Director to adopt rules to implement the bill's provisions regarding the acceptance of a community mental health agency's accreditation for purposes of state certification. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). In adopting the rules, the Director must do all of the following:

- (1) Specify the documentation that must be submitted as evidence of holding appropriate accreditation;
- (2) Establish a process by which the Director may review the accreditation standards and processes used by the national accrediting organizations;
- (3) Specify the circumstances under which reports of major unusual incidents and agency cost reports must be submitted to the Director;
- (4) Specify the circumstances under which the Director may visit or otherwise evaluate a community mental health agency for cause;
- (5) Establish a process by which the Director, based on deficiencies identified as a result of visiting or evaluating an agency, may take a range of corrective actions, with the most stringent being revocation of the agency's certification.

Behavioral health documentation reduction

(Section 337.30.90)

The bill requires the Directors of ODMH and ODADAS, not later than December 31, 2011, and in consultation with persons interested in the issues of mental health residential facilities and community behavioral health services and programs, to do all of the following:



(1) Identify areas of duplicative and unnecessary documentation requirements associated with licensing residential facilities and certifying community behavioral health services and programs;

(2) Align the documentation standards of ODMH and ODADAS;

(3) Streamline the standards of ODMH and ODADAS regarding residential facilities and community behavioral health services and programs with federal standards;

(4) Promote the integration of behavioral and physical health in residential facilities and community behavioral health services and programs.

ODMH Trust Fund

(R.C. 5119.18)

The bill expands ODMH's authority to use its Trust Fund money to pay for any expenditure incurred in performing its duties under state law, rather than for the following specific mental health purposes:

(1) Establishing and supporting a program at the state level to promote a community support system to be available for every alcohol, drug addiction, and mental health service district;

(2) Providing training, consultation, and technical assistance regarding mental health programs and services and appropriate prevention and mental health promotion activities to ODMH employees, community mental health agencies and boards, and other agencies providing mental health services;

(3) Promoting and supporting a full range of mental health services that are available and accessible to all Ohio residents, especially for severely mentally disabled individuals;

(4) Designing and setting criteria for the determination of severe mental disability;

(5) Establishing standards for evaluation of mental health programs;

(6) Promoting, directing, conducting, and coordinating scientific research concerning the causes and prevention of mental illness, methods of providing effective services and treatment, and means of enhancing the mental health of all Ohio residents;



(7) Fostering the establishment and availability of vocational rehabilitation services and the creation of employment opportunities for consumers of mental health services;

(8) Establishing a program to protect and promote the rights of persons receiving mental health services;

(9) Establishing guidelines for the development of community mental health plans and the review and approval or disapproval of such plans;

(10) Promoting the involvement of persons who are receiving or have received mental health services in the planning, evaluation, delivery, and operation of mental health services;

(11) Notifying and consulting with the relevant constituencies that may be affected by rules, standards, and guidelines issued by ODMH;

(12) Providing training regarding the provision of community-based mental health services to ODMH employees who are utilized in state-operated, community-based mental health services;

(13) Providing consultation to the Department of Rehabilitation and Correction concerning the delivery of mental health services in state correctional institutions.

Transfer of Residential State Supplement Program

(R.C. 5119.69, 5119.691, and 5119.692; 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;

(6) Authorizes ODMH to designate an entity as responsible for providing administrative services to the program. For purposes of this requirement, ODMH is authorized to either enter into a contract with, or delegate the responsibility to, an entity to provide the services.

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.

Pre-employment criminal records checks

(R.C. 5119.693)

Current law requires applicants for employment in positions involving providing direct care to individuals under community-based long-term care programs administered by ODA to undergo a criminal records check conducted by the Bureau of Criminal Identification and Investigation. Since ODA certifies adult foster homes, applicants for employment in direct care positions with those homes are subject to the criminal records check requirement. Under current law, ODA must adopt rules regarding the criminal records checks. The rules must specify circumstances under which persons who plead guilty to or are convicted of specified offenses may be employed if they meet personal character standards.²⁵²

In transferring the certification of adult foster homes from ODA to ODMH, the bill continues the criminal records check requirement of applicants seeking employment in direct care positions at adult foster homes. The bill permits, rather than requires, ODMH to adopt rules regarding criminal records checks. The bill also permits, rather than requires, that the rules specify circumstances under which an adult foster home may employ persons who plead guilty to or are convicted of specified offenses but meet personal character standards set by 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.

²⁵² R.C. 173.39 and 173.394.



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.²⁵³

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) Program²⁵⁴ payments, the bill permits, rather than requires, that the inspection be coordinated with the

²⁵³ 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)).

²⁵⁴ The RSS Program provides cash supplements to payments made to eligible aged, blind, or disabled adults under the Supplemental Security Income (SSI) program.



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 the Director of Aging and residents' rights advocates from the list of individuals authorized to assert on behalf of adult care facility residents their residents' rights. The individuals authorized to do so under current law are the ODH Director,²⁵⁵ Director of Aging, 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.

²⁵⁵ 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.

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 during reasonable hours.

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 time²⁵⁶ and have access to facility records, including records pertaining to residents.

The bill expands when these employees and the ODMH Director may release resident-identifying information from the records of an adult care facility, without the resident's consent. In addition to current law's provision that permits employees and the ODMH Director to release this information by court order, the bill permits the release of information if authorized by law to do so.

Pre-employment criminal records checks

(R.C. 5119.85)

Current law requires applicants for employment with an adult care facility in a position involving direct care to "older adults" to undergo a criminal records check conducted by the Bureau of Criminal Identification and Investigation. "Older adult" is defined as a person age 60 or older. The bill instead requires criminal records checks for

²⁵⁶ 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).

positions involving direct care to "adult residents," who are defined by the bill as any individual residing in an adult care facility licensed by ODMH.

An adult care facility is generally prohibited from employing a person who pleads guilty to or is convicted of specified offenses. Current law requires the Public Health Council to adopt rules regarding adult care facilities conducting criminal records checks on applicants for employment. The rules must specify circumstances under which facilities may employ persons who plead guilty to or are convicted of specified offenses but meet personal character standards.²⁵⁷

In transferring the licensing of adult care facilities to ODMH, the bill permits, rather than requires, ODMH to adopt rules regarding criminal records checks. The bill also permits, rather than requires, that the rules specify circumstances under which facilities may employ persons who plead guilty to or are convicted of specified offenses but meet personal character standards set by ODMH.

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.

²⁵⁷ R.C. 3721.151.



Land conveyance to MetroHealth

(Section 753.25)

The bill authorizes the Governor to convey real estate that the Department of Mental Health plans to vacate as part of the consolidation of its two Northcoast Behavioral Healthcare facilities.

Specifically, the bill authorizes the Governor to execute a deed in the name of the state conveying to the Board of County Hospital Trustees of The MetroHealth System ("MetroHealth"), in the name of the County of Cuyahoga, State of Ohio, its successors and assigns, all of the state's right, title, and interest in the following listed parcels of real estate located in Cuyahoga County: 00821-008, 00821-009, 00821-010, 00821-011, 00821-012, 00821-013, 00821-014, 00821-015, 00821-016, and 00821-017. In preparing the deed, the Auditor of State, with the assistance of the Attorney General, is to develop a legal description of the real estate in conformity with the actual bounds of the real estate. The real estate together with the building situated upon it is to be conveyed. And the real estate is to be sold as an entire tract and not in parcels.

Consideration for conveyance of the real estate is \$10. In addition, the amount of \$3.4 million is to be paid to MetroHealth to pay for demolishing the building situated on the real estate. Notwithstanding any provision of law to the contrary, the Director of Mental Health is required to disburse \$3.4 million from appropriation item C58010, Campus Consolidation, as set forth in Sub. H.B. 462 of the 128th General Assembly, to the grantee within 30 days after the conveyance of the real estate. After the disbursement, the state must, within four months, complete a physical inventory of assets, relocate assets that are to be removed from the building, and itemize assets that are to remain with the transferred real estate and building.

MetroHealth is prohibited, during any period that any bonds issued by the state to finance or refinance all or a portion of the real estate are outstanding, from using any portion of the real estate for a private business use without the prior written consent of the state. "Private business use" means use, directly or indirectly, in a trade or business carried on by any private person other than use as a member of, and on the same basis as, the general public. "Private person" means any natural person or any artificial person (such as a corporation or other business organization or entity), including the United States or any agency or instrumentality of the United States, but excluding any state, territory, or possession of the United States, the District of Columbia, or any political subdivision thereof that is referred to as a "state or local governmental unit" in Treasury Regulation 1.103-1(a) and any person that is acting solely and directly as an officer or employee on behalf of such a governmental unit.



The bill prohibits MetroHealth from selling, conveying, or transferring ownership of the real estate before December 1, 2019, or before receiving written confirmation from the state that all of the state's bonded capital indebtedness associated with any of the buildings located on the real estate has been fully satisfied.

The bill requires MetroHealth to pay all costs associated with the purchase and conveyance of the real estate, including the costs of any surveys and recordation costs of the deed.

The bill requires the Auditor of State, with the assistance of the Attorney General, to prepare a deed to the real estate. The deed must state the consideration and the conditions and restrictions, and must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to MetroHealth. MetroHealth must present the deed for recording in the Office of the Cuyahoga County Recorder.

Authority to make the conveyance described above expires one year after the effective date of the section of law in which it is expressed.

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.

- Excludes from the Division's existing exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations only those activities that are regulated under federal laws for which oversight has been delegated to the Environmental Protection Agency and activities that are regulated under the statutes governing isolated wetlands.
- 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.
- Adds site construction and permitting related to site construction and restoration to the activities that are specifically identified as being subject to uniform statewide regulation.
- 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.
- 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.
- Alters the distribution of the proceeds of the sale of standing timber from state forest lands to provide 35% to the State Forest Fund and 65% to the county where the timber was harvested to be redistributed rather than 25% to the State Forest Fund, 65% to the county where the timber was harvested to be redistributed, and 10% to the General Revenue Fund as in current law.
- Authorizes the Chief of the Division of Forestry to annually request the Director of Budget and Management to transfer to the Wildfire Suppression Fund not more than \$100,000 from the State Forest Fund rather than from the General Revenue Fund as in current law.
- Requires the Ohio Natural Areas Council to advise the Director of Natural Resources or the Director's designee, rather than the Chief of the Division of Natural Areas and Preserves as in current law, regarding nature preserves and natural areas.
- Revises the membership of the Council by terminating the terms of office of the current members and providing for the appointment of new members, and requires members to be appointed by the Governor rather than the Director as in current law.
- Increases the frequency of Council meetings.
- 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.

- Requires a nonresident owner of land in Ohio and the owner's children and grandchildren, if applicable, to purchase a nonresident hunting license, deer or wild turkey permit, fur-taker permit, or nonresident fishing license by applying the exemptions in current law for landowners and their families only to Ohio residents.
- Allows all of the following to hunt without a license, take deer or wild turkey without a permit, hunt or trap fur-bearing animals without a permit, and fish without a license on land owned by a limited liability company, limited liability partnership, or a trust:
 - A resident individual, including the individual's children of any age and, for a hunting license, grandchildren under 18 years of age, who is a member of a limited liability company that has three or fewer members;
 - A resident individual, including the individual's children of any age and, for a hunting license, grandchildren under 18 years of age, who is a member of a limited liability partnership that has three or fewer partners; and
 - A resident individual, including the individual's children of any age and, for a hunting license, grandchildren under 18 years of age, who is a trustee or a beneficiary of a trust whose total number of trustees and beneficiaries does not exceed three individuals.
- Prohibits a wild animal hunting preserve from being located within 1,500 feet, rather than 3,000 feet as in current law, of another hunting preserve or of a commercial bird shooting preserve.
- Requires the boundaries of a wild animal hunting preserve to be clearly defined by the posting of signs at intervals of not more than 400 feet rather than 200 feet as in current law.

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, 1505.04, 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.

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 Division has sole and exclusive authority to regulate the permitting, location, and spacing of oil and gas wells and production operations in Ohio. The bill excludes from that authority only those activities that are regulated under federal laws for which oversight has been delegated to the Environmental Protection Agency and activities that are regulated under the state statutes governing isolated wetlands.

Current law also 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 permitting related to site construction and restoration to the activities that are specifically identified as being subject to uniform statewide regulation.

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.

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.

Distribution of proceeds of timber sales

(R.C. 1503.05 and 1503.141)

The bill alters the distribution of the proceeds of the sale of standing timber from state forest lands. Under the bill, 35% of the proceeds must be distributed to the State Forest Fund, and 65% must be distributed to the county where the timber was harvested to be redistributed. Under current law, 25% of the proceeds are distributed to the State Forest Fund, 65% to the county where the timber was harvested to be redistributed, and 10% to the General Revenue Fund.

The bill also authorizes the Chief of the Division of Forestry to annually request the Director of Budget and Management to transfer to the Wildfire Suppression Fund not more than \$100,000 from the State Forest Fund. Current law requires any such annual transfer to the Wildfire Suppression Fund to be made from the General Revenue Fund. Under both the bill and current law, money so transferred must come from the sale of standing timber from state forest lands.

Under current law, the State Forest Fund is required to be used for the administration, operation, maintenance, development, or utilization of the state forests, forest nurseries, and forest programs and for facilities or equipment incident to them. The Fund also must be used for the purchase of lands for state forest or forest nursery purposes and, in the case of contributions resulting from the issuance of Smokey Bear license plates, for fire prevention purposes. The Wildfire Suppression Fund is required to be used by the Chief to reimburse firefighting agencies and private fire companies for their costs incurred in the suppression of wildfires.

Ohio Natural Areas Council

(R.C. 1517.03; Section 515.23)

The bill requires the Ohio Natural Areas Council to advise the Director of Natural Resources or the Director's designee, rather than the Chief of the Division of Natural Areas and Preserves as in current law, regarding the administration of nature preserves and natural areas. It then makes changes in the Council itself and increases the frequency of Council meetings.

The bill terminates the terms of office of the current members of the Council and provides for the appointment of new members. The following members are to be appointed to the Council by the Governor with the advice and consent of the Senate:

- (1) One member representing natural history museums;
- (2) One member representing metropolitan park districts;
- (3) One member representing colleges and universities;
- (4) One member representing outdoor education programs in primary and secondary education;
- (5) One member representing nature centers; and
- (6) Two members representing the public.

Each appointed member must be active or interested in natural area preservation. Not more than four of the appointed members can belong to the same political party. The Director or the Director's designee is a nonvoting ex officio member of the Council.

The bill requires the Governor to make appointments to the Council not later than 30 days after the provision's effective date. It provides for staggered four-year terms and establishes standard appointment procedures for the members of the Council. The Department of Natural Resources must furnish clerical, technical, legal, and other services required by the Council in the performance of its duties. The Council must hold at least one regular meeting every three months.

Currently, the Council must have no fewer than five members as determined and appointed by the Director. Current law does not specify entities or interests to be represented on the Council. Members' terms of office are determined by the Director. The Council is required to hold at least one regular meeting in each calendar year.



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.

Hunting license, deer or wild turkey permit, fur-taker permit, and fishing license exemption

(R.C. 1533.10, 1533.11, 1533.111, and 1533.32)

The bill requires a nonresident owner of land in Ohio and the owner's children and grandchildren, if applicable, to purchase a nonresident hunting license, deer or wild turkey permit, fur-taker permit, or nonresident fishing license by applying the exemptions in current law for landowners and their families only to Ohio residents. Current law authorizes the owner of lands in Ohio and the owner's children of any age and grandchildren under 18 years of age to hunt on the lands without a hunting license. In addition, current law authorizes the owner of lands in Ohio and the owner's children of any age to hunt on the land without a deer or wild turkey permit, to hunt or trap fur-bearing animals on the land without a fur-taker permit, and to take frogs and turtles and catch certain fish on waters on the land without a fishing license.

The bill also allows all of the following to hunt without a license, take deer or wild turkey without a permit, hunt or trap fur-bearing animals without a permit, and fish without a license on land owned by a limited liability company, a limited liability partnership, or a trust:

(1) A resident individual, including the individual's children of any age and, for a hunting license, grandchildren under 18 years of age, who is a member of a limited liability company that has three or fewer members;

(2) A resident individual, including the individual's children of any age and, for a hunting license, grandchildren under 18 years of age, who is a member of a limited liability partnership that has three or fewer partners; and

(3) A resident individual, including the individual's children of any age and, for a hunting license, grandchildren under 18 years of age, who is a trustee or a beneficiary



of a trust whose total number of trustees and beneficiaries does not exceed three individuals.

Wild animal hunting preserves

(R.C. 1533.731)

The bill prohibits a wild animal hunting preserve from being located within 1,500 feet, rather than 3,000 feet as in current law, of another hunting preserve or of a commercial bird shooting preserve. The bill also requires the boundaries of a wild animal hunting preserve to be clearly defined by the posting of signs at intervals of not more than 400 feet rather than 200 feet as in current law.

Under current law, game and nonnative wildlife that have been approved by the Chief of the Division of Wildlife, that have been legally acquired or propagated under the authority of a propagating license, and that are properly marked and tagged may be released and hunted within the confines of the licensed wild animal hunting preserve. Hunting may take place between sunrise and sunset, without regard to sex, bag limit, or open season, by licensed hunters authorized by the holder of the wild animal hunting preserve license to hunt on those lands. The Chief is required to establish, by rule, the allowable methods of taking game and nonnative wildlife in a wild animal hunting preserve.

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: \$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)

- Increases to \$750 (from \$150) the initial and renewal registration fees charged to wholesale distributors of dangerous drugs.
- Increases to \$150 (from \$55) the penalty for reinstatement of a wholesale distributor of dangerous drugs registration certificate that has not been timely renewed.

Fees for wholesale distributors of dangerous drugs

(R.C. 4729.52)

The bill increases the fees charged by the State Board of Pharmacy to wholesale distributors of dangerous drugs as follows:

- (1) Initial registration: \$750 (from \$150);
- (2) Renewal of registration: \$750 (from \$150);
- (3) Penalty for reinstatement of a registration certificate that has not been timely renewed: \$150 (from \$55). (The penalty is in addition to the renewal fee.)

DEPARTMENT OF PUBLIC SAFETY (DPS)

- Eliminates the authority of deputy registrars to accept driver's license reinstatement fees, establishes a pilot program to allow clerks of municipal and county courts to accept driver's license reinstatement fees, and permits the Bureau of Motor Vehicles to make the program permanent and expand it should the pilot program prove effective.
- 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.
- Modifies the provisions governing the sale of a used motor vehicle by a motor vehicle dealer and a used manufactured home or mobile home by a manufactured housing dealer when the dealer does not have a certificate of title to the vehicle or home in the dealer's name.
- Modifies the payments motor vehicle and manufactured housing dealers must make to the Attorney General for deposit into the existing Title Defect Recision Fund.



- 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.
- Requires each applicant for an initial motor vehicle dealer's license or motor vehicle leasing dealer's license to pay a separate fee "equal to the last assessment" required of motor vehicle dealers (\$150) for purposes of the Title Defect Recision Fund, and requires the Registrar of Motor Vehicles to deposit the fee into that fund.
- Clarifies the relationship between a construction equipment auction license issued by the Registrar of Motor Vehicles and auction-related licenses issued by the Department of Agriculture.

Collection of driver's license reinstatement fees

(R.C. 4503.03, 4507.1612, 4507.45, 4509.101, 4509.81, 4510.10, 4510.22, 4510.72, and 4511.191)

The bill eliminates the authority of deputy registrars to accept driver's license reinstatement fees, which was given to them by the Transportation Appropriations Act of the 129th General Assembly. The bill requires the Registrar of Motor Vehicles to adopt rules establishing a reinstatement fee payment pilot program not later than January 1, 2013. The pilot program must permit the Registrar, with the approval of the Director of Public Safety, to designate at least one but not more than three clerks of a municipal court or county court to collect reinstatement fees and processing fees on behalf of the Registrar.

The rules must specify all of the following:

(A) The reinstatement and processing fees that the clerk may collect under the program;

(B) Minimum standards the clerk is required to meet and maintain;



- (C) Terms of the contract between the Registrar and the clerk;
- (D) The amount of bond that will be required of the clerk;
- (E) Requirements for employees and facilities of the clerk;
- (F) Any other requirements as the Registrar may prescribe.

In addition to the reinstatement and processing fees the clerk collects on behalf of the Registrar, the bill permits the clerk to collect a \$10 service fee. If the clerk collects this fee, the clerk may collect only one service fee irrespective of the number of reinstatement and processing fees the clerk collects at any one time relative to one person. The clerk may retain \$8 of each \$10 service fee for the clerk's services and must transmit the reinstatement and processing fees and the remaining \$2 of each service fee to the Registrar. The Registrar is required to deposit that \$2 into the existing State Bureau of Motor Vehicles Fund. The rules may require a clerk who collects a reinstatement or processing fee also to collect any other valid reinstatement documents or other evidence that is submitted with the payment of the reinstatement or processing fee. The rules must specify the time and manner in which the clerk must transmit the fees, documents, and evidence to the Registrar for final approval and clearance, as appropriate.

The Registrar is required to evaluate the effectiveness of the reinstatement fee payment pilot program for a period not to exceed one year. After completion of the evaluation, if the Registrar determines that the pilot program was a success, the Registrar, with the approval of the Director, must adopt any amendments to the rules governing the pilot program based on the evaluation that are necessary to make the pilot program permanent and to expand the pilot program as described in the bill. At a minimum, the amended rules must require the Registrar to make reasonable attempts to contract with at least one clerk of a municipal or county court in each county to collect reinstatement, processing, and service fees on behalf of the Registrar unless a reinstatement office already exists in that county or the Registrar determines that it is not practical to enter into such a contract with a clerk of a municipal or county court in a particular county.

A clerk of a municipal or county court who collects reinstatement fees, processing fees, service fees, and reinstatement documents or evidence under the bill and the applicable rules may issue an order that permits a person to operate a motor vehicle for a period not exceeding 30 days pending the Registrar's final determination of whether all reinstatement requirements have been met or if additional reinstatement requirements must be met before the suspension may be terminated or the reinstatement may be entered. The Registrar is required to send a written notice of the

Registrar's final determination to the person at the person's last known address as shown in the records of the Bureau.

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.

Sale of a used motor vehicle, manufactured home, or mobile home when the dealer does not have a certificate of title in the dealer's name

(R.C. 4505.181)

The bill modifies the certificate of title provisions governing the display, offering for sale, or sale of (1) a used motor vehicle by a motor vehicle dealer or person acting on behalf of such a dealer or (2) a used manufactured home or mobile home by a manufactured housing dealer or person acting on behalf of such a dealer when the dealer has not obtained a certificate of title for the used vehicle or home ("vehicle") in the dealer's name.

Bill of sale for the used vehicle or a power of attorney from the prior owner

The bill requires the dealer to possess either a bill of sale for each used vehicle that will be displayed, offered for sale, or sold or a properly executed power of attorney or other related documents from the prior owner of the vehicle giving the dealer authority to have a certificate of title to the vehicle issued in the name of the dealer. Current law requires the dealer to possess both a bill of sale and a properly executed power of attorney or other related document from the prior owner of the vehicle.

Posting of a bond by a dealer

Under existing law, a dealer must post with the Attorney General's office in favor of this state a bond of a surety company authorized to do business in this state, in an amount of at least \$25,000, to be used solely for the purpose of compensating retail purchasers of motor vehicles, manufactured homes, or mobile homes who suffer damages due to failure of the dealer to comply with these certificate of title provisions if (1) the Attorney General has paid a retail purchaser of the dealer under these provisions or (2) the dealer has been licensed as a dealer for less than three years. The bill (1) applies the requirement of the posting of a bond if the Attorney General has paid a secured party (on behalf of the retail purchaser), not just a retail purchaser and (2)



eliminates the requirement that a bond be posted in the case of a dealer who has been licensed as a dealer for less than three years. The bill also provides that failure to post the required bond constitutes a deceptive act or practice in connection with a consumer transaction and is a violation of the Consumer Sales Practices Act.

Payment by a dealer to the Attorney General for deposit into the existing Title Defect Recision Fund

The bill eliminates the provision of current law that if the dealer has been a licensed dealer longer than the three-year period preceding the date of sale of the used vehicle and the Attorney General has not paid a retail purchaser of the dealer under these certificate of title provisions within three years prior to that date, the dealer must pay \$150 to the Attorney General for deposit into the existing Title Defect Recision Fund.

Circumstances under which the retail purchaser of a used vehicle may demand recision of the sale

Existing law provides that if a retail purchaser purchases a used vehicle for which the dealer does not have a certificate of title issued in the name of the dealer at the time of the sale (1) the retail purchaser has an unconditional right to rescind the transaction if any of four specified circumstances applies and (2) the dealer has an obligation to refund to the retail purchaser the full purchase price of the vehicle. "Full purchase price," as used in the bill, means the contract price, including charges for dealer-installed options and accessories, all finance, credit insurance, and service contract charges incurred by the retail purchaser, all sales tax, license and registration fees, and the amount of any negative equity that was not already paid by the dealer to a third party to satisfy a lien, as reflected in the contract. The bill (1) eliminates the power of the purchaser to rescind the transaction in favor of a right by the purchaser to demand that the dealer rescind the transaction, (2) eliminates the (unqualified) obligation of the dealer to refund to the retail purchaser the full purchase price of the vehicle, and (3) adds a fifth circumstance in which the transaction may be rescinded. The five specified circumstances are as follows:

(1) The dealer fails, on or before the 40th day following the date of the sale, to obtain a title in the name of the retail purchaser. (Current law.)

(2) The title for the vehicle indicates that it is a rebuilt salvage vehicle, and the fact that it is a rebuilt salvage vehicle was not disclosed to the retail purchaser in writing prior to the execution of the purchase agreement. (Current law.)

(3) The title for the vehicle indicates that the dealer has made an inaccurate odometer disclosure to the retail purchaser. (Current law.)



(4) The title for the vehicle indicates that it is a "buyback" vehicle (a vehicle that a motor vehicle dealer was required to buy back from the purchaser under the Nonconforming New Motor Vehicle Law, also known as the Lemon Law) and the fact that it is a "buyback" vehicle was not disclosed to the retail purchaser in the written purchase agreement. (New circumstance added by the bill.)

(5) The motor vehicle is a used manufactured home or used mobile home that has been repossessed, but a certificate of title for the repossessed home has not yet been transferred by the repossessing party to the dealer on the date the retail purchaser purchases the used manufactured home or mobile home from the dealer, and the dealer fails to obtain a certificate of title on or before the 40th day after the dealer obtains the certificate of title for the home from the repossessing party or the date on which an occupancy permit for the home is delivered to the purchaser by the appropriate legal authority, whichever occurs later. (Current law.)

Under the bill, if circumstance (1) applies, a retail purchaser or the retail purchaser's representative must provide the dealer notice of the request for rescission. Current law requires the retail purchaser or the retail purchaser's representative to notify the dealer and afford the dealer the opportunity to comply with the dealer's obligation to refund the full purchase price of the vehicle. The bill requires the notice of the request for rescission to occur not later than 60 days from the date the motor vehicle is titled in the name of the retail purchaser. The dealer must have the opportunity to comply with the dealer's obligation to refund the full purchase price of the motor vehicle. Reimbursement to the retail purchaser is limited to any money the retail purchaser actually paid and, in the case of a lender of the retail purchaser, the amount the lender paid to purchase the contract or finance the vehicle sale. If a vehicle was taken in trade as a down payment, the dealer is required to return the vehicle to the consumer unless the dealer remitted payment to a third party to satisfy a security interest. If the dealer remitted payment, the dealer must reimburse the purchaser the value of the vehicle, as evidenced by the bill of sale. These same provisions apply if circumstance (2), (3), or (4) applies, except that a retail purchaser or the retail purchaser's representative must provide notice to the dealer of a request for rescission not later than 180 days from the date the vehicle is titled in the name of the retail purchaser.

If circumstance (5) applies, the retail purchaser or the retail purchaser's representative is required to notify the dealer and afford the dealer the opportunity to comply with the dealer's obligation to rescind the manufactured home or mobile home transaction; no deadline is specified.

Failure of a retail purchaser to give the dealer timely notice of request for rescision

If the retail purchaser does not deliver notice to the dealer within the applicable specified time period, the retail purchaser is not entitled to any recovery and does not have a cause of action under these provisions.

Application by a retail purchaser to the Attorney General for payment from the Title Defect Rescision Fund

Under current law, if a retail purchaser notifies a dealer of one or more of the specified circumstances and the dealer fails to refund to the retail purchaser the full purchase price of the vehicle or reach a satisfactory compromise with the retail purchaser within three business days of presentation of the retail purchaser's rescision claim, the retail purchaser may apply to the Attorney General for payment from the Title Defect Rescision Fund. No time limit for notification is prescribed. Under the bill (1) notice to the dealer must be given by the retail purchaser within the applicable time period specified in the bill (60 or 180 days from the date the vehicle is titled in the name of the retail purchaser) and (2) the dealer has seven days to rescind the transaction or reach a satisfactory compromise with the retail purchaser before the purchaser may apply to the Attorney General for payment from the Fund of the full purchase price to the retail purchaser.

Upon application by a retail purchaser for payment from the Fund, if the Attorney General is satisfied that one or more of the prescribed circumstances exist, the Attorney General must cause the full purchase price of the vehicle to be paid to the retail purchaser from the Fund. Corresponding to other provisions made by the bill, the bill requires also that notification must have been given to the dealer within the applicable time period. Additionally, reimbursement from the Fund is to include the cost of any additional temporary license placards but may not exceed that cost and the full purchase price of the vehicle. Existing law provides that reimbursement from the Fund is to be paid to the retail purchaser after delivery of the vehicle to the Attorney General; under the bill, the Attorney General may require delivery of the used vehicle to the Attorney General prior to reimbursement from the Fund, which may be only one of the following:

(1) To the retail purchaser, any money the retail purchaser actually paid and, in the case of a lender of the retail purchaser, the amount the lender paid to purchase the contract or finance the sale of the vehicle;

(2) If the retail purchaser wishes to retain the vehicle, the Attorney General, in the Attorney General's sole discretion, may pay a lienholder of record or other holder of a secured interest so that title can be transferred to the retail purchaser free of



encumbrances, other than a security interest granted by the retail purchaser at the time of vehicle purchase.

The Attorney General also may pay the cost of additional temporary license placards for the vehicle from the Fund.

Relation of these certificate of title provisions to the Consumer Sales Practices Act

The bill eliminates a provision of current law that failure by a dealer to comply with the existing provisions governing the sale of a used vehicle by a dealer when the dealer does not have a certificate of title to the used vehicle in the dealer's name constitutes a deceptive act or practice in connection with a consumer transaction and is a violation of the Consumer Sales Practices Act.

Failure of a dealer to pay a secured interest on a trade-in vehicle

Under the bill, if a dealer fails to submit payment to the holder of a secured interest on a trade-in vehicle as agreed to by the dealer and retail purchaser and none of the specified circumstances that can serve as the basis for rescission apply, the retail purchaser may apply to the Attorney General for payment to the secured creditor from the Title Defect Rescission Fund. The Attorney General must demand immediate payment from the dealer, and if payment has not been made or is not immediately forthcoming, the Attorney General may cause an amount equal to that which the dealer agreed to pay to the secured creditor to be paid from the Fund, along with any additional interest and late fees resulting from the dealer's failure to pay the secured creditor in a timely manner.

Dealer assessments for the Title Defect Rescission Fund

The bill provides that if, at any time during any calendar year, the balance in the Title Defect Rescission Fund is less than \$300,000, the Attorney General may assess all licensed motor vehicle dealers and manufactured housing dealers \$150 for deposit into the Fund until the balance in the Fund reaches \$300,000. A notice of assessment must be sent to each dealer at its licensed location.

This is in contrast to current law, which provides that (1) all licensed motor vehicle dealers and manufactured housing dealers must pay to the Attorney General for deposit into the Title Defect Rescission Fund \$150 each year until the balance in the Fund is not less than \$300,000 and (2) all such dealers also must pay to the Attorney General for deposit into the Fund that same amount during any year and subsequent years during which the balance in the Fund is less than \$300,000 until the balance in the Fund reaches that amount.

Attorney fees

The bill provides that nothing in these certificate of title provisions may be construed as providing for payment of attorney fees to the retail purchaser.

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.

Motor vehicle dealer and motor vehicle leasing dealer license fee

(R.C. 4517.10, 1345.52, and 4505.181, not in the bill)

The bill requires each applicant for an initial motor vehicle dealer's license or motor vehicle leasing dealer's license to pay a separate fee "equal to the last assessment" required of motor vehicle dealers for purposes of the Title Defect Recision Fund and requires the Registrar of Motor Vehicles to deposit the separate fee into that fund. The Title Defect Recision Fund consists of money that motor vehicle dealers are required to pay to the Attorney General, dependent in part upon the balance in the fund; when dealers pay into the fund, the payment is \$150. Under current law, a person applying for a new dealer's license is not required to pay into the fund until it falls below the level specified in law, \$300,000; when the fund falls below \$300,000, all licensed dealers must pay \$150 into the fund, per year, until the fund reaches \$300,000. The fund is used solely to provide restitution to retail purchasers of motor vehicles who are unable to obtain a certificate of title from a dealer and so suffer damages.

Construction equipment auction license

(R.C. 4517.01 and 4517.02)

In regard to the construction equipment auction license created in the recent Transportation Appropriations Act, the bill clarifies that such a license is required only when a person is in the business of auctioning *both* large construction or transportation equipment *and also*, incidental to that business, motor vehicles. Under existing law, special conditions apply when a construction equipment auction licensee sells motor vehicles, including a restriction that the licensee derive not more than 10% of the person's gross annual sales revenue in Ohio from the sale of motor vehicles having a gross vehicle weight rating of 10,000 pounds or less; specific requirements to comply with titling, sales tax, and commercial activity tax provisions in the same manner as a motor vehicle dealer when auctioning motor vehicles having a gross vehicle weight rating of 10,000 pounds or less; and a prohibition against selling at auction a motor vehicle having a gross vehicle weight rating of 10,000 pounds or less unless the motor vehicle owner also sells large construction or transportation equipment through the construction equipment auction licensee.

Additionally, the bill specifies that the new construction equipment auction license does not in any way affect the conduct of auctions by any person holding an auction-related license issued by the Department of Agriculture who is acting in compliance with those licensing requirements.



Lastly, the bill modifies the definition of a "construction equipment auctioneer" so that a person may engage in the business of auctioning large construction equipment if the person has not only a valid construction equipment auction license issued by the Registrar of Motor Vehicles but also a valid auction firm license issued by the Department of Agriculture, rather than an auctioneer's license as is required under existing law.

PUBLIC UTILITIES COMMISSION (PUC)

- Exempts, from regulation by the Power Siting Board, manufacturing facilities that create byproducts that may be used in the generation of electricity as defined by the Board.
- Requires the Public Utilities Commission of Ohio (PUCO), by the end of 2011, to determine appropriate methods to ensure that the reduction in assessments for the Office of the Consumers' Counsel for fiscal years 2012 and 2013 is distributed to the benefit of utility customers, and requires timely implementation.
- Repeals the Community-voicemail Service Pilot Program, and requires assessments made under the Pilot Program to cease and the PUCO to refund the assessments, without interest, within 60 days of the effective date of the refund provision.

Byproducts exemption from Power Siting Board regulation

(R.C. 4906.01)

The bill exempts, from regulation by the Power Siting Board, a manufacturing facility that creates byproducts that may be used in the generation of electricity, as defined by the Board. With this exemption, such a facility would not be required to obtain a certificate from the Board for facility construction.²⁵⁸ Existing law is not clear as to whether such a facility is currently required to obtain this certificate.

The bill also clarifies that other facilities that are exempt from Board regulation, specifically electric, gas, natural gas distributing lines and gas or natural gas gathering lines and associated facilities, are included as such exempt facilities by Board definition.

²⁵⁸ R.C. 4906.04 (not in the bill).



Distribution of reduced assessments

(Section 749.10)

The bill requires the Public Utilities Commission (PUCO), by the end of 2011, to determine appropriate methods to ensure that the reduction in public utility assessments paid to the Office of the Ohio Consumers' Counsel (OCC) for fiscal years 2012 and 2013 is distributed to the benefit of Ohio customers of those public utilities. The bill requires the PUCO to implement its distribution methodology in a timely manner.

Because the OCC is funded by public-utility assessments, and those assessments must equal the OCC's appropriation in each fiscal year,²⁵⁹ the bill's reduced OCC appropriations 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 the bill's requirement to distribute reduced assessments, result in any reduction for customers until a public utility's next rate case.

Repeal of Community-voicemail Service Pilot Program

(R.C. 4927.17; Section 365.10, Sections 620.51, 620.52, and 620.53)

The bill repeals the Community-voicemail Service Pilot Program and the Community-voicemail Service Pilot Program Fund established by Sub. S.B. 162 of the 128th General Assembly (the act revising Ohio's telecommunications law) and requires all assessments made under the Pilot Program to cease. Under the bill, the PUCO must refund the assessments, without interest, to the telephone companies that have been assessed under the Pilot Program. All refunds must be made within 60 days of the effective date of the refund provision.

The bill removes the requirement that the Select Committee on Telecommunications Regulatory Reform include in its study (due September 13, 2014) a report on the Community-voicemail Service Pilot Program. The bill also deletes references to the program in existing law regarding telephone company rate change notices.

²⁵⁹ R.C. 4911.18, not in the bill.



Existing law requires the PUCO to implement a two-year Community-voicemail Service Pilot Program, in at least one urban area and one rural area of the state, for individuals in a state of transition, including the homeless, clients of battered-spouse programs, and displaced and returning veterans, who do not have access to traditional telephone exchange service or alternatives. Program funding comes through assessments collected from each telephone company that is a local exchange carrier.

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.

Residency status for in-state tuition

- 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.
- Refuses residency status, for purposes of in-state college tuition, to any person who is not a U.S. citizen or U.S. national unless the person has been granted the right either (1) to live in the U.S. permanently and without work restrictions or (2) to reside temporarily in the U.S.

Out-of-State Tuition Surcharge Forgiveness Program

- Creates the Ohio Out-of-State Tuition Surcharge Forgiveness Program, which defers the out-of-state tuition surcharge for non-Ohio residents who agree to live and work in Ohio for at least five years after graduation.
- Incrementally forgives the total amount of the out-of-state surcharges deferred for every year the graduate lives and works in Ohio.
- Authorizes the boards of trustees of the state institutions to limit the number of their students who may participate and to establish eligibility standards for their students.



- Converts the amount of the out-of-state surcharge into a loan to be repaid with interest if the recipient withdraws from school or fails to live and work in Ohio for five years.

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 rescission 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, not including programs that qualify as cooperative education programs.

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 STEM 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 members adhere to its sincerely held religious beliefs or standards of conduct.

Leasing campus facilities

- Permits a state institution of higher education to enter into an agreement to convey auxiliary facilities to a conduit entity, which will enter into a lease-leaseback agreement with an independent funding source.
- Authorizes state institutions of higher education and university housing commissions to enter into lease agreements with nonpublic vendors to provide campus housing facilities.

Miscellaneous

- Eliminates the existing The Ohio State University Highway and Transportation Research Fund and requires the cash balance in the Fund be paid to The Ohio State University.

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.



Residency status for in-state tuition

(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.

However the bill excludes from residency status any person who is not a U.S. citizen or U.S. national unless the U.S. Bureau of Citizenship and Immigration Services has granted that person either: (1) the right to reside permanently in, and to work without restrictions in, the U.S. or (2) the right to reside temporarily in the U.S.

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 statute, 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.²⁶⁰

Out-of-State Tuition Surcharge Forgiveness Program

(R.C. 3333.93 and 3333.94; conforming changes in R.C. 3333.38 and 3345.32)

The bill creates the Ohio Out-of-State Tuition Surcharge Forgiveness Program. The program defers the out-of-state tuition surcharge for non-Ohio residents, both undergraduates and graduates, who enroll in a state institution of higher education and who agree to live and work in Ohio for at least five years after graduation. For each year a deferment recipient lives and works in Ohio, a percentage of the total amount of out-of-state tuition owed by the recipient is forgiven. Although the language outlining the forgiveness schedule may be imprecise, the most practical way to interpret the language seems to be as follows:

(1) 10% of the total deferred amount is forgiven at the end of the first year of employment and residence after graduation;

(2) 20% of the remaining deferred amount is forgiven at the end of the second year of employment and residence after graduation;

(3) 30% of the remaining deferred amount is forgiven at the end of the third year of employment and residence after graduation;

(4) 50% of the remaining deferred amount is forgiven at the end of the fourth year of employment and residence after graduation; and

(5) 100% of the remaining deferred amount is forgiven at the end of the fifth year of employment and residence after graduation.

Recipients must reside and work in Ohio immediately subsequent to receiving a degree from a state institution of higher education. However, a recipient has a six-month grace period to find a job while living in the state. Also, if an undergraduate recipient enrolls in a graduate program at a state institution of higher education in the

²⁶⁰ R.C. 3333.31(B) and (C), 3333.32, and 3333.42 (the last two sections not in the bill).



academic year following graduation, the five-year residence and employment requirement does not commence until the recipient graduates from the graduate program.

Rules

The bill directs the Chancellor to adopt rules to establish and administer the program. The rules must include (1) student eligibility to receive a deferment, including any academic requirements to continue receiving a deferment, (2) an application, selection, and award process for deferments, (3) a process for accounting for the amount of out-of-state tuition owed by the deferment recipient, calculated in conjunction with state institutions of higher education, (4) the maximum amount of out-of-state surcharges a recipient may defer, (5) a procedure for recipients who transfer to other state institutions of higher education, and (6) conditions under which a deferment will be canceled.

As under current law for other student financial aid programs, the bill requires that participants file a statement of selective service, if applicable, and that individuals who have been convicted of, plead guilty to, or been adjudicated a delinquent child for riot, aggravated riot, failure to disperse, misconduct at an emergency, or disorderly conduct are ineligible for two years after applying for the deferment.²⁶¹

Institutional limits

The bill allows the board of trustees of any state institution of higher education to limit the number of students enrolled in that institution who may participate in the program. Further, the board of trustees may establish eligibility standards, beyond those of the Chancellor, for qualification for and continued participation in the program for its enrolled students.

Repayment

Recipients who accept the out-of-state tuition surcharge deferment must sign a promissory note payable to the state if the recipient does not live and work in the state for five years after graduation or if the deferment is terminated. If the recipient is under 18, the recipient's parent must sign the note. The amount payable under the note is the amount of deferred total out-of-state tuition surcharged accrued by the recipient. The bill requires the Chancellor to determine the period of repayment. The note must stipulate that the obligation to make payments under the note is canceled after the recipient has lived and worked in Ohio for five years after graduation or if the recipient dies or becomes totally and permanently disabled.

²⁶¹ R.C. 3333.38 and 3345.32.



The Chancellor may terminate the deferment under rules the Chancellor adopts for the program, at which time the deferred amount becomes a loan to be repaid. The deferment is also terminated if a recipient withdraws from school or fails to meet the standards of the deferment adopted by the Chancellor or the state institution from which the recipient receives a degree.

The bill requires the Chancellor and the Attorney General to collect payments on deferments converted into loans.

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.

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.

The bill specifies that these requirements do not apply to baccalaureate degree programs that qualify as cooperative education programs. Under current law, a "cooperative education program" is a program that (1) combines periods of academic study and work experience in appropriate fields, (2) provides students with academic credit from the institution of higher education and wages from the employer, (3) evaluates each student's performance in the cooperative position from the perspective of both the institution of higher education and the employer, and (4) is part of a degree or certificate program for which a percentage of the total program acceptable to the Chancellor involves cooperative education.²⁶²

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

²⁶² R.C. 3333.71, not in the bill.



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."²⁶³ 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.²⁶⁴ 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.²⁶⁵ 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 the College in administering the program must take some responsibility for course content.²⁶⁶

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

²⁶³ R.C. 3333.81.

²⁶⁴ Section 371.60.70.

²⁶⁵ R.C. 3333.82(F).

²⁶⁶ R.C. 3333.82(A); Section 371.60.70(B).



require a student's district or school to award some amount of credit for a successfully completed course.²⁶⁷

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.²⁶⁸

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.²⁶⁹ 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 to or participation in courses offered through the clearinghouse and from refusing to recognize courses that fulfill the minimum high school curriculum.²⁷⁰

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

²⁶⁷ R.C. 3333.85(B); Section 371.60.70(C).

²⁶⁸ Section 371.60.70(E).

²⁶⁹ R.C. 3333.84(C); Section 371.60.70(D).

²⁷⁰ R.C. 3333.83(A) and 3333.85. See also R.C. 3313.603(C).



district, school, college or university, or individual subscribing to the course and in which manner the fee shall be paid to the course provider."²⁷¹ 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.²⁷²

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.

(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."²⁷³

²⁷¹ R.C. 3333.84(A) and (D).

²⁷² R.C. 3333.82(F).

²⁷³ R.C. 3333.82.

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.²⁷⁴

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
- (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:

²⁷⁴ R.C. 3333.87.



(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 STEM fields or in STEM 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 STEM field or (2) a graduate student in a STEM field or STEM 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 STEM field or STEM 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 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."²⁷⁵

Leasing campus auxiliary facilities

(R.C. 3345.54)

The bill authorizes the board of trustees of a state institution of higher education,²⁷⁶ subject to approval by the Chancellor of the Ohio Board of Regents and the Controlling Board, to enter into a financing agreement with a conduit entity and an independent funding source and may convey to the conduit entity title to any auxiliary facilities owned by the state institution. The conduit entity and independent funding source must be selected either through a competitive selection process or by direct negotiations. For purposes of the bill, "**auxiliary facilities**" means buildings, structures, and other improvements, and equipment, real estate, and interests in such real estate, to be used for or in connection with student activity or service facilities, housing and dining facilities, dining halls, and other food service and preparation facilities, parking facilities, bookstores, athletic and recreational facilities, faculty centers, auditoriums, assembly and exhibition halls, hospitals, infirmaries and other medical and health facilities, research, and continuing education facilities. "**Conduit entity**" means an organization described in Section 501(c)(3) of the Internal Revenue Code that qualifies as a public charity under Section 509(a)(2) or 509(a)(3) of the Internal Revenue Code, whose corporate purpose allows it to perform the functions and obligations of a conduit entity prescribed in a financing agreement under the bill. "**Independent funding source**" means a private entity that enters into a financing agreement with a conduit entity and a state institution.

The financing agreement envisioned by the bill is a contract between a state institution of higher education, a conduit entity, and an independent funding source that provides for all of the following:

²⁷⁵ R.C. 3345.021, not in bill.

²⁷⁶ "State institution of higher education" is defined in R.C. 3345.011.



- The conveyance of auxiliary facilities owned by a state institution of higher education to the conduit entity for consideration deemed adequate by the institution.
- The lease of the conveyed property by the conduit entity to the independent funding source and leaseback of the conveyed property to the conduit entity for a term not to exceed 99 years.
- Such other terms and conditions negotiated and agreed upon by the parties, including terms regarding:
 - Payment to the institution by the conduit entity of revenues received from the conveyed property in excess of the payments it is required to make to the independent funding source;
 - Pledge, assignment, or creation of a lien in favor of the independent funding source by the conduit entity of any revenues derived from the conveyed property;
 - Reverter or conveyance of title to the conveyed property to the institution when the property is no longer subject to a lease with the independent funding source.
- Terms and conditions required by the Chancellor or the Controlling Board as a condition of approval of the financing agreement.

The institution and the conduit entity may enter into agreements or contracts under which the institution may maintain or administer the conveyed property and may collect and disburse revenues on behalf of the conduit entity.

The parties also may modify or extend the financing agreement subject to approval by the Chancellor and the Controlling Board.

The property that is conveyed pursuant to a financing agreement retains its exemption from property taxes and assessments, as though title to the conveyed property were held by the institution, so long as during any part of the tax year that title was held by the institution or was held by the conduit entity and, if held by the conduit entity, remains subject to the lease-leaseback arrangement between the conduit entity and the independent funding source. The conduit entity, however, must apply for continued exemption of the conveyed property as provided by law after the conveyed property is transferred to it and during the term of the lease-leaseback arrangement.

Finally, the bill provides that nothing in this provision is intended to abrogate, amend, limit, or replace any existing authority that state institutions of higher education may have with respect to the conveyance, lease, lease-leaseback, finance, or acquisition of auxiliary facilities.

Leasing campus housing facilities

(R.C. 3345.55)

In addition to the authority provided by the bill for leasing campus auxiliary facilities (see "**Leasing campus auxiliary facilities**" above), the bill authorizes a university (defined by the bill to include state institutions of higher education and university housing commissions) to enter into a lease agreement with a nonpublic vendor to provide housing services in campus housing facilities to students of the university. The lease agreement may require the vendor to construct new campus housing facilities to serve students. The lease agreement must be for a term of at least 20 but no more than 30 years and include the following requirements:

- (1) The vendor must be responsible for the operation and maintenance of the housing facilities;
- (2) The vendor must lease housing units to students of the university;
- (3) The vendor is bound by and must enforce any university housing policies.

The bill provides that a university may revoke the lease and regain operational control over dormitories if the vendors violate the terms of the lease agreement.

Elimination of The Ohio State University Highway and Transportation Research Fund

(R.C. 3335.45; Section 371.70.10)

The bill eliminates the existing The Ohio State University Highway and Transportation Research Fund and requires the cash balance in the Fund be paid to The Ohio State University.

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 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.
- Specifies that after the sale of any facility described in the third preceding dot point the state has a right to repurchase the facility if the contractor wants to sell or otherwise transfer the facility or becomes insolvent, defaults on the contract, or defaults on the financial agreement for the purchase of the facility.
- Requires that any case challenging the constitutionality of R.C. 9.06 or Section 753.10 (sale of DRC facilities) or the legality of certain official actions taken pursuant to those provisions be brought in the Franklin County Court of Common Pleas and that the case and any appeal from a final order in the case be given priority and be decided expeditiously.
- 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 Penal Industries Manufacturing Fund.
- Renames the Services and Agricultural Fund the Institutional Services Fund.
- Modifies the purposes for which money in the Institutional Services Fund may be used.
- Modifies the purposes for which money in the Ohio Penal Industries Manufacturing Fund may be used.
- Permits the Division of Business Administration of the Department of Rehabilitation and Correction to enter into a lease or agreement with a state agency, political subdivision, or private entity that allows the agency, subdivision, or entity to use property and facilities that are under the jurisdiction of the Department but that are not being used by the Department.

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.

(d) After the sale and conveyance of the facility, both of the following apply:

(i) Before the contractor may resell or otherwise transfer the facility and the real property on which it is situated, any surrounding land that also was transferred under the contract, or both, the contractor first must offer the state the opportunity to repurchase the facility, real property, and surrounding land and must sell it to the state if the state so desires, pursuant to and in accordance with the repurchase clause included in the contract.

(ii) Upon the default by the contractor of any financial agreement for the purchase of the facility and the real property on which it is situated, any surrounding land that also was transferred under the contract, or both, the default by the contractor of any other term in the contract, or the financial insolvency of the contractor or inability of the contractor to meet its contractual obligations, the state may repurchase the facility, real property, and surrounding land, if the state so desires, pursuant to and in accordance with the repurchase clause included in the contract.



Authorization for sale of state facilities

(Section 753.10; R.C. 5120.092)

The bill authorizes the DAS Director and the DRC 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 the DAS Director and the DRC 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 the DRC Director and the DAS 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, the DRC 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.



(4) A binding commitment that irrevocably grants to the state a right to repurchase the facility and the real property on which it is situated, any surrounding land that is to be transferred under the contract, or both if: (a) the contractor or the contractor's successor wants to sell or otherwise transfer to a third party the facility and the real property on which it is situated, any surrounding land transferred under the contract, or both, or (b) the contractor defaults on any financial agreement for the purchase of the facility and real property on which it is situated, any surrounding land transferred with the facility, or both, defaults on any term of the contract, or becomes insolvent or unable to meet its contractual obligations. Under (a), the contractor or successor first must offer the facility or property to the state at least 120 days before it intends to make the sale or transfer to the third party. In either situation, the state's purchase price must be not greater than the price the contractor paid, less depreciation from the time of the conveyance to the contractor, plus the depreciated value of any capital improvements funded by anyone other than the state after the conveyance to the contractor.

If the DAS Director and the DRC 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 the DRC Director and the DAS 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 the DAS Director and the DRC 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.

Legal challenges to sale of facilities

(R.C. 9.06)

The bill requires that any action asserting that R.C. 9.06 or Section 753.10 of the bill violates any provision of the Ohio Constitution or that any action taken by the Governor, DAS, or DRC pursuant to those sections violates any provision of the Ohio Constitution or the Revised Code be brought in the Franklin County Court of Common Pleas. Under the bill, the court must give any such action priority over all other civil cases pending on its docket and expeditiously make a determination on the claim, and the court of appeals must give like priority to an appeal from any final order issued in the case and decide the appeal expeditiously.

State and local taxes

(R.C. 9.06(J)(3))

The bill expressly subjects a private contractor that enters into a contract to own and operate one of the five prisons authorized by the bill to state and municipal income taxes and the commercial activity tax. Further, sales involving a contractor in the contractor's role as a consumer or purchaser are subject to all state and local sales and use taxes unless exempted under another existing provision of sales and use tax law. After a prison facility is sold to a contractor, the facility is placed on the county tax list and duplicate, with the effect of making the facility subject to all real property taxes and assessments, with no exemption from real property taxation applying to the conveyed facility.



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 Healthcare 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 Institutional Services Fund and Ohio Penal Industries Manufacturing Fund

(R.C. 5120.28(B) and (C))

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 be deposited into the Institutional Services Fund (new name for the Services and Agricultural Fund). The bill requires that money received by DRC for agricultural products produced also be deposited into the Ohio Penal Industries Manufacturing Fund instead of the Renamed Institutional Services 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.



Lease of unused Department of Rehabilitation and Correction facilities

(R.C. 5120.22)

The bill permits the Division of Business Administration of the Department of Rehabilitation and Correction to enter into a lease or agreement with a state agency, political subdivision, or private entity, which lease or agreement allows the state agency, political subdivision, or private entity to use property and facilities that are under the jurisdiction of the Department that are not being used by the Department. The bill provides that all money collected for leasing and services performed in accordance with the lease or agreement must be deposited into the Property Receipts Fund and that the money in the Fund is to be used for any expenses resulting from the lease or agreement. These expenses include, but are not limited to, expenses for services performed, construction, maintenance, repair, reconstruction, or demolition of the facilities or other property.

The Property Receipts Fund is an existing fund and will continue to also be used to pay for any expenses necessary to provide for state-owned housing under the Department's jurisdiction that is used by the Department's employees.

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)

- Designates an alternative retirement plan established by a public institution of higher education prior to July 1, 2000, that is a qualified trust under federal tax law a provider for purposes of Ohio law governing alternative retirement plans.
- Except for the contributions required to mitigate any negative financial impact on the State Teachers Retirement System (STRS) and interest on those contributions, provides that such an institution is not required to pay any retirement contributions or interest due STRS for an employee who made an election prior to July 1, 2000.
- Permits an institution that failed to timely file with STRS a copy of an election made prior to July 1, 2000, to file it not later than 90 days after the bill's effective date.

Alternative retirement plans

(Section 733.20)

For purposes of Ohio law governing alternative retirement plans²⁷⁷ for employees of public institutions of higher education, the bill designates as a provider a plan

²⁷⁷ An alternative retirement plan is a defined contribution plan that provides retirement and death benefits through investment options. Certain full-time academic and administrative employees of public



established prior to July 1, 2000, as long as it is a qualified trust under section 401(a) of the Internal Revenue Code (IRC). The board of trustees of each public institution of higher education must adopt an alternative retirement plan and enter into a contract with each provider designated by the Ohio Department of Insurance that is willing to provide investment options under the plan.²⁷⁸ Currently, the Department may designate only plans that are qualified trusts under the IRC.

Contributions

An employee who elects to participate in an alternative retirement plan must contribute to the plan the percentage of compensation the employee would contribute to the public retirement system that would otherwise cover the employee. Each institution employing a participating employee must contribute an amount equal to a percentage of the employee's compensation to the plan. Part of the contribution is used to mitigate the negative financial impact of the alternative retirement program on the public retirement system. The contribution to mitigate the negative financial impact is an amount equal to 6% of the employee's compensation, unless the rate is adjusted by the Ohio Retirement Study Council on the basis of actuarial studies.²⁷⁹

Except for the contributions required to mitigate negative financial impact and interest on those contributions at a rate determined by the STRS Board, the bill provides that an institution is not required to pay any retirement contributions due STRS for an employee who made an election prior to July 1, 2000, to participate in an alternative retirement plan that is designated as a provider under the bill. This provision applies from the date of the election as long as participation by the employee continues.²⁸⁰

Notice of election

An employee who elects to participate in an alternative retirement plan must submit an election in writing to the employing institution. Once submitted, the election is irrevocable while the employee remains employed by the institution. Current law provides that not later than ten days after the election becomes irrevocable, a certified

institutions of higher education may elect to participate in an alternative retirement plan instead of the public retirement system that would otherwise cover their positions: the Public Employees Retirement System (PERS), State Teachers Retirement System (STRS), or School Employees Retirement System (SERS).

²⁷⁸ R.C. 3305.03 and 3305.04.

²⁷⁹ R.C. 3305.06.

²⁸⁰ R.C. 3305.054(A)(2).



copy of the election must be filed by the institution with the appropriate state retirement system.²⁸¹

The bill permits an institution that failed to timely file with STRS a copy of an election made prior to July 1, 2000, to file it not later than 90 days after the bill's effective date and requires STRS to accept the election as though it was timely filed.

STATE BOARD OF SANITARIAN REGISTRATION (SAN)

- Increases the registration renewal fee for a registered sanitarian and a sanitarian-in-training from \$74 to \$80.
- Increases the late fee for a renewal application from \$27 to \$50, and specifies that the late fee is in addition to the renewal fee.
- Authorizes the State Board of Sanitarian Registration to establish by rule fees for additional copies of pocket identification cards and wall certificates.

Fees for registered sanitarians and sanitarians-in-training

(R.C. 4736.12)

The bill increases the registration renewal fee for registered sanitarians and sanitarians-in-training that the State Board of Sanitarian Registration charges from \$74 to \$80. Additionally, the bill increases the late fee for a renewal application from \$27 to \$50 and specifies that the late fee is in addition to the renewal fee. Finally, the bill authorizes the Board to adopt rules establishing fees for additional copies of pocket identification cards and wall certificates.

SCHOOL FACILITIES COMMISSION (SFC)

- Increases to 13 months (from one year under current law) the period after which the conditional approval of state funding for a school district's classroom facilities construction project lapses if the district voters do not approve a bond issue and tax levy to pay the district's portion of the project cost.

²⁸¹ R.C. 3305.05(C)(1).



- Specifies procedures for setting a new project scope and cost estimate for districts for which funding has lapsed.
- Requires that funds reserved to pay the state and school district shares of all projects be spent simultaneously, in proportion to their respective shares, instead of spending the state funds first as under current law for most district projects.
- Specifies procedures for close-out of projects.
- Codifies and makes permanent the Corrective Action Program.
- 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.
- Revises the calculation of "average taxable value," for purposes of wealth rankings, for school districts whose tangible personal property valuation (not including public utility personal property) made up 18% or more of its total taxable value for tax year 2005.
- Requires the Department of Education to calculate and certify to the School Facilities Commission a new, alternate equity list for use in fiscal year 2012 using the revised calculation of "average taxable value."
- Specifies a new procedure for calculating the local share when a school district participating in the Expedited Local Partnership Program becomes eligible 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.
- Permits a school district that received classroom facilities assistance under pre-1997 law and that is eligible for additional assistance to undertake a segment that addresses only part of a facility to renovate or replace work performed during the earlier project.
- Adds the cost of nonrequired locally funded initiatives, in an amount of up to 50% of the district's project cost, to the list of improvements that a district participating in a state-assisted classroom facilities project may incur debt in excess of the ordinary debt limit of 9% of its tax valuation.

- Modifies the standards by which the Superintendent of Public Instruction may certify a school district as a "special needs" district that may exceed the ordinary debt limit to acquire permanent improvements.
- Increases the debt a "special needs" district may incur.
- Permits a joint vocational school district, in the same resolution, to commit existing or new tax levies to finance the annual debt service on bonds issued for both its state-assisted classroom facilities project and locally funded initiatives related to that project.
- 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 districts²⁸² 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 School Facilities 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

²⁸² 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.



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.

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 and estimated cost 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 their Expedited Local Partner agreements.

The new scope and estimated costs 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 Commission has completed a final accounting of the district's project construction fund and determined that all payments were in compliance with Commission policies, (4) any litigation concerning the project has been resolved, and (5) all construction management services provided by the Commission have been delivered.

However, the bill permits the Commission to issue a certificate of completion prior to satisfaction of those conditions, if the Commission determines that the circumstances preventing their satisfaction "are so minor in nature that the project should be considered complete." When doing so, the Commission may specify any of the following: (1) the work that has yet to be completed and the manner in which the district board must oversee its completion, (2) terms and conditions for the resolution of pending litigation, or (3) any remaining responsibilities of the project construction manager.

Finally, the bill also permits the Commission to issue a certificate of completion even when the district does not voluntarily participate in the close-out process. The Commission may do so if the construction manager verifies that all facilities have been completed and the facilities have been occupied for at least a year. If there are any state funds remaining in the project construction fund that have not been returned within 60 days after issuance of the certificate of completion, the Auditor of State must issue a finding for recovery against the district and request legal action by the Attorney General.

Corrective Action Program

(R.C. 3318.49; Sections 620.30 and 620.31)

H.B. 462 of the 128th General Assembly, the capital reauthorization act for the 2010-2012 biennium, gave temporary authority to the School Facilities Commission and appropriated \$23.3 million for grants to districts to correct defective or omitted work connected with a project. The bill codifies that authority and makes it a permanent program. Beginning July 1, 2011, the Commission must operate the program using the new codified statutory language.

For purposes of the permanent program, the Commission must define both "defective" and "omitted" and establish procedures and deadlines for districts to use in applying for assistance. The permanent authorization also differs from H.B. 462's temporary provisions as follows:



(1) It changes the deadline for a school district to notify the Commission of defects or omissions to five years after facility occupancy, instead of five years after project close-out as under H.B. 462.

(2) It states that the Commission's procedures for corrective action first must focus on engaging the responsible contractors.

(3) It requires a local share of the cost of the corrective work, based on the method used to determine respective shares of CFAP or vocational district projects. But the bill allows a district to request additional state assistance if it cannot provide its share; and

(4) The bill requires the Commission to seek recovery from responsible parties and to apply any recovered funds first to the district's share of the cost of the corrective work and then to the state's share.

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 School Facilities 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.

Accounting for reductions in tangible personal property valuations

(R.C. 3318.011)

The bill modifies the formula for computing district shares of CFAP projects to account for those districts that had relatively high tangible personal property valuations before the law phased out the tax on most tangible personal property. Since the formula for determining a district's wealth percentile, which in turn is used to determine its share of its CFAP project cost, is averaged over three years and itself includes a three-year average of a district's tax valuation, some districts may appear to have a greater tax capacity than they actually have for a few years until that former tangible personal property valuation is no longer reflected in their averaged tax valuations.

The bill addresses this delayed effect by specifying that, if a school district's tangible personal property valuation, not including public utility personal property (which is still subject to taxation), made up 18% or more of its total taxable value for tax year 2005 (when the phase-out began), then its three-year "average taxable value" used in determining the wealth percentiles must include only its real property tax valuation and public utility personal property valuation for all years that are considered in the average. For all other districts, the bill continues to require the calculation of average taxable value using both real property and all tangible personal property tax valuations.

Alternate equity list

(Section 387.70)

Since the Department of Education has already certified the wealth percentile or "equity list" for fiscal year 2011 that is used to determine funding under the School Facilities Commission's programs for fiscal year 2012, the bill also requires the



Department to calculate and certify a new, alternate equity list for use in fiscal year 2012 using the bill's new definition of "average taxable value," as described above. However, the bill adds that a district that already has been offered assistance for fiscal year 2012 prior to the Commission's receipt of the alternate equity list may not be denied the opportunity for assistance for that fiscal year because of the change in equity rankings on the alternate list. Also, the bill provides that, for any district offered assistance in fiscal year 2012, the district's share of the cost of its project will be the lesser of its share based on the district's percentile rank on the alternate equity list or its share based on its percentile rank on the original equity list for fiscal year 2011.

CFAP shares for Expedited Local Partner districts

(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,²⁸³ 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 *least* of (1) the percentage locked in under the Expedited Local Partner agreement, (2) the percentage computed using its current wealth percentile rank, or (3) for a CFAP project approved for fiscal year 2012, the amount computed under the alternative equity list as described above. Otherwise, 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.

Background

As noted above, 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. 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.²⁸⁴ 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

²⁸³ 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.

²⁸⁴ R.C. 5711.22, not in the bill.



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. Still, the impact of this decline is likely delayed for districts that had a relatively high percentage of tangible personal property in their tax valuations.

Segmented projects for 1990 "look-back" districts

(R.C. 3318.034)

A school district is permitted to divide its CFAP project into segments and to proceed with only one or more separate segments of the total project at a time. Thus, a district need not seek voter approval for a bond issue for the complete project all at once. However, the law also requires that (1) each segment consist of new construction or complete renovation of one or more entire buildings and (2) the district's share of the cost of each segment be equal to at least 4% of the district's tax valuation. In addition, a segment may not leave a building uncompleted.

The bill exempts from these requirements certain segmented projects by "1990 look-back" districts. Those districts are ones that received assistance under CFAP as it was administered by the Department of Education under former law before creation of the School Facilities Commission in 1997. That program often did not provide for district-wide assistance to a district. The law permits such districts to receive additional assistance, when their wealth percentiles are eligible under current law, if they did not receive assistance for a complete district-wide renovation prior to 1997.

Under the bill, when a 1990 "look-back" district opts to segment its new project, it may create a segment that addresses only a part of a facility in order to renovate or replace work done under its prior project, if the Commission determines that the renovation or replacement is necessary to protect the facility. The cost of the segment is to be shared by the state and the district in the usual manner, but the minimum size requirements described above do not apply. Also, the district need not seek a maintenance levy for that segment, as is otherwise required for all CFAP projects. (Each district participating in a state classroom facilities program generally must levy an additional tax of one-half mill for 23 years or generate the equivalent of that amount by some other means.)

School district debt limit

(R.C. 133.06)

All political subdivisions, including school districts, are subject to some debt limit that is based on a percentage of their property tax valuations. The percentage and



the types of debt that are included in those limits vary among types of subdivisions. Generally, a school district may not incur debt in a net amount greater than 9% of its tax valuation. However, a school district may incur debt exceeding that limit when undertaking a state-assisted classroom facilities project or if the state Superintendent certifies that the district has "special needs" for public improvements that it cannot finance without exceeding the limit. The bill makes changes to both of these exceptions to the general school district debt limit.

State-assisted school facilities projects

Currently, a district undertaking a state-assisted facilities project may exceed the ordinary debt limit to raise funds necessary to pay for (1) the district's share of the project, (2) the site for the project, and (3) any "required" locally funded initiatives. The School Facilities Commission may require districts to pay the entire amount for certain items that do not meet the Commission's specifications but are closely associated with the state-assisted portion of the entire project. The bill adds, to this list of improvements for which the district may exceed the debt limit, the cost of other, nonrequired locally funded initiatives in an amount of up to 50% of the district's project cost.

Special needs districts

Upon application, the state Superintendent may declare a school district as a "special needs" district, permitting the district to incur debt in excess of the ordinary limit in order to acquire needed permanent improvements. The bill makes several changes to the process to apply for a special needs certification and the amount of additional debt a special needs district may incur.

First, under current law, in applying for this certification, a district must submit to the state Superintendent a history and projection of the growth of both the district's student population, and its tax valuation, its projected facilities needs, and the estimated cost to meet those projected needs. The bill eliminates the requirement that a district submit a history and projection of the district's student population growth. It retains all of the other required items.

Next, the bill changes the standard for certification of special needs. Under current law, the state Superintendent may certify a district as an "approved special needs district," if the Superintendent finds that (1) the district does not have available sufficient additional funds from state or federal sources to meet the projected needs and (2) the growth in the district's tax valuation during the next five years is projected to average at least 3% per year. The bill reduces required projected average tax valuation growth to only 1.5% per year.



Finally, the bill increases the amount of debt a certified special needs district may incur. Under current law, a special needs district may incur debt equal to the greater of:

(1) 9% of the sum of its tax valuation plus the product of the tax valuation times the percentage by which the tax valuation has increased over the 60-month period prior to an election on the issuance of securities; or

(2) 9% of the sum of its tax valuation plus the product of the tax valuation times the percentage the state Superintendent projects the district's tax valuation will increase during the next 10 years.

The bill changes the percentages to 12% of either sum as described above, instead of 9%.

Financing under the Vocational School Facilities Assistance Program

(R.C. 3318.44)

The School Facilities Commission administers the Vocational School Facilities Assistance Program, exclusively to provide assistance to joint vocational school districts (JVSDs) on a graduated, cost-sharing basis in a manner similar to other districts under CFAP. However, the needs of these districts are different from those of other districts and their tax capacity to finance their projects is generally greater since their territories are so large. The law provides JVSDs with a wide array of options for financing their shares of their projects. The bill expands those options by permitting a JVSD board to combine in a single resolution propositions to commit the use of existing or new tax levies to finance the annual debt service on bonds issued for *both* its state-assisted classroom facilities project and locally funded initiatives related to that project.

Energy conservation measures

(R.C. 133.06 and 3313.372)

Current law permits a school district, subject to approval by the School Facilities Commission, to issue bonds to purchase energy conservation improvements without voter approval in an amount up to 9/10 of 1% of the district's tax valuation. The debt service on the bonds is paid with the estimated savings on energy costs. In a similar manner, districts may enter into a series of installment contracts for energy conservation improvements with the approval of the Commission.

In applying for approval, a district must submit to the Commission a report prepared by an architect, professional engineer, or other person experienced in the design and implementation of energy conservation measures. That report must include



estimates of all costs of design, engineering, installation, maintenance, repairs, debt service, and amounts by which energy consumption and resultant operational and maintenance costs may be reduced. The bill adds requirements that the report also include estimates of both (1) forgone residual value of materials or equipment replaced by the new energy conservation measures, and (2) a baseline analysis of actual energy consumption data for the preceding five years.

Also, current law requires the district board to monitor the savings and maintain a report of those savings, which must be made available to the Commission upon request. The bill, instead, requires outright that the district board submit its report to the Commission annually.

Debarment of contractors on SFC projects

(R.C. 153.02 and 3318.31)

The bill grants the 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 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 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 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 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'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 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.
- 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 is required to use the moneys credited to the fund for activities conducted pursuant to the Help America Vote Act of 2002.²⁸⁵ 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 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 2002²⁸⁶ 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.

²⁸⁵ Pub. L. No. 107-252, 116 Stat. 1666.

²⁸⁶ Title II, Subtitle D, Sections 261 to 265.



Citizen Education Fund

(R.C. 111.29)

The bill establishes, in the state treasury, the Citizen Education Fund. The fund is to receive gifts, grants, fees, and donations from private individuals and entities for voter education purposes. The Secretary of State is required to use moneys credited to the fund for preparing, printing, and distributing voter registration and educational materials and for conducting related workshops and conferences for public education. The fund is currently established in temporary law.

Electronic format and more flexible distribution requirements for session laws

(R.C. 149.091 and 149.11)

The bill authorizes the Secretary of State to publish the session laws (the Laws of Ohio) in a paper or electronic format as an alternative to the current requirement for a permanently bound format (a minimum of 25 copies in permanently bound volumes). The bill also eliminates current specific numbers of copies to be produced and relaxes the distribution requirements by authorizing instead of requiring the free distribution of the session laws to specified persons (county auditors, county law libraries, and other public officials). The persons who would have received free bound copies under current law (the clerks of both houses of the General Assembly, the Legislative Service Commission, the Ohio Supreme Court, the Library of Congress, the State Library, the Ohio Historical Society, and the Secretary) must continue to receive free copies of the session laws in paper or electronic format from the Secretary.

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.²⁸⁷ Funds that were transferred to the Secretary of State Business Technology Fund will be retained in the Corporate and Uniform Commercial Code Filing Fund.

²⁸⁷ 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,²⁸⁸ 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 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, 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,

²⁸⁸ 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)

- Repeals the limitation that no more than five per cent of the total disbursements, encumbrances, and obligations of the Southern Ohio Agricultural and Community Development Foundation shall be for administrative expenses in the same fiscal year.

Repeal of administrative expenses cap for Southern Ohio Agricultural and Community Development Foundation

(R.C. 183.30)

The bill repeals the limitation that no more than 5% of the total disbursements, encumbrances, and obligations of the Southern Ohio Agricultural and Community Development Foundation shall be for administrative expenses in the same fiscal year. The bill also repeals a provision stating that the 5% limitation does not apply to administrative expenses for which the Controlling Board approves a spending plan that the Foundation submits to the Board.

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 the turnpike and the liquor merchandising function (JobsOhio); affected taxes are commercial activity and state and local income and sales/use taxes.
- Continues tax exemption of real property used by such contractors if the state continues to own the property during the contract.

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.
- 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 General Revenue Fund (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 \$750,000 in fiscal year 2011 may not receive less than \$750,000, while all other county LGFs must receive at least the same amount the county LGF received in fiscal year 2011.
- Earmarks \$50 million in FYs 2012 and 2013 to pay for the Senate's increase in the minimum distribution threshold from \$500,000 to \$750,000.



- 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.
- Establishes a new "default" or statutory formula for allocating LGF money from a county undivided local government fund to subdivisions that uses a somewhat guaranteed "base allocation," which for a county and a metropolitan park district is 30% and 5.5% of the county's undivided LGF allocation, respectively, and for all other subdivisions is a three-year rolling average of prior year allocations and distributions.
- Permits deviation from the formula if 75% of the subdivisions in the county agree to an alternative formula devised by the county budget commission.

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.
- Requires credits to be awarded after the rehabilitation or a stage in the rehabilitation is complete, depending on the length of the rehabilitation period
- Requires a credit recipient to repay any credit if the project is not completed.
- Allows the Department of Development and Ohio Historic Preservation Office to charge reasonable fees for the administration of the credit.
- Requires expenditures of projects with costs over \$200,000 to be certified by an accountant.

- Permits the Director of Development to rescind an application in which the applicant has failed to obtain financing for the project within 18 months of being approved for a credit.
- 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.
- Authorizes the Tax Credit Authority to grant a full or partial sales and use tax exemption for equipment purchased by a business for use at an "eligible computer data center," provided that the business agrees to make a capital investment of at least \$100 million and maintain an annual payroll of at least \$5 million at the center.
- Requires the Tax Commissioner to grant a direct payment permit to businesses that enter into an agreement with the Tax Credit Authority for a computer data center equipment sales and use tax exemption.

Estate tax

- Repeals estate tax for the estates of individuals dying on or after January 1, 2013.
- Excludes from the sales and use tax the value of gift cards or certificates redeemed by a consumer in exchange for the vendor's goods or services as part of the vendor's awards, loyalty, or promotional program.

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.
- Requires the Commissioner to administer a separate temporary use tax amnesty program specifically for consumers with outstanding use tax obligations.

Tax administration

- Authorizes the Tax Commissioner to adopt rules requiring employer income tax withholding, use tax, motor fuel tax, cigarette and tobacco product excise tax, or



severance tax returns or reports to be filed, or payments made, electronically, unless exempted for good cause.

- Authorizes the 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.
- Authorizes the Commissioner to provide notice of retail license suspension or revocation by a delivery service other than certified mail.
- 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 three years the deadlines by which the owner of a qualified energy project must submit a property tax exemption application, begin construction, and place into service an energy facility using renewable energy resources or advanced energy technology to qualify for an ongoing real and tangible personal property tax exemption.
- Creates a permanent joint legislative committee to periodically review all existing "tax expenditures" and to review any legislation proposing a tax expenditure, and to make recommendations to the General Assembly as to the continuation, modification, or repeal of existing tax expenditures.
- Requires any bill proposing a new or modified tax expenditure to include a statement of the objectives and intent of the tax expenditure.
- Extends to joint vocational school districts the same notification and veto rights regarding pending tax increment financing arrangements that currently apply to city, local, and exempted village school districts.
- 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.
- Authorizes school districts, with voter approval of a single ballot question, to levy both a property tax for a fixed amount of revenue and an income tax.
- Modifies the statutory language governing the agricultural "use on use," "direct use," and agricultural land tile sales and use tax exemptions by applying them to tangible personal property used "primarily" rather than "directly" for such purposes.
- Authorizes a sales and use tax exemption for building materials and related services incorporated into a structure for keeping fish, horses, or captive deer for food or other agricultural purposes.
- 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.
- Expands the purposes for which a political subdivision may propose a police or fire services property tax levy to include the payment of salaries and retirement fund contributions for EMS personnel, part-time police personnel, and police and fire communications and administrative personnel.
- Clarifies that the ballot for a school property tax levy for cultural center purposes must state that the levy is for cultural center purposes.
- 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.
- Extends by one year the authority of the prosecuting attorney or treasurer of Hamilton County to appropriate up to 50% of delinquent tax and assessment funds above the amount necessary to collect additional delinquent taxes and assessments and to use the excess to pay operating expenses of the respective office otherwise paid from the general fund.
- States that, for the purpose of the existing corporation franchise (i.e., financial institution) tax credit for research expenses incurred by one or more members of a commonly owned or controlled group of corporations, an insurance company may

be included in the group, even though insurance companies are not subject to the corporation franchise tax.

- Divides each county's Delinquent Tax and Assessment Collection Fund into two separate funds, one for the expenses of the county treasurer and one for the expenses of the county prosecuting attorney.
- Authorizes the county treasurer or prosecuting attorney to suspend the crediting of delinquent tax collections to the respective officer's fund if the balance of the fund reaches a specified threshold.
- Authorizes a commercial activity tax exemption for receipts received from transactions that occur within a "uranium enrichment zone" certified by the Tax Commissioner.

Tax exemptions for privatized state services

(R.C. 126.60, 126.604, 718.01(A)(1), 4313.02(A), 5739.02(B)(51), 5747.01(A)(30), and 5751.01(F)(2)(ff))

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 two parties covered by the tax exemptions authorized by the bill are 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), and 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 operating the turnpike ("turnpike 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 from 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 turnpike 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 turnpike 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 includes a limited hold-harmless provision that guarantees minimum payments to county LGFs in fiscal years 2012 and 2013. Specifically, any county undivided LGF that received over \$750,000 in fiscal year 2011 must receive a minimum of \$750,000 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 \$750,000 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 2013, each month's total LGF allocation will include three components:

(1) First, the LGF will receive an amount each month equal to a percentage of the allocation made to the fund in that corresponding month in fiscal year 2011. Between August of 2011 and June of 2012, the amount will equal 75% of that month's fiscal year 2011 allocation. Then, between July of 2012 and June of 2013, the amount will equal 50% of that month's fiscal year 2011 allocation.

(2) The second amount allocated each month will equal the amount that would be necessary, after allocation of the amount in (1), to make minimum distributions to county undivided LGFs if the minimum distribution level were \$500,000 instead of \$750,000 (i.e., if counties that received over \$500,000 in fiscal year 2011 could not receive less than \$500,000, and if counties that received less than \$500,000 in fiscal year 2011 could not receive less than the amount received in that fiscal year).

(3) Third, each month's LGF allocation will include part of the \$100 million earmarked for fiscal years 2012 and 2013 to pay for the increase in the minimum distribution threshold from \$500,000 to \$750,000. (The House-passed bill set the minimum at \$500,000. The Senate increased it to \$750,000 and earmarked the CAT to pay for the increase.) Between August of 2011 and June 2012, the third amount allocated each month will equal one-eleventh of \$50 million (one-eleventh because only 11 of the 12 monthly distributions in FY 2012 are affected by the bill; the July 2011 distribution is made under current law). Between July of 2012 and June of 2013, the amount will equal one-twelfth of \$50 million.

The bill also specifies that the amounts in (1) and (2) must be allocated from income tax revenue credited to the GRF. The amounts in (3) may be allocated from any state 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 amount credited to the state LGF (as described in (1) under "**State funding of the Local Government Fund**") must be distributed to county LGFs and municipal corporations on a pro rata basis based on the proportionate share of state distributions each fund 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 \$750,000 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 \$750,000 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 \$750,000. 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 \$750,000. The bill's minimum distribution levels do not apply to direct municipal corporation distributions.

If, in any month, the state LGF monthly allocation exceeds the total amount necessary to make the initial distributions and minimum distributions described above, any excess must be distributed to all county LGFs based on each fund's proportionate share of the LGF distributions made to all county LGFs in that month in fiscal year 2011. (Similar to the initial distributions, a county's proportionate share does not include



dealers in intangibles taxes received in FY 2011.) Direct municipal corporation distributions would not receive a share of the excess.

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 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 Commissioner from compliance with these certification requirements in the 2012 and 2013 distribution years. Instead, the 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 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.

Allocation of undivided local government funds

(R.C. 5747.51, 5747.52 (repealed and reenacted), and 5747.53)

The bill establishes a new "default" or statutory formula for allocating Local Government Fund money from a county undivided local government fund to subdivisions. The bill permits deviation from the formula if 75% of the subdivisions located wholly or partially in the county agree to an alternative formula.



Ongoing law

Under ongoing law, the Tax Commissioner is required to certify to the county auditor of each county the amount of Local Government Fund money the Commissioner estimates will be paid in the upcoming calendar year to the county's undivided local government fund. (The certification is required to occur before July 26.) The auditor is then required to present the certified amount to the county budget commission (comprised of the county auditor, treasurer, and prosecuting attorney), which is then required to determine each political subdivision's (including the county's) "percentage share" of the certified amount using the tax budgets or other financial documents submitted to the commission (due, generally, on or before July 15). The budget commission is required to certify the percentage shares to the Tax Commissioner and must inform each subdivision of the amount it is estimated to receive. The commission's work must be completed by September.

Current law

Under current law, a subdivision's "percentage share" is determined by computing the subdivision's "relative need." Relative need is determined by subtracting various amounts from the subdivision's total estimated expenditures:

- Expenditures for roads, gas, water, sewer, and electric public utilities operated by the subdivision;
- Expenditures for public improvements and debt charges;
- Amounts to pay judgments;
- Amounts to be raised by taxes within the 10-mill limitation;
- The amount of public library funds estimated to be allocated to the subdivision;
- Miscellaneous revenue (i.e., revenue not raised by a tax or special assessment approved by voters);
- General fund money not devoted to the payment of any expense (but not amounts in a reserve balance account).

Once all subdivisions' relative needs are determined, the amounts are totaled, and the total is divided into the LGF amount certified by the Commissioner. The quotient is then multiplied by a subdivision's relative need, and the product is the amount estimated to be distributed to the subdivision (called the subdivision's "*proportionate share*").



Subdivisions other than the county are guaranteed a certain minimum proportionate share. The guaranteed amount equals the subdivision's average percentage share for 1968, 1969, and 1970 multiplied by the amount the subdivision actually received in 1970. Once all proportionate shares are determined, each subdivision's proportionate share is divided by the amount certified by the Commissioner, and the quotient is the subdivision's *percentage* share.

The county's percentage share is capped, depending on how many county residents live in municipal corporations. If 40% or fewer county residents reside in municipal corporations, the county's percentage share is capped at 60%. If the municipal population percentage is 41% to 80%, then the county's percentage share is capped at 50%. If the municipal population exceeds 80%, then the percentage share cap equals 30%.

Proposed formula

The bill eliminates the "relative need" computation and the related guarantees and caps and replaces it with a new formula. Under the new formula, a county and the metropolitan park district in the county, if any, will receive 30% and 5.5%, respectively, of the amount certified by the Tax Commissioner to the county auditor. (The certified amount is called the "total county allocation"). The resulting dollar amounts are the county's and park district's "base allocation." If the amount actually paid to the county's undivided local government fund exceeds the total county allocation, and the excess is greater than \$750,000, the county and metropolitan park district will receive 30% and 5.5%, respectively, of the amount in excess of \$750,000.

With respect to all other subdivisions, if the total county allocation exceeds the sum of all base allocations, each subdivision will receive its "base allocation" plus a share of the excess (the subdivision's "excess allocation"). If the total county allocation is less than the sum of all base allocations, each subdivision will receive its "adjusted (i.e., reduced) base allocation." Finally, if the amount actually paid to the county's undivided local government fund exceeds the total county allocation, each subdivision will receive a share of the excess.

A subdivision's "base allocation" is the average of three amounts: (1) the sum of the subdivision's base or adjusted base allocation and its excess allocation for which the subdivision is to receive payment in the current year, (2) the amount the subdivision actually received last year, and (3) the amount the subdivision actually received the year before last year. A subdivision's "adjusted base allocation" is its proportion of the sum of all base allocations multiplied by the total county allocation.

If the total county allocation exceeds the sum of all base allocations, each subdivision will be entitled to its "excess allocation." The formula to determine a subdivision's excess allocation takes into consideration three factors weighted by the subdivision's population: per capita taxable value, per capita income, and population density. The weighted factors are determined for each subdivision. For each weighted factor category, the sum of the factors for each subdivision is determined, and each subdivision's proportion of that total is computed. Once a subdivision's proportions for each weighted factor category are determined, they are averaged (i.e., they are added and the sum is divided by three). That average is then multiplied by the total excess to be allocated—the amount by which excess total county allocation exceeds the sum of all base allocations.

If the amount actually distributed to a county's undivided local government fund exceeds the total county allocation, each subdivision is entitled to a share of the excess. Of the first \$750,000 of excess, each subdivision will receive a share in proportion to its share of the total county allocation. For amounts greater than \$750,000, the amount remaining after the county and metropolitan park district's shares of the excess above \$750,000 are subtracted is distributed in the same manner as subdivisions' "excess allocation."

Alternative method

The bill authorizes a county budget commission to apportion county undivided local government funds in a manner of its own choosing. The alternative method, however, must be approved by at least 75% of the subdivisions located wholly or partly in the county.

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.²⁸⁹ 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.

²⁸⁹ A "tax year" is the same as the calendar year. For example, tax year 2011 means January 1, 2011 through December 31, 2011.



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."

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	40.6% 50.0%	70.0% 35.0%	49.4% 15.0%

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 \leq 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;²⁹⁰
- 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.

²⁹⁰ 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.²⁹¹ 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)
<ul style="list-style-type: none"> • 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:

²⁹¹ 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 2009.²⁹² 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).

²⁹² 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)
<ul style="list-style-type: none">• 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 imposed 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 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	<p>Current law: Successor district receives the sum of the fixed-rate levy losses for each district merged.</p> <p>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</p>	<p>Current law: Successor district receives the sum of the fixed-sum levy losses for each district merged.</p> <p>Bill: Same as current law.</p>
Transfer of part of a district's territory to an existing district	<p>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.</p> <p>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.</p>	<p>Current law: The Department of Education, in consultation with the Tax Commissioner, shall make an equitable division of the fixed-sum levy loss reimbursements.</p> <p>Bill: Same as current law.</p>
Transfer of part of a district's territory to a newly created district	<p>Current law: No fixed-rate levy losses are transferred</p> <p>Bill: No total resources, current expense TPP allocation, total TPP allocation, and non-current expense TPP allocation are transferred.</p>	<p>Current law: The Department of Education, in consultation with the Tax Commissioner, shall make an equitable division of the fixed-sum levy loss reimbursements.</p> <p>Bill: Same as current law.</p>



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.²⁹³ In tax year 2002, assessment rates for natural gas property were similarly reduced.²⁹⁴ 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

²⁹³ S.B. 3 of the 123rd General Assembly.

²⁹⁴ 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.²⁹⁵ 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:

²⁹⁵ 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 qualify to receive the existing refundable credit only 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, 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. A recipient of the new refundable credit must agree to (1) maintain an annual payroll of at least \$35 million or (2) maintain an annual payroll of at least \$20 million and retain at least 500 full-time equivalent employees. 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. In the 2011, 2012, and 2013 calendar years combined, the Tax Credit Authority may authorize up to \$25 million of refundable job retention credits. Beginning in 2014, the total amount authorized between 2011 and 2013 is the maximum amount that may be awarded in each year of the ensuing 15-year period.

Historic building rehabilitation tax credit

(R.C. 149.311)

Permanent extension and credit limit

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.

Tax credit certificate issuance and projects completed in stages

For an applicant whose time period for rehabilitation is not projected to exceed 24 months, the Director of Development is required to award credit certificates upon the project's completion of the rehabilitation. For an applicant that plans to complete the rehabilitation in stages, the Director is required to issue credit certificates after a stage in the rehabilitation is complete, depending on the length of the rehabilitation period, but the total period may not exceed 60 months, in accordance with federal law governing the federal rehabilitation tax credit.²⁹⁶

Applicants awarded a tax credit for a completed stage of rehabilitation are required to repay any amounts received if the project is not completed. Under current law, the Director may not award a credit certificate until a project has been completed. The Director may reallocate unused tax credits from a prior fiscal year for new applicants.

Administration fees

The bill permits the Department of Development and Ohio Historic Preservation Office to charge reasonable fees for the administration of the Historic Preservation Tax Credit Program. The fees are to be deposited in the Historic Rehabilitation Tax Credit Operating Fund created by the bill and used to pay costs incurred by the Department of Development and the Ohio Historic Preservation Office in administering the credit.

Miscellaneous changes

The bill requires a person applying for a rehabilitation tax credit certificate to apply to the Director of Development, who evaluates the application with the assistance of the State Historic Preservation Officer. Under current law, the person applies to the State Historic Preservation Officer, who then forwards applications to the Director for evaluation.

The bill requires expenditures of a project with total costs exceeding \$200,000 to be certified by a certified public accountant.

²⁹⁶ The cross-reference to 36 C.F.R. § 67.7(b)(8) in R.C. 149.311(A)(7)(b) appears to be in error. The proper cross-reference appears to be 26 C.F.R. § 1.48-12(b)(2)(v).



The bill permits, rather than requires as under current law, the Director to rescind an application in which the applicant has failed to obtain financing for the project within 18 months of being approved for a credit.

The bill requires the Tax Commissioner and Director to submit an annual report in April of each year. The current bill required an annual report through 2011. The bill requires the Commissioner and the Director to submit recommendations regarding the effectiveness of the program by December 2015 and not in 2012, as required under current law.

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.



Computer data center equipment sales and use tax exemption

(R.C. 122.175)

The bill allows businesses to receive a full or partial exemption from the sales and use tax for purchases of certain personal property that will be used at an "eligible computer data center."

Eligibility for the exemption

To qualify for the exemption, a business must agree to make a capital investment at an "eligible computer data center" in the state. A computer data center is eligible if the business agrees (1) to invest at least \$100 million in the computer data center or in equipment for use at the center and (2) to maintain an annual payroll of at least \$5 million at the center. Regarding the capital investment, the bill does not prescribe a beginning date after which investments count toward the \$100 million minimum. Instead, the Tax Credit Authority is authorized to establish the beginning date. The bill does not require that the date fall after the bill's effective date.

The bill defines a "computer data center" as a facility used primarily to house computer data center equipment used in conducting a computer data center business. A computer data center business is a business that provides access to computer equipment by means of telecommunications equipment for the purpose of (1) examining or acquiring data that is stored in or accessible to the computer equipment or (2) placing data into the computer equipment that can be retrieved by recipients with access to the computer equipment.

Computer data center equipment includes tangible personal property used in conducting a computer data center business, including the equipment necessary to supply electricity for the center or cooling systems that manage the performance of the equipment. Building and construction materials incorporated into the computer data center also qualify.

Exemption application

A business must apply to the Tax Credit Authority to enter into an agreement for a complete or partial sales and use tax exemption for computer data center equipment that will be used at an eligible computer data center. The Director of Budget and Management, Tax Commissioner, and Director of Development must review the application, determine the economic impact of the proposed computer data center, and make recommendations in regards to the application.



After reviewing those recommendations, the Tax Credit Authority may enter into an agreement authorizing a sales and use tax exemption only if it determines that (1) the business' capital investment in the proposed computer data center will increase payroll and the amount of Ohio income taxes that will be withheld from the compensation paid to employees of the center, (2) the business has the ability to complete the proposed capital investment, (3) the business intends to and has the ability to maintain operations at the eligible computer data center for the term of the agreement, and (4) receiving the exemption is a major factor in the business' decision to begin, continue, or complete the capital investment.

If the Tax Credit Authority approves an application, the authorized exemption will apply to the business' purchases of computer data center equipment and to any charges for the delivery, installation, or repair of that equipment.

Agreement with Tax Credit Authority

An agreement for a computer data center equipment sales and use tax exemption must include the following:

(1) A description of the eligible computer data center, the amount of the capital investment that will be made at the center, the timeline for the capital investment, the annual payroll at the proposed center, and the anticipated amount of Ohio income taxes to be withheld from the compensation of employees of the center.

(2) The percentage of the approved exemption, the length of time the exemption will apply, and the first date the exemption will apply.

(3) A requirement that the business maintain operations, and an annual payroll of at least \$5 million, at the eligible computer data center for the term of the agreement.

The agreement must also include several provisions similar to those required in agreements for a job creation or retention tax credit under R.C. 122.17 and 122.171. Those provisions include an annual reporting requirement, a limitation on employment position relocations, and a requirement that the business waive any limitations periods applicable to tax assessments payable if the business does not comply with the agreement.

Agreement compliance

Under the bill, the Tax Credit Authority may amend an agreement to reduce the percentage or term of an authorized exemption if a business fails to comply with any condition of the agreement.



The Tax Credit Authority may also terminate an agreement if a business does not maintain operations at an eligible computer data center for the term of the agreement. In such instances, the Authority may require the business to pay all or a portion of the taxes that would have been owed on equipment exempted under the agreement. The bill allows the Authority discretion in determining the portion of the unpaid taxes to charge a business.

Direct payment permits

The bill requires the Tax Commissioner to grant a direct payment permit to a business that enters into an agreement for a computer data center equipment sales or use tax exemption. Under continuing law, a direct payment permit allows an eligible business to forgo the payment of sales and use tax at the time of purchase and to instead accrue and pay the tax directly to the Department of Taxation.

Under the bill, a business' direct payment permit must allow the business to pay directly to the Department of Taxation any sales and use taxes due on computer data center equipment (if the business has a partial exemption) or other nonexempt goods or services purchased for use at an eligible computer data center. The business must file a return that details the amount of computer data center equipment purchased, the amount of other goods and services purchased for use at the eligible computer data center, the exemption percentage, the amount of tax that would be due absent the exemption agreement, and the amount of tax due as a result of the exemption.

Exemption from Public Records Law

Under the bill, financial statements or other information submitted to the Department of Development or Tax Credit Authority in relation to an exemption authorized in the bill are not subject to Ohio's Public Records Law. However, the Authority must provide such information to the Tax Commissioner upon request. The Authority may also use such information to issue public reports or in connection with court proceedings.

Annual report

On or before August 1 of each year, the Director of Development must submit an annual report that includes the number of agreements the Department entered into in the previous year, a description of the eligible computer data centers that are the subjects of those agreements, and a status update on all eligible computer data centers that are the subject of an exemption agreement.



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.



Sales and use tax exemption for customer loyalty coupons

(R.C. 5739.01(H)(1)(c), (I), and (PPP))

The bill excludes from the sales and use tax the value of gift cards or certificates redeemed by a consumer in exchange for a vendor's goods or services as part of the vendor's awards, loyalty, or promotional program.

Under the bill, sales and use taxes will not apply to any portion of the price of an item or service paid for with a gift card or certificate if (1) the gift card or certificate was distributed through a customer awards, loyalty, or promotional program and (2) the vendor does not receive any reimbursement or compensation from a third party to cover any part of the value of the gift card or certificate. A past or present purchase by the consumer is not considered compensation to the vendor for the gift card or certificate. The exclusion does not apply to gift cards purchased by consumers or sold by vendors. The bill defines a gift card to be a document, card, or certificate or a tangible or intangible record that can be redeemed for a dollar value when a purchase is made.

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. A separate amnesty program is proposed specifically for the use tax, as described in the following section.

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.

Use tax amnesty program

(R.C. 5703.58; Section 757.42)

The bill requires the Tax Commissioner to establish and administer a temporary use tax amnesty program specifically for consumers owing outstanding use tax. Consumers owing use tax are not eligible to participate in the general use tax amnesty program created in the bill (Sections 757.40 and 757.41). The general amnesty program is available to out-of-state sellers who register with the Commissioner and are required to collect and remit use tax. These sellers are not authorized to participate in the use tax amnesty program. A consumer that has been assessed for delinquent use tax on or before the program begins is not eligible to participate in the program.

The use tax program begins on the effective date of the section (the 91st day after the bill is filed) and runs until May 1, 2013. Under the program, a consumer with outstanding use tax liability is required to self-report and remit the amount of use tax owed by the consumer from January 1, 2010 forward. If the consumer pays the required amount of delinquent use tax, the Commissioner is required to waive or abate all delinquent use tax owed by the consumer before January 1, 2010, and all applicable interest and penalties accruing on any delinquent use tax owed by the consumer. A consumer that makes the required payments pursuant to the program may not be the subject of a criminal or civil action with regard to the remitted tax, and the



Commissioner may not issue an assessment against the consumer for that tax. A consumer that does not participate in the use tax amnesty program may be audited and assessed for delinquent use tax owed on or after January 1, 2008, and any interest or penalties that have accrued on that tax. Under existing law, an assessment against a consumer must be issued within ten years after the tax was due, except in cases of fraud, for which there is no time limit.

The Commissioner is required to issue forms and instructions and to adopt rules to administer the program and contract with parties for the promotions, computer support, or administration of the program. As soon as practicable after the program begins, the Commissioner is required to implement installment payment plans for participants in the amnesty program. No payment plan may last more than 24 months, and interest accrues on this amount at the state-set rate that applies to overdue taxes (currently 4% per year), and is compounded annually. If a consumer that has entered into a payment plan with the Commissioner fails to make the required payments, the Commissioner is required to certify to the Attorney General any unpaid amount for the Attorney General to begin collection proceedings.

Any taxes and interest from payment plans collected under the program are credited to the General Revenue Fund or to the appropriate counties or transit authorities.

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, use tax, 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 Commissioner.

Any taxpayer that is required under the rules to file or pay electronically may apply to the 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.

Vendor license revocation or suspension notices

(R.C. 5703.056 (not in bill), 5703.37, 5739.19, and 5739.30)

The bill authorizes the Tax Commissioner to notify a sales tax vendor that the vendor's retail license has been revoked or suspended by using a delivery service other than certified mail if the Commissioner finds that the delivery service is timely, reliable, and available to the general public and it records the name of the person who accepted delivery and the date delivery was accepted. Current law requires the Commissioner to deliver such notices via personal service or by certified mail.

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.

Tax expenditures: joint legislative review committee

(R.C. 101.36)

The bill creates a permanent joint legislative committee – composed only of legislators – to review all existing "tax expenditures" and to review any proposed tax expenditure legislation. The review of existing tax expenditures would have to be scheduled so that each existing tax expenditure would be reviewed at least once every eight years. The committee is named the Joint Tax Expenditure Review Committee.

"Tax expenditure"

The bill adopts existing law's definition of "tax expenditure," which currently is used to define the content of the Department of Taxation's Tax Expenditure Report that accompanies the Governor's proposed biennial operating budget. Under that definition, a tax expenditure is "any tax provision in the Revised Code that exempts, either in whole or in part, certain persons, income, goods, services, or property from the effect of taxes established in the Revised Code, including, but not limited to, tax deductions, exemptions, deferrals, exclusions, allowances, credits, reimbursements, and preferential tax rates." (R.C. 5703.48.) According to the current Tax Expenditure Report, there are currently 128 tax expenditures.

Duty of committee

The Joint Tax Expenditure Review Committee is required to establish a schedule for reviewing each existing tax expenditure at least once every eight years. The committee may order tax expenditures for review according to the order of their enactment or modification or according to the beneficiaries, the objectives, or the policy rationale. The committee must recommend whether each tax expenditure under review should be continued, modified, repealed, or scheduled for further review later. The committee may recommend "accountability standards" for future reviews of a tax expenditure.

The committee also is required to review each bill that proposes to enact or modify a tax expenditure after the bill is first introduced and before it is scheduled for a vote in a legislative committee. After the review, the committee must issue a copy of its review to each member of the legislative committee the bill was referred to.



Review criteria

The bill sets forth the following factors the review committee may consider in reviewing existing or proposed tax expenditures:

- The number and classes of persons that benefit from the tax expenditure;
- State and local fiscal effects;
- Public policy objectives, for which the committee may consider legislative history, the sponsor's intent, and the tax expenditure's effects on economic development, "high-wage jobs," and "community stabilization";
- The success of the tax expenditure in meeting its objectives;
- Whether the objectives could be served by other means or with less fiscal cost;
- Whether the objectives could have been accomplished by appropriations instead of tax expenditures;
- Whether the tax expenditure is more expansive than intended or has any other unintended effects, including giving an unfair competitive advantage to recipients at the expense of other businesses;
- The extent of any negative effects on recipients from ending a tax expenditure;
- The feasibility of modifying a tax expenditure to include adjustments or recapture in case recipients do not comply with its terms.

Proposed tax expenditures

The bill requires any bill introduced in the General Assembly that proposes to enact or modify a tax expenditure to include a statement explaining its objectives and the sponsor's intent.

Report

The committee is required to issue a report each year of its determinations and deliver a copy of the report to the Governor, the Speaker of the House, the Senate President, and the minority leaders of each chamber.

Committee composition

The committee is to be composed of eight members: the chairpersons of each chamber's tax-related standing committees, the ranking minority members of those



committees, and two appointees from each chamber, appointed by the Speaker and Senate President, respectively. Initial appointments must be made within 30 days after the provision's (90-day) effective date. Terms on the committee coincide with the term of each General Assembly.

Meetings

The committee must meet at least twice per year. Its meetings are open to the public to the extent required under the existing Open Meetings Law (R.C. 121.22), and the committee must allow any person to present testimony or evidence related to a tax expenditure. It must hold its first meeting within 90 days after the provision's effective date.

Joint vocational school districts: notices of pending TIFs

(R.C. 5709.40, 5709.41, 5709.42, 5709.73, and 5709.78)

The bill requires counties, townships, and municipal corporations contemplating tax increment financing-type property tax exemptions (TIFs) to notify joint vocational school districts (JVSDs) of the pending exemption. The bill also authorizes JVSDs to exercise an effective veto of any such exemption if more than 75% of the value of property is to be exempted or if the exemption would last for more than ten years. Under ongoing law, such notices must be given to city, local, and exempted village school districts, and those kinds of districts may veto a pending TIF if it would exempt more than 75% of otherwise taxable value or last for more than ten years. (TIFs may last for up to 30 years if school districts do not object.)

If the political subdivision proposing the TIF compensates a JVSD for all the taxes the JVSD would receive if the exemption were not granted, the political subdivision need not obtain the JVSD's prior approval. This is equivalent to the existing law for city, local, and exempted village school districts.

Qualified energy project tax exemption

(R.C. 5727.75)

The bill extends by three years the deadlines by which the owner or lessee of a qualified energy project must submit a property tax exemption application, submit a construction commencement application, begin construction, and place into service an energy facility using renewable energy resources (wind, solar, biomass, etc.) or advanced energy technology (clean coal, advanced nuclear, or cogeneration) to qualify for an ongoing real and tangible personal property tax exemption.



Under current law, with respect to an energy facility using renewable energy resources, the owner or lessee must submit an exemption application to the Director of Development, must submit a construction commencement application to the Power Siting Board (or, for smaller projects, to any other state or local agency having jurisdiction), and must commence construction before 2012. The owner or lessee must place the energy facility into service before 2013. The bill extends each of these deadlines by three years.

With respect to an energy facility using advanced energy technology, current law requires the owner or lessee to submit an exemption application to the Director of Development before 2014 and to place the energy facility into service before 2017. The bill extends each of these deadlines by three years.

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.

Combined school district income tax and property tax levy

(R.C. 145.56, 319.301, 3305.08, 3306.02, 3307.41, 3309.66, 3316.041, 3316.06, 3316.08, 3317.08, 5505.22, 5705.214, 5705.29, 5748.01, 5748.05, and 5748.081; Section 757.90)

The bill authorizes school districts to levy both a property tax for a fixed amount of revenue and an income tax through voter approval of a single ballot question.



Current law allows school districts to propose both types of levy questions at a single election, but not as a single issue on the ballot.

Levy proposal

To propose a combined levy, a school district board of education, by a vote of two-thirds of its members, must adopt a resolution declaring the necessity of raising a specified amount from each tax levy in order to support school operations. The resolution must be certified to the Tax Commissioner, who must estimate the income and property tax rates that would be necessary to raise the amount required to be raised from the income tax levy, and to the county auditor, who must calculate the property tax millage necessary to raise the amount required to be raised from the property tax levy.

After receiving the Tax Commissioner and county auditor estimates, the board of education, by a vote of two-thirds of its members, may adopt a resolution proposing to submit the combined levy question to voters at a special election (i.e., any of the four election dates each year). The resolution must state the income tax rate and property tax millage, the purpose of the income tax, the amount of money to be raised from the property tax, the date on which the income tax will take effect (which must be January 1 of any year following the year in which the question is submitted), and the tax list upon which the property tax will first be levied (which may be the current year's tax list).

The resolution must also specify the duration of each levy. Either tax may be levied for a specified number of years or for a continuing period of time; however, if the property tax is levied for a specified number of years, the number of years cannot exceed ten. Additionally, the resolution must state whether the income tax will be levied on all the taxable income of both resident individuals and estates, or only on the earnings of individuals. (Similar to other school district income tax levies, if the school district levies the income tax on both individuals and estates, the district may later replace the tax with a tax only on individuals' earnings.)

Submission of levy to voters

After the board adopts a resolution, the matter must be presented to school district voters in a single ballot question on the date of the special election specified in the resolution. Notice of the election must be published in one or more newspapers of general circulation in the school district once a week for two consecutive weeks before the election. (Under an unrelated law proposed in the bill, the second notice may be published in abbreviated form. R.C. 7.16.) Additionally, if the board of elections maintains a web site, notice of the election must also be posted on that web site for 30 days before the election.



If the taxes are approved by voters, the school district may issue notes in anticipation of a portion of the proceeds from each tax.

Exemption from H.B. 920 tax reduction law

Similar to other property taxes levied for a fixed amount, a property tax levy that may be combined with an income tax levy under the bill is exempt from the H.B. 920 tax reduction law. (The H.B. 920 tax reduction law operates to prevent the appreciation of real estate values from resulting in corresponding increases in property taxes. Generally, if the proceeds from a tax levied on real property in one year will exceed the proceeds from that tax, levied on that same property, in the preceding year, then the amount of the tax charged in the current year must be reduced by the difference. However, this reduction does not apply to a tax levy that is designed specifically to raise a fixed amount of revenue each year.)

Annual limitation on levy proposals

A school district may propose a combined income tax and property tax levy question up to twice per year. If the board submits the question more than once, at least one of the elections at which the question is submitted must be the November general election.

Levy reduction or repeal

As with other school district levies, voters may initiate a petition to repeal a school district income tax if it is levied for more than five years or to reduce a property tax levied for a continuing period of time.

Levy renewal

When one or both of the taxes levied through a combined levy are set to expire, the board of education may propose to renew either or both of the taxes through the submission of separate ballot questions. Alternatively, if both taxes are set to expire in the same calendar year, the board may propose a single ballot question to renew both existing taxes.

Applicability to pending proceedings

The bill provides that the provisions authorizing a combined income tax and property tax levy may apply to proceedings that are pending or completed, elections that are authorized, conducted, or certified, or securities that are authorized or issued on the date those provisions take effect.



Agricultural sales tax exemptions

Agricultural "direct use," "use on use," and land tile exemptions

(R.C. 5739.01 and 5739.02; Section 757.60)

The bill modifies the statutory language governing the agricultural "use on use" and "direct use" sales and use tax exemptions by applying them to sales of tangible personal property used "primarily" for producing tangible personal property used for farming, agriculture, horticulture, or floriculture or used "primarily" for those purposes. The bill also modifies the exemption for agriculture tile by requiring the tile to be used "primarily," instead of directly, for production in farming, agriculture, horticulture, or floriculture, respectively.

Under current law, sales of tangible personal property to farmers, agriculturists, horticulturists, and floriculturists who purchase such items for the purpose of incorporating them into tangible personal property to be produced for sale or to use them "directly" to produce other things for sale ("use on use"), and sales of articles to be used in farming, agriculture, horticulture, or floriculture "directly" in producing tangible personal property for sale ("direct use"), are not subject to sales and use tax. Under current law, agricultural land tile is fired clay or concrete tile, or flexible or rigid perforated plastic pipe or tubing, incorporated into a subsurface drainage system appurtenant to land used or to be used "directly" in production by farming, agriculture, horticulture, or floriculture.

Livestock structure exemption

The bill removes horses and fish from the definition of excluded livestock for the purpose of the ongoing sales and use tax exemption for livestock-related property, thereby extending the exemption to purchases of building materials and related services that are incorporated into a building or structure used for keeping fish or horses for food. The current exemption covers purchases of materials or services incorporated into buildings and structures used to house, feed, raise, or shelter livestock kept for food or other agricultural purposes, store or handle feed, or handle manure and waste.

The bill also exempts from sales and use taxation purchases of any building materials and related services that are incorporated into a building or structure used for keeping "captive deer" by specifying that such deer are "livestock" for the purpose of the existing exemption for livestock structures. "Captive deer" are deer and other cervidae that have been legally acquired, or their offspring that are privately owned for agricultural or farming purposes.



The bill states that its changes to the livestock structures exemption are intended to clarify the General Assembly's intent of the exemption when enacted.

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.

School district levy for cultural center

(R.C. 5705.21)

The bill clarifies that, if a school district seeks to levy a property tax for the purpose of operating a cultural center, the ballot must state that the levy is for the purpose of operating the cultural center. Current law requires the ballot to state the purpose of a levy.



Property tax levy for the payment of police and fire services personnel

(R.C. 5705.19)

Existing law allows political subdivisions to levy property taxes to pay for fire and police services and related property within the subdivision. The authorizing statute enumerates various specific categories of expenses that the levy's revenue may be spent for.

In addition to such expenses as the acquisition and maintenance of firefighting, ambulance, or emergency medical services equipment and buildings, the proceeds of a fire services levy may be used for the payment of "permanent, part-time, or volunteer firefighters or firefighting companies." The bill specifically authorizes subdivisions to also use the proceeds of a fire services tax levy to pay "emergency medical service, administrative, and communications" personnel involved in the subdivision's firefighting or emergency medical service operations.

Similarly, in addition to non-personnel related expenses, the proceeds of a police services levy may be used for the payment of "permanent police personnel." The bill specifically adds the payment of part-time police personnel as a permitted expense, as well as permanent or part-time communications or administrative personnel involved in the operation of the police department.

In regard to both types of levies, the proceeds from a levy for the payment of personnel may be used to make employer contributions to retirement or pension funds for those personnel.

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."

Delinquent Tax and Assessment Collection Fund

(Sections 640.10 and 640.11)

The bill extends until December 31, 2012, the authority of a prosecuting attorney or treasurer of a county with a population of between 800,000 and 900,000 – currently only Hamilton County – to determine that the amount of money appropriated to the respective office from the Delinquent Tax and Assessment Collection Fund exceeds the amount required to be used by that office in collecting additional delinquent taxes and assessments. The prosecutor or treasurer may spend up to 50% of the excess to pay the expenses of operating the respective office that otherwise would be payable from appropriations from the county general fund. This current authority, originally authorized by Section 6 of Am. Sub. S.B. 124 of the 128th General Assembly, had been scheduled to expire on December 31, 2011.

Franchise tax credit for research expenses

(R.C. 5733.351; Section 757.93)

Under ongoing law, a credit is allowed against the corporation franchise tax (CFT) for tax years 2004 through 2008 equal to 7% of the amount of qualified research expenses "incurred . . . by the taxpayer" during the taxable year that exceeded the taxpayer's average amount of research expenses over the three previous taxable years. The credit is nonrefundable but may be carried forward for up to seven years.²⁹⁷

²⁹⁷ "Taxpayer" is a defined term meaning a corporation subject to the CFT, which before tax year 2010 included corporations generally, but not insurance companies, and for tax years 2010 and thereafter includes only financial institutions and certain other financial-related corporations. (R.C. 5733.04.) "Qualified research expenses" is a term defined under section 41 of the Internal Revenue Code. It means, generally, research to discover technological information useful in the development of a new or improved business component, substantially all of the activities of which constitute experimentation to determine whether the component performs well. It excludes software developed for internal use.

In the case of a taxpayer who is a member of a "qualifying controlled group" (e.g., the taxpayer owns another taxpayer or the two are both owned by a third taxpayer, in which case the Tax Commissioner may treat them collectively as a single taxpayer for purposes of computing CFT liability), the credit is computed as if all taxpayers are one single taxpayer. The credit may then be allocated to such taxpayers in any manner selected by the taxpayers.

The bill states that an insurance company may be included in the qualifying consolidated group, even though insurance companies are not subject to the corporation franchise tax, and therefore not "taxpayers." (Insurance companies are subject to a different tax measured by premiums received to cover risks in Ohio.) The bill declares that the amendment is a clarification of existing law.

County Delinquent Tax and Assessment Collection Fund

(R.C. 321.261, with conforming changes in 149.38, 323.73, 323.75, 5721.19, and 5723.18)

The bill divides each county's Delinquent Tax and Assessment Collection Fund (DTAC Fund) into two separate funds, one for the expenses of the county treasurer and one for the expenses of the county prosecuting attorney. Under current law, the county DTAC Fund receives 5% of all delinquent real property, personal property, and manufactured mobile home taxes and assessments collected in the county, including 5% of the delinquent taxes and assessments collected on property sold at a tax foreclosure sale. The Fund also receives 20% of the proceeds from the public auction of abandoned lands (i.e., unoccupied tax-delinquent real property foreclosed through nonjudicial proceedings) and 10% of the taxes and assessments collected from the sale of forfeited land (i.e., tax-delinquent real property forfeited to the state pursuant to tax-foreclosure proceedings).

The county treasurer and prosecuting attorney are each apportioned one-half of the money allocated to the county DTAC Fund. The officers use these allocations to pay for the costs each office incurs in collecting delinquent taxes and assessments. The county treasurer may also use part of an appropriation to support a county land reutilization corporation.

The bill instead requires counties to establish a separate treasurer's DTAC Fund and prosecuting attorney's DTAC Fund, each of which would receive 2.5% of the delinquent taxes and assessments collected in the county. The separate funds would also receive one-half of the delinquent taxes and assessments received from tax foreclosure or forfeiture sales. However, all 20% of the proceeds from public auctions of abandoned lands must be credited to the treasurer's DTAC Fund.



Use of surplus money in a DTAC Fund

Under current law, if either the county treasurer or prosecuting attorney determines that the officer's appropriation from the county DTAC Fund will exceed the amount the officer will need for the purposes of collecting delinquent taxes and assessments for the current year, the officer may spend that surplus "to prevent residential mortgage foreclosures," "to address problems associated with other foreclosed property," and, in some counties, to help local governments abate nuisances incident to foreclosures. The bill extends this option to the separate officer's funds.

The bill additionally allows the county treasurer or prosecuting attorney to suspend the crediting of delinquent taxes and assessment to the officer's respective fund if the balance of the fund exceeds three times the total amount deposited in the fund in the previous year. The officer must direct the county auditor to suspend allocations to the officer's fund for the upcoming year before October 20 of the current year. Any allocations diverted from a treasurer's or prosecuting attorney's DTAC Fund must be distributed instead to all taxing units in the county.

Allocations to county land reutilization corporations

Under current law, a board of county commissioners may deposit up to an additional 5% of delinquent tax collections into the county DTAC Fund for the benefit of a county land reutilization corporation. The bill requires that any such additional amounts be deposited in the county treasurer's DTAC Fund.

Applicability of laws affecting county DTAC Funds

The bill provides that current law applicable to county DTAC Funds related to annual accounting requirements, records retention, and employee travel expenses also apply to the respective treasurer's and prosecuting attorney's DTAC Funds.

Commercial activity tax exclusion for qualified uranium receipts

(R.C. 5751.01(F)(2)(ii) and 5751.41)

The bill provides an exemption from the commercial activity tax for receipts received from transactions that occur within a "uranium enrichment zone" certified by the Tax Commissioner. A "uranium enrichment zone" includes all of the real property comprising a uranium enrichment facility that is licensed by the U.S. Nuclear Regulatory Commission and that is or was owned or controlled by the U.S. Department of Energy or its successor.



Uranium enrichment zone certification

The Tax Commissioner must certify a uranium enrichment zone before the exemption proposed in the bill applies to receipts from transactions occurring within the zone. Any person that owns, leases, or operates real or personal property constituting or located within a uranium enrichment zone may apply for the certification.

Within 60 days of receiving an application for certification, the Tax Commissioner must approve the application if the property meets the definition of a uranium enrichment zone. If an application is denied, the Tax Commissioner must state the reasons for the denial. The Tax Commissioner may request additional information before approving or denying an application.

An applicant may appeal the denial of an application to the Board of Tax Appeals. In such a case, the Tax Commissioner must conditionally certify the applicant's property until final resolution of the appeal. If the Board of Tax Appeals ultimately confirms the denial of the application, the applicant must pay any taxes, interest, or penalties due on receipts that were excluded from the commercial activity tax but that should have been taxed.

DEPARTMENT OF TRANSPORTATION (DOT)

- In regard to the authority recently granted to the Ohio Department of Transportation (ODOT) to enter into public-private partnership agreements, eliminates (1) a requirement for the agreements to be for a period not to exceed the biennium, (2) authorization for an agreement to include certain costs of transportation facilities prior to acquisition and construction of the facilities, and (3) language specifying that the agreement does not constitute a debt or pledge of the state's faith and credit and that the operator has no right to have taxes or excises levied for payment under the agreement.
- 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 ODOT that are necessary for the approval of federal permits.
- Permits money in the existing Airport Assistance Fund, which consists of aircraft license taxes and fines, to be used to pay operating costs associated with ODOT's Office of Aviation.



- Permits the Director to expend funds for the design, construction, inspection, maintenance, repair, and replacement of bridge and bridge approaches for the Ironton-Russell Bridge, which spans the Ohio River between Ironton, Ohio, and Russell, Kentucky, and to expend funds in the same manner for the bridge that will replace the Ironton-Russell Bridge.
- Provides that an applicant for a certificate of qualification from ODOT in an amount of \$5 million or more, rather than \$2 million or more as specified in current law, must submit to the Director of Transportation a financial audit report prepared and attested to by an independent certified public accountant, and an applicant for such a certificate of qualification from ODOT in an amount less than \$5 million, rather than less than \$2 million as specified in current law, must submit a financial review report to the Director.
- Eliminates the wheel or axle load limit exemptions that apply to vehicles transporting certain specific materials if the vehicles do not exceed the existing gross vehicle weight limit by more than the established weight limit tolerance (either 5% or 7.5%) for the particular vehicle and load.

ODOT public-private partnership agreements

(R.C. 5501.73)

The bill eliminates the following provisions from the language governing the Ohio Department of Transportation's (ODOT) recently established authority to enter into public-private agreements related to transportation facilities: (1) a requirement that agreements be for a period not to exceed the then current two-year period for which appropriations have been made to ODOT, while providing that any agreement may be renewed for succeeding two-year periods when the General Assembly makes appropriations to ODOT for each successive biennium, (2) authority for the public-private agreements to include any agreement by ODOT with respect to any costs of transportation facilities to be included prior to acquisition and construction of the facilities, (3) a declaration that public-private agreements do not constitute a debt or pledge of the faith and credit of the state, or of any political subdivision of the state, and the operator has no right to have taxes or excises levied by the General Assembly, or the taxing authority of any political subdivision of the state, for payments under the agreement, and (4) a requirement for public-private agreements to contain a statement to the effect of that declaration.

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 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.

Airport Assistance Fund

(R.C. 4561.21)

The bill permits money in the existing Airport Assistance Fund, which consists of aircraft license taxes and fines, to be used to pay operating costs associated with ODOT's Office of Aviation. Currently, money in the Fund may be used only for maintenance and capital improvements to publicly owned airports.

Ironton-Russell Bridge

(R.C. 5501.44)

In 1982, the Ironton-Russell Bridge, which spans the Ohio River between Ironton, Ohio, and Russell, Kentucky, was transferred from the Ohio Bridge Commission to ODOT and the Commission was abolished. The bill permits the Director of Transportation to expend funds for the design, construction, inspection, maintenance, repair, and replacement of bridge and bridge approaches for the Ironton-Russell bridge. Following the replacement of that bridge, the Director may expend funds for the design,



construction, inspection, maintenance, repair, and replacement of bridge and bridge approaches. The bill permits the expenditure of funds in this manner, notwithstanding two provisions of current law. The first provision prescribes permissible uses by ODOT of money in the Highway Operating Fund and the second provides that an agreement with another state, a subdivision of another state, or the United States relative to cooperation in the repair, maintenance, or construction of a bridge crossing a stream that forms a boundary line of Ohio cannot obligate Ohio to expend more than the cost of the construction of the portion of the bridge that is located within Ohio and not more than 50% of the maintenance costs of such a bridge, with a maximum annual maintenance obligation for Ohio of \$300,000.

ODOT certificate of qualification for bidders

(R.C. 5525.04)

Most classes of prospective bidders on the ODOT construction project must be prequalified as to their competence, responsibility, compliance with affirmative action programs, and possession of specified financial resources. A prospective bidder who is found to possess the required qualifications is issued a certificate of qualification, which fixes the aggregate amount of work that the applicant may have under construction and uncompleted at any one time and may limit the class of work for which the person may submit bids.

The bill provides that an applicant for a certificate of qualification in an amount of \$5 million or more, rather than \$2 million or more as specified in current law, must submit to the Director of Transportation a financial audit report prepared and attested to by an independent certified public accountant. The bill also provides that an applicant for a certificate of qualification in an amount less than \$5 million, rather than less than \$2 million as specified in current law, must submit a financial review report to the Director. An audit provides a higher level of assurance than a review as to the fairness of presentation of the financial statements of the prospective bidders.

Motor vehicle weight limit tolerances

(R.C. 5577.042 and 5577.043)

The bill eliminates a provision recently enacted by Am. Sub. H.B. 114 (the Transportation Appropriations Bill) that exempted certain specified vehicles from a penalty for violating the wheel or axle load limits that otherwise would apply to the vehicles if the vehicle did not exceed the existing gross vehicle weight limit by more than the established weight limit tolerance for the particular vehicle and load of either 5% or 7.5%. The bill does not affect (1) the 7.5% weight tolerance for a coal truck, farm truck and farm machinery, log truck, and solid waste haul vehicle or (2) the 5% weight



tolerance for a surface mining truck transporting minerals, a vehicle transporting hot mix asphalt material, a vehicle transporting concrete, a vehicle transporting manure, turf, sod, or silage, and a vehicle transporting chips, sawdust, mulch, bark, pulpwood, biomass, or firewood, when those vehicles are being operated under the conditions specified for each type of vehicle.

TREASURER OF STATE (TOS)

- Provides for the Treasurer of State to supersede and replace 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 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 OBA's current bond issuance authority for these purposes.
- Excepts from the transfer of authority, OBA's duties, interests, and responsibilities regarding the James A. Rhodes State Office Tower, the Vern Riffe Center for Government and the Arts, the Frank J. Lausche State Office Building, the Michael V. DiSalle Government Center, the Oliver R. Ocasek Government Office Building, and the State of Ohio Computer Center.
- Creates four specific bond service trust funds used for the payment of bond service charges for bond sales credited to four specific building funds that the bill consolidates into the bond authority law.
- Requires each governmental entity to submit reportable information regarding its public employees and elected officials annually to the Treasurer of State, and requires the Treasurer of State to make the information publicly available.
- 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.
- Authorizes the Treasurer of State to offer, and to administer, a supplemental employee compensation deferral plan for eligible employees of a school district or community college.



Bond issuance authority of the Ohio Building Authority

(R.C. 123.10, 154.02, 154.07, 154.11, 154.24, 154.25, 3333.90, and 5120.105; 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.²⁹⁸ It provides 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.²⁹⁹ Further, the bill does not transfer OBA's interests in, responsibilities for, or any lease or agreement relating to the operation and maintenance of the James A. Rhodes State Office Tower, the Vern Riffe Center for Government and the Arts, the Frank J. Lausche State Office Building, the Michael V. DiSalle Government Center, the Oliver R. Ocasek Government Office Building, and the State of Ohio Computer Center.

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.

²⁹⁸ R.C. 3333.90.

²⁹⁹ See R.C. Chapter 152.



Bond service trust funds

As part of the transfer of bonding authority regarding the housing of branches or agencies of state government, the bill formally creates the Administrative Facilities Bond Service Trust Fund, the Adult Correctional Facilities Bond Service Trust Fund, the Juvenile Correctional Facilities Bond Service Trust Fund and the Public Safety Bond Service Trust Fund. The funds are to be used for payment of bond service charges for the sales of obligations that are credited to the Administrative Building Fund, the Adult Correctional Building Fund, the Juvenile Correctional Building Fund, and the Public Safety Building Fund, which the bill also creates in relation to the transfer of bonding authority. The bill deletes the reference in current law to the establishment of the Administrative Building Fund and updates appropriate cross references to this Fund and the Adult Correctional Building Fund that appear in existing law.

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, improvements, sites, open space and green space areas, utilities, or equipment to be used in connection with such facilities.

Public employee salary and benefits information

(R.C. 113.47)

The bill requires each governmental entity to submit "reportable information" regarding its public employees and elected officials annually to the Treasurer of State by March 1 of the calendar year following the year for which the reportable information is being submitted. Reportable information for calendar year 2010 must be submitted by September 1, 2011. The Treasurer of State is authorized to adopt rules under the Administrative Procedure Act to prescribe incentives to enforce compliance with the reporting requirement.

A "governmental entity" is a state agency or a political subdivision of the state that pays wages to employees or elected officials. And "reportable information" means,



for any calendar year, the name, title, gross pay, employer, and years of service of each employee or elected official of a governmental entity, and any cost associated with employment other than gross pay, including, but not limited to, pension, medical insurance, dental insurance, and vision insurance, and vacation leave, sick leave, personal time, disability leave, and any other type of leave.

The Treasurer of State must make the reportable information that has been submitted available to the public by April 15 of each year either on the Treasurer of State's web site or in any other convenient and accessible manner determined by the Treasurer of State.

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.³⁰⁰ Current law allows the Treasurer to place only certificates of deposit with lending institutions to lend money to small businesses at a reduced rate.

Supplemental school employee compensation deferral plan

(R.C. 113.42, 113.43, 113.44, 113.45, 2907.15, and 2921.41)

Authority of Treasurer of State

The bill authorizes the Treasurer of State, subject to an appropriate assurance of approval by the Internal Revenue Service, to offer all eligible school employees a supplemental employee deferral plan, which must be in addition to any retirement or any other benefit program provided by law for the employees. A "school employee" is any employee of a city, vocational, exempted village, or local school district and any employee of a community college, technical college, or state community college.³⁰¹ A

³⁰⁰ "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.)

³⁰¹ R.C. 113.42.

"supplemental employee deferral plan" is a tax deferred annuity, including a custodial account, as described in the Internal Revenue Code.³⁰²

The Treasurer must establish eligibility criteria for plan participation, and must administer the plan on behalf of participating employees. The Treasurer may designate third parties to act on behalf of the Treasurer as administrator of the plan. Also, the Treasurer must adopt rules under the Administrative Procedure Act to provide any necessary standards or conditions for the administration of the plan.

The bill creates, as a custodial fund, the Supplemental Employee Deferral Plan Administration Fund, which is to be used by the Treasurer to pay actual and necessary expenses of the Treasurer in administering the plan.

The bill requires administrative expenses of the plan to be applied in any of the following ways: (1) against earnings from investments, (2) as prorated fees charged equitably among the participants of the plan, or (3) by another method determined by the Treasurer. The Treasurer may apply different methods or amounts of recovery of administrative expenses for different types of investment options provided under the plan.

Investments

Under the bill, the plan may invest in investments considered appropriate by the Treasurer, including life insurance, annuity contracts, or mutual funds. Any investment included in the plan must be reviewed and selected by the Treasurer based on a competitive bidding process established by the Treasurer and as the Treasurer considers appropriate.

Election to participate

Any school employee who meets the eligibility criteria established by the Treasurer may participate in the supplemental employee deferral plan, so long as the administrative entity of the employee's school district, community college, technical college, or state community college has elected to participate in the plan. The Treasurer must prescribe the manner and form by which an employee must elect to participate in the plan. Notwithstanding any law to the contrary, a school district, community college, technical college, or state community college electing to participate in the plan may elect exclusively to offer the supplemental employee deferral plan to employees or may elect to offer the supplemental employee deferral plan as one of a limited number of options.

³⁰² 26 U.S.C. 403(b) and (b)(7).



Contributions

An employee who elects to participate in the supplemental employee deferral plan authorizes the employee's employer to make reductions from the employee's compensation for contributions to the plan. The total of the amount contributed and the employee's nondeferred income for any year is not to exceed the employee's total compensation under the existing salary schedule or classification plan applicable to the employee in that year. "Compensation" includes any compensation received as a lump sum for accumulated unused vacation, personal leave, or sick leave. The rules adopted for administration of the plan must place limits on the portion of a participating employee's compensation that may be deferred in order to avoid adverse treatment of the plan by the Internal Revenue Service or the occurrence of a reduction in compensation in excess of the compensation available for any pay period.

Any compensation deferred under the plan must continue to be included as regular compensation for the purpose of computing the contributions to and benefits from the retirement system of a participating employee, if applicable. Compensation deferred may not be included in the computation of any federal or state income taxes withheld on behalf of a participating employee.

Employee contributions and earnings on those contributions are immediately vested.

If permitted by the plan, an employer may make employer contributions to the plan on behalf of participating employees. Employer contributions, if any, and the earnings on those contributions must vest according to the schedule established in the plan.

Payments

Any payment from the plan, other than a survivorship benefit, that is made to a participating employee who is a public official charged with theft in office is subject to a withholding order from a court for restitution. Similarly, any payment to a participating employee who is charged with a sexual assault is subject to a court withholding order for victim restitution.

If the plan receives notice that a participating employee has been charged with one of a variety of criminal offenses, no payment may be made prior to whichever of the following is applicable:

(1) If the person is convicted of or pleads guilty to the violation, but a motion for a withholding order for purposes of restitution has not been filed, 30 days after the day on which the person is sentenced for the violation;



(2) If the person is convicted of or pleads guilty to the violation, and a motion for a withholding order for purposes of restitution has been filed, the day on which the court decides the motion;

(3) If the charge is dismissed or the person is found not guilty or not guilty by reason of insanity of the violation, the day on which the dismissal of the charge or the verdict is entered in the journal of the court.

Accrued funds exempt from execution

Except as provided in law for the division of marital property and for child support obligations, an account, benefit, or other right accrued or accruing to any person under the supplemental employee deferral plan is not subject to execution, garnishment, attachment, sale to satisfy a judgment or order, the operation of bankruptcy or insolvency laws, or other process of law and is unassignable.

TUITION TRUST AUTHORITY (TTA)

- Requires the Tuition Trust Authority to establish, within the Variable College Savings Program, a "default investment option" to benefit contributors who are first-time investors or have low to moderate incomes.

Default investment option

(R.C. 3334.19)

The bill requires the Tuition Trust Authority (TTA) to establish a "default investment option" within its Variable College Savings Program for contributors who are first-time investors or have low to moderate incomes. The bill itself does not describe or define the term "default investment option," but it likely refers to an investment plan that does not require the investor to choose from among savings instruments or plan administrators or to make periodic decisions whether to transfer money among investment options. The bill does not specify whether the intent is simply for TTA to market the default option as one choice, or to restrict investors with certain characteristics (such as low or moderate incomes) to the default option.

The TTA is a state agency under the purview of the Chancellor of the Board of Regents. It operates two college savings programs that correspond to the types permitted by federal tax law: (1) a guaranteed savings program, which is now closed to new investors, and (2) a variable savings program. Under the Variable College Savings



Program, an individual contributes money to an investment account managed by the state, or its agent, for the benefit of the beneficiary. Assets of the Variable Program are invested in savings accounts, life insurance or annuity contracts, securities, bonds, or other investment products. Because the program is market-based, it generally provides a variable rate of return and contributors assume all investment risk.

WORKERS' COMPENSATION COUNCIL (WCC)

- Abolishes the Workers' Compensation Council.
- Transfers all of the Council's records to the Legislative Service Commission and all other assets, liabilities, and funds to the Bureau of Workers' Compensation.

Abolition of the Workers' Compensation Council

(R.C. 4121.75, 4121.76, 4121.77, 4121.78, and 4121.79 (all repealed) and Sections 610.20, 610.21, and 690.20, with conforming changes in R.C. 101.532, 101.82, 102.02, 127.14, 4121.03, 4121.12, 4121.121, 4121.125, 4121.44, 4123.341, 4123.342, and 4123.35)

The bill abolishes the Workers' Compensation Council, which currently reviews the soundness of the workers' compensation system and legislation involving or affecting the workers' compensation system. Upon the provision's (immediate) effective date, or as soon as possible thereafter, the Council must wind up its affairs. All of the Council's records must be transferred to the Legislative Service Commission and all of its other assets and liabilities are transferred to the Bureau of Workers' Compensation (BWC). BWC is thereupon and thereafter successor to, and assumes the obligations of, the Council. Any business commenced but not completed by the Council or the Director of the Council on the provision's effective date must be completed by the Administrator of Workers' Compensation in the same manner, and with the same effect, as if completed by the Council or the Director. No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer required by the bill and must be administered by the Administrator. All Council employees cease to hold their positions of employment on the provision's effective date.

With respect to the Workers' Compensation Council Remuneration Fund, the Director of Budget and Management must transfer the unexpended and unencumbered cash balances to the State Insurance Fund. With respect to the Workers' Compensation Council Fund, the Treasurer of State must transfer the unexpended and unencumbered



balance to the State Insurance Fund. Upon completion of the transfers, the funds are abolished.

Wherever the Director or Council is referred to in any law, contract, or other document, the bill requires the reference to be deemed to refer to the Administrator or BWC, whichever is appropriate. No action or proceeding pending on the provision's effective date is affected by the transfer, and must be prosecuted or defended in the name of the Administrator or BWC. In all such actions and proceedings, the Administrator or BWC, upon application to the court, must be substituted as a party.

DEPARTMENT OF YOUTH SERVICES (DYS)

- Requires the Department of Youth Services to coordinate and assist juvenile justice systems by visiting and inspecting jails, detention facilities, correctional facilities, facilities that may hold juveniles involuntarily, and any other facility that may temporarily house juveniles on a voluntary or involuntary basis for the purpose of compliance with the federal "Juvenile Justice and Delinquency Prevention Act of 1974."
- 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 the Ohio River Valley Juvenile Correctional Facility.

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 Ohio River Valley Juvenile Correctional Facility

(Section 753.30)

The bill authorizes the Director of Administrative Services and the Director of Youth Services to sell the Ohio River Valley Juvenile Correctional Facility if the Director of Administrative Services determines the property is no longer required for state purposes. The facility must be sold pursuant to a bidding process conducted by the Director of Administrative Services at a price acceptable to both Directors. The contract of sale must require the purchaser to give preference in hiring to employees or former employees of the Department of Youth Services displaced by the closure of the facility located on the property and a binding commitment that irrevocably grants to the state a right to repurchase the facility and the real property on which it is situated, any surrounding land that is to be transferred under the contract, or both if: (1) the purchaser or the purchaser's successor wants to sell or otherwise transfer to a third party the facility and real property on which it is situated, any surrounding land transferred under the sale, or both or (2) the purchaser defaults on any financial agreement for the purchase of the facility and real property on which it is situated, any surrounding land transferred under the sale, or both, defaults on any term of the contract, or becomes insolvent or unable to meet its contractual obligations. Under (1), the purchaser or successor must offer the facility or property to the state at least 120 days before it intends to make the transfer to the third party. In either situation, the state's purchase price must be not greater than the price the contractor paid, less depreciation from the time of the conveyance to the purchaser, plus the depreciated value of any capital improvements funded by anyone other than the state after the conveyance to the purchaser. The deed to the purchaser is to be prepared by the Attorney General and executed by the Governor. 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 the facility, expires two years after its effective date.



MISCELLANEOUS (MSC)

- Limits the cumulative total amount recovered in a civil action for forfeiture (\$10,000) and the amount of attorney's fees (not to exceed the forfeiture amount recovered) for a violation of the prohibition against the unlawful removal, destruction, mutilation, transfer, or other damage to or disposition of the records of a public office.
- Provides that a person is not aggrieved by such violation if clear and convincing evidence shows that the request for a record was contrived as a pretext to create potential liability.
- Precludes the recovery of a forfeiture by others involving the same record once a person has recovered a forfeiture, regardless of the number of persons aggrieved or the number of civil actions commenced.
- Prescribes a five-year period of limitations for a civil action for injunctive relief or for forfeiture for a violation of the prohibition.
- 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.
- 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.
- Extends the expiration date for an authorization to convey state land to the Dayton Public Schools.
- Authorizes conveyance of the real estate in the possession of Cleveland State University to a purchaser as yet to be determined.



Destruction or damage of records

(R.C. 149.351)

Existing law provides that all records are the property of the public office concerned and generally prohibits their removal, destruction, mutilation, transfer, or other damage or disposition, in whole or in part. Any person who is aggrieved by the removal, destruction, mutilation, or transfer of, or by other damage to or disposition of a record in violation of the above prohibition or by threat of any such act may bring a civil action for injunctive relief or a civil action to recover a forfeiture in the amount of \$1,000 for each violation and obtain an award of the reasonable attorney's fees incurred by the person in the action. The bill limits the cumulative total amount to be recovered in forfeiture to a maximum of \$10,000, regardless of the number of violations, and limits the amount of attorney's fees to a maximum of the forfeiture amount recovered.

Under the bill, a person is not aggrieved by a violation of the above prohibition if clear and convincing evidence shows that the request for a record was contrived as a pretext to create potential liability under the above provisions. The commencement of a civil action waives any right under R.C. Chapter 149. to decline to divulge the purpose for requesting the record, but only to the extent needed to evaluate whether the request was contrived as a pretext to create potential liability. If clear and convincing evidence in a civil action shows that the request for a record was a pretext to create potential liability, the court may award reasonable attorney's fees to any defendant or defendants in the action. Once a person recovers a forfeiture in a civil action, the bill precludes any other person from recovering a forfeiture for a violation of the prohibition involving the same record, regardless of the number of persons aggrieved by a violation of the prohibition or the number of civil actions commenced.

The bill further provides that a civil action for injunctive relief or a civil action to recover a forfeiture must be commenced within five years after the day in which the prohibition was allegedly violated or was threatened to be violated.

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 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).

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.

Dayton Public Schools land conveyance

(Section 620.20 and 620.21)

The bill extends the expiration date for an authorization to convey state land to the Dayton Public Schools to October 16, 2013, in order to provide more time for the school system to complete the required demolition and construction. The authorization otherwise is scheduled to expire on July 17, 2011.³⁰³

³⁰³ Section 753.60 of Am. Sub. H.B. 1 of the 128th General Assembly.



Cleveland State University land conveyance

(Section 753.27)

The bill authorizes conveyance of the real estate formerly used as the residence for the President of Cleveland State University to a purchaser as yet to be determined. Specifically, the bill authorizes the Governor to execute a deed in the name of the state, on behalf of Cleveland State University, conveying to a purchaser as yet to be determined, its heirs and assigns or its successors and assigns, all of the state's right, title, and interest in the real estate located at 21425 Shelburne Road, City of Shaker Heights, County of Cuyahoga, State of Ohio, such real estate consisting of the building formerly used as the residence for the President of Cleveland State University and the land on which the building is situated. In preparing the deed, the Auditor of State, with the assistance of the Attorney General, is to develop a legal description of the real estate in conformity with the actual bounds of the real estate.

Consideration for conveyance of the real estate is to be as is agreed upon by Cleveland State University and the purchaser.

The deed may contain any condition or restriction that the Governor or Cleveland State University determines is reasonably necessary to protect the state's interests.

The purchaser must pay all costs associated with the conveyance, including recordation costs of the deed.

Upon payment of the purchase price, 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 any conditions or restrictions, and must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the purchaser. The purchaser must present the deed for recording in the Office of the Cuyahoga County Recorder.

Authority to make the conveyance described above expires one year after the effective date of the section of law in which it is expressed.



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
Reported, S. Finance	06-08-11
Passed Senate (23-10)	06-08-11
House refused to concur in Senate amendments (98-0)	06-08-11

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