# Ohio Legislative Service Commission

## Bill Analysis

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# H.B. 487

129th General Assembly
(As Introduced)

**Rep.** Amstutz (By Request)

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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 ends with a Miscellaneous category.

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# DEPARTMENT OF ADMINISTRATIVE SERVICES (DAS)

## Ohio Facilities Construction Commission

- Creates the Ohio Facilities Construction Commission to replace the Office of the State Architect and Engineer and the Office of Energy Services.

- Maintains the Ohio School Facilities Commission as an independent agency within the Ohio Facilities Construction Commission.

- Transfers the powers, duties, and obligations of the Office of the State Architect and Engineer to the Ohio Facilities Construction Commission, and requires the Ohio Facilities Construction Commission to continue the operations and management of the Office of the State Architect and Engineer as provided in continuing law or in any agreements relating to capital expenditures for construction operations functions to which the Office of the State Architect and Engineer is a party.

- Transfers several duties, including the planning, supervision of construction, keeping of records, and disposition of capital facilities, from the Department of Administrative Services (DAS) to the Ohio Facilities Construction Commission.

- Deems all statutory references to the Office of the State Architect and Engineer to be references to the Ohio Facilities Construction Commission.

- Specifies that the Ohio Facilities Construction Commission must complete any activities related to operations functions that are not completed by the Office of the State Architect and Engineer on the date of transfer with the same effect as if completed by the Office of the State Architect and Engineer.

- Specifies that judicial and administrative actions will proceed with the Ohio Facilities Construction Commission being substituted as a party for the Office of State Architect and Engineer.

- Specifies that notwithstanding any provision of continuing law to the contrary, and if requested by the Commission, that the Director of Budget and Management is to

make budget changes necessitated by the transfer, if any, including administrative organization, program transfers, the creation of new funds, the transfer of state funds, and the consolidation of funds.

- Appropriates established encumbrances plus any additional amounts determined to be necessary for the Ohio Facilities Construction Commission to perform the construction, energy, and capital funding operation functions of the Office of State Architect and Engineer.

- Requires, not later than 30 days after the transfer and consolidation of the construction, energy, and capital funding operations function of the Office of State Architect and Engineer to the Ohio Facilities Construction Commission, an authorized officer to certify to the Ohio Facilities Construction Commission the unexpended balance and location of any funds and accounts designated for building and facility operation and management functions, and the custody of the funds and accounts is to be transferred to the Commission.

- Requires the Ohio Facilities Construction Commission and the Department of Natural Resources (DNR) to cooperate in and, not later than December 31, 2012, complete a study to determine which operation functions, if any, of the DNR Division of Engineering should be integrated and consolidated into the Commission.

## Lease-purchase and lease-leaseback agreements

- Specifies that DAS may enter into lease-purchase agreements with any person or political subdivision in the state.

- Requires that improvements under a lease-purchase agreement be for any public purpose or private use for the benefit of the state, instead of just any public purpose as required under existing law.

- Repeals the public bidding process requirements for leasing buildings, structures, and other improvements to state agencies.

- Permits DAS, under a lease-leaseback agreement, to lease real property of the state to provide for the construction of buildings, structures, and other improvements for the use of the state.

## Conveyance and easement authority

- Removes the requirement for the Governor's signature on conveyances of unneeded state land.

- Retains the requirement for the Director of DAS to sign state conveyances of unneeded state land, but authorizes the use of a designee for this purpose.

- Requires the Controlling Board to approve all conveyances of land not needed by the state.

- Expressly provides that state leases, easements, or licenses may be made to any person or entity.

- Removes the restriction, applicable to federal agencies, political subdivisions, and taxing districts, against subleasing or assigning a lease of state-owned land.

- Expressly provides that DAS's existing authority to exercise general custodial care of all real property of the state includes the sale and conveyance of real estate not needed by the state.

## Civil service law

- Amends civil service law so that certain provisions will be applicable only with respect to positions in the classified service of the state and not to service with the counties or other political subdivisions.

- Modifies the protocol for appointment to positions in the classified civil service of the state from eligible lists resulting from civil service examinations.

- Modifies state civil service law with respect to the official who is authorized to find that it is impracticable, for certain positions, to determine fitness by competitive examination.

- Authorizes the Director of DAS to appoint a designee to register applicants in the unskilled labor class.

- Clarifies civil service law with respect to the right of an employee in the unclassified service to resume a position in the classified service.

- Eliminates the authority of the Director to establish, modify, or rescind a job classification plan for county agencies that elect not to use the services of the county personnel department.

- Specifies that the right to request a job audit applies only to classified employees in the service of the state.

- Modifies the law with respect to the authority for county agencies to contract with DAS for human resources services.

- Requires a county, by statute rather than by rule, to adhere to merit system principles, and makes a county financially liable to the state for the loss of federal funding due to the action or inaction of the county personnel department.

### Enterprise services

- Authorizes the Directors of Budget and Management and Administrative Services to determine ways to improve efficiencies of "enterprise services."

- Authorizes the Directors of Budget and Management and Administrative Services to improve efficiencies of "enterprise services" by consolidation and transfer of services, and budget and program changes, notwithstanding any law to the contrary.

- Authorizes the Directors of Budget and Management and Administrative Services to agree, notwithstanding any law to the contrary, to establish any new funds, appropriations, full or partial encumbrances, and consolidate funds and transfer cash as necessary to accomplish improved efficiencies in enterprise services.

- Authorizes the Directors of Budget and Management and Administrative Services to transfer employees, assets and liabilities, including records, contracts, and agreements, to accomplish the improvements in enterprise services.

### Joint purchasing programs

- Requires DAS to establish, operate, and maintain a state clearinghouse web site to provide information about joint purchasing programs between or among political subdivisions.

## Creation of the Ohio Facilities Construction Commission and transfer of duties from other entities

(R.C. 121.04, 123.01, 123.011 (123.22), 123.024 (123.06), 123.04 (123.02), 123.07 (123.03), 123.08 (123.18), 123.09 (123.04), 123.10 (123.05), 123.101 (123.27), 123.11 (123.07), 123.13 (123.08), 123.14 (123.09), 123.15 (123.10), 123.152, 123.17 (123.24), 123.21 (123.11), 123.21 (enacted new), 123.23 (enacted), 123.25 (enacted), 123.26 (enacted), 123.46 (123.12), 123.47 (123.13), 123.48 (123.14), 123.49 (123.15), 123.77 (123.17), 126.14, 152.18, 152.24, 153.01, 153.011, 153.013, 153.02, 153.04, 153.06, 153.07, 153.08, 153.09, 153.11, 153.12, 153.14, 153.16, 153.17, 153.502, 153.503, 153.53, 1506.42, 3318.10, 3318.30, 3318.31, 3345.16, 3345.50, 3345.51, 3345.69, 3347.03, 3383.02, 3383.07, and 5120.105; Section 701.70.10)

The bill creates the Ohio Facilities Construction Commission to administer the design and construction of improvements to public facilities of the state. The new Commission replaces the Office of the State Architect and Engineer and the Office of Energy Services, as well as taking over some duties from the Department of Administrative Services. The Ohio School Facilities Commission remains an independent agency within the Ohio Facilities Construction Commission. The bill also requires the Ohio Facilities Construction Commission to cooperate in a study with the Department of National Resources (DNR) to determine whether the DNR Division of Engineering also should be consolidated into the Ohio Facilities Construction Commission.[1]

As is described below in detail, the bill transfers the powers, duties, and programs of the Office of the State Architect and Engineer and the Office of Energy Services to the Ohio Facilities Construction Commission, and transfers several duties, including the planning, supervision of construction, keeping of records, and disposition of capital facilities, from the Department of Administrative Services to the Ohio Facilities Construction Commission.

The Ohio Facilities Construction Commission consists of three members: (a) the Director of Budget and Management, (b) the Director of Administrative Services, and (c) a member appointed by the Governor. The Governor must appoint the member within 60 days of the effective date of the bill. The initial term of appointment ends three years after the effective date of the bill. Subsequent terms are for three years.

The members of the Ohio Facilities Construction Commission must meet at least once each calendar year, must serve without compensation, and must file an annual report of the Commission's activities and finances with the Governor, the Speaker of the House of Representatives, the President of the Senate, and the chairpersons of the House and Senate Finance Committees. The Ohio Facilities Construction Commission is exempt from review by the Sunset Review Committee.[2]

The Ohio Facilities Construction Commission must appoint and fix the compensation of an Executive Director, who is to serve at the pleasure of the Ohio Facilities Construction Commission. The Attorney General must serve as the legal representative for the Ohio Facilities Construction Commission, and the Attorney General may appoint other counsel as necessary for that purpose.[3]

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[1] Section 701.70.10(G).

[2] R.C. 123.20.

[3] R.C. 123.21.

### Commission functions

The Ohio Facilities Construction Commission may perform any actions necessary to fulfill its duties and to exercise its powers. The Ohio Facilities Construction Commission may do all of the following:

- Prepare, or contract with licensed architects or engineers to prepare, surveys, general and detailed plans, specifications, bills of materials, and estimates of cost for any projects, improvements, or public buildings to be constructed by state agencies that may be authorized by legislative appropriations or any other funds made available for the purpose, provided that the construction of the projects, improvements, or public buildings is a statutory duty of the Commission;

- Supervise the construction of any projects, improvements, or public buildings constructed for a state agency, and inspect materials prior to their incorporation into those projects, improvements, or public buildings;

- Make contracts for and supervise the design and construction of any projects and improvements or the construction and repair of buildings that are under the control of a state agency. All these contracts may be based in whole or in part on the unit price or maximum estimated cost, with payment computed and made upon actual quantities or units.

- Adopt, amend, and rescind rules for the administration of the Ohio Facilities Construction Commission programs that are authorized by law;

- Adopt, amend, and rescind rules pertaining to the administration of the construction of the public works of the state;

- Contract with, retain the services of, or designate, and fix the compensation of, any agents, accountants, consultants, advisers, and other independent contractors that are necessary or desirable to carry out the authorized programs of the Ohio Facilities Construction Commission, or authorize the Executive Director of the Ohio Facilities Construction Commission to do so;

- Receive and accept any gifts, grants, or donations to be used for the Ohio Facilities Construction Commission programs that are authorized by law;

- Make and enter into all contracts, commitments, and agreements, and execute all instruments, necessary or incidental to the performance of the Ohio Facilities Construction Commission's duties and the execution of its

rights and powers, or authorize the Executive Director of the Ohio Facilities Construction Commission to perform the powers and duties;

- Debar a contractor.

### Lease-purchase agreements

The bill also enacts a new provision that permits the Ohio Facilities Construction Commission to enter into a lease-purchase agreement providing for the construction, renovation, or addition and eventual acquisition of a building or improvements to a building for any state agency, college, university, or instrumentality, subject to the following conditions:

- The agreement must provide for a lease for a series of two-year renewable lease terms totaling not more than 30 years.

- The agreement must provide that at the end of the series of lease terms under the agreement, if all obligations of the state under the agreement have been satisfied, the title to the leased property is vested in the state.

- Payments under the agreement may be deemed to be, and paid as, current operating expenses.

- The Commission may lease for a period not to exceed 30 years, real estate owned by the state to any person or political subdivision of the state approved by the Commission, provided that the lease requires the lessee under a lease-purchase or lease-leaseback agreement to construct buildings, structures, and other improvements for any public purpose or private use for the benefit of government, or to alter, renovate, repair, expand, and improve the property as the property exists on the date of the lease, and, in conjunction therewith, to grant leases, easements, or licenses for lands under the control of a state agency for a period not to exceed 40 years.

- The lease-leaseback or lease-purchase plan must provide that at the end of the lease period, the buildings, structures, and related improvements, together with the land on which they are situated, become the property of the state without cost.

- The lease must contain provisions that require the lessee to lease to the state such space in any building or structure on the property that the Commission considers necessary.[4]

### Ohio Facilities Construction Commission Fund

The Executive Director of the Ohio Facilities Construction Commission must set the rate of tolls to be collected on the construction or improvement of the public works of the state, and must collect all tolls, rents, fines, commissions, fees, and any other revenues that result from the construction or improvement of the public works of the state. Under current law, the Director of Administrative Services sets these rates and collects these revenues.

This money must be deposited into the Ohio Facilities Construction Commission Fund, along with any transfers of money that are authorized by the General Assembly and the amount of the investment earnings of the Administrative Building Fund that the Director of Budget and Management deems to be appropriate and in excess of the amounts required to meet federal arbitrage rebate requirements.

The Ohio Facilities Construction Commission may use the money in the Ohio Facilities Construction Commission Fund for the following purposes:

- To pay personnel and other administrative expenses of the Commission;
- To pay the cost of conducting evaluations of public works;
- To pay the cost of building design specifications;
- To pay the cost of providing project management services;
- To pay the cost of operating the Local Administration Competency Certification Program (which currently is administered by the Office of the State Architect and Engineer); and
- For any other purpose that the Executive Director of the Commission deems necessary for the Commission to execute its duties.[5]

In addition to the functions discussed above, the bill transfers several specific duties and powers from the Office of the State Architect and Engineer, the Office of Energy Services, and the Department of Administrative Services to the Ohio Facilities

[4] R.C. 123.25.

[5] R.C. 123.26.

Construction Commission. The bill also retains the Ohio School Facilities Commission as an independent agency within the new Commission.

## Ohio School Facilities Commission

### Background

The Ohio School Facilities Commission administers the construction of the state's public primary and secondary schools and assists school districts in the planning, design, and renovation of public schools. The Ohio School Facilities Commission also administers several programs that provide state funding to school districts and community schools for the construction of 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 address the particular needs of certain types of districts. The Exceptional Needs School Facilities Assistance Program provides funding for districts in the 1st through 75th wealth percentiles, and districts with territories of more than 300 square miles, in advance of their districtwide CFAP projects to construct single buildings in order to address acute health and safety issues. The Expedited Local Partnership Program permits most school districts that have not been served under CFAP to apply the advance expenditure of *district* money on approved parts of their districtwide needs toward their shares of their CFAP projects when they become eligible for that program. The Accelerated Urban School Building Assistance Program allows certain Big-Eight school districts[6] to receive CFAP assistance earlier than otherwise permitted.

### Changes to the Ohio School Facilities Commission

The bill retains the Ohio School Facilities Commission as an independent agency within the Ohio Facilities Construction Commission. The bill allows the Ohio School Facilities Commission to share employees and facilities with the Ohio Facilities

[6] The program applies to Akron, Dayton, Cincinnati, Columbus, Cleveland, and Toledo. The other two Big-Eight districts, Canton and Youngstown, had received CFAP funding before the Accelerated Urban Program began.

Construction Commission. The Ohio School Facilities Commission may request the Ohio Facilities Construction Commission, instead of the Director of Administrative Services, to debar a contractor.

The bill clarifies that the Ohio School Facilities Commission may adopt, amend, and rescind rules pertaining to the administration of the construction of the school facilities of the state, and that the Executive Director of the Ohio School Facilities Commission may exercise all powers that the Ohio School Facilities Commission possesses.[7] The bill also specifies that, in addition to the continuing procedures for the planning and construction of school facilities, a school district may, with the approval of the Ohio School Facilities Commission, utilize any otherwise lawful construction delivery method for the construction of a project.[8]

### Office of the State Architect and Engineer

The bill eliminates the Office of the State Architect and Engineer, which currently exists within the Department of Administrative Services to oversee the design and construction of facilities for state agencies, boards, and commissions, and institutions of higher education. The Ohio Facilities Construction Commission assumes all of the functions of the Office of the State Architect and Engineer, including the duties to:

- Administer the Local Administration Competency Certification Program to certify institutions of higher education to administer capital facilities projects without the supervision, control, or approval of the Ohio Facilities Construction Commission;[9]

- Set standards to be followed by construction managers at risk (i.e., construction managers who provide the state agency a guaranteed maximum price for a project)[10] and by design-build firms when establishing prequalification criteria for prospective bidders on subcontracts to be performed under a construction management or design-build contract. Under existing law, the Office of the State Architect and Engineer works with the Department to set the standards, while

[7] R.C. 3318.30.

[8] R.C. 3318.10.

[9] R.C. 123.24.

[10] R.C. 9.33 (not in the bill).

under the bill, the Ohio Facilities Construction Commission independently sets the standards.[11]

- Contribute a voting member to the Ohio Cultural Facilities Commission, which provides for the development, performance, and presentation to the public of cultural events and professional sports and athletics.[12]

### Office of Energy Services

The bill eliminates the Office of Energy Services, which currently exists within the Office of the State Architect and Engineer to provide state agencies with certain energy engineering and design services, as well as energy auditing and contracting opportunities to promote energy efficiency and conservation. The bill transfers some of the functions of the Office of Energy Services to the Ohio Facilities Construction Commission, while the Department, which oversaw the Office of Energy Services, remains responsible for some other duties. The bill transfers to the Ohio Facilities Construction Commission the duties to:

- Develop energy efficiency and conservation programs for new construction design and review, existing building audit and retrofit, energy-efficient procurement, and alternative fuel vehicles;[13]

- Adopt rules that specify cost-effective energy efficiency and conservation standards to govern the lease, design, construction, operation, and maintenance of all state-funded facilities, except facilities of state-funded institutions of higher education and facilities operated by a political subdivision;[14]

- Consult with a committee to develop guidelines for the board of trustees of each state institution of higher education to use to ensure energy efficiency and conservation in on- and off-campus buildings.[15]

The bill transfers from the Office of Energy Services to the Department the duties to:

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[11] R.C. 153.502 and 153.503.

[12] R.C. 3383.02.

[13] R.C. 123.22(B).

[14] R.C. 123.22(D).

[15] R.C. 3345.69.

- Adopt rules, exchange information with other agencies, and monitor the performance of motor vehicles and other equipment, to ensure that energy efficiency and conservation are considered in the purchase of products and equipment by any state agency or institution;[16]

- Adopt rules prescribing a fleet average fuel economy, and ensure that all of the passenger vehicles state agencies and institutions acquire, except for emergency vehicles, meet the fleet average fuel economy rules.[17]

### Duties transferred from the Department

The bill transfers from the Department to the Ohio Facilities Construction Commission the duties and powers to:

- Make rules and regulations that are necessary for the improvement of the public works of the state;[18]

- Regulate the rate of tolls to be collected on the *construction or improvement* of the public works of the state, fix all rentals, and collect all tolls, rents, fines, commissions, fees, and other revenues arising from any source in the *construction or improvement* of the public works of the state. The revenues collected under this provision are paid into the Ohio Facilities Construction Commission Fund.[19] The Director of Administrative Services retains the duty to regulate the rate of tolls to be collected on the public works of the state, to fix all rentals, and to collect all tolls, rents, fines, commissions, fees, and other revenues arising from any source in the public works, including the purchase or rental of property, except that the Director may not collect a commission or fee from a real estate broker or a private owner when real property is leased or rented to the state.[20]

- Receive mandatory reports from public entities about the completion of state-funded capital facilities projects, except from the Ohio School Facilities Commission, the Ohio Public Works Commission, the Ohio Cultural Facilities Commission, and for any project for which the Ohio

[16] R.C. 123.01(A)(14) and (15) and 123.22(E).

[17] R.C. 123.01(A)(16) and 123.22(F).

[18] R.C. 123.04.

[19] R.C. 123.26.

[20] R.C. 123.05.

Facilities Construction Commission has entered into a joint use agreement;

- Receive mandatory reports from the Attorney General about any mediation and litigation costs associated with capital facilities projects for which a judgment has been rendered;[21]

- Order the payment of claims against the state for the improvement of the public works of the state, including the salary and expenses of all employees engaged in the work;[22]

- Declare a public exigency when an injury or obstruction occurs in any public works of the state that materially impairs its immediate use or places in jeopardy property adjacent to it, when an immediate danger of such an injury or obstruction exists, or when an injury or obstruction, or the immediate danger of an injury or obstruction, occurs during the construction of any public works and immediately impairs its immediate use or places in jeopardy property adjacent to it. In the case of a public exigency, the Ohio Facilities Construction Commission may enter into the necessary contracts without competitive bidding or selection. The Executive Director of the Ohio Facilities Construction Commission must notify the Director of Budget and Management and the Controlling Board before any project may begin.[23] The Director of Administrative Services retains the power to declare a public exigency under the same standards and procedures for any public works that is maintained by the Director of Administrative Services. In that case, the Director of Administrative Services may request the Ohio Facilities Construction Commission to enter into the necessary contracts without competitive bidding or selection, but the Director may not independently enter into these contracts.[24]

- Construct, reconstruct, enlarge, improve, alter, repair, paint, or decorate for a state entity any capital facility that is financed by the Ohio Building Authority, but that the Ohio Building Authority has not constructed, reconstructed, rehabilitated, remodeled, renovated, enlarged, improved,

[21] R.C. 123.27.

[22] R.C. 123.09.

[23] R.C. 123.23.

[24] R.C. 123.10.

altered, maintained, equipped, furnished, repaired, painted, or decorated. The Department, or with the consent of the Department, the state entity that is using the facility, is responsible to rehabilitate, remodel, renovate, maintain, equip, or furnish the facility.[25]

- Investigate alleged violations of the requirement that steel products used in constructing state-funded projects be made in the United States and refer violations to the Attorney General for a civil action;[26]

- Debar a contractor from contract awards for projects or public improvements, upon proof that the contractor has committed certain violations;[27]

- Prescribe the materials, forms, and procedures that contractors should use to prepare plans, details, bills of material, specifications of work, cost estimates, life-cycle cost analyses, bids, and other information;[28]

- Make orders regarding the form and phraseology of public notices of bidding for contracts, make orders determining in which newspapers or by what electronic means the notices must appear, and make rules regarding the electronic broadcast of public bid openings;[29]

- Make copies of plans, details, estimates of cost, and specifications available for public inspection during the period of publication and bidding;[30]

- Establish alternative dispute resolution procedures to resolve disputes between contractors and the state regarding the terms of public improvement contracts or the breach of such a contract, before the contractor may bring an action in the Court of Claims;[31]

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[25] R.C. 152.18.

[26] R.C. 153.011.

[27] R.C. 153.02.

[28] R.C. 153.04 and 153.06.

[29] R.C. 153.06, 153.07, 153.08, and 153.09.

[30] R.C. 153.07.

[31] R.C. 153.12.

- Establish policy and procedure guidelines for contract documents in conjunction with the administration of public works contracts that the state or any state institution enters into;[32]

- Under certain circumstances, give permission to the owner of a project to employ additional workers or to obtain additional materials when a contractor neglects the project or does not meet the terms of the contract;[33]

- Authorize without Controlling Board approval the expenditure, for the purposes of completing a project, of any money gained because of the forfeiture of a surety bond when a contractor defaults on the project contract;[34]

- Adopt rules regarding the procedures and criteria for determining the best value selection of a design-build firm or a construction manager at risk; set standards to be followed by construction managers at risk and by design-build firms when establishing prequalification criteria for prospective bidders on subcontracts to be performed under the construction management or design-build contract; prescribe the form for contract documents to be used by a general contractor, a construction manager at risk, or a design-build firm when entering into a subcontract; and prescribe the form for contract documents to be used by a public authority when entering into a contract with a design-build firm or a contract manager at risk;[35]

- Every five years, evaluate and adjust for inflation the monetary threshold for a project that triggers the necessity to commission an architect or engineer to draw up certain plans, details, specifications, cost estimates, and life-cycle cost analyses;[36]

- With the Director of Administrative Services, ensure that no capital money appropriated by the General Assembly for any purpose is expended unless the project for which the money was appropriated provides for an affirmative action program for the employment and

[32] R.C. 153.16.

[33] R.C. 153.17(A).

[34] R.C. 153.17(B).

[35] R.C. 153.502 and 153.503.

[36] R.C. 153.01 and 153.53.

effective utilization of persons who are disadvantaged because of their cultural, racial, or ethnic background or other similar causes, including their race, religion, sex, disability, military status, national origin, or ancestry;[37]

- With the Chancellor of the Ohio Board of Regents, develop criteria to determine whether a state university, state community college, or Northeast Ohio Medical University that is certified under the Local Administration Competency Certification Program and that meets other qualifications may administer, without the supervision, control, or approval of the Ohio Facilities Construction Commission, a capital facilities project for which the General Assembly has appropriated funds;[38]

- With the Chancellor of the Ohio Board of Regents, develop criteria for and approve requests for any state university, state community college, or Northeast Ohio Medical University that is not certified under the Local Administration Competency Certification Program to administer, without the supervision, control, or approval of the Ohio Facilities Construction Commission, capital facilities projects for which the General Assembly's appropriation does not exceed $4 million;[39]

- Administer a capital facilities project when the Chancellor of the Ohio Board of Regents has revoked the institution's authority to administer the project;[40]

- Provide for the construction of cultural projects, except for projects administered by the Ohio Cultural Facilities Commission or its designee;[41]

- Provide for the construction of halfway house facilities, except that the Department of Rehabilitation and Correction may administer these projects.[42]

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[37] R.C. 153.59.

[38] R.C. 123.24 and 3345.51.

[39] R.C. 3345.50.

[40] R.C. 3345.51(E).

[41] R.C. 3383.07.

[42] R.C. 5120.105.

### Transitional provisions

The bill provides for the Ohio Facilities Construction Commission to assume the powers and obligations of, and to continue the operations and management of the Office of the State Architect and Engineer. Because the Office of Energy Services is a division within the Office of the State Architect and Engineer, the term "Office of the State Architect and Engineer" as it is used in these transitional provisions appears to include the Office of Energy Services.

All employees of the Office of the State Architect and Engineer are to be transferred to the Ohio Facilities Construction Commission as the Commission determines to be necessary.

The bill provides that all statutory references to the Office of the State Architect and Engineer are deemed to refer to the Ohio Facilities Construction Commission, and that all judicial and administrative actions will proceed with the Ohio Facilities Construction Commission being substituted as a party for the Office of the State Architect and Engineer. The Ohio Facilities Construction Commission must complete any activities related to operations functions that are not completed by the Office of the State Architect and Engineer on the date of transfer with the same effect as if completed by the Office of the State Architect and Engineer.

The bill specifies that notwithstanding any provision of continuing law to the contrary, and if requested by the Commission, the Director of Budget and Management is to make budget changes necessitated by the transfer, if any, including administrative organization, program transfers, the creation of new funds, the transfer of state funds, and the consolidation of funds. The bill appropriates established encumbrances plus any additional amounts determined to be necessary for the Ohio Facilities Construction Commission to perform the construction, energy, and capital funding operation functions of the Office of State Architect and Engineer.

The bill also requires, not later than 30 days after the transfer and consolidation of the construction, energy, and capital funding operations function of the Office of State Architect and Engineer to the Ohio Facilities Construction Commission, an authorized officer to certify to the Ohio Facilities Construction Commission the unexpended balance and location of any funds and accounts designated for building and facility operation and management functions, and the custody of the funds and accounts is to be transferred to the Commission.

Finally, the bill requires the Ohio Facilities Construction Commission and the Department of Natural Resources (DNR) to cooperate in a study to determine which operation functions, if any, of the DNR Division of Engineering should be integrated

and consolidated into the Commission. The study must be completed not later than December 31, 2012.[43]

### Other changes to facilities construction law

The bill requires that when a proposed change to the plans, details, bills of material, or specifications of a project are approved, accepted, and filed, the alterations are considered as being a part of the original contract, but the bond that the contractor executed for the purposes of the contract must be increased or decreased to cover the change in the contract. Under existing law, the original bond is considered to cover the change in the contract.[44]

## Lease-purchase and lease-leaseback agreements

(R.C. 123.01(A)(14))

### Lease-purchase agreements

The bill amends three provisions of existing law related to lease-purchase agreements entered into by the Department of Administrative Services (DAS). First, under this type of agreement, the state leases property owned by another contracting party; however, current law does not specify what entities are eligible to be a contracting party with the state. The bill specifies that the contracting party may be any person or political subdivision located in Ohio. Second, the bill creates a new purpose for which DAS may enter into a lease: currently, a lease must be for any public purpose; the bill adds that the lease may also be for the private use for the benefit of the state. Lastly, the bill repeals the public bidding requirements for lease-purchase agreements under which a state agency leases buildings, structures, and other improvements pursuant to a lease-purchase agreement. In its stead, the bill requires the person of subdivision entering into the lease-purchase agreement to provide to DAS satisfactory plans detailing the nature and costs, including financing costs, for the improvements under the agreement.

### Lease-leaseback agreements

In addition to the existing authority to enter into a lease-purchase agreement for property, the bill gives DAS additional authority to enter into a lease-*leaseback* agreement to lease real property of the state to another contracting party. Specifically, the bill does all of the following regarding lease-leaseback agreements:

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[43] Section 701.70.10.

[44] R.C. 153.11.

- Specifies that DAS may enter into the agreement with any person or political subdivision located in Ohio;

- Requires that any improvement made under the agreement must be for any public purpose or private use for the benefit of the state;

- Requires the person or subdivision to do the following under the agreement: (1) construct buildings or structures, or make other alterations, renovations, repairs, expansions, or other improvements to the property as it exists on the date of the agreement, and (2) lease to the state, during the agreement period, space that DAS deems necessary in any building, structure, or other similar improvement on the property;

- Requires that the person or subdivision leasing the property provide to DAS satisfactory plans detailing the nature and cost, including financing costs, of improvements to the property;

- Specifies that the lease period may not exceed 40 years;

- Specifies that at the end of the lease period, the buildings, structures, and improvements become the property of the state without cost;

- In conjunction with entering into a lease-leaseback agreement, permits the state to grant leases, easements, or licenses for lands under the control of a state agency for a period not exceeding 40 years.

### Conveyance and easement authority; Controlling Board approval

(R.C. 123.01 and 127.27)

The bill modifies the existing authority to lease or grant easements or licenses for unproductive and unused lands or other property under the control of a state agency by removing the current requirement for the conveyances to be executed for the state by both the Director of Administrative Services (DAS) and the Governor. The bill removes the requirement for the Governor's signature on these conveyances, but retains the requirement for the Director of DAS's signature and adds that the signature of a designee of the Director may be used. The bill requires the Controlling Board to approve all conveyances of land not needed by the state.

The bill also expressly provides that these leases, easements, or licenses may be made to any person or entity.

The bill removes the existing provision applicable to federal agencies, political subdivisions, and taxing districts, allowing for the agency, political subdivision, or

taxing district to have the exclusive use of property without the right of sublease or assignment, for a period not longer than 15 years. Presumably, the effect is to allow the agencies, subdivisions, and taxing authorities to have the right of sublease or assignment when leasing state-owned land.

The bill expressly provides that DAS's existing authority to exercise general custodial care of all real property of the state includes the sale and conveyance of real estate not needed by the state.

## Civil service law

(R.C. 124.04, 124.06, 124.11, 124.12, 124.14, 124.241, 124.231, 124.241, 124.25, 124.26, 124.27, 124.30, and 124.31)

The bill modifies the authority of the Department of Administrative Services (DAS) with respect to certain provisions of civil service law. These modifications generally regard the authority over the examination for and classification of positions. The authority is modified to be applicable with respect only to positions in the classified service of the state.[45] Under current law, DAS authority for these provisions extends to all positions in the classified state service, which, in addition to the state, includes the counties and general health districts. The modified authorities concern:

(1) Preparation, conduct, and grading of all competitive and noncompetitive examinations;

(2) Preparation of eligible lists containing the names of persons who are qualified for appointment to positions;

(3) Allocation, reallocation, and classification of positions;

(4) Development and conduct of personnel recruitment services;

(5) Development and conduct of personnel training programs;[46]

[45] "Service of the state" or "civil service of the state" includes all offices and positions of trust or employment with the government of the state. "Service of the state" and "civil service of the state" do not include offices and positions of trust or employment with state-supported colleges and universities, counties, cities, city health districts, city school districts, general health districts, or civil service townships of the state, or with JobsOhio (R.C. 124.01, not in the bill).

[46] R.C. 124.04.

(6) The manner and means for appointment, removal, transfer, layoff, suspensions, reinstatements, promotions, or reductions of officers or employees;[47]

(7) Development of written descriptions of the nature of employment in the unclassified civil service;[48]

(8) Formal application requirements;[49]

(9) Preparation of eligible lists from the returns of examinations;[50]

(10) Protocols for appointments from an eligible list, and original and promotional appointments;[51]

(11) Protocols for filling positions without competitive examination;[52]

(12) The requirement for special examinations to be administered to legally blind or legally deaf persons.[53]

Under continuing law, municipal civil service commissions must prepare, amend, and enforce rules that are not inconsistent with the Civil Service Act that applies to the state classified service.[54]

The bill modifies the protocol for appointment from an eligible list. Under current law an appointing authority generally must select from a name that ranks in the top 25% of the eligible list, or, if the entire list is ten or fewer names, from any name on the list. The bill permits an appointing authority alternatively to select from a name in the top ten of the eligible list when the top 25% of the eligible list is ten or fewer names.[55]

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[47] R.C. 124.06.

[48] R.C. 124.12(C).

[49] R.C. 124.25.

[50] R.C. 124.26.

[51] R.C. 124.27 and 124.31.

[52] R.C. 124.30.

[53] R.C. 124.231.

[54] R.C. 124.40 (not in the bill).

[55] R.C. 124.27(A).

The bill modifies state civil service law[56] with respect to the official who is authorized to find that it is impracticable, for certain positions, to determine fitness by competitive examination. Under current law, the Director of Administrative Services must find it impracticable to determine by competitive examination the fitness for these positions. The bill specifies that any appointing authority, rather than only the Director, possesses the authority to make such a determination. The positions effected by this change include bailiffs, constables, official stenographers, and commissioners of courts of record, deputies of clerks of the courts of common pleas who supervise or who handle public moneys or secured documents, officers and employees of courts of record and of deputies of clerks of the courts of common pleas.[57]

The bill authorizes the Director to appoint a designee to register applicants in the unskilled labor class.[58] Under continuing law, the classified service consists of two classes, designated as the competitive class and the unskilled labor class.

The bill clarifies civil service law with respect the right of an employee in the unclassified service to resume a position in the classified service. Under continuing law, a person who holds a position in the classified service and who is appointed to a position in the unclassified service, retains the right to resume the position and status held by the person in the classified service immediately prior to the person's appointment to the position in the unclassified service. The employee's right to resume the position in the classified service may be exercised only when the appointing authority has demoted the employee to a pay range lower than the employee's current pay range or revoked the employee's appointment to the unclassified service. The bill specifies also that the employee must have either held a certified position prior to July 1, 2007, in the classified service within the appointing authority's agency, or held a permanent position on or after July 1, 2007, in the classified service within the appointing authority's agency.[59]

The bill eliminates the authority of the Director to establish, modify, or rescind a job classification plan for county agencies that elect not to use the services of the county personnel department. Under continuing law, the Director must establish, and may

[56] Chapter 124. of the Revised Code.

[57] R.C. 124.11(A)(10).

[58] R.C. 124.11(B)(2).

[59] R.C. 124.11(D).

modify or rescind, a job classification plan for all positions, offices, and employments the salaries of which are paid in whole or in part by the state.[60]

The bill modifies the law with respect to the right of a classified employee to request that the Director perform a job audit to review the classification of the employee's position. Under current law, this right is available to any classified employee, which presumably includes employees in the competitive classified civil service of the state, the several counties, cities, city health districts, general health districts, and city school districts of the state, and civil service townships. The bill specifies that the right to request a job audit applies to only classified employees in the service of the state.[61]

The bill modifies the law with respect to the authority for county agencies to contract with DAS for human resources services. The bill expressly authorizes county agencies to contract with DAS for any human resources services, including, but not limited to, establishment and modification of job classification plans, competitive testing services, and periodic audits and reviews to guarantee the county's uniform application of the powers, duties, and functions specified in state and county personnel law[62] with regard to employees in the service of the county.[63] The provisions of the bill expressly do not modify the powers and duties of the State Personnel Board of Review with respect to employees in the service of a county or limit the right of any employee who possesses the right of appeal to the State Personnel Board of Review to continue to possess that right of appeal.

The bill eliminates the authority of the Director, by rule, to require county personnel departments to adhere to merit system principles with regard to employees of certain county agencies so that there is no loss of federal funding. Instead, the bill expressly requires a county to adhere to these principles, and makes the county financially liable to the state for the loss of federal funding due to the action or inaction of the county personnel department.[64]

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[60] R.C. 124.14(A)(5).

[61] R.C. 124.14(D)(2).

[62] Sections 124.01 to 124.64 and Chapter 325. of the Revised Code.

[63] R.C. 124.14(G)(2)(c) and (H).

[64] R.C. 124.14(G)(6).

## "Enterprise services" improvements and efficiencies

(Section 701.40)

The bill requires the Directors of Budget and Management and Administrative Services to determine ways to improve efficiencies of "enterprise services," including, but not limited to, the areas of procurement, human resources, and information technology. The improvements may result from consolidation and transfer of the enterprise services. The Director of Budget and Management, upon agreement with the Director of Administrative Services, and notwithstanding any law to the contrary, may make budget and program transfers between agencies as are determined to be necessary to successfully implement the improved efficiencies in enterprise services, and may establish any necessary new funds, appropriations, full or partial encumbrances, and may consolidate funds and transfer cash. Any employees, assets and liabilities, including, but not limited to, records and contracts and agreements, may be transferred by the Directors to facilitate the improvements in enterprise services.

## Web site about joint purchasing programs

(Section 701.30)

The bill requires the Department of Administrative Services (DAS), by itself or by contract with another entity, to establish, operate, and maintain a state web site to serve as an online clearinghouse of information about existing joint purchasing programs between or among political subdivisions. In doing so, DAS must: (1) use a domain name for the web site that will be easily recognized, remembered, and understood by users of the web site, (2) maintain the web site so 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) compile information provided by political subdivisions about joint purchasing arrangements they are involved in that the Department verifies, through meetings with various statewide associations and others, to have resulted in verifiable cost savings, and consolidate that information on the web site in a consistent manner, (5) enable political subdivisions to register and request inclusion of their submitted information on the web site, (6) enable information to be accessed by key word, by program name, by county, by type of product or service, and by other useful identifiers, (7) maintain adequate systemic security and back-up features, and develop and maintain a contingency plan for coping with and recovering from power outages, systemic failures, and other unforeseen difficulties that may affect the web site, and (8) 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.

DAS must bear the expense of establishing, operating, and maintaining the online clearinghouse web site.

## DEPARTMENT OF AGING (AGE)

### Criminal records checks

- Revises the law governing criminal records checks for employment positions with the Office of the State Long-Term Care Ombudsperson Program.
- Permits the Director of the Ohio Department of Aging (ODA) to adopt rules that require employees of the Office to undergo criminal records checks and database reviews.
- Creates a database review process regarding employment positions with the Office.
- Provides that a criminal records check for an employment position with the Office is not required for an applicant or employee found by a database review to be ineligible for the position.
- Revises the list of disqualifying offenses that may make an individual ineligible for an employment position with the Office.
- Revises the law governing criminal records checks for employment positions with community-based long-term care agencies.
- Permits the ODA Director to adopt rules that require employees of community-based long-term care agencies to undergo criminal records and database reviews.
- Creates a database review process regarding employment positions with community-based long-term care agencies.
- Provides that a criminal records check for an employment position with a community-based long-term care agency is not required for an applicant or employee found by a database review to be ineligible for the position.
- Revises the list of disqualifying offenses that may make an individual ineligible for an employment position with a community-based long-term care agency.

### Legal representation

- Requires the Attorney General to provide legal counsel to the Office of the State Long-Term Care Ombudsperson Program and to represent any representative of the

Office against whom any legal action is brought in connection with the representative's duties, in place of ODA's existing duty to ensure that legal counsel is available and legal representation is provided for these purposes.

- Requires the Attorney General to provide legal counsel to the regional long-term care ombudsperson programs and to represent any representative of a regional program against whom any action is brought in connection with the representative's official duties.

### PASSPORT

- Limits to 90 days, rather than three months, the time an individual may participate in the state-funded component of the PASSPORT program on the basis that the individual's application for the Medicaid-funded component of PASSPORT (or the potential replacement program called the Unified Long-Term Services and Support Medicaid waiver program) is pending while a determination is being made of whether the individual meets the financial eligibility requirements.

### Home First

- Eliminates a provision under which an individual may potentially qualify for the Assisted Living Program's Home First component on the basis that the individual resided in a residential care facility for at least six months immediately before applying for the Assisted Living 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 that cost.

## State Long-Term Care Ombudsperson Program criminal records checks

(R.C. 173.27 (primary), 109.57, and 109.572)

The bill revises the law governing criminal records checks for employment positions with the Office of the State Long-Term Care Ombudsperson Program.

Current law requires the State Long-Term Care Ombudsperson or the Ombudsperson's designee to request that the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check of each applicant. An applicant is a person under final consideration for employment with the Office in a full-time, part-time, or temporary position that involves providing ombudsperson services to long-term care facility residents or community-based long-

term care service recipients. Volunteers are not included. If the person is applying to be the State Long-Term Care Ombudsperson, the Director of the Ohio Department of Aging (ODA) is to request the criminal records check.

### Employees subject to database reviews and criminal records checks

The bill permits the ODA Director to adopt rules that require employees to undergo criminal records checks. The rules also may require employees to undergo database reviews that the bill creates (see "**Database reviews**," below). An employee is a person employed by the Office in a full-time, part-time, or temporary position that involves providing ombudsperson services to long-term care facility residents or community-based long-term care service recipients. Volunteers are not included. The ODA Director may exempt one or more classes of employees from the database review and criminal records check requirements. If the rules require employees to undergo database reviews and criminal records checks, the rules must specify the times at which the database reviews and criminal records checks are to be conducted.

Continuing law permits the Office to charge an applicant a fee regarding a criminal records check if the Office notifies the applicant of the fee at the time the applicant initially applies for employment. The fee may not exceed the amount that the Office pays to BCII for the criminal records check. The bill does not authorize the Office to charge an employee a fee regarding a criminal records check.

The Office may not employ an applicant who fails to complete a BCII criminal records check form or to provide fingerprint impressions on a BCII standard impression sheet. Under the bill, the Office also is prohibited from continuing to employ an employee who fails to complete the form or provide the employee's fingerprint impressions on the BCII impression sheet.

### Database reviews

The bill creates a database review process. An applicant is to undergo a database review as a condition of employment with the Office in a position that involves providing ombudsperson services to long-term care facility residents or community-based long-term care service recipients. If the ODA Director's rules so require, an employee is to undergo a database review as a condition of continuing employment with the Office in such a position. A database review is to determine whether an applicant or employee is included in any of the following:

(1) The excluded parties list system operated by the United States General Services Administration (GSA);

(2) The list of excluded individuals and entities operated by the Office of Inspector General (OIG) in the United States Department of Health and Human Services;

(3) The registry of MR/DD employees operated by the Department of Developmental Disabilities;

(4) The Internet-based sex offender and child-victim offender database operated by BCII;

(5) The Internet-based database of inmates operated by the Department of Rehabilitation and Correction (DRC);

(6) The state nurse aide registry operated by the Department of Health;

(7) Any other database, if any, the ODA Director is permitted to specify in rules.

The bill prohibits the Office from employing an applicant or continuing to employ an employee if a database review reveals any of the following:

(1) The applicant or employee is included in GSA's excluded parties list system, OIG's list of excluded individuals and entities, the registry of MR/DD employees, BCII's Internet-based sex offender and child-victim offender database, or DRC's Internet-based database of inmates;

(2) There is in the state nurse aide registry a statement detailing findings by the Director of Health that the applicant or employee neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident;

(3) The applicant or employee is included in one or more of the other databases that the ODA Director may specify in rules and the rules prohibit the Office from employing an applicant or employee included in such a database in a position that involves providing ombudsperson services to long-term care facility residents or community-based long-term care service recipients.

An applicant or employee is not required to undergo a criminal records check in addition to a database review if the applicant or employee is found by the database review to be ineligible for the job.

The State Long-Term Care Ombudsperson or the Ombudsperson's designee is required to inform each applicant that a database review will be conducted to determine whether the Office is prohibited from employing the applicant. The

Ombudsperson or designee also must inform each applicant about the criminal records check requirement. The ODA Director is to provide the information to an applicant for employment as the Ombudsperson.

The Office is permitted by current law to employ conditionally an applicant before obtaining the results of the applicant's criminal records check if the criminal records check is requested not later than five business days after the applicant begins conditional employment. The bill prohibits the Office from conditionally employing an applicant who is found by a database review to be ineligible for the job.

### Disqualifying offenses

Current law prohibits the Office from employing a person in a position that involves providing ombudsperson services to long-term care facility residents or community-based long-term care service recipients if the person has been convicted of or pleaded guilty to certain disqualifying offenses. However, the Office may employ such a person in such a position if the person meets personal character standards set by the ODA Director in rules. Under the bill, the Office may not employ an applicant or continue to employ an employee in such a position if the applicant or employee is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense unless the applicant or employee meets personal character standards specified in rules to be adopted by the ODA Director.

The following is a list of the disqualifying offenses (an asterisk indicates that an offense is not currently a disqualifying offense):

(1) Cruelty to animals (R.C. 959.13)*; cruelty against a companion animal (R.C. 959.131)*; aggravated murder (R.C. 2903.01); murder (R.C. 2903.02); voluntary manslaughter (R.C. 2903.03); involuntary manslaughter (R.C. 2903.04); reckless homicide (R.C. 2903.041)*; felonious assault (R.C. 2903.11); aggravated assault (R.C. 2903.12); assault (R.C. 2903.13); permitting child abuse (R.C. 2903.15)*; failing to provide for a functionally impaired person (R.C. 2903.16); aggravated menacing (R.C. 2903.21); menacing by stalking (R.C. 2903.211)*; menacing (R.C. 2903.22)*; patient abuse or neglect (R.C. 2903.34); patient endangerment (R.C. 2903.341)*; kidnapping (R.C. 2905.01); abduction (R.C. 2905.02); criminal child enticement (R.C. 2905.05)*; extortion (R.C. 2905.11); coercion (R.C. 2905.12); rape (R.C. 2907.02); sexual battery (R.C. 2907.03); unlawful sexual conduct with a minor (R.C. 2907.04)*; sexual imposition (R.C. 2907.05); sexual imposition (R.C. 2907.06); importuning (R.C. 2907.07); voyeurism (R.C. 2907.08); public indecency (R.C. 2907.09); compelling prostitution (R.C. 2907.21)*; promoting prostitution (R.C. 2907.22)*; procuring (R.C. 2907.23)*; soliciting (R.C. 2907.24)*; prostitution (R.C. 2907.25); disseminating matter harmful to juveniles (R.C. 2907.31);

pandering obscenity (R.C. 2907.32); pandering obscenity involving a minor (R.C. 2907.321); pandering sexually oriented matter involving a minor (R.C. 2907.322); illegal use of a minor in nudity-oriented material or performance (R.C. 2907.323); deception to obtain matter harmful to juveniles (R.C. 2907.33)*; aggravated arson (R.C. 2909.02)*; arson (R.C. 2909.03)*; disrupting public service (R.C. 2909.04)*; support of terrorism (R.C. 2909.22)*; terroristic threats (R.C. 2909.23)*; terrorism (R.C. 2909.24)*; aggravated robbery (R.C. 2911.01); robbery (R.C. 2911.02); aggravated burglary (R.C. 2911.11); burglary (R.C. 2911.12); breaking and entering (R.C. 2911.13); theft (R.C. 2913.02); unauthorized use of a vehicle (R.C. 2913.03); unauthorized use of property (R.C. 2913.04); telecommunications fraud (R.C. 2913.05)*; passing bad checks (R.C. 2913.11); misuse of credit cards (R.C. 2913.21); forgery (R.C. 2913.31); criminal simulation (R.C. 2913.32)*; Medicaid fraud (R.C. 2913.40); acts constituting prima-facie evidence of purpose to defraud (R.C. 2913.41)*; tampering with records (R.C. 2913.42)*; securing writings by deception (R.C. 2913.43); personating an officer (R.C. 2913.44)*; unauthorized display of emblems related to law enforcement on motor vehicles (R.C. 2913.441)*; defrauding creditors (R.C. 2913.45)*; illegal use of Supplemental Nutrition Assistance Program benefits or WIC program benefits (R.C. 2913.46)*; insurance fraud (R.C. 2913.47); Workers' Compensation fraud (R.C. 2913.48)*; identity fraud (R.C. 2913.49)*; recovering stolen property (R.C. 2913.51); inciting to violence (R.C. 2917.01)*; aggravated riot (R.C. 2917.02)*; riot (R.C. 2917.03)*; inducing panic (R.C. 2917.31)*; abortion without informed consent (R.C. 2919.12)*; unlawful abortion (R.C. 2919.121)*; unlawful distribution of an abortion-inducing drug (RU-486) (R.C. 2919.123)*; endangering children (R.C. 2919.22)*; interference with custody (R.C. 2919.23)*; contributing to unruliness or delinquency (R.C. 2919.24)*; domestic violence (R.C. 2919.25); intimidation (R.C. 2921.03)*; perjury (R.C. 2921.11); falsification (R.C. 2921.13)*; compounding a crime (R.C. 2921.21)*; disclosure of confidential information (R.C. 2921.24)*; assaulting police dog, horse, or assistance dog (R.C. 2921.321)*; escape (R.C. 2921.34)*; aiding escape or resistance to authority (R.C. 2921.35)*; prohibited conveying of certain items onto property of state facilities (R.C. 2921.36)*; impersonation of certain officers (R.C. 2921.51)*; carrying concealed weapons (R.C. 2923.12); conveyance or possession of deadly weapons or dangerous ordnance in school safety zone (R.C. 2923.122)*; illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance in a courthouse (R.C. 2923.123)*; having weapons while under disability (R.C. 2923.13); improperly discharging firearm at or into habitation or school safety zone (R.C. 2923.161); discharge of firearm on or near prohibited premises (R.C. 2923.162)*; improperly furnishing firearms to minor (R.C. 2923.21)*; engaging in a pattern of corrupt activity (R.C. 2923.32)*; criminal gang activity (R.C. 2923.42)*; corrupting another with drugs (R.C. 2925.02); trafficking (R.C. 2925.03); illegal manufacture of drugs or cultivation of marihuana (R.C. 2925.04)*; illegal assembly or possession of chemicals used to manufacture a controlled substance (R.C. 2925.041)*; funding of drug or marihuana trafficking (R.C. 2925.05)*; illegal administration or distribution of

anabolic steroids (R.C. 2925.06)*; sale or use of drugs not approved by the U.S. Food and Drug Administration (R.C. 2925.09)*; drug possession (R.C. 2925.11); permitting drug abuse (R.C. 2925.13); use, possession, or sale of drug paraphernalia (R.C. 2925.14)*; deception to obtain a dangerous drug (R.C. 2925.22); illegal processing of drug documents (R.C. 2925.23); tampering with drugs (R.C. 2925.24)*; illegal dispensing of drug samples (R.C. 2925.36)*; unlawful purchase or receipt of a pseudoephedrine product (R.C. 2925.55)*; unlawful sale of a pseudoephedrine product (R.C. 2925.56)*; ethnic intimidation (R.C. 2927.12)*; adulteration of food (R.C. 3716.11); felonious sexual penetration in violation of former law (former R.C. 2907.12)*; a violation of the former offense of child stealing as that offense existed before July 1, 1996 (former R.C. 2905.04)*;

(2) A violation of conspiracy, attempt to commit an offense, or complicity in the commission of an offense when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in (1) above;

(3) A violation of an existing or former municipal ordinance* or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in (1) or (2) above.

### Release of criminal records check report

Continuing law provides that a criminal records check report is not a public record and may be released only to certain persons. The bill provides that a report may be released to a court, hearing officer, or other necessary individual involved in a case dealing with a civil or criminal action regarding Medicaid or a program ODA administers.

## Community-based long-term care agency criminal records checks

(R.C. 173.394 (primary), 109.57, 109.572, and 173.391; Sections 610.10, 610.11, and 751.20)

The bill revises the law governing criminal records checks for employment positions with community-based long-term care agencies.

Current law requires applicants to undergo a criminal records check conducted by the Bureau of Criminal Identification and Investigation (BCII). An applicant is a person under final consideration for employment with a community-based long-term care agency in a full-time, part-time, or temporary position that involves providing direct care to an individual. The bill provides that the following is also an applicant: a person who is referred to a community-based long-term care agency by an employment service for a position that involves providing direct care to an individual. Continuing law provides that volunteers are not applicants and, therefore, are not included in the criminal records check requirements.

Generally, the chief administrator of a community-based long-term care agency is the one who must request that BCII conduct a criminal records check for an applicant. Current law provides that a chief administrator does not have to make the request for an applicant referred to the agency by an employment service if (1) the chief administrator receives from the employment service or applicant a criminal records check report regarding the applicant that BCII conducted within the one-year period immediately preceding the applicant's referral and (2) the report demonstrates that the applicant has not been convicted of or pleaded guilty to a disqualifying offense or, despite having been convicted of or pleaded guilty to a disqualifying offense, the applicant meets personal character standards specified in rules adopted by the Ohio Department of Aging (ODA).

### Employees subject to database reviews and criminal records checks

The act that established the criminal records check requirement for community-based long-term care agency applicants, Am. Sub. S.B. 160 of the 121st General Assembly, provided that the requirement applies only to persons seeking employment on or after January 27, 1997. The bill eliminates this exemption and permits the ODA Director to adopt rules that require employees to undergo criminal records checks. The rules also may require employees to undergo database reviews that the bill creates (see "**Database reviews**," below). An employee is a person employed by a community-based long-term care agency in a full-time, part-time, or temporary position that involves providing direct care to an individual and a person who works in such a position due to being referred to an agency by an employment service. Volunteers are not included. The ODA Director may exempt one or more classes of employees from the database review and criminal records check requirements. If the rules require employees to undergo database reviews and criminal records checks, the rules must specify the times at which the database reviews and criminal records checks are to be conducted.

Continuing law permits a community-based long-term care agency to charge an applicant a fee regarding a criminal records check if the agency notifies the applicant of the fee at the time the applicant initially applies for employment and Medicaid does not reimburse the agency the fee it pays for the criminal records check. The fee may not exceed the amount that the agency pays to BCII for the criminal records check. The bill does not authorize an agency to charge an employee a fee regarding a criminal records check.

A community-based long-term care agency may not employ an applicant who fails to complete a BCII criminal records check form or to provide fingerprint impressions on a BCII standard impression sheet if the agency provides the form and impression sheet to the applicant. Under the bill, an agency also is prohibited from

continuing to employ an employee who fails to complete the form or provide the employee's fingerprint impressions on the BCII impression sheet if the agency provides the form and impression sheet to the employee.

### Database reviews

The bill creates a database review process. An applicant is to undergo a database review as a condition of employment with a community-based long-term care agency in a position that involves providing direct care to an individual. If the ODA Director's rules so require, an employee is to undergo a database review as a condition of continuing employment with an agency in such a position. A database review is to determine whether an applicant or employee is included in any of the following:

(1) The excluded parties list system operated by the United States General Services Administration (GSA);

(2) The list of excluded individuals and entities operated by the Office of Inspector General (OIG) in the United States Department of Health and Human Services;

(3) The registry of MR/DD employees operated by the Department of Developmental Disabilities;

(4) The Internet-based sex offender and child-victim offender database operated by BCII;

(5) The Internet-based database of inmates operated by the Department of Rehabilitation and Correction (DRC);

(6) The state nurse aide registry operated by the Department of Health;

(7) Any other databases, if any, the ODA Director is permitted to specify in rules.

The bill prohibits an agency from employing an applicant or continuing to employ an employee if a database review reveals any of the following:

(1) The applicant or employee is included in GSA's excluded parties list system, OIG's list of excluded individuals and entities, the registry of MR/DD employees, BCII's Internet-based sex offender and child-victim offender database, or DRC's Internet-based database of inmates;

(2) There is in the state nurse aide registry a statement detailing findings by the Director of Health that the applicant or employee neglected or abused a long-term care

facility or residential care facility resident or misappropriated property of such a resident;

(3) The applicant or employee is included in one or more of the other databases that the ODA Director may specify in rules and the rules prohibit an agency from employing an applicant or employee included in such a database in a position that involves providing direct care to an individual.

An applicant or employee is not required to undergo a criminal records check in addition to a database review if the applicant or employee is found by the database review to be ineligible for the job.

The chief administrator of a community-based long-term care agency is required to inform each applicant that a database review will be conducted to determine whether the agency is prohibited from employing the applicant. The chief administrator also must inform each applicant about the criminal records check requirement. However, the notification requirement may not apply if the applicant is referred by an employment service (see "**Referrals by an employment service**," below).

A community-based long-term care agency is permitted by current law to employ conditionally an applicant before obtaining the results of the applicant's criminal records check if the criminal records check is requested not later than five business days after the applicant begins conditional employment. The bill prohibits an agency from conditionally employing an applicant who is found by a database review to be ineligible for the job.

### Referrals by an employment service

The bill maintains provisions of current law regarding applicants who are referred to community-based long-term care agencies by employment services and applies the provisions to database reviews and employees who work at agencies due to being referred by employment services. Under these provisions, an agency is not required to subject an applicant or employee to a database review or criminal records check if the applicant or employee is referred to the agency by an employment service and both of the following apply:

(1) The agency's chief administrator receives from the employment service confirmation that a database review was conducted of the applicant or employee;

(2) The chief administrator receives from the employment service, applicant, or employee a report of the results of a criminal records check of the applicant or employee that has been conducted by BCII within the one-year period immediately preceding the following:

(a) In the case of an applicant, the date of the applicant's referral by the employment service to the agency;

(b) In the case of an employee, the date by which the agency would otherwise have to request a criminal records check of the employee.

### Disqualifying offenses

Current law prohibits a community-based long-term care agency from employing a person in a position that involves providing direct care to an individual if the person has been convicted of or pleaded guilty to certain disqualifying offenses. However, an agency may employ such a person in such a position if the person meets personal character standards set by ODA in rules. Under the bill, an agency may not employ an applicant or continue to employ an employee in such a position if the applicant or employee is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense unless the applicant or employee meets personal character standards to be specified in rules adopted by the ODA Director.

The following is a list of the disqualifying offenses (an asterisk indicates that an offense is not currently a disqualifying offense):

(1) Cruelty to animals (R.C. 959.13)*; cruelty against a companion animal (R.C. 959.131)*; aggravated murder (R.C. 2903.01); murder (R.C. 2903.02); voluntary manslaughter (R.C. 2903.03); involuntary manslaughter (R.C. 2903.04); reckless homicide (R.C. 2903.041)*; felonious assault (R.C. 2903.11); aggravated assault (R.C. 2903.12); assault (R.C. 2903.13); permitting child abuse (R.C. 2903.15)*; failing to provide for a functionally impaired person (R.C. 2903.16); aggravated menacing (R.C. 2903.21); menacing by stalking (R.C. 2903.211)*; menacing (R.C. 2903.22)*; patient abuse or neglect (R.C. 2903.34); patient endangerment (R.C. 2903.341)*; kidnapping (R.C. 2905.01); abduction (R.C. 2905.02); criminal child enticement (R.C. 2905.05)*; extortion (R.C. 2905.11); coercion (R.C. 2905.12); rape (R.C. 2907.02); sexual battery (R.C. 2907.03); unlawful sexual conduct with a minor (R.C. 2907.04)*; sexual imposition (R.C. 2907.05); sexual imposition (R.C. 2907.06); importuning (R.C. 2907.07); voyeurism (R.C. 2907.08); public indecency (R.C. 2907.09); compelling prostitution (R.C. 2907.21)*; promoting prostitution (R.C. 2907.22)*; procuring (R.C. 2907.23)*; soliciting (R.C. 2907.24)*; prostitution (R.C. 2907.25); disseminating matter harmful to juveniles (R.C. 2907.31); pandering obscenity (R.C. 2907.32); pandering obscenity involving a minor (R.C. 2907.321); pandering sexually oriented matter involving a minor (R.C. 2907.322); illegal use of a minor in nudity-oriented material or performance (R.C. 2907.323); deception to obtain matter harmful to juveniles (R.C. 2907.33)*; aggravated arson (R.C. 2909.02)*; arson (R.C. 2909.03)*; disrupting public service (R.C. 2909.04)*; support of terrorism

(R.C. 2909.22)*; terroristic threats (R.C. 2909.23)*; terrorism (R.C. 2909.24)*; aggravated robbery (R.C. 2911.01); robbery (R.C. 2911.02); aggravated burglary (R.C. 2911.11); burglary (R.C. 2911.12); breaking and entering (R.C. 2911.13); theft (R.C. 2913.02); unauthorized use of a vehicle (R.C. 2913.03); unauthorized use of property (R.C. 2913.04); telecommunications fraud (R.C. 2913.05)*; passing bad checks (R.C. 2913.11); misuse of credit cards (R.C. 2913.21); forgery (R.C. 2913.31); criminal simulation (R.C. 2913.32)*; Medicaid fraud (R.C. 2913.40); acts constituting prima-facie evidence of purpose to defraud (R.C. 2913.41)*; tampering with records (R.C. 2913.42)*; securing writings by deception (R.C. 2913.43); personating an officer (R.C. 2913.44)*; unauthorized display of emblems related to law enforcement on motor vehicles (R.C. 2913.441)*; defrauding creditors (R.C. 2913.45)*; illegal use of Supplemental Nutrition Assistance Program benefits or WIC program benefits (R.C. 2913.46)*; insurance fraud (R.C. 2913.47); Workers' Compensation fraud (R.C. 2913.48)*; identity fraud (R.C. 2913.49)*; recovering stolen property (R.C. 2913.51); inciting to violence (R.C. 2917.01)*; aggravated riot (R.C. 2917.02)*; riot (R.C. 2917.03)*; inducing panic (R.C. 2917.31)*; abortion without informed consent (R.C. 2919.12)*; unlawful abortion (R.C. 2919.121)*; unlawful distribution of an abortion-inducing drug (RU-486) (R.C. 2919.123)*; endangering children (R.C. 2919.22)*; interference with custody (R.C. 2919.23)*; contributing to unruliness or delinquency (R.C. 2919.24)*; domestic violence (R.C. 2919.25); intimidation (R.C. 2921.03)*; perjury (R.C. 2921.11); falsification (R.C. 2921.13)*; compounding a crime (R.C. 2921.21)*; disclosure of confidential information (R.C. 2921.24)*; assaulting police dog, horse, or assistance dog (R.C. 2921.321)*; escape (R.C. 2921.34)*; aiding escape or resistance to authority (R.C. 2921.35)*; prohibited conveying of certain items onto property of state facilities (R.C. 2921.36)*; impersonation of certain officers (R.C. 2921.51)*; carrying concealed weapons (R.C. 2923.12); conveyance or possession of deadly weapons or dangerous ordnance in school safety zone (R.C. 2923.122)*; illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance in a courthouse (R.C. 2923.123)*; having weapons while under disability (R.C. 2923.13); improperly discharging firearm at or into habitation or school safety zone (R.C. 2923.161); discharge of firearm on or near prohibited premises (R.C. 2923.162)*; improperly furnishing firearms to minor (R.C. 2923.21)*; engaging in a pattern of corrupt activity (R.C. 2923.32)*; criminal gang activity (R.C. 2923.42)*; corrupting another with drugs (R.C. 2925.02); trafficking (R.C. 2925.03); illegal manufacture of drugs or cultivation of marihuana (R.C. 2925.04)*; illegal assembly or possession of chemicals used to manufacture a controlled substance (R.C. 2925.041)*; funding of drug or marihuana trafficking (R.C. 2925.05)*; illegal administration or distribution of anabolic steroids (R.C. 2925.06)*; sale or use of drugs not approved by the U.S. Food and Drug Administration (R.C. 2925.09)*; drug possession (R.C. 2925.11); permitting drug abuse (R.C. 2925.13); use, possession, or sale of drug paraphernalia (R.C. 2925.14)*; deception to obtain a dangerous drug (R.C. 2925.22); illegal processing of drug documents (R.C. 2925.23); tampering with drugs (R.C. 2925.24)*; illegal dispensing of

drug samples (R.C. 2925.36)*; unlawful purchase or receipt of a pseudoephedrine product (R.C. 2925.55)*; unlawful sale of a pseudoephedrine product (R.C. 2925.56)*; ethnic intimidation (R.C. 2927.12)*; adulteration of food (R.C. 3716.11); felonious sexual penetration in violation of former law (former R.C. 2907.12)*; a violation of the former offense of child stealing as that offense existed before July 1, 1996 (former R.C. 2905.04)*;

(2) A violation of conspiracy, attempt to commit an offense, or complicity in the commission of an offense when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in (1) above;

(3) A violation of an existing or former municipal ordinance* or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in (1) or (2) above.

### Release of criminal records check report

Continuing law provides that a criminal records check report is not a public record and may be released only to certain persons. The bill provides that a report may be released to a court, hearing officer, or other necessary individual involved in a case dealing with a civil or criminal action regarding Medicaid or a program ODA administers.

## Legal representation for long-term care ombudsperson programs

(R.C. 173.23)

The bill requires the Attorney General to provide legal counsel to the Office of the State Long-Term Care Ombudsperson Program and to represent any representative of the Office against whom any legal action is brought in connection with the representative's duties. Under current law, the Department of Aging is required to ensure that this legal counsel is available for advice and consultation and that this legal representation is provided.

The bill also requires the Attorney General to provide legal counsel to the regional long-term care ombudsperson programs and to represent any representative of a regional program against whom any action is brought in connection with the representative's official duties. Existing law does not require this legal counsel and legal representation to be provided.

### State-funded component of the PASSPORT Program

(R.C. 173.40)

The bill revises the period of time that an individual may participate in the state-funded component of the PASSPORT program on the basis that the individual's application for the Medicaid-funded component of PASSPORT (or the potential replacement program called the Unified Long-Term Services and Support Medicaid waiver program) is pending while a determination is being made of whether the individual meets the financial eligibility requirements. Under the bill, an individual may participate in the state-funded component on that basis for 90 days rather than three months.

### Assisted Living Program's Home First component

(R.C. 5111.894)

The bill revises the eligibility requirements for the Assisted Living Program's Home First component. The Home First process enables individuals meeting certain requirements to be enrolled in the Assisted Living Program ahead of others.

To qualify for the Assisted Living Program's Home First component, an individual must have been determined to be eligible for the Medicaid-funded component of the Assisted Living Program and must be in at least one of five circumstances. The bill eliminates one of the circumstances with the result that an individual must be in one of four circumstances. Under the circumstance that is eliminated, an individual must have resided in a residential care facility for at least six months immediately before applying for the Assisted Living Program and have been at risk of imminent admission to a nursing facility because the costs of residing in the residential care facility had depleted the individual's resources such that the individual was unable to continue to afford the cost of residing in a residential care facility.

## DEPARTMENT OF AGRICULTURE (AGR)

- Eliminates various agriculture funds, including the Pilot Farmland Preservation Fund, and transfers any cash in those funds to the Indirect Cost Fund.

### Elimination of various agriculture funds

(R.C. 901.54; Section 211.10 of Am. Sub. H.B. 153 of the 129th General Assembly)

The bill eliminates the statutory creation of the Pilot Farmland Preservation Fund. The Fund consists of money received by the Office of Farmland Preservation in the Department of Agriculture and is used to leverage or match other farmland preservation funds provided from federal, local, or private sources. The bill provides for the transfer of any cash from the Fund to the Indirect Cost Fund.

In addition, the bill eliminates the following funds and provides for the transfer of any cash balances in them to the Indirect Cost Fund: (1) Federal Grants Fund, (2) Specialty Crops Support Fund, (3) Fruits and Vegetables Fund, (4) Dairy Fund, (5) Animal Industry Fund, (6) Scale Certification Fund, (7) Weights and Measures Permits Fund, (8) Food Policy Council Fund, (9) Sustainable Agriculture Fund, (10) Farm Service Electronic Filing Fund, and (11) Seed Fund.

## DEPARTMENT OF ALCOHOL AND DRUG ADDICTION SERVICES (ADA)

- Requires the Ohio Department of Drug and Alcohol Addiction Services (ODADAS) to develop, administer, and revise as necessary a comprehensive statewide gambling addiction services plan.

- Renames the Council on Alcohol and Drug Addiction Services the "Council on Alcohol, Drug, and Gambling Addiction Services" and adds the following as members: (1) an individual who has received or is receiving gambling addiction services, and (2) the executive directors of the Casino Control Commission, the Lottery Commission, and the State Racing Commission.

- Includes veterans among the other examples of underserved groups to be addressed when ODADAS fulfills its existing duty to develop a comprehensive statewide alcohol and drug addiction services plan.

## Gambling addiction services planning

### Comprehensive statewide gambling addiction services plan

(R.C. 3793.041)

The bill requires the Ohio Department of Alcohol and Drug Addiction Services (ODADAS) to develop, administer, and revise as necessary a comprehensive statewide gambling addiction services plan. The requirement is similar to ODADAS's existing duty to develop, administer, and revise as necessary a comprehensive statewide alcohol and drug addiction services plan.

The plan must provide for allocation and distribution of funds from the Problem Casino Gambling and Addictions Fund, which is described in the Ohio Constitution,[65] and any funding to be distributed by ODADAS for problem gambling.

The plan must specify the methodology that ODADAS will use for determining how the funds will be allocated and distributed. A portion of the funds must be allocated on the basis of the ratio of the population of each alcohol, drug addiction, and mental health service district to Ohio's total population as determined from the most recent federal census or the most recent official estimate made by the U.S. Census Bureau.

The plan must also ensure that gambling addiction services of a high quality are accessible to, and responsive to the needs of, all persons, especially those who are members of underserved groups, including (but not limited to) African Americans, Hispanics, Native Americans, Asians, juvenile and adult offenders, women, veterans, and persons with special services needs due to age or disability. The plan must include a program to promote and protect the rights of those who receive services.

To aid in formulating the plan and in evaluating the effectiveness and results of gambling addiction services, ODADAS, in consultation with the Department of Mental Health, must establish and maintain an information system or systems. ODADAS must specify the information that has to be provided by boards of alcohol, drug addiction, and mental health services and by gambling addiction programs for inclusion in the system. ODADAS is prohibited from collecting any personal information from the boards except as required or permitted by state or federal law for purposes related to payment, health care operations, program and service evaluation, reporting activities, research, system administration, and oversight.

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[65] Ohio Const., Art. XV, Sec. 6(C)(3)(g).

In consultation with boards, programs, and persons receiving services, ODADAS must establish guidelines for the use of funds allocated and distributed as described above.

### Council on Alcohol, Drug, and Gambling Addiction Services

(R.C. 3793.09)

The bill renames the Council on Alcohol and Drug Addiction Services the "Council on Alcohol, Drug, and Gambling Addiction Services." The bill requires the Council to advise ODADAS in the development and implementation of the statewide plan for gambling addiction services and retains the Council's duty to advise ODADAS regarding the statewide plan for alcohol and drug addiction services.

The bill expands the Council's membership by four members. Specifically, the bill increases to 14 (from 13) the number of members appointed by the Governor. The one additional appointed member must be an individual who has received or is receiving gambling addiction services. The bill also increases to 13 (from 10) the members who are public officials. The additional public official members are the executive directors of the Casino Control Commission, the Lottery Commission, and the State Racing Commission.

Under current law, the Council's membership consists of the following:

--13 members appointed by the Governor with the advice and consent of the Senate. These must be representatives of boards of alcohol, drug addiction, and mental health services; the criminal and juvenile justice systems; and alcohol and drug addiction services.

--10 public official members: the Directors of Health, Public Safety, Mental Health, Rehabilitation and Correction, and Youth Services; the Superintendents of Public Instruction and Liquor Control; the Attorney General; the Adjutant General; and the Executive Director of the Division of Criminal Justice Services in the Department of Public Safety.

## Comprehensive statewide alcohol and drug addiction services plan

(R.C. 3793.04)

Similar to the bill's provisions regarding a statewide plan for gambling addiction services, current law requires ODADAS's comprehensive statewide alcohol and drug addiction services plan to ensure that high-quality services are accessible to, and

responsive to the needs of, all persons, especially underserved groups. The bill adds veterans to the groups currently listed in statute as examples of underserved groups.

## ATTORNEY GENERAL (AGO)

- Changes the required number of hours of continuing professional training for peace officers and troopers from up to 24 hours to 4 hours.
- Eliminates the Law Enforcement Assistance Fund.
- Eliminates the requirement that the Attorney General adopt rules regarding the reimbursement of public appointing authorities for the cost of continuing professional training programs.
- Eliminates the requirement that the Ohio Peace Officer Training Commission administer a program for the reimbursement of public appointing authorities for the cost of continuing professional training programs.
- Eliminates the ability of an appointing agency to apply for reimbursement of the cost of continuing professional training programs and all requirements and standards for the Ohio Peace Officer Training Commission to review such applications.
- Eliminates the requirements that: (1) a law enforcement agency that has any seized or forfeited property during any calendar year prepare and send to the Attorney General an annual report with respect to the agency's acquisition and disposition of that property, and (2) the Attorney General send a notice to the President of the Senate and Speaker of the House of Representatives of the Attorney General's receipt of the reports described in clause (1) and of the access to and availability of those reports.
- Changes the date by which the Attorney General is required to report on the Attorney General's operations with regard to Consumer Sales Practices Act, and on violations of that Act, to the Governor and the General Assembly from January 1 to January 31 of each year.

## Continuing professional training for peace officers and troopers

(R.C. 109.802 (repealed by the bill) and 109.803)

Current law requires every appointing authority to require each of its appointed peace officers and troopers to complete up to 24 hours of continuing professional training each calendar year, as directed by the Ohio Peace Officer Training Commission. The number of hours directed by the Commission, up to 24 hours, is intended to be a minimum requirement, and appointing authorities are encouraged to exceed the number of hours the Commission directs as the minimum. The Commission must set the required minimum number of hours based upon available funding for reimbursement. If no funding for the reimbursement is available, no continuing professional training is required.

Under the bill, every appointing authority must require each of its appointed peace officers and troopers to complete four hours of continuing professional training each year. The bill eliminates all of the other language discussed in the previous paragraph that encourages appointing authorities to exceed the required number of hours and reimbursement for the training. Additionally, the bill requires every appointing authority to submit documentation to the Commission indicating its peace officers' or troopers' completion of or authorized extension of time for completion of continuing professional training together with the roster of all persons who have been appointed to or employed by the agency or entity as peace officers or troopers in any capacity that is required to be submitted to the Commission annually.

## Law Enforcement Assistance Fund

The bill eliminates the Law Enforcement Assistance Fund within the state treasury that is currently used to pay reimbursements for continuing professional training programs for peace officers and troopers. Additionally, the bill eliminates the requirement that the Attorney General adopt rules regarding the reimbursement of public appointing authorities for the cost of continuing professional training programs, the requirement that the Ohio Peace Officer Training Commission administer a program for reimbursement of those costs, and the ability of an appointing agency to apply for reimbursement of those costs and all requirements and standards for the Ohio Peace Officer Training Commission to review such applications.

## Law enforcement agency reports – seized or forfeited property

(R.C. 2981.11)

### Current law

The current Forfeiture Law in R.C. Chapter 2981. generally applies to and governs both criminal and civil asset forfeitures to the state or a political subdivision relating to any act or omission that could be charged as a criminal offense or a delinquent act, whether or not a formal prosecution or delinquency proceeding began when a forfeiture is initiated. The Law does not apply to forfeitures under the Motor Vehicle Law or with respect to a few other specified types of property. Property that is subject to forfeiture under the Law is contraband involved in an offense, proceeds derived from or acquired through the commission of an offense, or an instrumentality used in or intended to be used in the commission or facilitation of specified category of offense when the use or intended use, consistent with specified factors, is sufficient to warrant forfeiture under the Law. The specified categories of offenses with respect to which the "instrumentality" provision applies are felonies, misdemeanors when forfeiture is specifically authorized by statute or ordinance, and attempts or conspiracies to commit or complicity in committing either of the prior specified categories. R.C. 2981.11 generally governs the custody and disposition of forfeited property and other specified types of property. Under the section:

(1) Any property that has been lost, abandoned, stolen, seized pursuant to a search warrant, or otherwise lawfully seized or forfeited and that is in the custody of a law enforcement agency must be kept safely by the agency, pending the time it no longer is needed as evidence or for another lawful purpose, and must be disposed of in a specified manner.

(2) Each law enforcement agency with custody of any property that is subject to the section must adopt and comply with a written internal control policy that provides for keeping detailed records as to the amount of property the agency acquired, the date the property was acquired, and the disposition of the property. The records regarding disposition must specify the manner in which the property was disposed, the date of disposition, detailed financial records concerning any property sold, the name of any person who received the property, the general types of expenditures made with amounts gained from the sale of the property and retained by the agency, and the specific amount expended on each general type of expenditure. The records kept under the internal control policy are open to public inspection during the agency's regular business hours.

(3) Each law enforcement agency that during any calendar year has any seized or forfeited property covered by the section in its custody, including amounts distributed to its law enforcement trust fund or a similar fund created for the State Highway Patrol, Department of Public Safety, Department of Taxation, or State Board of Pharmacy, must prepare a report covering the calendar year that cumulates all of the information contained in all of the public records the agency kept pursuant to the section for that calendar year. The agency must send a copy of the cumulative report to the Attorney General not later than March 1 of the calendar year following the calendar year covered by the report. Each report received by the Attorney General is a public record open for inspection under the state's Public Records Law.

(4) Not later than April 15 of each calendar year in which reports are sent to the Attorney General as described above in (3), the Attorney General must send to the Senate President and the Speaker of the House of Representatives a written notice that indicates that the Attorney General received reports that cover the previous calendar year, that the reports are open for inspection under the state's Public Records Law, and that the Attorney General will provide a copy of any or all of the reports to the President or Speaker upon request.

#### Operation of the bill

The bill repeals the provisions described above in (3) and (4) under "**Current Law**." Under the bill, law enforcement agencies will not have to prepare the cumulative reports described above in (3) or send them to the Attorney General, and the Attorney General will not have to send the written notices described above in (4) to the Senate President and the Speaker of the House of Representatives.

### Consumer Sales Practices Act annual report date change

(R.C. 1345.05)

The bill changes the date by which the Attorney General is required to report on the Attorney General's operations with regard to the Consumer Sales Practices Act, and on violations of that Act, to the Governor and the General Assembly from January 1 to January 31 of each year.

## AUDITOR OF STATE (AUD)

- Requires the officers of a regional council of governments to notify the Auditor of State of its existence within ten business days after its formation, and the officers of

an existing regional council of governments to notify the Auditor of State of its existence within 30 business days after the requirement takes effect.

- Requires the Auditor of State to issue a report to the Governor and the General Assembly regarding the number of regional councils of governments and their effectiveness.

- Requires the Auditor of State to establish, operate, and maintain a state online clearinghouse web site to provide information about streamlining government operations, collaboration, and shared services.

## Notice of formation of a regional council of governments; report

(R.C. 167.04(D); Section 701.60)

The bill requires the officers of a regional council of governments to notify the Auditor of State of its existence within ten business days after its formation and to provide on a form prescribed by the Auditor of State information regarding the regional council that the Auditor of State considers necessary.

Any regional council of governments that was formed and is operating before this provision's effective date must notify the Auditor of State of its existence within 30 business days after that effective date and must provide on the Auditor of State's form the necessary information.

The Auditor of State must review the information provided and, within one year after the provision's effective date, must issue a report to the Governor and the General Assembly. The report must address how many regional councils of governments are operating, whether those regional councils continue to meet the objectives for which they were first authorized in 1967, and whether regional councils are an efficient and effective way for local governments to share services or to participate in cooperative arrangements.

For purposes of these provisions, a "business day" means a day of the week, excluding Saturday, Sunday, or a legal holiday.

## Auditor of State web site about streamlining government operations

(Section 701.20)

The bill requires the Auditor of State to establish, operate, and maintain one or more state web sites to serve as an online clearinghouse of information about

streamlining government operations, collaboration, and shared services to reduce the cost of government in Ohio. The web site may be developed by the Auditor of State or through the use of outside vendors. Existing web sites may be used if their content conforms to the requirements of the provision.

In establishing, maintaining, and operating the online clearinghouse web site, the Auditor of State is required to: (1) use a domain name that will be easily recognized, remembered, and understood by users of the web site, (2) maintain the web site so 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) enable information to be accessed by key word or other useful identifiers, (5) compile information provided by political subdivisions that includes savings recommendations from performance audits, examples of shared services among communities, shared services agreements to use as templates, and other tools developed independently by the Auditor of State or requested by political subdivisions and agreed to by the Auditor of State, (6) enable political subdivisions to register and request inclusion of their submitted information on the web site, as well as to report state and local barriers to collaboration, (7) maintain adequate systemic security and back-up features, and develop and maintain a contingency plan for coping with and recovering from power outages, systemic failures, and other unforeseen difficulties that may affect the web site, and (8) 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.

## OFFICE OF BUDGET AND MANAGEMENT (OBM)

- Repeals a requirement that the Office of Internal Auditing in the Office of Budget and Management submit a report regarding the effectiveness and expenditure of federal stimulus funds to legislative leaders on August 1, 2012, February 1, 2013, and August 1, 2013.

### Oversight of federal stimulus funds

(Section 521.70 of Am. Sub. H.B. 153 of the 129th General Assembly)

The bill modifies a requirement that the Office of Internal Auditing in the Office of Budget and Management submit semi-annual reports to legislative leaders regarding (1) the effectiveness of federal stimulus funds allocated to Ohio under the American Recovery and Reinvestment Act of 2009 (ARRA) and (2) how stimulus funds are spent

by each state agency. Currently, the Office must submit each semi-annual report by February 1, 2012, August 1, 2012, February 1, 2013, and August 1, 2013. The bill repeals the requirement that the Office submit the latter three reports.

## CAPITOL SQUARE REVIEW AND ADVISORY BOARD (CSR)

- Revises membership on the Capitol Square Review and Advisory Board, requiring one member to represent the Department of Administrative Services instead of the Ohio Building Authority.
- Requires the Capitol Square Review and Advisory Board to provide for the design and erection on the Capitol Square grounds of a memorial to victims of the European Nazi-Promulgated Holocaust and to the Ohioans who participated in the liberation of the death camps during World War II.

### Membership

(R.C. 105.41; Section 701.10.30)

The bill revises membership on the Capitol Square Review and Advisory Board by changing the requirements for one of the 13 members. Under current law, one member of the Board is to be a representative of the Ohio Building Authority. The bill removes this requirement and instead requires one member to represent the Department of Administrative Services (DAS).

The current board member who represents the Ohio Building Authority will continue to hold office until the end of the term for which the member was appointed. Upon expiration of that member's term, or upon the earlier occurrence of a vacancy in that membership, the Governor must appoint a representative of DAS to the Board. The member thus appointed will hold office for a term ending at the same time as the other members appointed by the Governor who are holding office at the time the appointment is made.

### Holocaust Memorial

(Section 701.10.20)

The bill provides for the design and erection on the Capitol Square grounds of a memorial to victims of the European Nazi-Promulgated Holocaust and to the Ohioans who participated in the liberation of the death camps during World War II. The bill

requires the Capitol Square Review and Advisory Board to designate, by October 1, 2012, a prominent place on the lawn or outside grounds of Capitol Square for the erection of the memorial. The Board must invite, accept, and evaluate proposals for the concept, design, financing, and erection of the memorial, and must select from among the proposals the memorial to be designed and erected at the place designated.

The bill specifies that only preliminary construction activities, including site preparation and utility placement, are to be paid for with public funds, and that planning for and designing and erecting the memorial are to be paid for with only private contributions.

The bill creates the Capitol Square Holocaust Memorial Fund as a custodial account to be held by the Treasurer of State, and requires private contributions to be deposited into the Fund. The Board may draw money from the Fund to pay the cost of planning for and designing and erecting the memorial. The Board must maintain a thorough and accurate account of all its expenditures from the Fund. The accounts are a public record.

The procedures specified in the bill for the creation of the memorial supersede any contrary provision in law or in any rule or procedure adopted by the Board.

## DEPARTMENT OF COMMERCE (COM)

- Renames the Division of Labor, under the Department of Commerce, to be the Division of Industrial Compliance.

- Eliminates the $50 filing fee for registration of securities by description for an offering of $50,000 or less.

- Provides that the penalty for failure to submit required filings regarding certain sales of securities to the Division of Securities due to excusable neglect is equal to the greater of the required filing fee or $100, rather than equal to the amount of the filing fee.

- Requires that 45% of the money in the existing Undivided Liquor Permit Fund be distributed to the State Liquor Regulatory Fund created by the bill rather than to the General Revenue Fund as in current law, and requires the new Fund to be used to pay the operating expenses of the Division of Liquor Control and the Liquor Control Commission.

- Requires the Director of Budget and Management, whenever in the Director's judgment the amount of money in the State Liquor Regulatory Fund is in excess of the amount that is needed to pay those operating expenses, to credit the excess to the General Revenue Fund.

- Generally requires all B-2a and S liquor permit fees to be credited to the State Liquor Regulatory Fund rather than the existing Liquor Control Fund.

- Requires payments from JobsOhio for the Division's operation of the spirituous liquor merchandising operations to be credited to the Liquor Operating Services Fund created by the bill rather than the Liquor Control Fund as in existing law.

## The Division of Labor becomes Division of Industrial Compliance

(R.C. 121.04, 121.08, 121.083, 121.084, 124.11, 3301.55, 3703.01, 3703.03 to 3703.08, 3703.10, 3703.21, 3703.99, 3713.01 to 3713.10, 3721.071, 3743.04, 3743.25, 3781.03, 3781.102, 3781.11, 3783.05, 3719.02, 3791.04, 3791.05, 3791.07, 4104.01, 4104.02, 4104.06 to 4104.101, 4104.12, 4104.15 to 4104.19, 4104.21, 4104.33, 4104.42, 4104.43, 4104.44, 4104.48, 4105.01, 4105.02 to 4105.06, 4105.09, 4105.11 to 4105.13, 4105.15 to 4105.17, 4105.191 to 4105.21, 4115.10, 4115.101, 4169.02 to 4169.04, 4171.04, 4740.03, 4740.11, 4740.14, 5104.051, 5119.71, 5119.73, and 5119.731; Section 701.70.20)

The bill changes the name of the Division of Labor, under the Department of Commerce, to the Division of Industrial Compliance. To effect the change, all powers, appropriations, real and personal property, duties, obligations, and rules of the Superintendent and Division of Labor are transferred to the Superintendent and Division of Industrial Compliance.

## Division of Securities

### Elimination of filling fee for certain registration of securities by description

(R.C. 1707.08)

The bill eliminates the $50 filing fee for the registration of securities by description for an offering of $50,000 or less. Under current law, securities are required to be registered prior to being sold by one of three means: description, qualification, or coordination. Currently, the $50 filing fee must be paid to the Division of Securities in the Department of Commerce for all registrations by description to become effective.

### Penalty fee for failing to submit filings regarding the sale of securities

(R.C. 1707.391)

The bill modifies the penalty fee charged for failure to submit filings regarding sales of securities made in reliance on the Securities Law where the failure is due to excusable neglect. Under the bill, the penalty fee is equal to the greater of the required filing fee or $100. The bill also clarifies that the penalty fee must be paid in addition to any applicable fee, such as a filing fee, that has not already been paid, but only if such fee is required. Under current law, if securities have been sold in reliance on certain provisions of the Securities Law (for example, provisions requiring registration of securities sales or exempting sales from registration), but that reliance was improper because the required filings were not timely or properly made due to excusable neglect, the sale can nevertheless be deemed exempt, qualified, or registered upon the filing of an application with the Division of Securities and the payment of the required fee and a penalty equal to the amount of the required fee.

## Liquor control funds

(R.C. 4301.30 and 4313.02)

### Undivided Liquor Permit and State Liquor Regulatory Fund

Currently, 45% of the Undivided Liquor Permit Fund, which consists of fees collected by the Division of Liquor Control, must be disbursed to the General Revenue Fund. The bill instead requires the 45% to be distributed to a new State Liquor Regulatory Fund created by the bill in the state treasury. The State Liquor Regulatory Fund must be used to pay the operating expenses of the Division in administering and enforcing the liquor control laws and the operating expenses of the Liquor Control Commission. Investment earnings of the Fund must be credited to the Fund. Whenever, in the judgment of the Director of Budget and Management, the amount of money in the State Liquor Regulatory Fund is in excess of the amount that is needed to pay the operating expenses of the Division and the Commission, the Director must credit the excess amount to the General Revenue Fund.

The bill generally requires all B-2a and S liquor permit fees to be credited to the State Liquor Regulatory Fund rather than the existing Liquor Control Fund as in current law. It retains the requirement that, once during each fiscal year, an amount equal to 50% of the fees so collected be paid into the General Revenue Fund.

### Liquor Services Operating Fund

The bill requires payments from JobsOhio for the Division's operation of the spirituous liquor merchandising operations to be credited to the Liquor Operating Services Fund, which is created by the bill in the state treasury. Currently, those payments are credited to the Liquor Control Fund. The new Fund is to be used to pay for that operation.

## COURT OF CLAIMS OF OHIO (CLA)

### Wrongful imprisonment

- Provides that a determination that a person is a wrongfully imprisoned individual must be made in a separate civil action in the court of common pleas associated with the person's conviction and requires the prosecuting attorney to defend those civil actions.

- Removes "an error in procedure that resulted in the individual's release" from the possible criteria a person must satisfy to be considered a wrongfully imprisoned individual.

- Provides that if the individual at the time of the wrongful imprisonment was serving concurrent sentences on other convictions that were not vacated, dismissed, or reversed on appeal, then the individual is not eligible for any portion of wrongful imprisonment that occurred during such a concurrent sentence.

- Provides that in order for a wrongfully imprisoned individual to be eligible to recover a sum of money for the wrongful imprisonment, the individual cannot have been convicted of a felony, other than the felony that is the subject of the civil action, or a misdemeanor offense of violence within ten years prior to the filing of the civil action to be declared a wrongfully imprisoned individual or be convicted of a felony during the pendency of that action or the civil action in the Court of Claims.

- Allows a prosecuting attorney or the Attorney General, or their assistants, to inspect sealed conviction and bail forfeiture records for the purpose of defending a civil action to determine if a person is a wrongfully imprisoned individual.

- Removes a requirement that the court that determines that a person is a wrongfully imprisoned individual orally inform the individual that the individual has the right to have counsel of that individual's own choice in the civil action in the Court of Claims to recover damages from the state and the specific statement that a

wrongfully imprisoned individual has the right to have counsel of the individual's own choice.

## Liability of Department of Transportation

- Provides that the determination of the state's liability under the Court of Claims Law in accordance with the rules of law applicable to actions between private parties does not apply to a determination of liability of the Ohio Department of Transportation (ODOT) in actions against it.

- Classifies the functions of ODOT as either "governmental functions" or "proprietary functions" and defines both terms.

- States the general rule that ODOT 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 ODOT or of any of its officers or employees in connection with a governmental or proprietary function.

- Provides that ODOT is liable in damages for injury, death, or loss to person or property shown to be caused by a preponderance of the evidence by: (1) the negligent operation of a motor vehicle by an officer or employee engaged within the scope of employment or authority, (2) the negligent performance of acts with respect to proprietary functions, (3) the negligent failure to keep roads or highways in repair or to remove obstructions, (4) negligence and patent defects in buildings or grounds used in a governmental function, or (5) if civil liability is imposed on ODOT by statute.

- Specifies immunities or defenses that the ODOT or an officer or employee may of the ODOT may assert in a civil action for damages against the ODOT or the officer or employee.

- Provides that an immunity or defense conferred upon an officer or employee by the bill does not affect any liability of the ODOT for an act or omission of the officer or employee described in the second preceding dot point.

## Civil action thresholds

- Increases the threshold below which the state is barred from filing a third-party complaint or counterclaim in a civil action that is filed in the Court of Claims from $2,500 to $10,000.

- Increases the threshold below which a civil action against the state must be determined administratively by the Clerk of the Court of Claims from $2,500 to $10,000.

## Wrongful imprisonment

(R.C. 303.09, 2305.02, 2743.48, and 2953.32)

### Civil action to determine if individual is a wrongfully imprisoned individual

Under existing law, when a court of common pleas determines, on or after September 24, 1986, that a person is a wrongfully imprisoned individual, the court must provide the person with a copy of R.C. 2743.48 and orally inform the person and the person's attorney of the person's rights under R.C. 2743.48 to commence a civil action against the state in the court of claims because of the person's wrongful imprisonment and to be represented in that civil action by counsel of the person's own choice. The bill eliminates the requirement that the court orally inform the person and the person's counsel of the person's right to be represented by counsel of the person's choice.

Under the bill, in order to be declared a wrongfully imprisoned individual, a person may file a civil action in the court of common pleas associated with the person's conviction. That civil action must be separate from the underlying finding of guilt by that court of common pleas, and that court of common pleas has exclusive, original jurisdiction to hear and determine that action. There is no right to a jury trial in that action. The prosecuting attorney of that county must defend that civil action and must be served with a copy of the complaint. Upon the filing of a civil action to be determined to be a wrongfully imprisoned individual, the Attorney General must also be served with a copy of the complaint and must be heard. Before a person may be determined to be a wrongfully imprisoned individual, the person must prove to the court of common pleas associated with the person's conviction that at the time of the offense the person was not engaging in any other criminal conduct arising out of that offense.

Under existing law, within 60 days after the date of the entry of a court of common plea's determination that a person is a wrongfully imprisoned individual, the clerk of the court of claims must forward a preliminary judgment to the President of the Controlling Board requesting the payment of 50% of the amount the wrongfully imprisoned individual is entitled to receive under Ohio law to the wrongfully imprisoned individual. The bill instead requires the clerk to forward that preliminary judgment within 60 days after the date of the filing of the complaint for damages in the

Court of Claims and the finding by the Court of Claims of the number of days of wrongful imprisonment in a state correctional institution. The bill also provides that if an individual was serving at the time of the wrongful imprisonment concurrent sentences on other convictions that were not vacated, dismissed, or reversed on appeal, the individual is not eligible for compensation for any portion of that wrongful imprisonment that occurred during a concurrent sentence of that nature.

### Rebuttable presumption that individual is a wrongfully imprisoned individual

Existing law provides that in a civil action filed in the Court of Claims to recover a sum of money because of the individual's wrongful imprisonment, the complainant may establish that the claimant is a wrongfully imprisoned individual by submitting to the Court of Claims a certified copy of the judgment entry of the court of common pleas associated with the claimant's conviction and sentencing, and a certified copy of the entry of determination of a court of common pleas that the claimant is a wrongfully imprisoned individual. No other evidence is required of the complainant to establish that the claimant is a wrongfully imprisoned individual, and the claimant must be irrebuttably presumed to be a wrongfully imprisoned individual. The bill specifies that the certified copy of the entry of determination is from the court of common pleas associated with the claimant's conviction and sentencing and that the claimant must be *rebuttably* presumed to be a wrongfully imprisoned individual *absent a violation of any provision of R.C. 2743.48 or of R.C. 2305.02 (the court of common pleas associated with the individual's conviction has exclusive, original jurisdiction to hear and determine an action to determine that the person is a wrongfully imprisoned individual).*

### Presentation of requisite proof

Existing law provides that in a civil action filed in the Court of Claims to recover a sum of money because of the individual's wrongful imprisonment, upon presentation of requisite proof to the court, a wrongfully imprisoned individual is entitled to receive a sum of money that equals the total of certain specified amounts. The bill specifies that the presentation of requisite proof is to the Court of Claims.

### Deduction of known debts of wrongfully imprisoned individual

The bill requires the Court of Claims to deduct any known debts owed by the wrongfully imprisoned individual to the state or a political subdivision from the sum of money recovered by the wrongfully imprisoned individual and requires that those deducted amounts must be paid to the state of political subdivision, whichever is applicable.

### Award of court costs and other expenses

Under existing law, if the wrongfully imprisoned individual was represented in the civil action in the Court of Claims by counsel of the wrongfully imprisoned individual's own choice, the Court of Claims must include in the judgment entry an award for reasonable attorney's fees of that counsel. The bill instead requires the Clerk of the Court of Claims to include in the judgment entry an award for the payment of the court costs, transcripts, expert witness fees, and other reasonable out-of-pocket litigation expenses related to that civil action.

### Eligibility to recover

Under existing law, in order to be eligible to recover a sum of money because of wrongful imprisonment, a wrongfully imprisoned individual cannot have been, prior to September 24, 1986, the subject of an act of the General Assembly that authorized an award of compensation for the wrongful imprisonment or have been the subject of an action before the former Sundry Claims Board that resulted in an award of compensation for wrongful imprisonment. Additionally, to be eligible to so recover, the wrongfully imprisoned individual must commence a civil action in the Court of Claims no later than two years after the date of the entry of the determination of a court of common pleas that the individual is a wrongfully imprisoned individual.

The bill specifies that the entry of determination must be from the court of common pleas associated with the individual's conviction. It also provides that the wrongfully imprisoned individual cannot have been convicted of a felony, other than the felony that is the subject of the action, or a misdemeanor offense of violence within ten years prior to the filing of the civil action to be determined to be a wrongfully imprisoned individual by the court of common pleas associated with the individual's conviction or be convicted of a felony during the pendency of that action or the action in the Court of Claims.

### Criteria to be considered a wrongfully imprisoned individual

Under existing law, a "wrongfully imprisoned individual" means an individual who satisfies, in part, the following:

(1) The individual was charged with a violation of a section of the Revised Code by an indictment or information prior to, or on or after, September 24, 1986, and the violation charged was an aggravated felony or felony.

(2) The individual was found guilty of, but did not plead guilty to, the particular charge or a lesser-included offense by the court or jury involved, and the offense of which the individual was found guilty was an aggravated felony or felony.

(3) Subsequent to sentencing and during or subsequent to imprisonment, an error in procedure resulted in the individual's release, or it was determined by a court of common pleas that the offense of which the individual was found guilty, including all lesser-included offenses, either was not committed by the individual or was not committed by any person.

The bill modifies the provisions described in (1), (2), and (3) above. First, it removes the requirement in (1) above that the individual was charged with a violation of the Revised Code by an indictment or information *prior to, or on or after, September 24, 1986.* Second, it requires in the provision described in (2) above that the individual was found guilty of the particular charge or a lesser-included offense by the court or jury involved, *the offender did not plead guilty to the particular charge or a lesser-included offense, whether or not the guilty was accepted or invalidated by the court*, and requires that the offense of which the individual was found guilty was an aggravated felony or felony. Finally, in the provision discussed in (3) above an error in procedure that resulted in the individual's release no longer will result in the individual meeting the definition of a wrongfully imprisoned individual, and the bill specifies that *the court of common pleas associated with the individual's conviction* is the court that determines that the offense, including all lesser-included offenses, either was not committed by the individual or was not committed by any person.

### Inspection of sealed records of wrongfully imprisoned individual

Under existing law, inspection of sealed conviction or bail forfeiture records may be made only by certain persons or for certain purposes, including by a law enforcement officer or prosecutor, or the assistants of either, to determine whether the nature and character of the offense with which the person is to be charged would be affected by virtue of the person's previously having been convicted of a crime, by a law enforcement officer who was involved in the case, for use in the officer's defense of a civil action arising out of the officer's involvement in that case, or by any law enforcement agency or any authorized employee of a law enforcement agency or by the Department of Rehabilitation and Correction as part of a background investigation of a person who applies for employment with the agency as a law enforcement officer or with the Department as a corrections officer. The bill provides that a prosecuting attorney or the Attorney General, or the assistants of either, may inspect sealed records of conviction or bail forfeiture for the purpose of defending a civil action brought by a person in the court of common pleas associated with that person's conviction in order to determine if the person is a wrongfully imprisoned individual.

## Determination of liability of Department of Transportation

(R.C. 2743.01, 2743.02, 2743.021, and 2743.022)

The bill establishes specific rules for the determination of the liability of the Ohio Department of Transportation (ODOT) in an action brought against it before the Court of Claims. Under the current Court of Claims Law, generally, the state waives its immunity from liability, consents to be sued, and have its liability determined in the Court of Claims in accordance with the same rules of law applicable to suits between private parties, with certain exceptions. The bill expands the exceptions to provide that the determination of the liability of ODOT is subject to the specific rules of law it establishes. It modifies the definition of "state" in the Court of Claims Law, which under current law includes all departments of the state, to provide that the definition is subject to the bill's provisions for the determination of the liability of ODOT. The bill specifies that notwithstanding any provision in the Court of Claims Law, the liability of ODOT for damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of ODOT or of any of its officers or employees in connection with a "governmental function" or "proprietary function" (see "**Definitions**," below) must be determined in accordance with the provisions enacted by the bill.

### General immunity from liability; exceptions to immunity

Under the bill, the general rule is that ODOT 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 ODOT or of any of its officers or employees in connection with a governmental or proprietary function. However, ODOT generally *is liable* in damages in a civil action for injury, death, or loss to person or property shown to be caused by a preponderance of the evidence by any act or omission of ODOT or of any of its officers or employees in connection with a governmental or proprietary function, as follows:

(1) ODOT is liable for injury, death, or loss to person or property that is caused by any of the following: (a) the negligent operation of any motor vehicle by any of its officers or employees while the officer or employee is engaged within the officer's or employee's scope of employment and authority, (b) the negligent performance of acts by any of its officers or employees with respect to its proprietary functions, (c) its negligent failure to keep "roads" or "highways" (see "**Definitions**," below) under its jurisdiction in repair and other negligent failure to remove obstructions from roads or highways under its jurisdiction, or (d) the negligence of any of its officers or employees and the injury, death, or loss occurs within or on the grounds of, and is due to patent physical defects within or on the grounds of, buildings that are used in connection with the performance of a governmental function of ODOT.

(2) In addition to the circumstances described in (1) above, ODOT is liable for injury, death, or loss to person or property when civil liability is expressly imposed upon it by a section of the Revised Code. Civil liability is not to be construed to exist under another section merely because that section imposes a responsibility or mandatory duty upon ODOT, because that section provides for a criminal penalty, because of a general authorization in that section that ODOT may sue and be sued, or because that section uses the term "shall" in a provision pertaining to ODOT.

### Defenses or immunities that may be asserted

The bill provides that in a civil action brought against ODOT or an officer or employee of ODOT to recover damages for injury, death, or loss to person or property allegedly caused by any act or omission in connection with a governmental or proprietary function, the following defenses or immunities may be asserted to establish nonliability:

(1) ODOT is immune from liability under any of the following circumstances:

(a) The officer or employee involved was engaged in the performance of a quasi-judicial, prosecutorial, or quasi-legislative function.

(b) The conduct of the officer or employee involved, other than negligent conduct, that gave rise to the claim of liability was required or authorized by law, or the conduct of the officer or employee involved that gave rise to the claim of liability was necessary or essential to the exercise of the powers of ODOT or the officer or employee.

(c) The action or failure to act by the officer or employee involved that gave rise to the claim of liability was within the officer's or employee's discretion with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the officer's or employee's office or position.

(d) The injury, death, or loss to person or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.

(2) The officer or employee of ODOT is immune from liability unless one of the following applies:

(a) The officer's or employee's acts or omissions were manifestly outside the scope of the officer's or employee's employment or official responsibilities.

(b) The officer's or employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner.

(c) Civil liability is expressly imposed upon the officer or employee by a section of the Revised Code. Civil liability is not to be construed to exist under another section merely because that section imposes a responsibility or mandatory duty upon an officer or employee, because that section provides for a criminal penalty, because of a general authorization in that section that an officer or employee may sue and be sued, or because the section uses the term "shall" in a provision pertaining to an officer or employee.

The bill provides that any immunity or defense conferred upon an officer or employee of ODOT by (2), above, does not affect or limit any liability of ODOT for an act or omission of the officer or employee as described above in "**General immunity from liability; exceptions to immunity**." It further provides that an order that denies ODOT or an officer or employee of ODOT the benefit of an alleged immunity from liability as provided in bill or any other provision of the law is a final order.

### Definitions

The bill defines the following terms:

"Governmental function" means a function of ODOT that is specified below or satisfies any of the following: (a) a function that is imposed upon the state as an obligation of sovereignty and is performed by ODOT voluntarily or pursuant to legislative requirement, (b) a function that is for the common good of all citizens of Ohio, or (c) a function that promotes or preserves the public peace, health, safety, or welfare and involves activities that are not engaged in or not customarily engaged in by nongovernmental persons. "Governmental function" includes, but is not limited to, the following functions insofar as they are within the jurisdiction of ODOT:

(1) The provision or nonprovision of roadway services;

(2) The regulation of the use of, and the design, construction, reconstruction, repair, renovation, and maintenance of roads, highways, streets, avenues, alleys, sidewalks, bridges, culverts, aqueducts, viaducts, and public grounds;

(3) Quasi-judicial, prosecutorial, and quasi-legislative functions, including, but not limited to, permitting functions;

(4) The design, construction, reconstruction, repair, renovation, maintenance, and operation of buildings that are used in connection with the performance of a

governmental function, including, but not limited to, office buildings, garage facilities, and rest areas;

(5) The enforcement or nonperformance of any law;

(6) The regulation of traffic and the erection or nonerection of traffic signs, signals, or control devices;

(7) The collection and disposal of solid wastes, as defined in R.C. 3734.01;

(8) The provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;

(9) The provision or nonprovision of inspection services of all types, including, but not limited to, inspections in connection with building, zoning, sanitation, fire, plumbing, and electrical codes, and the taking of actions in connection with those types of codes, including, but not limited to, the approval of plans for the construction of buildings or structures and the issuance or revocation of building permits or stop work orders in connection with buildings or structures;

(10) Flood control measures;

(11) The issuance of revenue obligations;

(12) The design, construction, reconstruction, renovation, repair, maintenance, and operation of any recreational area or facility incident to a highway improvement;

(13) A function that the General Assembly requires ODOT to perform, including, but not limited to, any duties, powers, and functions that are conferred by law on ODOT or its Director, assistant directors, deputy directors, or divisions under R.C. Title LV (Roads, Highways, and Bridges Law).

"Proprietary function" means a function of ODOT that satisfies both of the following: (a) the function is not one described or specified above as a "governmental function," and (b) the function is one that promotes or preserves the public peace, health, safety, or welfare and involves activities that are customarily engaged in by nongovernmental persons.

As used in (1)(c), above, in "**General immunity from liability; exceptions to immunity**," "road" or "highway" includes all appurtenances to the road or highway, including but not limited to, bridges, viaducts, grade separations, culverts, lighting, signalization, and approaches on or to such road or highway, but does not include

berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are mandated by the Ohio Manual of Uniform Traffic Control Devices.

### Civil action thresholds

(R.C. 2743.02 and 2743.10)

#### Third-party complaints or counterclaims

Under current law, the state may file a third-party complaint or counterclaim in any civil action that is filed in the Court of Claims except a civil action for $2,500 or less. The bill increases the threshold from $2,500 to $10,000.

#### Administrative determination of civil actions against the state

Under current law, civil actions against the state for $2,500 or less must be determined administratively by the Clerk of the Court of Claims. The bill increases the threshold from $2,500 to $10,000.

## DEPARTMENT OF DEVELOPMENT (DEV)

- Authorizes the Director of Development to enter into cooperative or contractual agreements with others to create, administer, or otherwise be involved with Ohio tourism-related promotional programs.

- Terminates the Industrial Technology and Enterprise Advisory Council, which was created to approve tax credits for investments in development and technology transfer companies and to make recommendations to the Director regarding the award of other technology and enterprise development assistance, and transfers those duties to the Third Frontier Commission.

- Eliminates the involvement of Edison Centers in reviewing applications for, and making recommendations regarding, those investment tax credits and substitutes the Director in that role.

- Increases, from $45 million to $51 million, the maximum amount of investment tax credits that can be issued.

- Requires approval by the Director for duties and functions regarding project funding that are carried out by the Ohio Coal Development Office and its director.

- Requires a metropolitan housing authority (MHA) to make publicly available an annual report of an accurate account of its activities, receipts, and expenditures.

- Removes the requirement that an MHA make an annual report of its activities, receipts, and expenditures directly to the Director.

## Contractual agreements for tourism promotion

(R.C. 122.07)

Under current law, the Department of Development has authority to disseminate information concerning Ohio's advantages and attractions and to provide technical assistance to public and private agencies involved in the preparation of programs designed to attract business, industry, and tourists. The bill authorizes the Director of Development to enter into cooperative or contractual agreements with individuals, organizations, and businesses to create, administer, or otherwise be involved with Ohio tourism-related promotional programs. The Director has discretion to authorize payment to the contracting party under these agreements. Payment can include deferred compensation in an amount specified by the Director. Amounts due under agreements entered into by the Director are payable from the Travel and Tourism Cooperative Projects Fund created by the bill. "Excess" revenue generated by Ohio tourism-related promotional programs must be remitted to the fund and reinvested in ongoing tourism marketing.

## Industrial Technology and Enterprise Advisory Council; investment tax credits and other technology and enterprise development assistance

(R.C. 121.22, 122.15, 122.151. 122.152, 122.153, 122.154, 122.30, 122.31, 122.36, and 184.02; R.C. 122.29 (repealed); R.C. 122.28, 122.32, 122.33, 122.34, and 122.35 (conforming changes); Section 812.11)

The bill terminates the Industrial Technology Enterprise Advisory Council effective October 1, 2012. The Council was created to do the following:

(1) Assist the Director by reviewing applications for and making recommendations regarding the award of assistance under the Industrial Technology and Enterprise Development Grant Program, the Industrial Technology and Enterprise Resources Program, and the Thomas Alva Edison Grant Program. Under the bill, the Third Frontier Commission is to take over those duties.

(2) Receive recommendations from an Edison Center and make final determinations regarding the approval of tax credits for investments made in Ohio businesses that primarily involve research and development, technology transfer, bio-technology, or information technology. Under the bill, the Director, rather than an

Edison Center, is to receive the applications for investment tax credits and make recommendations to the Third Frontier Commission. The Commission is given the responsibility of making the final determination as to the award of the tax credits.

Further, the bill increases – from $45 million to $51 million – the maximum amount of investment tax credits that can be issued.

## Ohio Coal Development Office

(R.C. 1551.33, 1555.02, 1555.03, 1555.04, 1555.05, and 1555.06)

The bill requires the approval of the Director of Development for the exercise of the duties and functions of the Ohio Coal Development Office and its director regarding project funding. Those duties and functions include making and guaranteeing loans and making grants from the Coal Research and Development Fund; requesting the issuance of coal research and development general obligations; entering into necessary agreements and contracts; and applying to the Controlling Board for funds for surveys or studies by the Office of any proposed coal research and development project subject to repayment.

Under current law, the director of the Office may exercise any powers and duties that the director considers appropriate or desirable to achieve the Office's purposes, including powers and duties of the Director of Development specified in the statutes governing the Office. The bill requires the approval of the Director of Development for the exercise of such powers and duties by the director of the Office and also requires the Director of Development to identify which powers and duties are to be exercised by the director of the Office.

## Metropolitan housing authority annual reports

(R.C. 3735.37)

The bill requires a metropolitan housing authority to make publicly available the annual report consisting of an accurate account of all its activities and of all receipts and expenditures that is required by continuing law. The bill removes current law's requirement that the annual report be made to the Director of Development.

# DEPARTMENT OF DEVELOPMENTAL DISABILITIES (DDD)

## Criminal records checks

- Revises the law governing criminal records checks for employment positions with the Ohio Department of Developmental Disabilities (ODODD), county boards of developmental disabilities (county DD boards), and providers of specialized services.

- Requires a subcontractor that contracts with a provider or another subcontractor to comply with the criminal records checks requirements if the subcontractor employs a person in a direct services position.

- Permits the ODODD Director to adopt rules requiring employees to undergo criminal records checks and requiring ODODD, county DD boards, providers, and subcontractors to obtain the driving records of employees.

- Revises the list of disqualifying offenses for which a criminal records check is to search.

- Requires ODODD, county DD boards, providers, and subcontractors to request certain applicants' and (if rules so require) employees' driving records from the Bureau of Motor Vehicles.

- Establishes criminal records check requirements for the chief executive officers of businesses and independent providers seeking initial or renewed supported living certificates.

## Registry of MR/DD employees

- Expands the list of offenses for which an MR/DD employee is to be included in the registry of MR/DD employees pertaining to abuse, neglect, or misappropriation of property.

- Provides that independent providers of supported living are MR/DD employees for the purpose of the law governing the registry.

- Requires ODODD or a county DD board to provide to an MR/DD employee who is an independent provider an annual notice regarding the conduct for which an MR/DD employee may be included in the registry.

## County DD boards

- Prohibits a former employee of a county DD board from serving as a member of the same county DD board within four years (rather than one year as currently provided) of the date that employment ceases.

- Prohibits a former county DD board employee from serving as a member of another county DD board within two years of the date that employment ceases.

- Modifies and clarifies other provisions of the law governing ineligibility to serve as a county DD board member based on having certain familial relationships or being a current or former employee.

## Employment-related provisions

- Transfers to superintendents of county DD boards the responsibility, currently held by the ODODD Director, for the certification or registration of persons to be employed, either by a county DD board or an entity contracting with a county DD board, in positions serving individuals with mental retardation or developmental disabilities.

- Maintains the ODODD Director's responsibility to take such actions relative to county DD board superintendents.

- Eliminates most of the statutory provisions establishing specific standards and procedures for the certification or registration of employees and instead requires the standards and procedures to be established in rules adopted by the ODODD Director.

- Requires the rules to include (1) the employment positions that will require certification or registration and (2) the training, education, and experience requirements that must be met, taking into account the needs of the individuals being served.

- Eliminates provisions regarding fees to be charged for certification or registration, including the use of the fees for the supported living program residential facility licensing, and providing continuing education and professional training to providers of services to individuals with mental retardation or developmental disabilities.

- Eliminates a requirement that a county DD board reemploy a management employee for one year if the board superintendent fails to notify the employee 90

days before the expiration of the employee's contract that the board does not intend to rehire the employee (but maintains the notification requirement).

- Eliminates a provision specifying that a management employee's benefits include sick leave, vacation leave, holiday pay, and such other benefits.

- Eliminates provisions referring to procedures for retention of management employees who were under contract or in probationary periods at the time the statutes for contracting with management employees were modified in 1988.

- Eliminates provisions referring to procedures for retention of professional employees who were employed by a county DD board at the time the statutes for certification of employees were modified in 1990.

- Eliminates a provision prohibiting a teacher, professional employee, or management employee from terminating an employment contract with a county DD board without either receiving the board's consent or giving 30 days' notice.

- Eliminates provisions specifying (1) that an employee of a county DD board may be a member of the governing board of either a political subdivision, including a board of education, or an agency that does not provide specialized services to persons with developmental disabilities, and (2) that the county DD board may contract with that governing board even though its membership includes a county DD board employee.

- Eliminates a requirement that a service and support administrator employed by a county DD board ensure that each recipient of services have a designated person responsible for providing continuous representation, advocacy, advice, and assistance regarding the daily coordination of services.

- Eliminates a provision requiring ODODD, when directed to do so by a county DD board that is part of a regional council of governments, to distribute funds for that county DD board to the regional council's fiscal officer.

## Licensure of ICFs/MR

- Repeals a law that makes an ICF/MR subject to licensure by the Department of Health as a nursing home rather than by ODODD as a residential facility if the ICF/MR was certified before June 30, 1987, or had an application to convert intermediate care facility beds to ICF/MR beds pending on that date.

- Requires a person or government agency that is operating an ICF/MR pursuant to a nursing home license, as a condition of continuing to operate the ICF/MR on and

after July 1, 2013, to apply to the ODODD Director for a residential facility license not later than February 1, 2013, and to obtain the residential facility license not later than July 1, 2013.

## Choosing providers of certain ODODD programs

- Eliminates a requirement that county DD boards with Medicaid local administrative authority create lists of all persons and government entities eligible to provide habilitation, vocational, or community employment services under a Medicaid waiver administered by ODODD.

- Eliminates a requirement that ODODD monthly create a list of all persons and government entities eligible to provide residential services and supported living.

- Revises the law governing the rights of individuals with mental retardation and developmental disabilities to choose providers of services by providing that (1) such an individual who is eligible for home and community-based services provided under an ODODD-administered Medicaid waiver has, except as otherwise provided by a federal Medicaid regulation, the right to obtain the services from a qualified and willing provider and (2) such an individual who is eligible for non-Medicaid residential services or supported living has the right to obtain the residential services or supported living from any qualified and willing provider.

## Retention of records

- Permits records on institution residents kept by ODODD to be deposited (after a period of time determined by ODODD) with the Ohio Historical Society.

- Generally prohibits the records or information in them from being disclosed by the Historical Society, except to the resident's closest living relative on the relative's request.

## Other provisions

- Prohibits ODODD from charging a county DD board a fee for Medicaid paid claims for home and community-based services provided under the Transitions Developmental Disabilities Waiver.

- Eliminates a provision authorizing only the guardian of an individual with mental retardation or another developmental disability who has been adjudicated incompetent to make decisions regarding the individual's receipt of services from a county DD board.

- Establishes the following decision-making procedures regarding an individual's receipt of services or participation in a program provided for or funded by a county DD board or ODODD: (1) provides that the individual must make the decision, if capable to do so, (2) permits the individual to seek support and guidance from a family member or trusted friend, and (3) if the individual lacks capacity to make a decision, permits the decision to be made by another person determined according to a specified priority list.

- Eliminates the role of county DD boards regarding recommendations for plans to develop residential services for persons with mental retardation or developmental disabilities.

- Revises the law governing a county DD board's responsibility under certain circumstances to pay the nonfederal share of Medicaid expenditures for an individual's care in a state-operated intermediate care facility for the mentally retarded by (1) giving ODODD the option of collecting the amount the county DD board owes by submitting an invoice for payment of that amount to the county DD board rather than using funds otherwise allocated to the county DD board and (2) authorizing the ODODD Director to grant to a county DD board a waiver that exempts the county DD board from responsibility for the nonfederal share in an individual's case.

## ODODD, county DD board, provider, and subcontractor criminal records checks

(R.C. 5123.081 (primary), 109.57, 109.572, 5123.033, 5123.082, 5123.542, 5126.0221, 5126.0222, 5126.25, 5126.28 (repealed), and 5126.281 (repealed); Sections 620.10, 620.11, and 751.20)

Under current law, the ODODD Director and the superintendent of a county DD board must request that the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check of applicants for appointment or employment with ODODD or the county DD board. An entity under contract with a county DD board to provide specialized services to individuals with mental retardation or developmental disabilities is required to request that BCII conduct a criminal records check of applicants for employment with the contracting entity in a position in which the applicant would have physical contact with, the opportunity to be alone with, or exercise supervision or control over individuals with mental retardation or developmental disabilities.

The bill revises this law. The following is a discussion of this law as it is to exist under the bill. Some of the provisions discussed below are included in, or are similar to, current law.

### Terminology

The provisions discussed below use certain terms that are given specific meanings. The following is a discussion of the terms.

**Applicant** – The following are applicants: (1) persons under final consideration for appointment to or employment with ODODD or a county DD board, (2) persons being transferred to ODODD or a county DD board, (3) employees being recalled to or reemployed by ODODD or a county DD board after layoffs, and (4) persons under final consideration for direct services positions with a provider or a subcontractor. Neither of the following is an applicant: (1) a person employed by a responsible entity in a position for which a criminal records check is required and either is being considered for a different position with the responsible entity or is returning after a leave of absence or seasonal break in employment, unless the responsible entity has reason to believe that the person has committed a disqualifying offense and (2) a person who is to provide only respite care under a family support services program if a family member of the individual with mental retardation or a developmental disability who is to receive the respite care selects the person.

**Direct services position** – A direct services position is an employment position in which the employee has the opportunity to be alone with or exercises supervision or control over one or more individuals with mental retardation or a developmental disability.

**Employee** – Both of the following are employees: (1) persons appointed to or employed by ODODD or a county DD board and (2) persons employed in a direct services position by a provider or subcontractor. A person is not an employee if the person provides only respite care under a family support services program if a family member of the individual with mental retardation or a developmental disability who receives the respite care selected the person.

**Provider** – A provider is a person that provides specialized services to individuals with mental retardation or developmental disabilities and employs one or more persons in direct services positions.

**Responsible entity** – The following are responsible entities:

(1) ODODD in the case of (a) a person who is an applicant because the person is under final consideration for appointment to or employment with ODODD, being

transferred to ODODD, or being recalled to or reemployed by ODODD after a layoff and (b) a person who is an employee because the person is appointed to or employed by ODODD.

(2) A county DD board in the case of (a) a person who is an applicant because the person is under final consideration for appointment to or employment with the county DD board, being transferred to the county DD board, or being recalled to or reemployed by the county DD board after a layoff and (b) a person who is an employee because the person is appointed to or employed by the county DD board.

(3) A provider in the case of (a) a person who is an applicant because the person is under final consideration for a direct services position by the provider and (b) a person who is an employee because the person is employed in a direct services position by the provider.

(4) A subcontractor in the case of (a) a person who is an applicant because the person is under final consideration for a direct services position by the subcontractor and (b) a person who is an employee because the person is employed in a direct services position by the subcontractor.

**Specialized services** – A service is a specialized service if it is a program or service designed and operated to serve primarily individuals with mental retardation or developmental disabilities, including a program or service provided by an entity licensed or certified by ODODD. If there is a question as to whether a provider or subcontractor is providing specialized services, the provider or subcontractor is permitted to request that the ODODD Director make a determination. The ODODD Director's determination is final.

**Subcontractor** – A person is a subcontractor if the person employs one or more persons in direct services positions and has either (1) a subcontract with a provider to provide specialized services included in the contract between the provider and ODODD or a county DD board or (2) a subcontract with another subcontractor to provide specialized services included in a subcontract between the other subcontractor and a provider or other subcontractor.

### Statement regarding criminal record

Before employing an applicant in a position for which a criminal records check is required, ODODD, a county DD board, a provider, or a subcontractor, whichever is the responsible entity, must require the applicant to submit a statement with the applicant's signature attesting that the applicant has not been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense. The responsible entity also must require the applicant to sign an agreement under

which the applicant agrees to notify the responsible entity within 14 calendar days if, while employed by the responsible entity, the applicant is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for a disqualifying offense. The agreement must provide that the applicant's failure to provide the notification may result in termination of the applicant's employment.

### Criminal records check

As a condition of employing any applicant in a position for which a criminal records check is required, a responsible entity must request BCII to conduct a criminal records check of the applicant. If the ODODD Director adopts rules requiring an employee to undergo a criminal records check, a responsible entity must request BCII to conduct a criminal records check of the employee at times specified in the rules as a condition of continuing to employ the employee in a position for which a criminal records check is required.

A responsible entity must (1) provide to each applicant and employee required to undergo a criminal records check a copy of the BCII-prescribed form for requesting a criminal records check and the BCII standard fingerprint impression sheet, (2) obtain the completed form and impression sheet from the applicant or employee, and (3) forward them to BCII at the time the criminal records check is requested. An applicant or employee who receives the BCII form and impression sheet and is requested to complete the form and provide a set of the applicant's or employee's fingerprint impressions must complete the form or provide all the information necessary to complete the form and provide the applicant's or employee's fingerprint impressions on the impression sheet. A responsible entity may not employ an applicant or continue to employ an employee if the applicant or employee fails to comply with these requirements.

### Disqualifying offenses

Except as provided in rules adopted by the ODODD Director, a responsible entity may not employ an applicant or continue to employ an employee if the applicant or employee is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

The following are the disqualifying offenses:

(1) One or more of the following offenses: cruelty to animals (R.C. 959.13); cruelty against a companion animal (R.C. 959.131); aggravated murder (R.C. 2903.01); murder (R.C. 2903.02); voluntary manslaughter (R.C. 2903.03); involuntary manslaughter (R.C. 2903.04); reckless homicide (R.C. 2903.041); felonious assault (R.C.

2903.11); aggravated assault (R.C. 2903.12); assault (R.C. 2903.13); permitting child abuse (R.C. 2903.15); failing to provide for a functionally impaired person (R.C. 2903.16); aggravated menacing (R.C. 2903.21); menacing by stalking (R.C. 2903.211); menacing (R.C. 2903.22); patient abuse or neglect (R.C. 2903.34); patient endangerment (R.C. 2903.341); kidnapping (R.C. 2905.01); abduction (R.C. 2905.02); criminal child enticement (R.C. 2905.05); extortion (R.C. 2905.11); coercion (R.C. 2905.12); rape (R.C. 2907.02); sexual battery (R.C. 2907.03); unlawful sexual conduct with a minor (R.C. 2907.04); sexual imposition (R.C. 2907.05); sexual imposition (R.C. 2907.06); importuning (R.C. 2907.07); voyeurism (R.C. 2907.08); public indecency (R.C. 2907.09); compelling prostitution (R.C. 2907.21); promoting prostitution (R.C. 2907.22); procuring (R.C. 2907.23); soliciting (R.C. 2907.24); prostitution (R.C. 2907.25); disseminating matter harmful to juveniles (R.C. 2907.31); pandering obscenity (R.C. 2907.32); pandering obscenity involving a minor (R.C. 2907.321); pandering sexually oriented matter involving a minor (R.C. 2907.322); illegal use of a minor in nudity-oriented material or performance (R.C. 2907.323); deception to obtain matter harmful to juveniles (R.C. 2907.33); aggravated arson (R.C. 2909.02); arson (R.C. 2909.03); disrupting public service (R.C. 2909.04); support of terrorism (R.C. 2909.22); terroristic threats (R.C. 2909.23); terrorism (R.C. 2909.24); aggravated robbery (R.C. 2911.01); robbery (R.C. 2911.02); aggravated burglary (R.C. 2911.11); burglary (R.C. 2911.12); breaking and entering (R.C. 2911.13); theft (R.C. 2913.02); unauthorized use of a vehicle (R.C. 2913.03); unauthorized use of property (R.C. 2913.04); telecommunications fraud (R.C. 2913.05); passing bad checks (R.C. 2913.11); misuse of credit cards (R.C. 2913.21); forgery (R.C. 2913.31); criminal simulation (R.C. 2913.32); Medicaid fraud (R.C. 2913.40); acts constituting prima-facie evidence of purpose to defraud (R.C. 2913.41); tampering with records (R.C. 2913.42); securing writings by deception (R.C. 2913.43); personating an officer (R.C. 2913.44); unauthorized display of emblems related to law enforcement on motor vehicles (R.C. 2913.441); defrauding creditors (R.C. 2913.45); illegal use of Supplemental Nutrition Assistance Program benefits or WIC program benefits (R.C. 2913.46); insurance fraud (R.C. 2913.47); Workers' Compensation fraud (R.C. 2913.48); identity fraud (R.C. 2913.49); recovering stolen property (R.C. 2913.51); inciting to violence (R.C. 2917.01); aggravated riot (R.C. 2917.02); riot (R.C. 2917.03); inducing panic (R.C. 2917.31); abortion without informed consent (R.C. 2919.12); unlawful abortion (R.C. 2919.121); unlawful distribution of an abortion-inducing drug (RU-486) (R.C. 2919.123); endangering children (R.C. 2919.22); contributing to unruliness or delinquency (R.C. 2919.24); domestic violence (R.C. 2919.25); intimidation (R.C. 2921.03); perjury (R.C. 2921.11); falsification (R.C. 2921.13); compounding a crime (R.C. 2921.21); disclosure of confidential information (R.C. 2921.24); assaulting police dog, horse, or assistance dog (R.C. 2921.321); escape (R.C. 2921.34); aiding escape or resistance to authority (R.C. 2921.35); prohibited conveying of certain items onto property of state facilities (R.C. 2921.36); impersonation of certain officers (R.C. 2921.51); carrying concealed weapons (R.C. 2923.12); conveyance or possession of deadly weapons or dangerous ordnance in

school safety zone (R.C. 2923.122); illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance in a courthouse (R.C. 2923.123); having weapons while under disability (R.C. 2923.13); improperly discharging firearm at or into habitation or school safety zone (R.C. 2923.161); discharge of firearm on or near prohibited premises (R.C. 2923.162); improperly furnishing firearms to minor (R.C. 2923.21); engaging in a pattern of corrupt activity (R.C. 2923.32); criminal gang activity (R.C. 2923.42); corrupting another with drugs (R.C. 2925.02); trafficking (R.C. 2925.03); illegal manufacture of drugs or cultivation of marihuana (R.C. 2925.04); illegal assembly or possession of chemicals used to manufacture a controlled substance (R.C. 2925.041); funding of drug or marihuana trafficking (R.C. 2925.05); illegal administration or distribution of anabolic steroids (R.C. 2925.06); sale or use of drugs not approved by the U.S. Food and Drug Administration (R.C. 2925.09); permitting drug abuse (R.C. 2925.13); use, possession, or sale of drug paraphernalia (R.C. 2925.14); deception to obtain a dangerous drug (R.C. 2925.22); illegal processing of drug documents (R.C. 2925.23); tampering with drugs (R.C. 2925.24); illegal dispensing of drug samples (R.C. 2925.36); unlawful purchase or receipt of a pseudoephedrine product (R.C. 2925.55); unlawful sale of a pseudoephedrine product (R.C. 2925.56); ethnic intimidation (R.C. 2927.12); or adulteration of food (R.C. 3716.11);

(2) One or more violations of the former offense of child stealing as that offense existed before July 1, 1996 (former R.C. 2905.04);

(3) One or more violations of interference with custody (R.C. 2919.23) that would have been a violation of the former offense of child stealing (former R.C. 2905.04) as that offense existed before July 1, 1996, had the violation occurred before that date;

(4) One violation of the offense of drug possession that is not a minor drug possession offense;

(5) Two or more violations of the offense of drug possession, regardless of whether any of the violations are a minor drug possession offense;

(6) One or more violations of the former offense of felonious sexual penetration (former R.C. 2907.12);

(7) One or more violations of conspiracy, attempt to commit an offense, or complicity in the commission of an offense when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in (1) to (6) above;

(8) One or more felonies contained in the Revised Code that are not listed in (1) to (7) above, if the felony bears a direct and substantial relationship to the duties and responsibilities of the position being filled;

(9) One or more offenses contained in the Revised Code constituting a misdemeanor of the first degree on the first offense and a felony on a subsequent offense, if the offense bears a direct and substantial relationship to the position being filled and the nature of the services being provided by the responsible entity;

(10) One or more violations of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in (1) to (9) above.

### Other criminal record reports

A responsible entity is permitted to request any other state or federal agency to supply the responsible entity with a written report regarding the criminal record of an applicant or employee. If an employee holds an occupational or professional license or other credentials, the responsible entity may request that the state or federal agency that regulates the employee's occupation or profession supply the responsible entity with a written report of any information pertaining to the employee's criminal record that the agency obtains in the course of conducting an investigation or in the process of renewing the employee's license or other credentials. The responsible entity is permitted to consider the reports when determining whether to employ the applicant or to continue to employ the employee.

### Driving record

As a condition of employing an applicant in a position for which a criminal records check is required and that involves transporting individuals with mental retardation or developmental disabilities or operating a responsible entity's vehicles for any purpose, the responsible entity must obtain the applicant's driving record from the Bureau of Motor Vehicles. If rules the ODODD Director adopts so require, the responsible entity must obtain an employee's driving record from the Bureau at times specified in the rules as a condition of continuing to employ the employee. The responsible entity may consider the applicant's or employee's driving record when determining whether to employ the applicant or continue to employ the employee.

### Conditional employment

A responsible entity is permitted to employ an applicant conditionally pending receipt of a report regarding the applicant requested under the provisions discussed above. The responsible entity must terminate the applicant's employment if it is

determined from a report that the applicant failed to inform the responsible entity that the applicant had been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

### Applicants charged a fee

A responsible entity is permitted to charge an applicant a fee for costs the responsible entity incurs in obtaining a report regarding the applicant under the provisions discussed above if the responsible entity notifies the applicant of the amount of the fee at the time of the applicant's initial application for employment and that, unless the fee is paid, the responsible entity will not consider the applicant for employment. The fee is not to exceed the amount of the fee, if any, the responsible entity pays for the report. A responsible entity is not authorized to charge the fee to an employee.

### Release of reports

A report obtained under the provisions discussed above is not a public record and is not to be made available to anyone except the following:

(1) The applicant or employee who is the subject of the report or the applicant's or employee's representative;

(2) The responsible entity that requested the report or its representative;

(3) ODODD if a county DD board, provider, or subcontractor is the responsible entity that requested the report and ODODD requests the responsible entity to provide a copy of the report to ODODD;

(4) A county DD board if a provider or subcontractor is the responsible entity that requested the report and the county DD board requests the responsible entity to provide a copy of the report to the county DD board;

(5) Any court, hearing officer, or other necessary individual involved in a case dealing with any of the following:

--The denial of employment to the applicant or employee;

--The denial, suspension, or revocation of a supported living certificate; a certificate for MR/DD personnel to administer prescribed medications, perform health-related activities, and perform tube feedings; or a certificate for a registered nurse to provide MR/DD personnel training courses;

--A civil or criminal action regarding Medicaid or a program ODODD administers.

An applicant or employee for whom a responsible entity has obtained a report may request the responsible entity to have copies of the reports sent to any state agency, entity of local government, or private entity. The applicant or employee is to specify in the request the agencies or entities to which the copies are to be sent. On receiving the request, the responsible entity must send copies of the reports to the agencies or entities so specified.

A responsible entity is permitted to request that a state agency, local government entity, or private entity send copies to the responsible entity of any report regarding a records check or criminal records check that the agency or entity possesses, if the responsible entity obtains the written consent of the individual who is the subject of the report.

A responsible entity must provide each applicant and employee with a copy of any report obtained about the applicant or employee under the provisions discussed above.

### Rules

The ODODD Director is required to adopt rules to implement the provisions discussed above.

The rules may do any of the following:

(1) Require employees to undergo criminal records checks;

(2) Require responsible entities to obtain the driving records of employees;

(3) Exempt one or more classes of employees from the requirements described in (1) and (2), above, if the rules establish either or both of those requirements.

The rules must do both of the following:

(1) If either or both of the requirements described in (1) and (2) above are established, specify the times at which the criminal records checks are to be conducted and the driving records are to be obtained;

(2) Specify circumstances under which a responsible entity may employ an applicant or employee who is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense but meets standards in regard to rehabilitation set by the Director.

## Supported living criminal records checks

(R.C. 5123.169 (primary), 109.57, 109.572, 5123.16, 5123.161, 5123.162, 5123.163, 5123.164, 5123.166, and 5123.1610)

Continuing law prohibits any person or government entity from providing supported living without a valid supported living certificate issued by the ODODD Director. The bill establishes new conditions that the chief executive officer of a business and an independent provider must meet to obtain an initial or renewed supported living certificate. A business is (1) an association, corporation, nonprofit organization, partnership, trust, or other group of persons or (2) an individual who employs, directly or through contract, one or more other individuals to provide supported living. An independent provider is a provider who provides supported living on a self-employed basis and does not employ, directly or through contract, another individual to provide the supported living.

### Statement regarding criminal record

Before issuing a supported living certificate to an applicant who is the chief executive officer of a business or who seeks to be an independent provider or renewing such an applicant's certificate, the ODODD Director must require the applicant to submit a statement with the applicant's signature attesting that the applicant has not been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense. The Director also must require the applicant to sign an agreement under which the applicant agrees to notify the Director within 14 days if, while holding a supported living certificate, the applicant is formally charged with, is convicted of, pleads guilty to, or is found eligible for intervention in lieu of conviction for a disqualifying offense. The agreement is to provide that the applicant's failure to provide the notification may result in the Director taking action against the applicant's certificate.

### Criminal records check

As a condition of receiving a supported living certificate or having a certificate renewed, an applicant must request BCII to conduct a criminal records check of the applicant. If an applicant does not present proof to the ODODD Director that the applicant has been a resident of Ohio for the five-year period immediately before the date that the applicant applies for issuance or renewal of the certificate, the Director must require the applicant to request that BCII obtain information from the Federal Bureau of Investigation (FBI) as part of the criminal records check. If the applicant provides proof of residency, the Director may require the applicant to request that BCII include information from the FBI in the criminal records check. An applicant may provide the proof of residency by presenting, with a notarized statement asserting that

the applicant has been an Ohio resident for the five-year period, a valid driver's license, notification of registration as an elector, a copy of an officially filed federal or state tax form identifying the applicant's permanent residence, or any other document the Director considers acceptable.

Each applicant is required to do all of the following:

(1) Obtain a copy of the BCII-prescribed form for requesting a criminal records check and the BCII standard fingerprint impression sheet;

(2) Complete the form and provide the applicant's fingerprint impressions on the impression sheet;

(3) Forward the completed form and impression sheet to BCII at the time the criminal records check is requested;

(4) Instruct BCII to submit the results of the criminal records check directly to the ODODD Director;

(5) Pay to BCII the fee charged for conducting the criminal records check.

The ODODD Director is prohibited from issuing or renewing a supported living certificate if the applicant fails to comply with these requirements.

### Disqualifying offenses

Except as provided in rules adopted by the ODODD Director, the Director may not issue or renew a supported living certificate if the applicant is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense. The rules are to specify circumstances under which the Director may issue or renew the certificate despite the conviction, guilty plea, or eligibility for intervention in lieu of conviction if the applicant meets standards regarding rehabilitation.

The following are the disqualifying offenses:

(1) One or more of the following offenses: cruelty to animals (R.C. 959.13); cruelty against a companion animal (R.C. 959.131); aggravated murder (R.C. 2903.01); murder (R.C. 2903.02); voluntary manslaughter (R.C. 2903.03); involuntary manslaughter (R.C. 2903.04); reckless homicide (R.C. 2903.041); felonious assault (R.C. 2903.11); aggravated assault (R.C. 2903.12); assault (R.C. 2903.13); permitting child abuse (R.C. 2903.15); failing to provide for a functionally impaired person (R.C. 2903.16); aggravated menacing (R.C. 2903.21); menacing by stalking (R.C. 2903.211); menacing (R.C. 2903.22); patient abuse or neglect (R.C. 2903.34); patient endangerment

(R.C. 2903.341); kidnapping (R.C. 2905.01); abduction (R.C. 2905.02); criminal child enticement (R.C. 2905.05); extortion (R.C. 2905.11); coercion (R.C. 2905.12); rape (R.C. 2907.02); sexual battery (R.C. 2907.03); unlawful sexual conduct with a minor (R.C. 2907.04); sexual imposition (R.C. 2907.05); sexual imposition (R.C. 2907.06); importuning (R.C. 2907.07); voyeurism (R.C. 2907.08); public indecency (R.C. 2907.09); compelling prostitution (R.C. 2907.21); promoting prostitution (R.C. 2907.22); procuring (R.C. 2907.23); soliciting (R.C. 2907.24); prostitution (R.C. 2907.25); disseminating matter harmful to juveniles (R.C. 2907.31); pandering obscenity (R.C. 2907.32); pandering obscenity involving a minor (R.C. 2907.321); pandering sexually oriented matter involving a minor (R.C. 2907.322); illegal use of a minor in nudity-oriented material or performance (R.C. 2907.323); deception to obtain matter harmful to juveniles (R.C. 2907.33); aggravated arson (R.C. 2909.02); arson (R.C. 2909.03); disrupting public service (R.C. 2909.04); support of terrorism (R.C. 2909.22); terroristic threats (R.C. 2909.23); terrorism (R.C. 2909.24); aggravated robbery (R.C. 2911.01); robbery (R.C. 2911.02); aggravated burglary (R.C. 2911.11); burglary (R.C. 2911.12); breaking and entering (R.C. 2911.13); theft (R.C. 2913.02); unauthorized use of a vehicle (R.C. 2913.03); unauthorized use of property (R.C. 2913.04); telecommunications fraud (R.C. 2913.05); passing bad checks (R.C. 2913.11); misuse of credit cards (R.C. 2913.21); forgery (R.C. 2913.31); criminal simulation (R.C. 2913.32); Medicaid fraud (R.C. 2913.40); acts constituting prima-facie evidence of purpose to defraud (R.C. 2913.41); tampering with records (R.C. 2913.42); securing writings by deception (R.C. 2913.43); personating an officer (R.C. 2913.44); unauthorized display of emblems related to law enforcement on motor vehicles (R.C. 2913.441); defrauding creditors (R.C. 2913.45); illegal use of Supplemental Nutrition Assistance Program benefits or WIC program benefits (R.C. 2913.46); insurance fraud (R.C. 2913.47); Workers' Compensation fraud (R.C. 2913.48); identity fraud (R.C. 2913.49); recovering stolen property (R.C. 2913.51); inciting to violence (R.C. 2917.01); aggravated riot (R.C. 2917.02); riot (R.C. 2917.03); inducing panic (R.C. 2917.31); abortion without informed consent (R.C. 2919.12); unlawful abortion (R.C. 2919.121); unlawful distribution of an abortion-inducing drug (RU-486) (R.C. 2919.123); endangering children (R.C. 2919.22); contributing to unruliness or delinquency (R.C. 2919.24); domestic violence (R.C. 2919.25); intimidation (R.C. 2921.03); perjury (R.C. 2921.11); falsification (R.C. 2921.13); compounding a crime (R.C. 2921.21); disclosure of confidential information (R.C. 2921.24); assaulting police dog, horse, or assistance dog (R.C. 2921.321); escape (R.C. 2921.34); aiding escape or resistance to authority (R.C. 2921.35); prohibited conveying of certain items onto property of state facilities (R.C. 2921.36); impersonation of certain officers (R.C. 2921.51); carrying concealed weapons (R.C. 2923.12); conveyance or possession of deadly weapons or dangerous ordnance in school safety zone (R.C. 2923.122); illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance in a courthouse (R.C. 2923.123); having weapons while under disability (R.C. 2923.13); improperly discharging firearm at or into habitation or school safety zone (R.C. 2923.161); discharge of firearm on or near prohibited premises

(R.C. 2923.162); improperly furnishing firearms to minor (R.C. 2923.21); engaging in a pattern of corrupt activity (R.C. 2923.32); criminal gang activity (R.C. 2923.42); corrupting another with drugs (R.C. 2925.02); trafficking (R.C. 2925.03); illegal manufacture of drugs or cultivation of marihuana (R.C. 2925.04); illegal assembly or possession of chemicals used to manufacture a controlled substance (R.C. 2925.041); funding of drug or marihuana trafficking (R.C. 2925.05); illegal administration or distribution of anabolic steroids (R.C. 2925.06); sale or use of drugs not approved by the U.S. Food and Drug Administration (R.C. 2925.09); permitting drug abuse (R.C. 2925.13); use, possession, or sale of drug paraphernalia (R.C. 2925.14); deception to obtain a dangerous drug (R.C. 2925.22); illegal processing of drug documents (R.C. 2925.23); tampering with drugs (R.C. 2925.24); illegal dispensing of drug samples (R.C. 2925.36); unlawful purchase or receipt of a pseudoephedrine product (R.C. 2925.55); unlawful sale of a pseudoephedrine product (R.C. 2925.56); ethnic intimidation (R.C. 2927.12); or adulteration of food (R.C. 3716.11);

(2) One or more violations of the former offense of child stealing as that offense existed before July 1, 1996 (former R.C. 2905.04);

(3) One or more violations of interference with custody (R.C. 2919.23) that would have been a violation of the former offense of child stealing (former R.C. 2905.04) as that offense existed before July 1, 1996, had the violation occurred before that date;

(4) One violation of the offense of drug possession that is not a minor drug possession offense;

(5) Two or more violations of the offense of drug possession, regardless of whether any of the violations are a minor drug possession offense;

(6) One or more violations of the former offense of felonious sexual penetration (former R.C. 2907.12);

(7) One or more violations of conspiracy, attempt to commit an offense, or complicity in the commission of an offense when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in (1) to (6) above;

(8) One or more felonies contained in the Revised Code that are not listed in (1) to (7) above, if the felony bears a direct and substantial relationship to the duties and responsibilities of the position being filled;

(9) One or more offenses contained in the Revised Code constituting a misdemeanor of the first degree on the first offense and a felony on a subsequent

offense, if the offense bears a direct and substantial relationship to the position being filled and the nature of the services being provided by the responsible entity;

(10) One or more violations of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in (1) to (9) above.

### Other criminal record report

The ODODD Director is permitted to request any other state or federal agency to supply the Director with a written report regarding the criminal record of an applicant. The Director may consider the reports when determining whether to issue or renew a supported living certificate.

### Driving record

An applicant who seeks to be an independent provider or is an independent provider seeking renewal of the applicant's supported living certificate must obtain the applicant's driving record from the Bureau of Motor Vehicles and provide a copy of the report to the ODODD Director if the supported living that the applicant will provide involves transporting individuals with mental retardation or developmental disabilities. The Director may consider the applicant's driving record when determining whether to issue or renew the certificate.

### Release of reports

A report obtained under the provisions discussed above is not a public record and is not to be made available to any person, other than the following:

(1) The applicant who is the subject of the report or the applicant's representative;

(2) The ODODD Director or the Director's representative;

(3) Any court, hearing officer, or other necessary individual involved in a case dealing with any of the following:

--The denial of or refusal to renew a supported living certificate;

--The denial, suspension, or revocation of a certificate for MR/DD personnel to administer prescribed medications, perform health-related activities, and perform tube feedings or a certificate for a registered nurse to provide MR/DD personnel training courses;

--A civil or criminal action regarding Medicaid or a program ODODD administers.

An applicant for whom the Director has obtained reports discussed above may submit a written request to the Director to have copies of the reports sent to any person or state or local government entity. The applicant must specify in the request the person or entities to which the copies are to be sent. On receipt of the request, the Director must send copies of the reports to the persons or entities so specified.

The Director is permitted to request that a person or state or local government entity send copies to the Director of any report regarding a records check or criminal records check that the person or entity possesses if the Director obtains the written consent of the individual who is the subject of the report.

The Director must provide each applicant with a copy of any report about the applicant obtained under the provisions discussed above.

### Registry of MR/DD employees regarding abuse, neglect, or misappropriation

(R.C. 5123.50, 5123.51, and 5123.542)

ODODD is required to review any report it receives that an MR/DD employee has abused, neglected, or misappropriated the property of an individual with mental retardation or another developmental disability. ODODD must investigate the allegation and determine whether there is a reasonable basis for the allegation. If ODODD determines that a reasonable basis exists, it must conduct an adjudication under the Administrative Procedure Act (R.C. Chapter 119.).

In conducting the hearing, the hearing officer appointed by ODODD must determine whether there is clear and convincing evidence that the MR/DD employee has committed certain actions. The ODODD Director must establish a registry of MR/DD employees found to have committed any of the actions. A person or government entity must inquire whether an individual is included in the registry before hiring, contracting with, or employing an individual as an MR/DD employee. In general, a person or government entity is prohibited from hiring, contracting with, or employing the individual if the individual is included in the registry.[66]

[66] R.C. 5123.52 (not in the bill).

### List of actions included in the registry

An MR/DD employee may be included in the registry of MR/DD employees if the employee is found to have done any of the following:

(1) Misappropriated the property of one or more individuals with mental retardation or a developmental disability that has a value, either separately or taken together, of $100 or more;

(2) Misappropriated such an individual's property that is designed to be used as a check, draft, negotiable instrument, credit card, charge card, or device for initiating an electronic fund transfer at a point of sale terminal, automated teller machine, or cash dispensing machine;

(3) Knowingly abused such an individual;

(4) Recklessly abused or neglected such an individual, with resulting physical harm;

(5) Negligently abused or neglected such an individual, with resulting serious physical harm;

(6) Recklessly neglected such an individual, creating a substantial risk of serious physical harm;

(7) Engaged in sexual conduct or had sexual contact with such an individual who was not the employee's spouse and for whom the employee was employed or under a contract to provide care;

(8) Unreasonably failed to make a mandatory report of suspected abuse or neglect when the employee knew or should have known that the failure would result in a substantial risk of harm to such an individual.

The bill expands the list of actions for which an MR/DD employee may be included in the registry by including the following:

--Misappropriation of prescribed medication of an individual with mental retardation or a developmental disability;

--Being convicted of or entering a plea of guilty to any of the following offenses if the victim of the offense is an individual with mental retardation or a developmental disability: sex offenses, theft offenses, fraud offenses, failing to provide for a

functionally impaired person, patient abuse or neglect, patient endangerment, endangering children, or an offense of violence.[67]

### MR/DD employees subject to the registry

Current law defines "MR/DD employee" as (1) an employee of ODODD, (2) an employee of a county DD board, and (3) an employee in a position that includes providing specialized services to an individual with mental retardation or another developmental disability. The bill provides that independent providers also are MR/DD employees; therefore, they are subject to inclusion in the registry regarding their acts of abuse, neglect, or misappropriation of property. An independent provider is an individual who provides supported living on a self-employed basis and does not employ, directly or through contract, another individual to provide supported living.

### Notice regarding the registry

Continuing law provides for MR/DD employees to receive an annual notice explaining the conduct for which an MR/DD employee may be included in the registry of MR/DD employees. ODODD, county DD boards, and providers of specialized services to individuals with mental retardation or developmental disabilities are to provide the notice. The bill requires ODODD or a county DD board to provide the notice to an MR/DD employee who is an independent provider.

## Members of county DD boards

(R.C. 5126.023)

Certain persons are prohibited by current law from serving on a county DD board based on their familial relationships or their status as current or former employees. The bill modifies some of these restrictions and clarifies others. Under the bill's changes, none of the following may serve as a county DD board member:

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[67] Offenses of violence are defined by current law as aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, aggravated assault, assault, permitting child abuse, aggravated menacing, menacing by stalking, menacing, abduction, extortion, trafficking in persons, rape, sexual battery, gross sexual imposition, aggravated arson, arson, terrorism, aggravated robbery, robbery, aggravated burglary, burglary, inciting to violence, aggravated riot, riot, inducing panic, domestic violence, intimidation, intimidating certain persons in a case, escape, improper discharge of a firearm, an offense other than a traffic offense that was committed purposely or knowingly and the offense resulted in harm or the risk of serious physical harm, and conspiracy or attempt to commit or complicity in committing any of these offenses. (R.C. 2901.01(A)(9).)

(1) An immediate family member of a member of the *same* county DD board. Currently, a person cannot serve as a county DD board member if the person is an immediate family member of *another county DD board member.*

(2) An employee of *any* county DD board. Currently, a person cannot serve as a county DD board member if the person is *a county DD board employee*.

(3) An immediate family member of an employee of the *same* county DD board. Currently, a person cannot serve as a county DD board member if the person is an immediate family member of *a county DD board employee*.

(4) A former employee of a county DD board whose employment ceased less than *four* calendar years before the employee would begin to serve as a member of the *same* county DD board. This is an increase in the current law waiting period of *one* calendar year.

(5) A former employee of a county DD board whose employment ceased less than two years before the former employee would begin to serve as a member of a different county DD board. This is not addressed in current law.

The bill eliminates a provision that prohibits (unless there is no conflict of interest) a person from serving as a county DD board member if the person is, or has an immediate family member who is, an employee or board member of an agency contracting with the county DD board that is not licensed or certified by ODODD to provide services to individuals with mental retardation or developmental disabilities. The bill eliminates a corresponding provision specifying that (1) all questions relating the existence of a conflict of interest are to be submitted to the local prosecuting attorney for resolution and (2) the Ohio Ethics Commission may examine any issues arising under the ethics laws pertaining to public officers,[68] the criminal law prohibiting public officials from having an unlawful interest in a public contract,[69] and the criminal law prohibiting public servants from soliciting improper compensation.[70]

[68] R.C. Chapter 102.

[69] R.C. 2921.42 and 2921.421.

[70] R.C. 2921.43.

## Certification or registration of employees

(R.C. 5126.25, 5123.033, 5123.0414, 5123.0415, 5123.081, 5123.082 (repealed), 5123.083 (repealed), 5126.0220, 5126.20, 5126.22, 5126.251, 5126.252 (repealed), and 5126.26 (repealed))

### Overview

The bill transfers to superintendents of county DD boards the responsibility for the certification or registration of persons to be employed in positions serving individuals with mental retardation or developmental disabilities.

### Transfer to county DD boards

Current law requires the ODODD Director to adopt rules establishing uniform standards and procedures for the certification or registration of persons for employment by county DD boards or employees of the entities with which county DD boards contract to serve individuals with mental retardation and developmental disabilities. The standards and procedures apply to the following: superintendents; management, professional, and service employees; and investigative agents. The bill transfers to superintendents of county DD boards the responsibility for the certification or registration of persons to be employed in positions serving individuals with mental retardation or developmental disabilities. The bill maintains the ODODD Director's responsibility to take these actions relative to county DD board superintendents. As under current law, the bill provides that no person may be employed in a position requiring certification or registration without valid certification or registration, and no person may continue to be employed if the required certification or registration is denied, revoked, or not renewed.[71]

### Rules on certification or registration

The bill requires the ODODD Director to adopt the rules to be followed by county DD boards regarding certification or registration. The rules apply to persons seeking employment with or employed by either a county DD board or an entity that contracts with a county DD board to operate programs and services for individuals with mental retardation or developmental disabilities.

The ODODD Director is required to adopt rules establishing all of the following:

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[71] As under current law, the certification and registration requirements do not apply to a teacher holding a valid license or certificate or another licensed professional (such as health care professionals) performing duties for which the professional is authorized to perform.

(1) The positions of employment subject to certification or registration;

(2) The requirements that must be met to receive the certification or registration, including standards regarding education, specialized training, and experience, taking into account the needs of individuals with mental retardation or developmental disabilities and the specialized techniques needed to serve them;[72]

(3) Application requirements for a person seeking certification or registration for employment;

(4) Initial certification or registration procedures and requirements for renewal, including continuing education and professional training requirements;

(5) Grounds for which certification or registration may be denied, suspended, or revoked and procedures for appealing the denial, suspension, or revocation.

Superintendents of each county DD board are responsible for taking all actions regarding certification and registration of employees (other than the position of superintendent). These actions, which must be taken in accordance with the ODODD Director's rules, include issuing, renewing, denying, suspending, and revoking a certificate or registration. A person subject to a denial, suspension, or revocation may appeal the decision in accordance with the Director's rules. The ODODD Director is to retain responsibility for all of these actions relative to the position of superintendent.

The bill maintains a provision under current law permitting a person with a valid certificate or registration on the effective date of any rule change to have not less than one year to meet the new certification or registration standards; this would apply to any rule changes made by the Director regarding the new certificates or registration of the bill.

The bill specifies that a person with valid certification or registration issued by one county DD board is qualified to be employed in any other county DD board or entity contracting with a county DD board. The bill does not address the effect of the new certification and registration system on persons who were certified or registered prior to the bill's effective date.

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[72] As provided under current law, the ODODD Director may not require a person designated as a service employee to have or obtain a bachelor's or higher degree. A "service employee" is defined as a person employed by a county DD board in a position for which a bachelor's degree is not required and includes a workshop specialist, workshop specialist assistant, contract procurement specialist, community employment specialist, and any assistant to a professional employee.

### Fees

The bill eliminates provisions of current law requiring that fees be charged for certification or registration and that those fees be deposited in the Program Fee Fund. That fund is used by ODODD for employee certification and registration, the supported living program, the licensing of residential facilities, and to provide continuing education and professional training to providers of services to individuals with mental retardation or developmental disabilities. The bill does not specify if any fees are to apply to the bill's certificates or registration or the purposes for which those fees may be used.

### Eliminated provisions

All of the following provisions of current law are eliminated in the transfer of the responsibility of employee certification and registration to county DD boards (if indicated, the ODODD Director is to address the issue in rules):

(1) A specific requirement that an investigative agent requires certification, must hold or obtain no less than an associate degree from an accredited college or university or hold or obtain comparable experience or training, and must complete continuing education;

(2) A requirement that certificates and evidence of registration be provided according to categories, levels, and grades;

(3) A requirement that the ODODD Director approve courses of study meeting certification standards and provide for the inspection of the courses to ensure the maintenance of satisfactory training procedures;

(4) A requirement that courses of study be approved only if given by a state university or college or an institution that has received a certificate by the Ohio Board of Regents to confer degrees;

(5) A requirement that applicants seeking certification or evidence of registration apply to ODODD on a form established by the Director and include an application fee;

(6) A requirement that the ODODD Director take disciplinary actions against the holder of a certificate or registration;

(7) Specific offenses for which the ODODD Director is authorized to take disciplinary actions and the hearing requirements regarding those actions (requirements to be adopted in rules);

(8) Provisions on the completion of necessary courses of instruction by an applicant for a certificate, when the applicant has not completed necessary courses;

(9) Authorization for a county DD board superintendent or superintendent's designee to certify to the ODODD Director that a county DD board or contracting entity employee has met continuing education or professional training requirements as a condition of renewal of certification or registration;

(10) A provision providing for an automatic suspension or refusal to renew a certificate or registration if a person fails to comply with a child support order.

## County DD board employees

### Management employees

(R.C. 5126.20 and 5126.21)

A person employed by a county DD board as a "management employee" is an employee in a position having supervisory or managerial responsibilities and duties. The bill modifies the law governing these employees as follows:

(1) Eliminates a requirement that a county DD board reemploy a management employee for one year at the same salary, and any authorized salary increase, if the board superintendent fails to notify the employee 90 days before the expiration of the employee's contract that the board does not intend to rehire the employee. The bill maintains the notification requirement.

(2) Eliminates a provision specifying that a management employee's benefits include sick leave, vacation leave, holiday pay, and such other benefits and instead provides that management employees receive employee benefits as established by the board.

(3) Eliminates provisions referring to procedures for retention of management employees who were under contract or in probationary periods at the time the statutes for contracting with management employees were modified in 1988.

### Professional employees

(R.C. 5126.26 and 5126.27 (repealed))

As discussed above, unless exempt from certification requirements, no person is permitted to be employed by a county DD board unless the person holds the proper credentials applicable to the employment position.

The bill eliminates an obsolete exemption that applies to professional employees who were employed by a county DD board at the time the statutes for certification of employees were modified in 1990. That exemption provided that employees employed on that date were permitted to do one of the following:

(1) Accept an employment position at the county DD board for which the employee meets the certification requirements;

(2) Remain in the position and comply with a professional development plan.

### Termination of contracts

(R.C. 5126.29 (repealed))

Current law provides that no professional or management employee in a position requiring an educator's license issued by the State Board of Education or a certificate issued by the ODODD Director may terminate the person's contract without first giving 30 days' notice to the county DD board or seeking prior written consent from the board. A person violating this requirement may have the person's license or certificate suspended for a period of time not to exceed one year. The bill eliminates this requirement.

### County DD board employees as members of governing board

(R.C. 5126.0222)

The bill eliminates a provision specifying that an employee of a county DD board may be a member of the governing board of either a political subdivision, including a board of education, or an agency that does not provide services designed and operated to serve primarily individuals with mental retardation or a developmental disability. The bill also eliminates a provision that specifies that the county DD board is authorized to contract with that governing board even though its membership includes a county DD board employee.[73]

## Service and support administration

(R.C. 5126.15)

County DD boards are authorized, and in certain instances required, to provide service and support administration to individuals. Those employed by a board as service and support administrators are required to assist individuals in receiving

[73] These employees would remain subject to any continuing laws governing ethics or unlawful influence in public contracts that otherwise apply to governing board members and county DD board employees.

services, including assessing individual needs for services, establishing an individual's eligibility for services, and ensuring that services are effectively coordinated.

The bill eliminates a requirement that service and support administrators ensure that each individual receiving services has a "designated person." This person is to be responsible on a continuing basis for providing the individual with representation, advocacy, advice, and assistance related to the day-to-day coordination of services. The bill also eliminates a provision permitting the individual to designate that person.

## Distribution of funds for county DD boards in regional councils of government

(R.C. 5126.13)

The bill eliminates a provision requiring ODODD, when directed to do so by a county DD board that is part of a regional council of governments, to distribute funds for that county DD board to the regional council's fiscal officer.

Existing law permits political subdivisions to enter into an agreement creating a regional council of government to, among other things, 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 performed or capable of performance by members of the council. Regional 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.

## Licensure of ICFs/MR as residential facilities

(R.C. 5123.192 (repealed and new enactment), 3702.62, 3721.01, 3721.21, 3721.50, 5123.171, 5123.19, 5123.41, and 5126.51; Sections 110.20, 110.21, 110.22, and 751.10)

The bill repeals a grandfather clause that makes a facility subject to licensure by the Department of Health as a nursing home rather than licensure by ODODD as a residential facility if the facility, on June 30, 1987, contained beds that the Department of Health had certified before that date as ICF/MR beds or had an application pending with the Department of Health to convert intermediate care facility beds to ICF/MR beds. The grandfather clause does not apply, however, to such a facility that applies for recertification as an ICF/MR after its certification or provider agreement is not renewed or is terminated pursuant to a final order for which all appeal rights have been

exhausted. The grandfather clause also does not apply to additional ICF/MR beds such a facility obtains.

A residential facility is a home or facility in which an individual with mental retardation or a developmental disability resides. However, none of the following is a residential facility: (1) the home of a relative or legal guardian in which an individual with mental retardation or a developmental disability resides, (2) a certified respite care home, (3) a county or district home, or (4) a dwelling in which the only residents with mental retardation or developmental disabilities are in independent living arrangements or being provided supported living.

Under the bill, a person or government agency operating an ICF/MR pursuant to a nursing home license under the grandfather clause must apply, not later than February 1, 2013, to the ODODD Director for a residential facility license for the ICF/MR and obtain the license not later than July 1, 2013, or cease to operate the ICF/MR. A grandfathered ICF/MR's nursing home license ceases to be valid at the earliest of (1) the date that its nursing home license is revoked or voided, (2) the date that it obtains a residential facility license, and (3) July 1, 2013. No bed that is part of a grandfathered ICF/MR may be used as part of a nursing home on and after the earlier of the date that it obtains a residential facility license and July 1, 2013.

In addition to repealing the grandfather clause, the bill eliminates a law that requires a nursing home that is certified as an ICF/MR to apply for licensure as a residential facility of the portion of the home that is certified as an ICF/MR. Presumably, the law does not apply to ICFs/MR that are subject to the grandfather clause. In place of this law, the bill provides that a residential facility includes a facility certified as an ICF/MR.

The bill provides that despite the repeal of the grandfather clause an ICF/MR operating under a nursing home license is to continue to be a nursing home for the purposes for which it is considered to be a nursing home under the law in effect on the day immediately preceding the repeal of the grandfather clause until the earliest of (1) the date that its nursing home license is revoked or voided, (2) the date that it obtains a residential facility license, and (3) July 1, 2013. The repeal of the grandfather clause does not change an ICF/MR's status regarding (1) the law regarding abuse, neglect, or misappropriation of residents' property at long-term care facilities, (2) the franchise permit fees on nursing homes and ICFs/MR, (3) the law that permits certain individuals who provide specialized services to individuals with mental retardation or developmental disabilities to administer prescribed medications, perform health-related activities, or perform tube feedings, or (4) the law governing the Residential Facility Linked Deposit Program.

The bill provides that the certificate of need (CON) law does not apply to any part of a long-term care facility's campus that is certified as an ICF/MR. Current law, in contrast, provides that a nursing home certified as an ICF/MR that is required to apply for licensure by ODODD as a residential facility is not, with respect to the portion of the home certified as an ICF/MR, subject to the CON law.

## Choosing providers of certain ODODD programs

(R.C. 5126.046 (primary), 5123.044, and 5126.055)

Current law requires certain county DD boards to create a list of all persons and government entities eligible to provide habilitation, vocational, or community employment services provided as part of home and community-based services available under a Medicaid waiver administered by ODODD. This applies to a county DD board that has Medicaid local administrative authority for the services. If a county DD board chooses and is eligible to provide the services, the county DD board must include itself on the list. The county DD board must make the list available to each individual with mental retardation or other developmental disability who resides in the county and is eligible for the services and to such individuals' families. The bill eliminates these requirements.

The bill also eliminates a requirement for ODODD to create, each month, a list of all persons and government entities eligible to provide residential services and supported living. Current law requires that ODODD include on the list all licensed residential facilities and certified supported living providers. ODODD must distribute the lists to county DD boards that have Medicaid local administrative authority for residential services and supported living provided as part of home and community-based services available under an ODODD-administered Medicaid waiver. A county DD board that receives a list must make it available to each individual with mental retardation or other developmental disability who resides in the county and is eligible for such residential services and supported living and to the families of such individuals.

The bill provides that, except as otherwise provided by a federal Medicaid regulation, an individual with mental retardation or other developmental disability who is eligible for home and community-based services provided under an ODODD-administered Medicaid waiver program has the right to obtain the services from any provider that is qualified to furnish the services and is willing to provide the services to the individual. An individual with mental retardation or other developmental disability who is eligible for non-Medicaid residential services or non-Medicaid supported living has the right under the bill to obtain the services from any provider of the residential services or supported living that is qualified to furnish the services and is

willing to provide the services or support to the individual. Current law, in contrast, provides that an individual with mental retardation or other developmental disability who is eligible for habilitation, vocational, or community employment services may choose the provider of the services and that an individual who is eligible for residential services or supported living may choose the provider of the residential services or supported living.

Under the bill, the ODODD Director, rather than ODODD and the Department of Job and Family Services, must adopt rules regarding these provisions.

### Retention of records of developmental disabilities institutions

(R.C. 5123.31 and 5123.89; conforming changes in 5123.166)

ODODD maintains records on residents of the institutions governed by it. These records must show the resident's name, residence, sex, age, nativity, occupation, condition, and date of entrance or commitment; the date, cause, and terms of the resident's discharge; the condition of the resident at the time of leaving; a record of the resident's transfer from one institution to another; and, if the resident dies while in the care and custody of ODODD, the date and cause of the resident's death.

The bill permits ODODD, after a period of time it determines, to deposit such records with the Ohio Historical Society. The bill generally prohibits the Historical Society from disclosing a resident's records or the information in them, except that disclosure may be made to the closest living relative of the resident on the relative's request.

The bill also corrects erroneous cross references in a related section of law (R.C. 5123.166).

### Fees charged county DD boards for home and community-based services

(R.C. 5123.0412 (primary) and 5123.01)

The bill prohibits ODODD from charging a county DD board a fee for Medicaid paid claims for home and community-based services provided under the Transitions Developmental Disabilities Waiver. Continuing law requires ODODD to charge each county DD board an annual fee equal to 1.25% of the total value of all Medicaid paid claims for home and community-based services provided under other ODODD-administered Medicaid waiver programs during the year to an individual eligible for services from the county DD board.

## Decision-making by and for individuals with mental retardation and developmental disabilities

(R.C. 5126.043)

The bill eliminates a provision authorizing only the guardian of an individual with mental retardation or another developmental disability who has been adjudicated incompetent to make decisions regarding the individual's receipt of services from a county DD board. In place of the eliminated provision, the bill establishes the following decision-making procedures regarding an individual with mental retardation or other developmental disability:

(1) When such an individual is required to make a decision regarding the individual's receipt of a service or participation in a program provided for or funded by ODODD or a county DD board, the individual must make the decision if the individual has the capacity to make such a decision. In making the decision, the individual is permitted to seek support and guidance from a family member or trusted friend. The bill specifies that seeking this support and guidance does not eliminate the individual's authority to make the decision.[74]

(2) When such an individual lacks the capacity to make the decision, the decision is to be made for the individual by another person identified on a list the bill creates. The person making the decision must consider the individual's needs, desires, and preferences and make the decision that is consistent with those items and the individual's best interests. The person responsible for making the decision is to be determined in the following order of priority:

- The individual's guardian;
- An adult who has been authorized in writing by the individual to make the decision on the individual's behalf;
- The individual's parent;
- An adult child of the individual;

[74] According to an ODODD representative, these provisions reflect current practice: an individual with mental retardation of another developmental disability who has not been adjudicated incompetent has the right to make decisions regarding the individual's receipt of a service or participation in a program provided for or funded by ODODD or a county DD board. And nothing in current law precludes the individual from seeking support and guidance from a family member or trusted adult friend or jeopardizes the individual's authority to make decisions if the individual seeks the support and guidance. (Telephone interview with ODODD representative, March 8, 2012.)

- An adult sibling of the individual;
- A grandparent of the individual;
- An adult not described above who is related by blood, marriage, or adoption; has exhibited special care and concern for the individual; is generally familiar with the individual's desires; and is willing and able to make the decision and act in the individual's best interests;
- An adult friend who has exhibited special care and concern for the individual, is generally familiar with the individual's desires, and is willing and able to make the decision and act in the individual's best interests.

If a specified class on the priority list described above contains more than one person, the decision may be made by a single person in the class unless that person knows of an objection by another person in the class. If an objection is known, the decision may be made only by a majority of the persons in the class who are reasonably available. If such a majority does not exist, the decision must be made by the person in the next priority class.

The bill disqualifies a person included on the priority list from making a decision on behalf of an individual if the person provides services to the individual. This disqualification, however, does not apply to a person who is providing only protective services or to a person who is providing services and is related by blood, marriage, or adoption to the individual.

## Plans for residential services

(R.C. 5123.042 and 5123.19; Sections 110.20, 110.21, and 110.22)

The bill eliminates a law that does all of the following:

(1) Requires a county DD board, in accordance with its comprehensive service plan, to review all proposals to develop residential services for individuals with mental retardation or developmental disabilities that are submitted to it and, if a proposal is acceptable to the county DD board, recommend providers of the services;

(2) Requires ODODD to approve proposals based on the availability of funds and in accordance with rules;

(3) Prohibits a county DD board from recommending providers if it is an applicant to provide services;

(4) Requires the ODODD Director, in cases of possible conflict of interest, to appoint a committee that must, in accordance with an approved county comprehensive service plan, review and recommend providers;

(5) Permits the ODODD Director, if a county DD board fails to establish a comprehensive service plan, to establish residential services development goals for the county DD board based on documented need as determined by ODODD;

(6) Permits ODODD, if a county DD board fails to develop or implement a comprehensive service plan, to review and select providers without the county DD board's involvement;

(7) Requires the ODODD Director to adopt rules establishing:

- Uniform standards under which a person or agency must submit plans to a county DD board for the development of residential services within the county the county DD board serves and the county DD board reviews the plans and recommends providers;

- Eligibility criteria for selecting persons and agencies to provide residential services, taking into consideration a county DD board's recommendations.

In place of this law, the bill requires each person or government entity seeking to develop or modify existing residential services to submit to ODODD a plan for the development or modification. ODODD is required to approve a plan that is submitted in accordance with rules the bill requires the ODODD Director to adopt and meets the uniform standards for plans established in the rules.

The bill maintains current law that exempts an applicant for an initial residential facility license or a modification of an existing residential facility license from the requirement to obtain approval of a plan for the proposed new facility or modification to the existing facility if (1) the new or modified facility is to serve individuals who have diagnoses or special care needs for which a special Medicaid reimbursement rate is set, (2) the Director of the Ohio Department of Job and Family Services (ODJFS) and ODODD Director determine that there is a need under the Medicaid program for the new or modified facility and that approving the facility is fiscally prudent for the Medicaid program, and (3) the Director of the Office of Budget and Management (OBM) notifies the ODJFS and ODODD directors that the OBM Director agrees with their determination.

### County DD board responsibility for certain Medicaid costs

(R.C. 5123.38)

The bill revises the law governing a county DD board's responsibility under certain circumstances to pay the nonfederal share of Medicaid expenditures for an individual's care in a state-operated intermediate care facility for the mentally retarded (ICF/MR). Under current law, ODODD must, except under certain circumstances, use funds otherwise allocated to a county DD board as the nonfederal share of Medicaid expenditures for an individual's care in a state-operated ICF/MR if the individual receives supported living or home and community-based services funded by the county DD board when the individual is committed to the state-operated ICF/MR. The bill requires instead that ODODD collect the amount of the nonfederal share for which a county DD board is responsible by either withholding that amount from funds ODODD has otherwise allocated to the county DD board or submitting an invoice for payment of that amount to the county DD board.

Current law provides that a county DD board is not responsible for the nonfederal share under two circumstances. First, a county DD board is not responsible if, not later 90 days after the date of the commitment of a person receiving supported services to a state-operated ICF/MR, the county DD board commences funding of supported living for an individual who resides in a state-operated ICF/MR on the date of the commitment or another eligible individual designated by ODODD. Second, a county DD board is not responsible if the county DD board, not later than 90 days after the date of the commitment of a person receiving Medicaid-funded home and community-based services, commences funding of such services for an individual who resides in a state-operated ICF/MR on the date of the commitment or another individual designated by ODODD. The bill establishes a third circumstance under which a county DD board is not responsible for the nonfederal share. The third circumstance is to apply if the ODODD Director, after determining that circumstances warrant granting a waiver in an individual's case, grants a county DD board a waiver that exempts the county DD board from responsibility for the nonfederal share for that case.

## DEPARTMENT OF EDUCATION (EDU)

- Extends the Ohio Digital Learning Task Force's existence through June 30, 2013, and requires it to monitor implementation of its prior recommendations and to issue a report by June 30, 2013, on whether digital learning is advancing in Ohio and any recommendations to enhance digital learning.

- Requires each early childhood education program that receives state funding from the Department of Education to participate in the Step Up to Quality Program administered by the Department of Job and Family Services, and to be rated in the Program by July 1, 2016.

- Requires school districts, educational service centers, and county DD boards serving preschool children with disabilities also to participate in the Step Up to Quality Program, and to be rated in the Program by July 1, 2018.

## Ohio Digital Learning Task Force

(Section 371.60.80)

The bill delays, from March 1, 2012, to June 30, 2013, the termination of the Ohio Digital Learning Task Force, and requires it to monitor the implementation of the recommendations it previously was required to submit to the Governor, the Senate President, and the Speaker of the House. Not later than June 30, 2013, the bill requires the Task Force also to report to the Governor, the Senate President, and the Speaker of the House whether digital learning is advancing in Ohio schools and any recommendations to enhance the delivery of digital learning programs and services. The bill terminates the Task Force on June 30, 2013.

### Background

The Task Force was created in H.B. 153 of the 129th General Assembly "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." Consisting of the Chancellor of the Board of Regents, the Superintendent of Public Instruction, the Director of the Governor's Office of 21st Century Education, or their designees, up to six members appointed by the Governor, one member appointed by the Senate President, and one member appointed by the Speaker of the House, the Task Force was ordered to examine several factors, including cost savings and academic benefits of using digital textbooks and digital content, digital content pilot programs and state-level initiatives in Ohio, information on digital textbooks, and digital content distribution methods.

The Task Force was required to submit a report by March 1, 2012, to the Governor, the Senate President, and the Speaker of the House regarding recommendations on various initiatives, including (1) access to digital content instruction for public and nonpublic schools and students receiving home instruction, (2) professional development for educators providing digital content, (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, (8) ways to align the resources and digital learning initiatives of state agencies and offices, (9) methods for providing coordination of and removing redundancy and inefficiency in digital learning programs, and (10) ways of addressing future changes in technology and learning. Upon submittal of the report, the Task Force was to cease to exist.

### Early childhood education programs subject to ODJFS rating program

(Sections 267.10.10 and 267.30.20 of H.B. 153)

The bill amends uncodified sections of H.B. 153 that prescribe standards for early childhood education programs that receive state funding from the Department of Education. It requires the programs receiving the funding to participate in the Step Up to Quality Program administered by the Ohio Department of Job and Family Services (ODJFS), and sets deadlines for them to be rated by the ODJFS program. Specifically:

(1) Early childhood education programs receiving state funding must be rated by July 1, 2016; and

(2) Special education programs for preschool children with disabilities that are operated by school districts, educational service centers, and county DD boards must be rated by July 1, 2018.

## ENVIRONMENTAL PROTECTION AGENCY (EPA)

### Transfer of Division of Recycling and Litter Prevention

- Abolishes the Division of Recycling and Litter Prevention in the Department of Natural Resources, transfers its functions and responsibilities to the Environmental Protection Agency (EPA), and transfers applicable appropriations to the EPA.

- Transfers the authority to make grants from the Recycling and Litter Prevention Fund from the Chief of the Division of Recycling and Litter Prevention with the approval of the Director of Natural Resources to the Director of Environmental Protection.

- Generally prohibits information that is submitted to, acquired by, or exchanged with EPA employees in order to obtain a grant from the Fund from being used in any manner for the purpose of enforcement of any requirement established in an

environmental law or used as evidence in any judicial or administrative enforcement proceeding.

- States that the above provision does not confer immunity on persons from enforcement that is based on information that is obtained by the Director or the Director's authorized representatives who are not EPA employees who administer or provide services under the grant program.

- Transfers the authority to make grants from the Scrap Tire Grant Fund from the Chief of the Division of Recycling and Litter Prevention to the Director.

- Makes necessary conforming changes.

## Clean Air Fund

- Eliminates the Clean Air Fund, which is used by EPA to administer Title V and non-Title V air pollution control programs, and replaces it with the Title V Clean Air Fund and the Non-Title V Clean Air Fund.

- Retains the existing fee structure that provides money to the Clean Air Fund, but distributes the proceeds of those fees to either the new Title V Clean Air Fund or the new Non-Title V Clean Air Fund.

- Requires fees related to emissions from a Title V air contaminant source to be credited to the Title V Clean Air Fund and certain fees related to non-Title V air contaminant sources to be credited to the Non-Title V Clean Air Fund.

- Requires money in the Title V Clean Air Fund generally to be used to administer and enforce the Title V permit program

- Requires money in the Non-Title V Clean Air Fund generally to be used to administer and enforce laws pertaining to the prevention, control, and abatement of air pollution other than the Title V program and, as in current law, other than motor vehicle inspection and maintenance programs.

- Specifies that an existing transfer from the Clean Air Fund to the Small Business Assistance Fund be transferred instead from the Title V Clean Air Fund and that it be transferred via an interstate transfer voucher.

- Requires that, annually, money in the Title V Clean Air Fund be transferred to the Small Business Ombudsperson Fund in an amount that is necessary for the operation of the Office of Ombudsperson.

- Makes technical changes, including the repeal of statutory authority for certain fees that have expired.

### Consensual administrative order agreements

- Authorizes the Director to enter into consensual administrative order agreements in furtherance of the purposes of the state's environmental laws.

- Authorizes the Director to advise, consult, cooperate, and enter into contracts or agreements with persons, in addition to governmental entities, affected groups, and industries as in current law, in furtherance of those purposes.

### Operators of water supply and wastewater systems

- Establishes a new fee schedule for certification of operators of water supply and wastewater systems by consolidating the application fee with the fee schedule for examinations administered by the Director for each class of operator.

- Establishes all of the following fees:

  --$45 for certification as an operator of a water supply system or wastewater system for a person who has passed an examination administered by an approved examination provider;

  --$500 to apply to be a water supply system or wastewater system operator examination provider; and

  --10% annually of the fees assessed and collected by an approved examination provider for administering examinations to persons seeking certification in Ohio as water supply system or wastewater system operators.

### Public water system licenses

- Requires the Director to adopt rules governing the issuance, conditioning, and denial of public water system licenses and license renewals in addition to rules governing the suspension and revocation of licenses as in current law.

- Allows the Director to condition a license or license renewal in addition to suspending or revoking a license or license renewal as in current law.

- With regard to an application for a new license, states that the Director has the authority to issue, issue with terms and conditions, or deny the license.

- Requires applications for initial licenses to be submitted at least 45 days prior to the commencement of the operation of a public water system.

- Makes additional organizational and technical changes to the law governing public water system licenses and license renewals.

## Transfer of functions and responsibilities of Division of Recycling and Litter Prevention to Environmental Protection Agency

(R.C. 121.04, 125.082, 125.14, 1501.04, 1502.01 (3736.01), 1502.02 (3736.03), 1502.03 (3736.02), 1502.04 (3736.04), 1502.05 (3736.05), 1502.06 (3736.06), 1502.07 (3736.07), 1502.12 (3734.822), 1502.99 (3736.99), 3714.073, 3734.51, 3734.55, 3734.82, and 5733.064 and Sections 737.20 and 737.30)

The bill abolishes the Division of Recycling and Litter Prevention in the Department of Natural Resources and transfers its functions and responsibilities to the Environmental Protection Agency (EPA). It establishes transition procedures for that transfer and also transfers applicable appropriations to the EPA. Under current law, the Division and its Chief are responsible for implementing programs and making grants related to recycling and litter prevention as discussed below.

### Programs

The bill transfers responsibility for establishing and implementing statewide source reduction, recycling, recycling market development, and litter prevention programs to the Director of Environmental Protection. It then requires those programs to be consistent with the state solid waste management plan that is adopted under the Solid, Hazardous, and Infectious Wastes Law.

### Recycling and Litter Prevention Fund

The bill transfers the authority to make grants from the continuing Recycling and Litter Prevention Fund from the Chief of the Division of Recycling and Litter Prevention with the approval of the Director of Natural Resources to the Director of Environmental Protection. The Fund may be used to make grants for all of the following programs: (1) assessment of waste generation within the state and implementation of source reduction practices, (2) implementation of recycling and recycling market development activities and projects, (3) litter prevention assistance to enforce antilitter laws, educate the public, and stimulate collection and containment of litter, and (4) research and development regarding source reduction, recycling, and litter prevention.

The bill then prohibits information that is submitted to, acquired by, or exchanged with EPA employees in order to obtain a grant from the Fund from being used in any manner for the purpose of enforcement of any requirement established in an environmental law or used as evidence in any judicial or administrative enforcement proceeding unless the information reveals a clear and immediate danger to the environment or to the health, safety, or welfare of the public. For that purpose, an environmental law is a law that is administered by the EPA. The bill adds that nothing in the statute governing the Fund confers immunity on persons from enforcement that is based on information that is obtained by the Director or the Director's authorized representatives who are not EPA employees who administer or provide services under that statute.

### Scrap Tire Grant Fund

The bill also transfers the authority to make grants from the Scrap Tire Grant Fund to the Director of Environmental Protection. Grants from the Fund may be made to support marketing development activities for scrap tires and synthetic rubber from tire manufacturing and recycling processes and to support scrap tire amnesty and cleanup events sponsored by solid waste management districts.

### Conforming changes

As a result of the abolishment of the Division, the bill makes necessary conforming changes. For example, it removes the chairperson of the Recycling and Litter Prevention Advisory Council, which the bill transfers to within EPA, from the Recreation and Resources Commission in the Department of Natural Resources. It also removes the Director of Natural Resources from the Solid Waste Management Advisory Council in the EPA.

## Title V Clean Air Fund and Non-Title V Clean Air Fund

(R.C. 3704.035, 3706.19, 3734.79, 3745.11, 3745.111 (repealed), 3745.112, 5709.212, and 6109.21)

The bill repeals the existing Clean Air Fund and replaces it with the Title V Clean Air Fund and the Non-Title V Clean Air Fund. The bill requires the Director of Environmental Protection to expend money in the Title V Clean Air Fund generally to administer and enforce the Title V program pursuant to the federal Clean Air Act, the state Air Pollution Control Law, and rules adopted under it. The bill requires the Title V Clean Air Fund to consist of existing fees levied on Title V air contaminant sources. The bill also specifies that an existing transfer from the Clean Air Fund to the Small Business Assistance Fund be transferred instead from the Title V Clean Air Fund and that it be transferred via an interstate transfer voucher. The bill requires that, annually,

money in the Title V Clean Air Fund, instead of the existing Clean Air Fund, be transferred to the Small Business Ombudsperson Fund in an amount that is necessary for the operation of the Office of Ombudsperson.

The bill requires the Director to expend money in the Non-Title V Clean Air Fund exclusively to pay the cost of administering and enforcing the laws of Ohio pertaining to the prevention, control, and abatement of air pollution, rules adopted under those laws, and terms and conditions of permits, variances, and orders issued under those laws. However, the Director is prohibited from expending money credited to the Non-Title V Clean Air Fund for the administration and enforcement of the Title V permit program, rules adopted under that program, or motor vehicle inspection and maintenance programs. The bill requires the Non-Title V Clean Air Fund to consist of existing fees related to non-Title V air contaminant sources. The bill also requires certain fees related to air pollution control facilities to be credited to the Non-Title V Clean Air Fund rather than the Clean Air Fund as in current law, provided that certain circumstances established in current law are applicable.

The bill also makes technical changes, including the repeal of statutory authority for certain air pollution control fees that have expired.

Under current law, the Director is required to expend money in the Clean Air Fund for the following purposes:

--To administer and enforce the Title V program pursuant to the federal Clean Air Act, the state Air Pollution Control Law, and rules adopted under it; and

--To pay the cost of administering and enforcing the laws of Ohio pertaining to the prevention, control, and abatement of air pollution, rules adopted under those laws, and terms and conditions of permits, variances, and orders issued under those laws, except that the Director is prohibited from expending money credited to the Clean Air Fund for motor vehicle inspection and maintenance programs.

## Consensual administrative order agreements

(R.C. 3745.01)

The bill authorizes the Director to enter into consensual administrative order agreements with other Ohio agencies, the federal government, other states, interstate agencies, affected groups, political subdivisions, and industries in furtherance of the purposes of the state's environmental laws. Under current law, the Director is authorized to advise, consult, cooperate, and enter into contracts or agreements for those purposes, but is not specifically authorized to enter into consensual administrative order agreements.

The bill further authorizes the Director to advise, consult, cooperate, and enter into contracts or agreements, including consensual administrative order agreements, with persons. Current law authorizes the Director to advise, consult, cooperate, and enter into contracts or agreements only with the governmental entities, affected groups, and industries discussed above.

## Water supply system and wastewater system operator certification fees

(R.C. 3745.11(O))

The bill alters the fee schedule for certification of operators of water supply and wastewater systems. The bill does this by consolidating the current application fee of $45 with the current fee schedule for examinations administered by the Director, applicable through November 30, 2014, for each class of operator of a water supply system or a wastewater system. The bill also consolidates the $25 application fee that is applicable on and after December 1, 2014 with the fee schedule for examinations applicable on and after that date. Below is a list of the fee schedules applicable through November 30, 2014, and on and after December 1, 2014.

Through November 30, 2014

Class A operator – $35 (existing fee), $80 (consolidated fee under the bill)

Class I operator – $60 (existing fee), $105 (consolidated fee under the bill)

Class II operator – $75 (existing fee), $120 (consolidated fee under the bill)

Class III operator – $85 (existing fee), $130 (consolidated fee under the bill)

Class IV operator – $100 (existing fee), $145 (consolidated fee under the bill)

On and after December 1, 2014

Class A operator – $25 (existing fee), $50 (consolidated fee under the bill)

Class I operator – 45 (existing fee), $70 (consolidated fee under the bill)

Class II operator – $55 (existing fee), $80 (consolidated fee under the bill)

Class III operator – $65 (existing fee), $90 (consolidated fee under the bill)

Class IV operator – $75 (existing fee), $100 (consolidated fee under the bill)

The bill also establishes the following new fees:

--$45 for certification as an operator of a water supply system or wastewater system for a person who has passed an examination administered by an approved examination provider;

--$500 to apply to be a water supply system or wastewater system operator examination provider; and

--10% annually of the fees assessed and collected by an approved examination provider for administering examinations to persons seeking certification in Ohio as water supply system or wastewater system operators.

## Public water system licenses

(R.C. 6109.21 and 3734.11 (for cross reference purposes only))

The bill alters the statutory requirements governing the issuance of licenses for public water systems and makes numerous organizational and technical changes to the law governing those systems. The bill also makes substantive changes to that law. First, the bill requires the Director to adopt rules in accordance with the Administrative Procedure Act establishing procedures and requirements governing the issuance, conditioning, suspension, revocation, and denial of licenses and license renewals. Current law requires the rules to establish procedures governing applications, suspensions, and revocations. The bill retains unchanged the requirement that the Director adopt rules establishing the information to be included on applications for licenses and license renewals.

The bill allows the Director to condition, suspend, or revoke a license or license renewal at any time if the Director finds that the public water system was not or will not be operated in substantial compliance with the Safe Drinking Water Law and rules adopted under it. Current law allows the Director only to suspend or revoke a license or license renewal if the Director finds that the public water system was not operated in substantial compliance with that Law and rules adopted under it.

The bill authorizes the Director, with respect to a new license application, to: (1) issue the license, (2) issue the license with terms and conditions, or (3) deny the license. It retains those options established in current law for license renewals.

The bill requires a license application to be submitted at least 45 days prior to commencing operation of the public water system. Current law requires that a license application be submitted prior to commencing operation of the system, but does not specify a date certain by which the application must be submitted.

## ETHICS COMMISSION (ETH)

- Modifies the filing fees for the disclosure statements required to be filed by certain pubic offices with the appropriate ethics commission.

### Ethics disclosure statements

(R.C. 102.02(E))

The bill modifies the filing fees for the disclosure statements required to be filed by certain public offices with the appropriate ethics commission. The general filing fee, which is the filing fee for public offices not specifically identified and assigned a special dollar amount, is increased from $40 to $60. The special filing fee for a member of the State Board of Education is increased from $25 to $35. And for members appointed to the Ohio Livestock Care Standards Board, the bill clarifies that they are subject to the general filing fee.

## EXPOSITIONS COMMISSION (EXP)

- Adds the Director of Natural Resources or the Director's designated representative to the membership of the Ohio Expositions Commission.

### Membership

(R.C. 991.02)

The bill adds the Director of Natural Resources or the Director's designated representative to the membership of the Ohio Expositions Commission as an ex officio member with voting rights. Currently, the Commission is composed of the Directors of Development and Agriculture or their designated representatives, who are ex officio members with voting rights, the chairpersons of the standing committees in the House of Representatives and the Senate to which matters dealing with agriculture are generally referred, who are nonvoting members, and nine members appointed by the Governor. The Commission is responsible for conducting the Ohio State Fair and managing the State Fairgrounds.

# DEPARTMENT OF HEALTH (DOH)

## Patient Centered Medical Home Education Program

- Establishes the Patient Centered Medical Home Education Program within the Ohio Department of Health (ODH).

- Requires the ODH Director, to the extent funds are available, to implement the existing Patient Centered Medical Home Education Pilot Project.

- Authorizes the ODH Director to adopt rules defining what constitutes a "patient centered medical home" for purposes of an entity authorized to provide care coordination services, rather than defining a "health home" as provided under current law.

- Maintains, in part, the existing Patient Centered Medical Home Education Advisory Group, but specifies that the Advisory Group is to provide recommendations to the ODH Director rather than serve as a decision-making body.

- Removes the limit on the number of physician practices that may be permitted to participate in the Pilot Project and provides that a practice is ineligible to participate in the Pilot Project unless the practice submitted an application not later than April 15, 2011.

- Eliminates the authority of the Advisory Group to appoint an executive director and employ other necessary staff and a requirement that, upon securing funding, the Advisory Group provide participating practices in the Pilot Project reimbursement for up to 75% of the cost incurred in purchasing health information technology.

- Includes curricula for physician assistants in the patient centered medical home model of care curricula development program required by existing law.

## Informed consent brochures

- Requires ODH to publish on its web site instead of causing to be published materials that inform a pregnant woman seeking an abortion about family planning, pregnancy and childbirth assistance, adoption agencies, and probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus at certain points during the pregnancy.

- Eliminates the duty of ODH to produce more than one copy of the materials described above to any person, hospital, physician, or medical facility that requests more than one copy.

- Eliminates the affirmative defense available to a physician or agent of the physician in a civil action that the physician or agent of the physician requested hard copies of the materials from ODH and ODH failed to produce them.

### Abolishment of Public Health Council

- Abolishes the Public Health Council and transfers the Council's duties to the ODH Director.

### Home health agency criminal records checks

- Revises the law governing criminal records checks for employment positions with home health agencies.

- Permits the Director of ODH to adopt rules that require employees of home health agencies to undergo criminal records checks and database reviews.

- Creates a database review process regarding employment positions with home health agencies.

- Provides that a criminal records check for an employment position with a home health agency is not required for an applicant or employee found by a database review to be ineligible for the position.

- Revises the list of disqualifying offenses that may make an individual ineligible for an employment position with a home health agency.

### The Ohio Violent Death Reporting System

- Requires the Director of ODH to establish and maintain the Ohio Violent Death Reporting System to monitor the incidence and causes of various types of violent deaths in Ohio.

- Requires the Director to adopt rules necessary to establish, maintain, and carry out the purposes of the Reporting System.

- Establishes confidentiality requirements for information, data, and records collected for use and maintained by, and all work products created in carrying out the purposes of, the Reporting System.

### Certificate of Need Program

- Modifies terms used in certificate of need (CON) law to reflect previous changes that limit the law to projects related to long-term care facilities.

- With respect to a CON application, specifies that (1) the application fee is nonrefundable unless the Director of ODH determines that the application cannot be accepted and (2) the Director's determination that a CON application is not complete is final and not subject to appeal.

- Eliminates a provision allowing, and in some cases requiring, a community public informational hearing on a CON application.

- Eliminates a requirement that the Director invite interested parties to a meeting requested by one or more people about a CON application.

- Requires the Director to consider all written comments received regarding a CON application, but eliminates the requirement that an administrative hearing be conducted when written comments are received.

- Establishes requirements that must be met on completion of a project under which beds are relocated after approval of a CON application, including an application approved during the initial phase of a four-year review period.

- Eliminates requirements that the Director (1) regularly conduct health system data collection and analysis for the CON program, prepare reports, and make recommendations and (2) issue, and annually review and revise, a state health resources plan.

- Eliminates a provision requiring the Public Health Council to authorize the creation of one or more nursing home placement clearinghouses.

- Provides that the Director's determination that a CON has expired is final and not subject to appeal.

- Provides that persons whose sole involvement with a CON application is testifying or submitting written comments on the application are not "affected persons" and therefore are no longer permitted to appeal.

- Modifies the process for reviewing applications for replacement or relocation of long-term care beds from a county with excess beds to a county with fewer beds than needed.

- Modifies requirements for the review of applications for an increase in beds in an existing nursing home to limit the increase to a total of no more than 30 beds for all applications combined.

- Requires the Director to accept applications for replacement CONs under certain conditions.

- Requires the Director as part of the determination of the long-term care bed supply to include beds in a hospital that are registered as special skilled nursing beds, long-term beds, or long-term care beds.

- Eliminates the requirement that the Director designate health service areas and health service agencies for each area and all requirements related to health service areas and agencies.

- Makes technical and conforming changes.

### Other provisions

- Provides that rules governing nursing homes (1) cannot prescribe the number of social workers that nursing homes with 120 or fewer beds must employ, (2) must require each nursing home with more than 120 beds to employ one social worker on a full-time basis, and (3) must require each nursing home to offer its residents medically related social services that assist the residents in attaining or maintaining their highest practicable physical, mental, and psychosocial well-being.

- Decreases the penalty for late payment of a fee charged by ODH under the Radiation Control Program to an additional 10% of the original fee when the fee remains unpaid on the 91st day after the invoice date, in place of the existing fee assessments made as follows: (1) two times the original fee if not paid within 90 days and (2) five times the original fee if not paid within 180 days.

## Patient Centered Medical Home Education Program

### Overview

The bill provides that the temporary Patient Centered Medical Home Education Pilot Project currently administered by the Patient Centered Medical Home Education Advisory Group be administered instead as a temporary Pilot Project by the Ohio Department of Health (ODH) within a permanent Patient Centered Medical Home Education Program. The Advisory Group is to provide recommendations to the ODH Director regarding the Program rather than serve as a decision-making body for the Pilot Project.

### Pilot Project – background

(R.C. Chapter 185.)

The Patient Centered Medical Home Education Pilot Project was established by Sub. H.B. 198 of the 128th General Assembly for the purpose of advancing medical education in the patient centered medical home model of care. This model of care is described in current law and the bill as an "enhanced model of primary care in which care teams attend to the multifaceted needs of patients, providing whole person comprehensive and coordinated patient centered care." Currently, the Pilot Project is to provide financial support to physician and practices and advanced practice nurse primary care practices to support this model of care.

### Establishment of Patient Centered Medical Home Education Program

(R.C. 185.01 (3701.92), 3701.921, and 3701.922; R.C. 3701.032 (repealed))

The bill establishes within ODH the Patient Centered Medical Home Education Program and applies the purposes of the existing Pilot Project – to advance education in the patient centered medical home model of care – to that Program. The ODH Director is authorized to do any of the following to implement the Program:

(1) The Director may develop and implement programs of education or training on the patient centered medical home model of care or other similar enhanced models of coordinated patient centered care that are intended to address the multifaceted needs of patients and provide whole person comprehensive and coordinated patient centered care.

(2) The Director may advise, consult, cooperate with, and assist, by contract or other arrangement, government agencies or institutions or private organizations, corporations, or associations in the development and promotion of programs pertaining to the evaluation and implementation of the patient centered medical home model of care or other similar enhanced models of coordinate patient centered care.

(3) In addition to being required, to the extent funds are available, to implement the Pilot Project described below, the Director may establish additional pilot projects that evaluate or implement, or provide education or training in the patient centered medical home model of care or other similar enhanced models of coordinated patient centered care.

(4) The Director may seek and administer state funds or grants from other sources to carry out any function of the Program. Any funds or grants received by the ODH Director for purposes of the Program are to be used for the Program.

(5) The ODH Director may adopt rules to implement and administer the Program, including definitions on what constitutes a "patient centered medical home" for purposes of identifying an entity authorized to provide care coordination services. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). The bill eliminates the Director's authority under current law to define a "health home" for the same purpose.

### Patient Centered Medical Home Education Pilot Project

(R.C. 185.02 (3701.923), 185.06 (3701.926), and 185.07 (3701.927); 185.04 (repealed), 185.08 (repealed), 185.10 (repealed), and 185.11 (repealed))

To the extent that funds are available, the Program is to include the Patient Centered Medical Home Education Pilot Project established under existing law, with certain modifications. The ODH Director is to do all of the following if the Pilot Project is implemented:

(1) Select practices led by physicians and primary care practices led by advanced practice nurses to participate in the Pilot Project and make the selection in accordance with current law that specifies requirements that apply to participating practices;[75]

(2) Conduct the Pilot Project in a manner that advances education in the patient centered medical home model of care;

(3) Evaluate learning opportunities generated by the Pilot Project, training of physicians and advanced practice nurses under the Pilot Project, costs of the Pilot Project, and the extent to which the Pilot Project met expected outcomes developed by the Advisory Group;

(4) Assess and review results of the Pilot Project;

(5) Recommend best practices and opportunities for improving technology, education, comprehensive training, consultation, and technical assistance for health care service providers in the patient centered medical home model of care.

In implementing the Pilot Project, the ODH Director is authorized to contract with an entity that has significant experience in assisting physician-led practices and advanced practice nurse-led primary care practices in transitioning to the patient

[75] These include certification requirements, capacity to adapt the practice to comply with standards for the operation of a patient centered medical home, and any other criteria established by the ODH Director (rather than the Advisory Group).

centered medical home model of care. Such a contract is to require that the entity do both of the following:

(1) For each participating practice, provide comprehensive training, consultation, and technical assistance in the operation of a patient centered medical home, including assistance with leadership training, scheduling changes, staff support, and care management for chronic health conditions;

(2) Assist the ODH Director in identifying necessary financial and operational requirements and any barriers or challenges associated with transitioning to a patient centered medical home model of care.

Although existing law requires the submission of a final report on the project (see "**Reports**," below), it does not specifically establish a beginning and ending date, for the Pilot Project. The bill provides that the Pilot Project is to begin when the first practice begins to participate in the Project and end no later than two years after the final practice selected by the ODH Director begins participation.

While the Pilot Project to be administered by the ODH Director retains in large part the provisions of existing law's Pilot Project, the following provisions that apply to the Pilot Project under current law are modified as follows:

(1) Participating practices are to be selected by the ODH Director, rather than the Advisory Group;

(2) The limit of 40 physician practices that may participate in the Pilot Project is removed;

(3) A practice must have submitted an application to participate not later than April 15, 2011;

(4) A practice must enter into a contract with the ODH Director to participate, rather than with the Advisory Group.

The bill provides that the contract entered into with the ODH Director may include requirements regarding the number of patients served by the practice who are Medicaid recipients and individuals without health insurance. The contract is also required to specify that a participating practice provide *comprehensive, coordinated primary care services* rather than *primary care services*.

As part of the transfer to ODH, the bill eliminates all of the following as they relate to the Pilot Project:

(1) Authority of the Advisory Group to appoint an executive director and employ other staff considered necessary;

(2) A requirement, on securing funding, to provide reimbursement to participating practices for up to 75% of the cost incurred in purchasing necessary health information technology;

(3) Authority of the Advisory Group to seek funding and hold the funds in an account to support the Pilot Project.

### Patient Centered Medical Home Education Advisory Group

(R.C. 185.03 (3701.924) and 185.05 (3701.925))

The existing Patient Centered Medical Home Education Advisory Group is recreated in a modified form under the bill with substantially the same membership. The Advisory Group will no longer be responsible for implementing and administering the Pilot Project, instead acting as a recommending body to the ODH Director on the Pilot Project specifically and the Program generally. The Advisory Group is required to develop and provide to the ODH Director a set of expected outcomes for the Pilot Project.

The responsibility of the Advisory Group to select practice participants for the Pilot Project is eliminated. The Advisory Group is instead to provide recommendations to the ODH Director; the recommendations must be made in accordance to the requirements specified under existing law.[76] The Advisory Group is to provide a copy of all applications received to the ODH Director after making its recommendations.

The composition of the Advisory Group is modified in part by the bill. Members who were appointed by a recommending authority are no longer appointed by that authority and instead are appointed by the ODH Director, in consultation with their respective recommending authority. Under the bill, recommended members serve at the pleasure of the ODH Director. In addition, former nonvoting, ex officio members are included as full voting members. The bill adds an employee of ODH and no more than five additional members with relevant expertise, appointed by the ODH Director.

In making the original appointments to the recreated Advisory Group, the ODH Director is required to appoint members serving on the existing Advisory Group on the effective date. If one of those members is unable to serve, the ODH Director is to

[76] These include requirements to recommend practices with certain affiliations and a diverse range of specialties and to consider the percentage of patients served by the practice who are part of a medically underserved population.

request from the specified recommending authority a list of no less than two persons qualified to serve on the Advisory Group and appoint one of those recommended. This process is also to be used in filling a vacancy.

In its organization, the ODH Director, rather than the Advisory Group, is to appoint from its members a chairperson and vice-chairperson. The bill provides that the Advisory Group is to meet not less than annually and at the call of the ODH Director. The bill maintains an existing provision requiring that members serve without compensation. The Advisory Group must have a majority of a quorum to make any recommendations, and a majority of the members of the Advisory Group constitutes a quorum.

### Curricula development

(R.C. 185.09 (3701.928))

Existing law requires the Advisory Group, as part of the Pilot Project, to jointly work with all medical and nursing schools in Ohio to develop appropriate curricula designed to prepare primary care physicians and advanced practice nurses to practice within the patient centered medical home model of care.

The bill provides that the ODH Director, or at the Director's request the Advisory Group, is *authorized*, rather than *required*, to work with medical, nursing, and *physician assistant* schools or programs in the development of the curricula. The bill also provides that the curricula and training components designed to prepare professionals to practice in the patient centered medical home model of care is to include physician assistants as well as physicians and nurses. Similarly, the bill provides that access to the curricula developed be extended to physician assistants. Rather than being required to work in association with medical and nursing schools to identify funding sources to ensure the development of this curricula, the bill provides that the ODH Director or Advisory Group is *authorized* to work in association with medical, nursing, and *physician assistant* schools or programs to identify those funding sources.

### Reports

(R.C. 185.12 (3701.929))

The bill maintains the requirement that two reports on the Pilot Project be submitted to the Governor, President and Minority Leader of the Senate, Speaker and Minority Leader of the House of Representatives, and Director of the Legislative Service Commission. However, the bill provides that the reports are to be prepared by the ODH Director and specifies different deadlines. The first report is to be issued not later than six months after the last practice enters into a contract with the ODH Director to

participate in the Project, rather than when the first funding for the Project is released. The final report is to be issued not later than two years after the last practice enters into a contract with the ODH Director to participate in the Project.

## Informed consent brochures

(R.C. 2317.56)

Current law requires the Department of Health *to cause to be published* in English and in Spanish the following materials:

(1) Materials that inform a pregnant woman about family planning information, of publicly funded agencies that are available to assist in family planning, and of public and private agencies and services that are available to assist her through the pregnancy, upon childbirth, and while the child is dependent, including, but not limited to, adoption agencies;

(2) Materials that inform a pregnant woman of the probable anatomical and physiological characteristics of the zygote, blastocyte, embryo, or fetus at two-week gestational increments for the first 16 weeks of pregnancy and at four-week gestational increments from the 17th week of pregnancy to full term, including any relevant information regarding the time at which the fetus possibly would be viable.

The bill instead requires the Department to *publish* the above materials *on the Department's web site*.

Under current law, the Department is required to provide the requested number of copies of the above materials to any person, hospital, physician, or medical facility that requests one or more copies of the materials. The bill requires the Department to provide only one copy of the materials to any person, hospital, physician, or medical facility that requests a copy.

### Affirmative defenses to a civil action for failure to provide informed consent materials

Current law unchanged by the bill provides that an abortion may be performed or induced only if several conditions are satisfied, except in cases when there is a medical emergency or medical necessity. One of these conditions is that at least 24 hours prior to the performance or inducement of the abortion one or more physicians or their agents must do each of the following in person, by telephone, by certified mail, return receipt requested, or by regular mail evidenced by a certificate of mailing:

(1) Inform the pregnant woman of the name of the physician who is scheduled to perform or induce the abortion.

(2) Give the pregnant woman copies of the materials described above under "**Informed consent brochures**."

(3) Inform the pregnant woman that the materials described above under "**Informed consent brochures**," are *provided* by the state and that they describe the embryo or fetus and list agencies that offer alternatives to abortion.

Additionally, current law unchanged by the bill provides that a physician who performs or induces an abortion with actual knowledge that any of the conditions mentioned above have not been satisfied or with a heedless indifference as to whether those conditions have been satisfied is liable in compensatory and exemplary damages in a civil action to any person, or the representative of the estate of any person, who sustains injury, death, or loss to person or property as a result of the failure to satisfy those conditions.

Current law provides the following three affirmative defenses to a civil action described in the preceding paragraph:

(1) The physician performed or induced the abortion because of a medical emergency or medical necessity.

(2) The physician made a good faith effort to satisfy the conditions mentioned above.

(3) The physician or an agent of the physician requested copies of the materials described above under "**Informed consent brochures**," but the physician was not able to give a pregnant woman copies of the materials because the Department failed to make the requested number of copies available to the physician or agent.

The bill eliminates this affirmative defense.

## Abolishment of Public Health Council

(R.C. 3701.02 (repealed), 3701.12 (repealed), 3701.33 (repealed), 3701.34 (repealed), and 3701.35 (repealed); conforming changes in Sections 601.50 and 601.51 and R.C. 140.03, 140.05, 313.121, 313.122, 313.16, 339.091, 955.16, 955.26, 1923.02, 2307.89, 2907.29, 3313.71, 3701.021, 3701.023, 3701.024, 3701.025, 3701.03, 3701.05, 3701.07, 3701.072, 3701.11, 3701.132, 3701.146, 3701.161, 3701.20, 3701.201, 3701.21, 3701.221, 3701.23, 3701.232, 3701.24, 3701.241, 3701.242, 3701.248, 3701.341, 3701.342, 3701.343, 3701.344, 3701.345, 3701.347, 3701.352, 3701.40, 3701.507, 3701.508, 3701.509, 3701.57, 3701.87, 3702.52, 3702.522, 3702.57, 3702.58, 3705.24, 3709.03, 3709.04, 3709.06, 3709.09, 3709.092, 3709.32, 3709.35, 3710.01, 3710.02, 3710.04, 3710.05, 3710.051, 3710.06, 3710.07, 3710.08, 3710.09, 3710.10, 3710.12, 3710.13, 3710.17, 3711.04, 3711.06, 3711.08, 3711.12, 3711.21, 3712.03,

3712.04, 3712.09, 3715.01, 3715.025, 3715.60, 3715.61, 3715.62, 3715.68, 3716.01, 3716.03, 3717.01, 3717.04, 3717.05, 3717.07, 3717.45, 3717.51, 3718.02, 3718.021, 3718.022, 3718.05, 3718.06, 3718.07, 3718.09, 3721.01, 3721.011, 3721.03, 3721.032, 3721.04, 3721.07, 3721.121, 3721.13, 3721.21, 3721.28, 3721.29, 3723.06, 3723.07, 3723.09, 3725.02, 3727.42, 3729.02, 3729.03, 3729.04, 3729.07, 3729.08, 3730.10, 3733.02, 3733.021, 3733.022, 3733.025, 3733.04, 3733.05, 3733.091, 3733.10, 3733.101, 3733.13, 3733.41, 3733.42, 3734.01, 3742.01, 3742.02, 3742.03, 3742.04, 3742.05, 3742.30, 3742.47, 3742.50, 3748.04, 3748.05, 3748.10, 3748.12, 3748.15, 3748.20, 3749.02, 3749.03, 3749.04, 3781.06, 4731.22, 4736.01, and 4773.08)

The bill abolishes the Public Health Council, which was created in 1917 as part of the Ohio Department of Health (ODH).[77] The bill transfers the Council's duties to the ODH Director.

Under current law, the Council is required to consider any matter relating to the preservation and improvement of the public health and to advise the ODH Director accordingly. The Council must conduct hearings in cases when ODH is required by law to give hearings; the Council's decisions govern the ODH Director's subsequent actions. The Council must prescribe by rule the number and functions of divisions and bureaus within ODH and the qualifications of their chiefs.

The Council has general authority to adopt, amend, and rescind rules of general application throughout Ohio. Several statutes require the Council to adopt rules governing ODH's programs pertaining to public health, including rules regarding the following:

--Prevention and treatment of certain health conditions and diseases;

--Infectious disease surveillance and investigation;

--Licensing and operation of certain health care facilities and providers, including nursing homes, residential care facilities, and hospice care programs;

--Implementation of the Certificate of Need Program, which governs the number and distribution of long-term care facilities in the state;

--Implementation of Ohio's Pure Food and Drug Law, establishment of the Ohio Uniform Food Safety Code, and licensure of food service operations;

--Licensing of asbestos abatement, lead abatement, and radon professionals and workers;

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[77] ODH, *Public Health Council* (last visited March 16, 2012), available at <http://www.odh.ohio.gov/rules/publicHealthCouncil/publicHealthCouncil.aspx>.

--Regulation of handlers of radiation-generating equipment of radioactive material under the Radiation Control Program and licensure of general x-ray machine operators, radiographers, radiation therapy technologists, or nuclear medicine technologists;

--Installation and maintenance of private water systems and sewage treatment systems;

--Licensing and operation of public swimming pools and public spas;

--Licensing and operation of manufactured home parks and recreational vehicle parks.

### Transition provisions

(Section 737.10)

For purposes of transferring the Council's duties to the ODH Director, the bill specifies the following:

(1) Any business commenced by the Council but not completed before the transfer is to be completed by the Director;

(2) No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer;

(3) Rules, orders, and determinations of the Council continue to be in effect after the transfer, until modified or rescinded by the Director;

(4) Any action or proceeding that is pending when the transfer occurs is not affected by the transfer and is to be prosecuted or defended in the name of the Director.

## Home health agency criminal records checks

(R.C. 3701.881 (primary), 109.57, 109.572, 1121.23, 1155.03, 1163.05, 1315.141, 1321.37, 1321.53, 1321.531, 1322.03, 1322.031, 1733.47, 1761.26, 2151.86, 3712.09, 3721.121, 4763.05, 5104.012, 5104.013, and 5104.09; Sections 610.10, 610.11, 620.10, 620.11, and 751.20)

The bill revises the law governing criminal records checks for employment positions with home health agencies.

Current law requires applicants to undergo a criminal records check conducted by the Bureau of Criminal Identification and Investigation (BCII). There are two types of applicants under current law: (1) persons under final consideration for appointment

to or employment with home health agencies in positions as persons responsible for the care, custody, or control of children and (2) persons under final consideration for employment with a home health agency in a full-time, part-time, or temporary position (but not a volunteer position) that involves providing direct care to a person age 60 or older. Different procedures and disqualifying offenses apply to the two types of applicants. For example, the chief administrator of a home health agency generally is the person who is required to request that BCII conduct a criminal records check of an applicant. However, a chief administrator is not required to make the request for an applicant who is referred to the home health agency by an employment service for a position that involves providing direct care to persons age 60 or older if (1) the chief administrator receives from the employment service or applicant a criminal records check report regarding the applicant that BCII conducted within the one-year period immediately preceding the applicant's referral and (2) the report demonstrates that the applicant has not been convicted of or pleaded guilty to a disqualifying offense or, despite having been convicted of or pleaded guilty to a disqualifying offense, the applicant meets personal character standards specified in rules adopted by the Ohio Department of Health (ODH).

The bill makes the criminal records check processes and database reviews (see "**Database reviews**," below) uniform for applicants. Instead of distinguishing between two types of applicants based on whether children or older adults will receive care, the bill provides that an applicant is a person under final consideration for employment with a home health agency in a full-time, part-time, or temporary position that involves providing direct care to an individual or is referred to a home health agency by an employment service for such a position. As a result, the criminal records check and database review requirements apply to applicants who will provide direct care to persons of any age and volunteers are no longer expressly excluded. "Direct care" is defined as any of the following:

(1) Skilled nursing care, physical therapy, speech-language pathology, occupational therapy, medical social services, or home health aide services provided in a patient's place of residence used as the patient's home;

(2) Any activity that requires the person performing the activity to be routinely alone with a patient or to routinely have access to a patient's personal property or financial documents regarding a patient;

(3) For each home health agency individually, any other routine service or activity that the agency's chief administrator designates as direct care.

### Employees subject to database reviews and criminal records checks

The act that established the criminal records check requirement for an applicant seeking a position with a home health agency in which the applicant would be responsible for the care, custody, or control of children, Am. Sub. S.B. 38 of the 120th General Assembly, provided that the requirement applies only to persons seeking such employment on or after October 29, 1993. The act that established the criminal records check requirement for an applicant seeking a position with a home health agency in a position that involves providing direct care to a person age 60 or older, Am. Sub. S.B. 160 of the 121st General Assembly, provided that the requirement applies only to persons seeking such employment on or after January 27, 1997. The bill eliminates these exemptions and permits the ODH Director to adopt rules that require employees to undergo criminal records checks. The rules also may require employees to undergo database reviews that the bill creates (see "**Database reviews**," below). An employee is a person employed by a home health agency in a full-time, part-time, or temporary position that involves providing direct care to an individual and a person who works in such a position due to being referred to a home health agency by an employment service. The ODH Director may exempt one or more classes of employees from the database review and criminal records check requirements. If the rules require employees to undergo database reviews and criminal records checks, the rules must specify the times at which the database reviews and criminal records checks are to be conducted.

Continuing law permits a home health agency to charge an applicant a fee regarding a criminal records check if the agency notifies the applicant of the fee at the time the applicant initially applies for employment and Medicaid does not reimburse the home health agency the fee it pays for the criminal records check. The fee may not exceed the amount that the home health agency pays to BCII for the criminal records check. The bill does not authorize a home health agency to charge an employee a fee regarding a criminal records check.

A home health agency may not employ an applicant who fails to provide the information necessary to complete a BCII criminal records check form or to provide fingerprint impressions on a BCII standard impression sheet if the home health agency requests the applicant to do so. Under the bill, a home health agency is prohibited from employing an applicant or continuing to employ an employee who fails to complete the form or provide the employee's fingerprint impressions on the BCII impression sheet if the home health agency provides the form and impression sheet to the applicant or employee.

### Database reviews

The bill creates a database review process. An applicant is to undergo a database review as a condition of employment with a home health agency in a position that involves providing direct care to an individual. If the ODH Director's rules so require, an employee is to undergo a database review as a condition of continuing employment with a home health agency in such a position. A database review is to determine whether an applicant or employee is included in any of the following:

(1) The excluded parties list system operated by the United States General Services Administration (GSA);

(2) The list of excluded individuals and entities operated by the Office of Inspector General (OIG) in the United States Department of Health and Human Services;

(3) The registry of MR/DD employees operated by the Department of Developmental Disabilities;

(4) The Internet-based sex offender and child-victim offender database operated by BCII;

(5) The Internet-based database of inmates operated by the Department of Rehabilitation and Correction (DRC);

(6) The state nurse aide registry operated by ODH;

(7) Any other database, if any, the ODH Director is permitted to specify in rules.

The bill prohibits a home health agency from employing an applicant or continuing to employ an employee if a database review reveals any of the following:

(1) The applicant or employee is included in GSA's excluded parties list system, OIG's list of excluded individuals and entities, the registry of MR/DD employees, BCII's Internet-based sex offender and child-victim offender database, or DRC's Internet-based database of inmates.

(2) There is in the state nurse aide registry a statement detailing findings by the ODH Director that the applicant or employee neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident.

(3) The applicant or employee is included in one or more of the other databases that the ODH Director may specify in rules and the rules prohibit a home health agency

from employing an applicant or employee included in such a database in a position that involves providing direct care to an individual.

An applicant or employee is not required to undergo a criminal records check in addition to a database review if the applicant or employee is found by the database review to be ineligible for the job.

The chief administrator of a home health agency is required to inform each applicant that a database review will be conducted to determine whether the agency is prohibited from employing the applicant. The chief administrator also must inform each applicant about the criminal records check requirement. However, the notification requirement may not apply if the applicant is referred by an employment service (see "**Referrals by an employment service**," below).

### Conditional employment

An applicant may be employed conditionally by a home health agency before a criminal records check is completed. The terms of conditional employ vary for the different types of applicants under current law. For example, an applicant for a position in which the applicant would be responsible for the care, control, or custody of a child may be employed conditionally until the criminal records check is completed and the home health agency receives the results. But an applicant for a position that involves providing direct care to a person age 60 or older may be employed conditionally if the home health agency requests the criminal records check not later than five business days after the applicant begins conditional employment and the home health agency must terminate the conditional employment if the results, other than results from the Federal Bureau of Investigation (FBI), are not obtained within the period ending 30 days after the date the request is made.

The bill makes the terms of conditional employment uniform for all applicants. Under the bill, a home health agency may conditionally employ an applicant before obtaining the results of a criminal records check if the agency is not prohibited by a database review from employing the applicant and either of the following applies:

(1) The agency's chief administrator requests the criminal records check not later than five business days after the applicant begins conditional employment.

(2) The applicant is referred to the home health agency by an employment service, the employment service or the applicant provides the agency's chief administrator a letter that is on the letterhead of the employment service, the letter is dated and signed by a supervisor or another designated official of the employment service, and the letter states all of the following:

(a) That the employment service has requested BCII to conduct a criminal records check of the applicant;

(b) That the requested criminal records check is to include a determination of whether the applicant has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for an offense that makes the applicant ineligible for the job at the home health agency (see "**Disqualifying offenses**," below);

(c) That the employment service has not received the results of the criminal records check as of the date set forth on the letter;

(d) That the employment service promptly will send a copy of the results of the criminal records check to the home health agency's chief administrator when the employment service receives the results.

If a home health agency conditionally employs an applicant who is referred by an employment service, the employment service, on receiving the results of the criminal records check, must promptly send a copy of the results to the agency's chief administrator.

The home health agency must terminate the conditional employment of an applicant, regardless of whether the applicant is referred to the agency by an employment service or applies directly to the agency, if the results of the criminal records check, other than the results of any request for information from the FBI, are not obtained within the period ending 30 days after the date the request for the criminal records check is made. Regardless of when the results are obtained, if the results indicate that the applicant has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, the home health agency must terminate the applicant's employment unless the applicant meets personal character standards specified in the ODH Director's rules and the agency chooses to employ the applicant.

### Referrals by an employment service

The bill maintains certain provisions of current law regarding applicants who are referred to home health agencies by employment services and applies the provisions to database reviews and employees who work at home health agencies due to being referred by employment services. Under these provisions, a home health agency is not required to subject an applicant or employee to a database review or criminal records check if the applicant or employee is referred to the home health agency by an employment service and both of the following apply:

(1) The agency's chief administrator receives from the employment service confirmation that a database review was conducted of the applicant or employee;

(2) The chief administrator receives from the employment service, applicant, or employee a report of the results of a criminal records check of the applicant or employee that has been conducted by BCII within the one-year period immediately preceding the following:

(a) In the case of an applicant, the date of the applicant's referral by the employment service to the home health agency;

(b) In the case of an employee, the date by which the home health agency would otherwise have to request a criminal records check of the employee.

### Disqualifying offenses

Current law prohibits a home health agency from employing a person in a position in which the person is responsible for the care, custody, or control of a child if the person previously has been convicted of or pleaded guilty to a disqualifying offense. However, a home health agency may employ such a person in such a position if the person meets standards in regard to rehabilitation set by ODH in rules. A home health agency is prohibited from employing a person in a position that involves providing direct care to a person age 60 or older if the person previously has been convicted of or pleaded guilty to a disqualifying offense unless the person meets personal character standards specified in ODH rules. There are differences in the lists of disqualifying offenses for the two types of positions.

Under the bill, a home health agency may not employ an applicant or continue to employ an employee in a position that involves providing direct care to an individual if the applicant or employee is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense unless the applicant or employee meets personal character standards specified in rules to be adopted by the ODH Director.

The following is the uniform list of disqualifying offenses:

(1) One or more of the following offenses: cruelty to animals (R.C. 959.13); aggravated murder (R.C. 2903.01); murder (R.C. 2903.02); voluntary manslaughter (R.C. 2903.03); involuntary manslaughter (R.C. 2903.04); reckless homicide (R.C. 2903.041); felonious assault (R.C. 2903.11); aggravated assault (R.C. 2903.12); assault (R.C. 2903.13); permitting child abuse (R.C. 2903.15); failing to provide for a functionally impaired person (R.C. 2903.16); aggravated menacing (R.C. 2903.21); menacing by stalking (R.C. 2903.211); menacing (R.C. 2903.22); patient abuse or neglect (R.C. 2903.34); patient

endangerment (R.C. 2903.341); kidnapping (R.C. 2905.01); abduction (R.C. 2905.02); criminal child enticement (R.C. 2905.05); extortion (R.C. 2905.11); coercion (R.C. 2905.12); rape (R.C. 2907.02); sexual battery (R.C. 2907.03); unlawful sexual conduct with a minor (R.C. 2907.04); sexual imposition (R.C. 2907.05); sexual imposition (R.C. 2907.06); importuning (R.C. 2907.07); voyeurism (R.C. 2907.08); public indecency (R.C. 2907.09); compelling prostitution (R.C. 2907.21); promoting prostitution (R.C. 2907.22); procuring (R.C. 2907.23); soliciting (R.C. 2907.24); prostitution (R.C. 2907.25); disseminating matter harmful to juveniles (R.C. 2907.31); pandering obscenity (R.C. 2907.32); pandering obscenity involving a minor (R.C. 2907.321); pandering sexually oriented matter involving a minor (R.C. 2907.322); illegal use of a minor in nudity-oriented material or performance (R.C. 2907.323); deception to obtain matter harmful to juveniles (R.C. 2907.33); aggravated arson (R.C. 2909.02); arson (R.C. 2909.03); disrupting public service (R.C. 2909.04); support of terrorism (R.C. 2909.22); terroristic threats (R.C. 2909.23); terrorism (R.C. 2909.24); aggravated robbery (R.C. 2911.01); robbery (R.C. 2911.02); aggravated burglary (R.C. 2911.11); burglary (R.C. 2911.12); breaking and entering (R.C. 2911.13); theft (R.C. 2913.02); unauthorized use of property (R.C. 2913.04); telecommunications fraud (R.C. 2913.05); passing bad checks (R.C. 2913.11); misuse of credit cards (R.C. 2913.21); forgery (R.C. 2913.31); criminal simulation (R.C. 2913.32); Medicaid fraud (R.C. 2913.40); acts constituting prima-facie evidence of purpose to defraud (R.C. 2913.41); tampering with records (R.C. 2913.42); securing writings by deception (R.C. 2913.43); personating an officer (R.C. 2913.44); unauthorized display of emblems related to law enforcement on motor vehicles (R.C. 2913.441); defrauding creditors (R.C. 2913.45); illegal use of Supplemental Nutrition Assistance Program benefits or WIC program benefits (R.C. 2913.46); insurance fraud (R.C. 2913.47); Workers' Compensation fraud (R.C. 2913.48); identity fraud (R.C. 2913.49); recovering stolen property (R.C. 2913.51); inciting to violence (R.C. 2917.01); aggravated riot (R.C. 2917.02); riot (R.C. 2917.03); disturbing a lawful meeting (R.C. 2917.12); inducing panic (R.C. 2917.31); abortion without informed consent (R.C. 2919.12); unlawful abortion (R.C. 2919.121); unlawful distribution of an abortion-inducing drug (RU-486) (R.C. 2919.123); endangering children (R.C. 2919.22); interference with custody (R.C. 2919.23); contributing to unruliness or delinquency (R.C. 2919.24); domestic violence (R.C. 2919.25); intimidation (R.C. 2921.03); perjury (R.C. 2921.11); falsification (R.C. 2921.13); compounding a crime (R.C. 2921.21); disclosure of confidential information (R.C. 2921.24); assaulting police dog, horse, or assistance dog (R.C. 2921.321); escape (R.C. 2921.34); aiding escape or resistance to authority (R.C. 2921.35); prohibited conveying of certain items onto property of state facilities (R.C. 2921.36); impersonation of certain officers (R.C. 2921.51); carrying concealed weapons (R.C. 2923.12); conveyance or possession of deadly weapons or dangerous ordnance in school safety zone (R.C. 2923.122); illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance in a courthouse (R.C. 2923.123); having weapons while under disability (R.C. 2923.13); improperly

discharging firearm at or into habitation or school safety zone (R.C. 2923.161); discharge of firearm on or near prohibited premises (R.C. 2923.162); improperly furnishing firearms to minor (R.C. 2923.21); engaging in a pattern of corrupt activity (R.C. 2923.32); criminal gang activity (R.C. 2923.42); corrupting another with drugs (R.C. 2925.02); trafficking (R.C. 2925.03); illegal manufacture of drugs or cultivation of marihuana (R.C. 2925.04); illegal assembly or possession of chemicals used to manufacture a controlled substance (R.C. 2925.041); funding of drug or marihuana trafficking (R.C. 2925.05); illegal administration or distribution of anabolic steroids (R.C. 2925.06); sale or use of drugs not approved by the U.S. Food and Drug Administration (R.C. 2925.09); permitting drug abuse (R.C. 2925.13); use, possession, or sale of drug paraphernalia (R.C. 2925.14); deception to obtain a dangerous drug (R.C. 2925.22); illegal processing of drug documents (R.C. 2925.23); tampering with drugs (R.C. 2925.24); illegal dispensing of drug samples (R.C. 2925.36); unlawful purchase or receipt of a pseudoephedrine product (R.C. 2925.55); unlawful sale of a pseudoephedrine product (R.C. 2925.56); ethnic intimidation (R.C. 2927.12); or adulteration of food (R.C. 3716.11);

(2) One or more violations of the former offense of felonious sexual penetration (former R.C. 2907.12);

(3) One or more violations of the former offense of child stealing as that offense existed before July 1, 1996 (former R.C. 2905.04);

(4) One violation of the offense of drug possession when the violation is not a minor drug possession offense;

(5) Two or more violations of the offense of drug possession, regardless of whether any of the violations are a minor drug possession offense;

(6) One or more violations of conspiracy, attempt to commit an offense, or complicity in the commission of an offense when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in (1) to (5) above;

(7) One or more violations of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in (1) to (6) above.

### Release of criminal records check report

Continuing law provides that a criminal records check report is not a public record and may be released only to certain persons. The bill provides that a report may be released to a court, hearing officer, or other necessary individual involved in a case dealing with a civil or criminal action regarding Medicaid.

## The Ohio Violent Death Reporting System

(R.C. 3701.93 to 3701.9314)

Subject to available funds, the bill requires the Director of Health to establish the Ohio Violent Death Reporting System to collect and maintain information, data, and records regarding violent deaths in Ohio.

### Duties of the Reporting System

Regarding the violent death information, data, and records it maintains, the Reporting System must do all of the following:

(1) Monitor the incidence and causes of the various types of violent deaths;

(2) Make appropriate epidemiologic studies of the violent deaths;

(3) Analyze trends and patterns in, and circumstances related to, the violent deaths;

(4) With the assistance of the advisory group established by the Director of Health under the bill (see discussion below), recommend actions to relevant entities to prevent violent deaths and make any other such recommendations the Director determines necessary.

### Data collection

The bill requires that the data collection model used by the Reporting System follow the data collection model used by the United States Centers for Disease Control and Prevention National Violent Death Reporting System and any other data collection model set forth by the Director of Health in rules.

The bill requires the Director of Health to adopt rules in accordance with the Administrative Procedures Act that do all of the following:

(1) If determined appropriate by the Director, set forth any other data collection model to be used by the Reporting System;

(2) Specify the types of violent deaths that shall be included in the Reporting System;

(3) Specify the information, data, and records to be collected for use by the Reporting System;

(4) Specify the sources from which the information, data, and records are to be collected for use by the Reporting System.

The bill also specifies that the Director is permitted to collect information about violent deaths in Ohio only from existing sources related to violent crimes and explicitly prohibits the Director from conducting independent criminal investigations in order to obtain information, data, or records for use by the Reporting System.

### Data sharing

The bill requires that every state department, agency, and political subdivision in Ohio provide information, data, and records, and otherwise assist in the execution of the Reporting System at the request of the Director of Health. Notwithstanding any section of the Revised Code pertaining to confidentiality, the bill also specifically requires any individual, public social service agency, or public agency that provides services to individuals or families, law enforcement agency, coroner, or public entity that provided services to an individual whose death is a violent death, to provide information, data, records, and otherwise assist in the execution of the Reporting System.

Similarly, the bill permits (but does not require) any other individual or entity, at the individual's or entity's discretion, to provide information, data, records, and otherwise assist in the execution of the Reporting System at the request of the Director. Any information, data, and records provided to the Director by any other individual or entity must contain only information, data, or records that are available or reasonably drawn from any information, data, and record developed and kept in the normal course of business.

### Confidentiality

Except as otherwise provided for confidential information made available to researchers under the bill, the following are not public records under the Public Record Law, they are confidential, and they are to be published only in statistical form:

(1) Information, data, and records collected for use and maintained by the Reporting System including, but not limited to, medical records, law enforcement investigative records, coroner investigative records, laboratory reports, and other records concerning a decedent;

(2) Work products created in carrying out the purposes of the Reporting System.

### Researcher access to confidential information

The bill requires the Director of Health to adopt rules in accordance with the Administrative Procedures Act to establish standards and procedures to make available to researchers confidential information collected by the Reporting System. Researchers complying with those standards and procedures also must comply with the bill's confidentiality requirements described above.

### Exemption from subpoena or discovery

Information, data, and records collected for use and maintained by, and all work products created in carrying out the purposes of, the Reporting System are not subject to subpoena or discovery while in the possession of the Reporting System or admissible in any criminal or civil proceeding if obtained through, or from, the Reporting System.

### Advisory group

The bill requires the Director of Health to establish an advisory group of interested parties and stakeholders to recommend actions to relevant entities to prevent violent deaths and make other recommendations the Director determines necessary.

### General rule-making authority

The bill permits the Director to adopt additional rules in accordance with the Administrative Procedures Act necessary to establish, maintain, and carry out the purposes of the Reporting System.

## Certificate of Need Program

(R.C. 3702.51, 3702.511, 3702.52, 3701.521 (repealed), 3702.522 (3702.521), 3702.523 (3702.522), 3702.524 (3702.523), 3702.525 (3702.524), 3702.526 (3702.525), 3702.526 (new), 3702.527 (new), 3702.5210 (repealed), 3702.5211 (repealed), 3702.5212 (repealed), 3702.5213 (repealed), 3702.53, 3702.531, 3702.54, 3702.55, 3702.56, 3702.57, 3702.58 (repealed), 3702.59, 3702.591 (repealed), 3702.592, 3702.593, 3702.594, 3702.60, 3702.62, conforming changes in R.C. 1751.01, 1751.02, 1751.13, 3701.503, 3701.63, 3702.141, 3702.31, 3705.30, 3721.01, 3727.01, and 3781.112)

### Certificate of need program applicable to long-term care facilities

The bill updates terms used in the certificate of need (CON) law to reflect that the program now applies only to long-term care facilities. Ohio has had a CON program since the late 1970s. Under the original program, a health care facility was permitted to conduct a "reviewable activity" only if a CON was approved by the Director of Health. Reviewable activities include such activities as building or renovating a facility or

adding additional beds. CON requirements for hospital construction and many other activities related to health care facilities were phased out in the late 1990s, but an approved CON must still be obtained to construct, replace, or renovate a long-term care facility or to add or relocate long-term care beds.

### CON applications

The bill specifies that the fee for a CON application, which is established by administrative rule, is nonrefundable unless the Director of Health determines that the application cannot be accepted. It also specifies that the Director's determination that a CON application is not complete is final and not subject to appeal.

The bill eliminates a provision allowing, and in some cases requiring, a community public informational hearing on a CON application. Under existing law, the Director is permitted to conduct this type of hearing and must do so at the request of an affected person made not later than 15 days after notice that the application is complete is mailed. The hearing must be conducted in the community in which the activities authorized by the CON would be carried out, and any affected person is permitted to testify at the hearing. The Director is permitted to designate a health service agency to conduct the hearing.

The bill also eliminates a requirement that the Director invite interested parties to a meeting or conference call that is requested by one or more people and is about a CON application.

With respect to comments regarding a CON application, the bill requires the Director to consider all written comments received but eliminates the requirement that an administrative hearing be conducted under R.C. Chapter 119. on receipt of the comments. Under current law, the Director must assign a hearing examiner to conduct an administrative hearing concerning a CON application whenever written objections to the application are received. The applicant, Director, and affected persons that filed objections are parties to the hearing, and the affected persons bear the burden of proving by a preponderance of evidence that the project is not needed or that granting the CON would not be in accordance with the CON law.

### Completion of a project to relocate beds

The bill modifies the requirement that must be met on completion of a project under which beds are relocated after approval of a CON application. Under existing law, when a CON application is approved during the initial phase of a four-year review period, on completion of the project, that number of beds must cease to be operated in the health care facility from which they were relocated. If the licensure or certification

of those beds cannot be or is not transferred to the facility to which the beds are relocated, the licensure or certification must be surrendered.

In the bill, these requirements are modified and applied to all projects that relocate beds, not just those in the initial phase of a four-year review period. The bill requires all of the following:

--The end of operation of a number of beds in the long-term care facility equal to the number of beds relocated from the facility, except that the beds may continue to be operated for up to 15 days to allow relocation of residents to the facility to which the beds have been relocated;

--For beds in a nursing home licensed by the Director of Health, the reduction of the license for beds in that facility by the number of licensed beds relocated (the reduction is to occur within 15 days of the relocation with no further action required by the Director);

--The surrender of the certification for any relocated beds that are certified under the Medicare or Medicaid program;

--For beds that are registered with the Department of Health as skilled nursing beds or long-term care beds, removal of the beds from registration not later than 15 days after relocation.

### CON appeals

The bill provides that the Director's determination that a CON has expired is final and not subject to appeal.

The bill also provides that persons whose sole involvement with a CON application is testifying or submitting written comments on the application are not "affected persons" and therefore are no longer permitted to appeal a decision regarding the application.

### Replacements CONs

The bill requires the Director to accept applications for replacement CONs under certain conditions. Replacement CONs are for any change in the bed capacity or site, or any other failure to conduct a reviewable activity in substantial accordance with the approved application for which a CON concerning long-term care beds was granted, if the change is made within five years after the implementation of the reviewable activity for which the CON was granted. The Director must accept the application if (1) the applicant is the same as the applicant for the approved CON or an affiliate or related person, (2) the source of any long-term care beds to be relocated is the same as in the

approved CON, and (3) the application for the approved CON was not subject to comparative review.

For the purpose of determining whether long-term care beds are from an existing long-term care facility, the Director must consider the date of filing of the application for a replacement CON to be the same as the date of filing of the original application for the approved CON.

The Director must not accept an application for a replacement CON that proposes to increase the number of long-term care beds to be relocated specified in the application for the approved CON.

The bill requires an applicant for a replacement CON to submit with the application a nonrefundable fee equal to the application fee for the approved CON.

Any long-term care beds that were approved in the approved CON remain approved in the application for a replacement CON. Upon approval of the application for a replacement CON, the original CON is automatically voided.

### Review of applications for replacement or relocation of long-term beds

The bill modifies the process for reviewing applications for replacement or relocation of long-term beds from a county with excess beds to a county with fewer beds than needed.

It requires comparative review for some applications, rather than requiring comparative review for all applications as under current law. Under the bill, comparative review is required if two or more applications are submitted during the same review period and any of the following applies:

--The applications propose to relocate beds from the same county and the number of beds for which CONs are being requested totals more than the number of beds available in the county from which beds are to be relocated.

--The applications propose to relocate beds to the same county and the number of beds for which CONs are being requested totals more than the number of beds needed in the county to which the beds are to be relocated.

--The applications propose to relocate beds from the same service area and the number of beds left in the service area from which the beds are being relocated would be less than the state bed need rate determined by the Director.

The bill permits a person who has submitted a bed replacement or relocation application that is not subject to comparative review to revise the site of the proposed project.

### Review of applications for an increase in beds in an existing nursing home

The bill modifies requirements for the review of applications for an increase in beds in an existing nursing home to limit the increase to a total of no more than 30 beds for all applications combined. Once the cumulative total of beds relocated reaches 30, the bill prohibits further applications from being accepted until the monitoring period expires.

### Determination of long-term care bed supply

The bill requires the Director as part of the determination of long-term care bed supply to include beds in a hospital that are registered as skilled nursing beds, long-term care beds, or special skilled nursing beds.

### Health system data

The bill eliminates requirements that the Director regularly conduct health system data collection and analysis activities for the CON program, prepare reports, and make recommendations to the Public Health Council based on these activities.

### State health resources plan

The bill repeals a requirement that the Director issue, and annually review and revise, a state health resources plan. Current law requires this plan to include (1) a description of the optimal quantity and distribution of all health services, facilities, and other resources in this state, (2) a description of existing deficiencies in the health resources of this state, and (3) a description of excess health resources in this state.

### Nursing home placement clearinghouses

The bill eliminates a provision requiring the Public Health Council to adopt rules authorizing creation of nursing home placement clearinghouses. Under existing law, any public or private agency or facility may apply to the Department to serve as a nursing home placement clearinghouse. The Department is authorized to approve one or more clearinghouses, as long as no more than one is approved in any county. Hospitals may utilize a nursing home placement clearinghouse prior to admitting a patient to a skilled nursing bed within the hospital and prior to keeping a patient in a skilled nursing bed within a hospital in excess of 30 days. The Department must provide a list of designated nursing home placement clearinghouses to hospitals on at least an annual basis.

### Health service areas

The bill repeals the requirement that the Director designate health service areas and health service agencies for each area. It removes all requirements related to health service areas and health service agencies from existing law.

### Technical and conforming changes

The bill eliminates CON provisions that are obsolete due to elapsed time periods or the resolution of pending cases. It also relocates existing definitions of "health service," "health care facility," "osteopathic hospital," "children's hospital," and "freestanding birthing center" to Revised Code sections outside the CON law.

## Nursing homes' social worker staff requirements

(R.C. 3721.04)

The bill establishes restrictions and requirements the Director of Health must follow when adopting rules regarding the number and qualifications of personnel in nursing homes or rules regarding social services to be provided by nursing homes. The bill prohibits the rules from prescribing the number of individuals licensed as social workers that a nursing home with 120 or fewer beds must employ. The rules must require each nursing home with more than 120 beds to employ on a full-time basis one individual licensed as a social worker. The rules also must require each nursing home to offer its residents medically related social services that assist the residents in attaining or maintaining their highest practicable physical, mental, and psychosocial well-being.

## Late fees under the Radiation Control Program

(R.C. 3748.04, 3748.07, 3748.12, and 3748.13)

The bill decreases the penalty for late payment of a fee charged by the Department of Health under the Radiation Control Program to an additional 10% of the original fee when the fee remains unpaid on the 91st day after the invoice date. Under current law, when fees are not paid timely by a generator of low-level radioactive waste or handler of radiation-generating equipment, the fees are assessed as follows:

--Two times the original fee if not paid within 90 days (a penalty of an additional 100% of the original fee);

--Five times the original fee if not paid within 180 days (a penalty of an additional 400% of the original fee).

# OFFICE OF HEALTH TRANSFORMATION (OHT)

## Identification of health transformation initiatives and adoption of operating protocols for state agencies

- Authorizes the Executive Director of the Office of Health Transformation or the Director's designee to facilitate the coordination of operations and exchange of information between certain state agencies.

- In furtherance of the authority described above, requires the Executive Director or the Director's designee to identify each health transformation initiative in Ohio that involves the participation of two or more state agencies ("participating agencies") and that permits or requires an interagency agreement to be entered into for purposes of specifying each participating agency's role in the initiative or facilitating the exchange of data or other information for the initiative.

- For each identified health transformation initiative, requires the Executive Director or the Director's designee to adopt, in consultation with each participating agency, one or more operating protocols for the initiative.

- Specifies that provisions in an operating protocol supersede any conflicting provisions in an interagency agreement.

- Specifies certain terms an operating protocol is required and permitted to include.

- Specifies that an operating protocol has the same force and effect as an interagency agreement or data sharing agreement, and requires each participating agency to comply with it.

- Requires the Director of Job and Family Services to determine whether a waiver of federal Medicaid requirements or a Medicaid state plan amendment is necessary to fulfill the bill's requirements and to apply for such a waiver or state plan amendment if necessary.

## Exchange of protected health information and personally identifiable information related to and in support of health transformation initiatives

- Consistent with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, authorizes participating agencies to exchange "protected health information" (as defined by the HIPAA Privacy Rule) with each other relating to eligibility for or enrollment in a health plan or relating to participation in a government program providing public benefits if the exchange of information is necessary for operating a health plan or coordinating, or improving the

administration or management of, the health care-related functions of at least one government program providing public benefits.

- Only for fiscal year 2013, authorizes a participating state agency to exchange "personally identifiable information" (as defined by the bill) for purposes related to and in support of an identified health transformation initiative.

- Imposes certain conditions on a participating agency's use or disclosure of personally identifiable information.

### Use and disclosure of protected health information by covered entities

- Enacts, into state law, federal requirements for a covered entity's (as defined by the HIPAA Privacy Rule) use and disclosure of protected health information.

- Specifies that any state or local requirement that conflicts with the state law requirements referenced above, or that conflicts with other provisions of the bill pertaining to the confidentiality, privacy, security, or privileged status of protected health information, is generally unenforceable.

- Restricts the circumstances under which a covered entity may disclose protected health information to an "approved health information exchange" without valid authorization from the individual who is the subject of the information or the individual's personal representative.

- Specifies that a covered entity that uses or discloses protected health information in conformance with the bill is immune from civil liability, criminal prosecution, and professional disciplinary action arising out of or relating to the use or disclosure.

### Standard authorization form – use and disclosure of protected health information and substance abuse records

- Requires the Director of ODJFS, in consultation with the Office of Health Transformation, to adopt rules prescribing a standard authorization form meeting federal requirements for the use and disclosure of protected health information and substance abuse records.

- Requires a standard authorization form adopted by the Director to be accepted by any person or governmental entity in Ohio as valid authorization for the use or disclosure of protected health information and substance abuse records to the persons or governmental entities specified in the form.

- Specifies that the bill does not preclude a form other than a standard authorization form from being accepted as valid authorization for the use or disclosure of

protected health information and substance abuse records in Ohio if the other form meets all federal requirements.

### Health information exchanges

- Authorizes the Director, in consultation with the Office of Health Transformation, to adopt rules to establish standards the Director must use to approve regional and statewide health information exchanges operating in Ohio and for other purposes related to approved health information exchanges.

### Identification of health transformation initiatives

(R.C. 191.06(A) to (C))

For fiscal year 2013 only, the bill authorizes the Executive Director of the Office of Health Transformation or the Director's designee to facilitate the coordination of operations and exchange of information between state agencies.[78] The bill specifies that the purpose of the Executive Director's authority is to support agency collaboration for health transformation purposes, including modernization of the Medicaid program, streamlining of health and human services programs in Ohio, and improving the quality, continuity, and efficiency of health care and health care support systems in Ohio.

In furtherance of the Executive Director's authority, the Executive Director or the Director's designee must identify each health transformation initiative in Ohio that involves the participation of two or more state agencies and that permits or requires an interagency agreement to be entered into for the purposes of specifying each participating agency's role in coordinating, operating, or funding the initiative, or facilitating the exchange of data or other information for the initiative. The bill requires the Executive Director to publish a list of the identified health transformation initiatives on the Internet web site maintained by the Office of Health Transformation.

[78] The bill defines "state agency" as each of the following: the Department of Aging; the Department of Alcohol and Drug Addiction Services; the Department of Development; the Department of Developmental Disabilities; the Department of Education; the Department of Health; the Department of Insurance; the Department of Job and Family Services; the Department of Mental Health; the Department of Rehabilitation and Correction; the Department of Taxation; the Department of Veterans Services; and the Department of Youth Services (R.C. 191.01(H)).

## Operating protocols for the initiatives

### Adoption of the protocols

(R.C. 191.06(D))

For each health transformation initiative that is identified as described above, the Executive Director of the Office of Health Transformation or the Director's designee must, in consultation with each participating agency, adopt one or more operating protocols. The bill specifies that notwithstanding any statute or rule adopted by a state agency, the provisions in a protocol supersede any provisions in an interagency agreement. These include statutes that authorize the Director of Job and Family Services to enter into (1) contracts or agreements with public and private entities and make grants to public and private entities[79] and (2) contracts with one or more other state agencies or political subdivisions to have the state agency or political subdivision administer one or more components of the Medicaid program, or one or more aspects of a component, under the Department of Job and Family Services' supervision.[80]

### Operating protocol contents

(R.C. 191.06(E))

An operating protocol that is adopted as described above must include both of the following:

(1) All terms necessary to meet the requirements of "other arrangements" between a covered entity and a business associate that are referenced in a provision of the HIPAA Privacy Rule;[81]

(2) If known, the date on which the protocol will terminate or expire.

In addition, the bill permits a protocol to specify the extent to which each participating agency is responsible and accountable for completing the tasks necessary for successful completion of the initiative, including tasks related to the following components of the initiative: workflow, funding, and exchange of date or other information that is confidential pursuant to state or federal law.

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[79] R.C. 5101.10.

[80] R.C. 5111.91.

[81] 45 C.F.R. 164.314(a)(2)(ii).

### Status of and compliance with an operating protocol

(R.C. 191.06(F))

The bill specifies that an operating protocol has the same force and effect as an interagency agreement or data sharing agreement, and each participating agency must comply with it.

### Medicaid waiver or state plan amendment

(R.C. 191.06(G))

The bill requires the Director of Job and Family Services to determine whether a waiver of federal Medicaid requirements or a Medicaid state plan amendment is necessary to fulfill the bill's provisions on operating protocols. If the Director determines a waiver or amendment is necessary, the Director must apply for it to the U.S. Secretary of Health and Human Services.

## Exchange of protected health information and personally identifiable information related to and in support of health transformation initiatives

### Identification of government programs providing public benefits

(R.C. 191.02)

The bill requires the Executive Director of the Office of Health Transformation, in consultation with all of the following individuals, to identify each government program administered by a state agency that is to be considered a "government program providing public benefits" for purposes of the bill's provision governing the authority of state agencies to exchange protected health information with each other (see "**Exchange of protected health information**," below): the Director of Aging, the Director of Alcohol and Drug Addiction Services, the Director of Development, the Director of Developmental Disabilities, the Director of Health, the Director of Job and Family Services, the Director of Mental Health, the Director of Rehabilitation and Correction, the Director of Veterans Services, the Director of Youth Services, the Administrator of the Rehabilitation Services Commission, the Administrator of Workers' Compensation, the Superintendent of Insurance, the Superintendent of Public Instruction, and the Tax Commissioner.

### Exchange of protected health information

(R.C. 191.04(A))

The bill authorizes a state agency to exchange protected health information with another state agency relating to eligibility for or enrollment in a health plan[82] or relating to participation in a government program providing public benefits if the exchange of information is necessary for either or both of the following:

(1) Operating a health plan;

(2) Coordinating, or improving the administration or management of, the health care-related functions of at least one government program providing public benefits.

The exchange of protected health information must be in accordance with federal laws governing the confidentiality of individually identifiable health information. These laws include HIPAA and regulations promulgated to implement HIPAA.

### Exchange of personally identifiable information

(R.C. 191.04(B))

For fiscal year 2013 only, the bill also permits a state agency to exchange personally identifiable information[83] with another state agency for purposes related to and in support of an identified health transformation initiative (see "**Identification of health transformation initiatives**," above).

### Conditions for the use or disclosure of personally identifiable information

(R.C. 191.04(C))

With respect to a state agency that uses or discloses personally identifiable information, the bill specifies that all of the following conditions apply:

(1) The state agency must use or disclose the information only as permitted or required by state and federal law. In addition, if the information is obtained during fiscal year 2013 from an exchange of personally identifiable information permitted by

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[82] "Health plan" is defined in federal regulations (45 C.F.R. 160.103) to mean an individual or group plan that provides, or pays the cost of, medical care (as defined in section 2791(a)(2) of the Public Health Services Act, 42 U.S.C. 300gg-91(a)(2)).

[83] The bill defines "personally identifiable information" as information that meets both of the following criteria: (1) it identifies an individual or there is reasonable basis to believe that it may be used to identify an individual, and (2) it relates to an individual's eligibility for, application for, or receipt of public benefits from a government program providing public benefits (R.C. 191.01(G)).

the bill as described above, the agency must also use or disclose the information in accordance with all operating protocols that apply to the use or disclosure.

(2) If the state agency is a state agency other than the Department of Job and Family Services and it uses and discloses protected health information relating to a Medicaid recipient, the agency must also comply with all state and federal laws that apply to the Department when it, as Ohio's single state agency to supervise the Medicaid program, uses or discloses protected health information.

(3) A state agency must implement administrative, physical, and technical safeguards for the purpose of protecting the confidentiality, integrity, and availability of personally identifiable information the creation, receipt, maintenance, or transmittal of which is affected or governed by an operating protocol.

(4) If a state agency discovers an unauthorized use or disclosure of unsecured protected health information or unsecured individually identifiable health information, the state agency must, not later than 72 hours after the discovery, do all of the following:

(a) Identify the individuals who are the subject of the protected health information or individually identifiable health information;[84]

(b) Report the discovery and the names of all individuals identified as described above to all other state agencies and the Executive Director of the Office of Health Transformation or the Director's designee;

(c) Mitigate, to the extent reasonably possible, any potential adverse effects of the unauthorized use or disclosure.

(5) A state agency must make available to the Executive Director of the Office of Health Transformation or the Director's designee, and to any other state or federal governmental entity required by law to have access on that entity's request, all internal

[84] "Protected health information" is defined in federal regulations (45 C.F.R. 160.103) to generally mean individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. "Individually identifiable health information" (also defined in federal regulations (45 C.F.R. 160.103)) is health information, including demographic information collected from an individual, that meets all of the following criteria: (1) it is created or received by a health care provider, a health plan, an employer, or a health care clearinghouse, (2) it relates to (a) the past, present, or future physical or mental health or condition of an individual, (b) the provision of health care to an individual, or (c) the past, present, or future payment for the provision of health care to an individual, and (3) it identifies the individual, or there is reasonable basis to believe it could be used to identify the individual.

practices, records, and documentation relating to personally identifiable information it receives, uses, or discloses that is affected or governed by an operating protocol.

(6) On termination or expiration of an operating protocol and if feasible, a state agency shall return or destroy all personally identifiable information received directly from or received on behalf of another state agency. If the personally identifiable information is not returned or destroyed, the state agency maintaining the information must extend the protections described above for as long as it is maintained.

(7) If a state agency enters into a subcontract or, when required by federal regulations,[85] a business associate agreement, the subcontract or agreement shall require the subcontractor or business associate to comply with the bill's provisions discussed above as if the subcontractor or business associate were a state agency.

## Use and disclosure of protected health information by covered entities

(R.C. 3798.03, 3798.04, and 3798.06)

### Overview

The bill generally enacts provisions in state law (1) requiring covered entities[86] to comply with requirements established by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule, and (2) prohibiting covered entities from violating prohibitions established by the HIPAA Privacy Rule. According to the U.S. Department of Health and Human Services, the HIPAA Privacy Rule, promulgated by the U.S. Secretary of Health and Human Services and otherwise known as the "standards for privacy of individually identifiable health information," provides federal protections for personal health information held by covered entities and gives patients an array of rights with respect to that information while at the same time permitting the disclosure of personal health information needed for patient care and other important purposes.[87]

### Requirements

With respect to protected health information, the bill requires a covered entity to do both of the following:

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[85] 45 C.F.R. 164.502(e)(2).

[86] "Covered entity" is defined in federal regulations (45 C.F.R. 160.103) to mean a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered by the HIPAA Privacy Rule.

[87] U.S. Department of Health and Human Services, *Understanding Health Information Privacy* (last visited March 12, 2012), accessible at <http://www.hhs.gov/ocr/privacy/hipaa/understanding/index.html>.

(1) If an individual's protected health information[88] is maintained by the covered entity in a designated record set,[89] provide the individual or the individual's representative with access to that information in a manner consistent with a specified provision of the HIPAA Privacy Rule.[90]

(2) Implement and maintain appropriate administrative, technical, and physical safeguards to protect the privacy of protected health information in a manner consistent with a specified provision of the HIPAA Privacy Rule.[91]

The bill provides that if a covered entity is a hybrid entity,[92] the requirements apply only to the health care component[93] of the hybrid entity.

### Prohibitions – in general

With respect to protected health information, the bill prohibits a covered entity from doing either of the following:

(1) Using or disclosing protected health information without patient authorization that is valid pursuant to a specified provision of the HIPAA Privacy

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[88] "Protected health information" is defined in federal regulations (45 C.F.R. 160.103) to generally mean individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. "Individually identifiable health information" (also defined in federal regulations (45 C.F.R. 160.103)) is health information, including demographic information collected from an individual, that meets all of the following criteria: (1) it is created or received by a health care provider, a health plan, an employer, or a health care clearinghouse, (2) it relates to (a) the past, present, or future physical or mental health or condition of an individual, (b) the provision of health care to an individual, or (c) the past, present, or future payment for the provision of health care to an individual, and (3) it identifies the individual, or there is reasonable basis to believe it could be used to identify the individual.

[89] "Designated record set" is defined in federal regulations (45 C.F.R. 164.501) to mean (1) a group of records maintained by or for a covered entity that is: (a) the medical records and billing records about individuals maintained by or for a covered health care provider, (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, or (c) used, in whole or in part, by or for the covered entity to make decisions about individuals.

[90] 45 C.F.R. 164.524.

[91] 45 C.F.R. 164.530(c).

[92] "Hybrid entity" is defined in federal regulations (45 C.F.R. 164.103) to mean a single legal entity: (1) that is a covered entity, (2) whose business activities include both covered and non-covered functions, and (3) that designates health care components in accordance with 45 C.F.R. 164.105(a)(2)(iii)(C).

[93] "Health care component" is defined in federal regulations (45 C.F.R. 164.103) to mean a component or combination of components of a hybrid entity designated by the hybrid entity in accordance with 45 C.F.R. 164.105(a)(2)(iii)(C).

Rule[94] and, if applicable, federal regulations governing the use and disclosure of substance abuse records,[95] except when the use or disclosure is required or permitted without such authorization by specified provisions of the HIPAA Privacy Rule[96] and, if applicable, federal regulations governing the use and disclosure of substance abuse records;[97]

(2) Using or disclosing protected health information in a manner not consistent with a specified provision of the HIPAA Privacy Rule.[98]

### Prohibitions – related to disclosure to a health information exchange

The bill prohibits a covered entity from disclosing protected health information to a health information exchange without an authorization that is valid under a specified provision of the HIPAA Privacy Rule[99] unless all of the following are true:

(1) The disclosure is to an approved health information exchange (see "**Health information exchanges**," below).

(2) The covered entity is a party to a valid participation agreement with the approved health information exchange that meets the requirements in rules the Director of the Ohio Department Job and Family Services (ODJFS) must adopt in consultation with the Office of Health Transformation under the bill (see "**Health information exchanges; Rules – participation agreements**," below).

(3) The disclosure is consistent with all procedures established by the approved health information exchange.

(4) Prior to the disclosure, the covered entity furnishes to the individual or the individual's personal representative[100] a written notice that complies with rules the

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[94] 45 C.F.R. 164.508.

[95] 42 C.F.R. part 2.

[96] Subchapter C of Subtitle A of Title 45 of the Code of Federal Regulations.

[97] 42 C.F.R. part 2.

[98] 45 C.F.R. 164.502.

[99] 45 C.F.R. 164.508.

[100] The bill defines a "personal representative" as a person who has authority under applicable law to make decisions related to health care on behalf of an adult or emancipated minor, or the parent, legal guardian, or other person acting in loco parentis who is authorized under law to make health care decisions on behalf of an unemancipated minor. "Personal representative" does not, however, include the parent or legal guardian of, or another person acting *in loco parentis* to, a minor who consents to the minor's own receipt of health care or a minor who makes medical decisions on the minor's own behalf

ODJFS Director, in consultation with the Office of Health Transformation, must adopt under the bill (see "**Health information exchanges; Rules – processes for various exchange functions**," below).

(5) The covered entity restricts disclosure consistent with other federal law, if any, governing the disclosure.

(6) Unless the minor[101] authorizes the disclosure, the covered entity restricts disclosure of protected health information concerning a minor relating to health care delivered to the minor in a manner that complies with Ohio laws pertaining to circumstances under which a minor may consent to the minor's own receipt of health care or make medical decisions on the minor's own behalf, including circumstances when a minor is examined following sexual assault,[102] diagnosed or treated for venereal diseases,[103] diagnosed or treated for substance abuse,[104] provided medical care while incarcerated in a state correctional facility for one or more adult offenses,[105] or provided outpatient mental health services that exclude the use of medication.[106]

(7) The covered entity restricts disclosure in a manner that is consistent with a written request from the individual or the individual's personal representative to restrict disclosure of all of the individual's protected health information.

(8) The covered entity restricts disclosure in a manner that is consistent with a written request from the individual of the individual's personal representative concerning specific categories of protected health information to the extent that rules the ODJFS Director is to adopt, in consultation with the Office of Health Transformation, require the covered entity to comply with such a request.

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pursuant to law, court approval, or because the minor's parent, legal guardian, or other person acting *in loco parentis* has assented to an agreement of confidentiality between the provider and the minor (R.C. 3798.01(K)).

[101] The bill requires the ODJFS Director to adopt rules for purposes of specifying the criteria a person who is mentally or physically disabled and who is under 21 years of age must meet to be considered a "minor" for purposes of the bill's provisions governing the use and disclosure of protected health information – R.C. 3798.06 and 3798.12 (R.C. 3798.13).

[102] R.C. 2907.29.

[103] R.C. 3709.241.

[104] R.C. 3719.012.

[105] R.C. 5120.172.

[106] R.C. 5122.04.

### Immunity

(R.C. 3798.08)

The bill specifies that a covered entity that accesses or discloses protected health information in a manner that complies with the bill's requirements discussed above and is not in violation of the bill's prohibitions discussed above is not liable in a civil action and is not subject to criminal prosecution or professional disciplinary action arising out of or relating to the use or disclosure.

### Supremacy of bill's provisions

(R.C. 3798.12)

Subject to certain exceptions discussed below, the bill specifies that any of the following pertaining to the confidentiality, privacy, security, or privileged status of protected health information transacted, maintained in, or accessed through a health information exchange is unenforceable if it conflicts with the bill's provisions pertaining to the use and disclosure of protected health information and approved health information exchanges (R.C. Chapter 3798.):

(1) A section of Ohio law not in R.C. Chapter 3798.;

(2) A rule as defined by the Administrative Procedure Act (R.C. Chapter 119.);[107]

(3) An internal management rule as defined by R.C. 111.15;[108]

(4) Guidance issued by an agency;

(5) Orders or regulations of a board of health of a city health district;[109]

(6) Orders or regulations of a board of health of a general health district;[110]

(7) An ordinance or resolution adopted by a political subdivision;[111]

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[107] R.C. 119.01 defines a rule as any rule, regulation, or standard, having a general and uniform operation, adopted, promulgated, and enforced by any agency under the authority of the laws governing such agency, and includes an appendix to a rule. "Rule" does not include any internal management rule of an agency unless the internal management rule affects private rights and does not include any guideline adopted pursuant to R.C. 3301.0714 for a statewide education management information system.

[108] R.C. 111.15 defines an internal management rule as any rule, regulation, bylaw, or standard governing the day-to-day staff procedures and operations within an agency.

[109] R.C. 3709.20.

[110] R.C. 3709.21.

(8) A professional code of ethics.

**Exceptions**

The bill specifies that, notwithstanding the general supremacy of its provisions, the bill does not render unenforceable or restrict in any manner any of the following:

(1) A provision of the Revised Code that on the bill's effective date requires a person or governmental entity to disclose protected health information to a state agency,[112] political subdivision, or other government entity;

(2) The confidential status of proceedings and records within the scope of a peer review committee of a health care entity;[113]

(3) The confidential status of quality assurance program activities and quality assurance records;[114]

(4) The testimonial privilege between a physician or dentist and a patient;[115]

(5) A statute, rule, or other provision described above (see "**Supremacy of bill's provisions**," (1) to (8)) that governs any of the following: (a) the confidentiality, privacy, security, or privileged status of protected health information in the possession or custody of an agency, (b) the process for obtaining from a patient consent to the provision of health care or consent for participation in medical or other scientific research, (c) the process for determining whether an adult has a physical or mental impairment or an adult's capacity to make health care decisions for purposes of the law governing county boards of developmental disabilities (R.C. Chapter 5126.), or (d) the process for determining whether a minor has been emancipated;

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[111] The bill defines a "political subdivision" as 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 (R.C. 3798.01(L)).

[112] The bill defines "state agency" as any one or more of the following: the Department of Aging; the Department of Alcohol and Drug Addiction Services; the Department of Developmental Disabilities; the Department of Education; the Department of Health; the Department of Insurance; the Department of Job and Family Services; the Department of Mental Health; the Department of Rehabilitation and Correction; the Department of Youth Services; the Bureau of Workers' Compensation; the Rehabilitation Services Commission; the Office of the Attorney General; or a health care licensing board created under Title 47 of the Revised Code that possesses individually identifiable health information (see footnote above for definition of "individually identifiable health information").

[113] R.C. 2305.252.

[114] R.C. 5122.32.

[115] R.C. 2317.02(B).

(6) When a minor[116] is authorized to consent to the minor's own receipt of health care or make medical decisions on the minor's own behalf, including circumstances when a minor is examined following sexual assault,[117] diagnosed or treated for venereal diseases,[118] diagnosed or treated for substance abuse,[119] provided medical care while incarcerated in a state correctional facility for one or more adult offenses,[120] or provided outpatient mental health services that exclude the use of medication.[121]

## Standard authorization form – use and disclosure of protected health information and substance abuse records

(R.C. 3798.10)

The bill requires the ODJFS Director, in consultation with the Office of Health Transformation and not later than six months after the bill's effective date, to prescribe by rules adopted in accordance with the Administrative Procedure Act a standard authorization form for the use and disclosure of protected health information by covered entities in Ohio. The form must meet all requirements of a specified provision of the HIPAA Privacy Rule pertaining to authorization forms[122] and, where applicable, federal law governing the use and disclosure of substance abuse records.[123]

If the authorization form prescribed by the ODJFS Director is properly executed by an individual or the individual's personal representative, the bill provides that the form must be accepted by any person or governmental entity in Ohio as valid authorization for the use or disclosure of the individual's protected health information to the persons or governmental entities specified in the form.

The bill specifies that nothing in it precludes a person or governmental entity from accepting as valid authorization for the use or disclosure of protected health information a form, other than one described above, if the other form meets all

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[116] The bill requires the ODJFS Director to adopt rules for purposes of specifying the criteria a person who is mentally or physically disabled and who is under 21 years of age must meet to be considered a "minor" for purposes of the bill's provisions governing the use and disclosure of protected health information – R.C. 3798.06 and 3798.12 (R.C. 3798.13).

[117] R.C. 2907.29.

[118] R.C. 3709.241.

[119] R.C. 3719.012.

[120] R.C. 5120.172.

[121] R.C. 5122.04.

[122] 45 C.F.R. 164.508.

[123] 42 C.F.R. part 2.

requirements specified in the relevant HIPAA Privacy Rule provision[124] and, if applicable, federal law governing the use and disclosure of substance abuse records.[125]

## Health information exchanges

### Rules – standards to approve the exchanges

(R.C. 3798.14)

The bill requires the ODJFS Director, in consultation with the Office of Health Transformation, to adopt rules in accordance with the Administrative Procedure Act for the purpose of establishing standards the Director must use to approve regional and statewide health information exchanges operating in Ohio. The rules may include standards and procedures to be followed by a health information exchange regarding the following:

(1) Satisfaction of certification standards for health information exchanges established by federal statutes or regulations;

(2) Adherence to nationally recognized standards for interoperability;[126]

(3) Access to and use and disclosure of protected health information maintained by or on an approved health information exchange;

(4) Demonstration of adequate financial resources to sustain continued operations in compliance with the rules the Director adopts;

(5) Participation in outreach activities for individuals and covered entities;

(6) Conduct of operations in a transparent manner to promote consumer confidence;

(7) Implementation of security breach notification procedures.

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[124] 45 C.F.R. 164.508.

[125] 42 C.F.R. part 2.

[126] "Interoperability" is defined by the bill to mean the capacity of two or more information systems to exchange information in an accurate, effective, secure, and consistent manner (R.C. 3798.01(G)).

### Rules – processes for various exchange functions

(R.C. 3798.15)

The bill requires the ODJFS Director, in consultation with the Office of Health Transformation, to adopt rules in accordance with the Administrative Procedure Act for the purpose of establishing processes for all of the following:

(1) A health information exchange to apply to the Director for approval to operate as an approved health information exchange in Ohio and, at times specified by the Director, reapproval of such status;

(2) The Director to investigate and resolve concerns and complaints submitted to the Director regarding an approved health information exchange;

(3) A health information exchange to apply for reconsideration of a decision the Director makes under a process established under (1) or (2), above;

(4) Covered entities and approved health information exchanges to enter into participation agreements and enforce the terms of such agreements.

The bill specifies that any decision the ODJFS Director makes in relation to a process established as described above is not subject to an appeal under the Administrative Procedure Act or any other provision of Ohio law.

### Rules – content of participation agreements

(R.C. 3798.16)

The bill requires the ODJFS Director, in consultation with the Office of Health Transformation, to adopt rules in accordance with the Administrative Procedure Act for the purpose of specifying the contents of agreements governing covered entities' participation in approved health information exchanges. At a minimum, the rules must require the content of such participation agreements to include all of the following:

(1) Procedures for a covered entity to disclose an individual's protected health information to an approved health information exchange;

(2) Procedures for a covered entity to access an individual's protected health information from an approved health information exchange;

(3) A written notice to be provided by a covered entity to an individual or the individual's personal representative prior to the covered entity's disclosure of the individual's protected health information to an approved health information exchange;

(4) Documentation the covered entity must use to verify that a notice described in (3), above, has been provided by the covered entity to an individual or the individual's personal representative prior to the disclosure of the individual's protected health information to an approved health information exchange;

(5) Procedures for an individual or the individual's personal representative to submit to the covered entity a written request to place restrictions on the covered entity's disclosure of protected health information to the approved health information exchange;

(6) The standards a covered entity must use to determine whether, and to what extent, to comply with a written request described in (5), above;

(7) The purposes for which a covered entity may access and use protected health information from the approved health information exchange.

**Notice prior to disclosure**

With respect to a written notice described in (3), above, the rules *may* specify that the notice can be incorporated into the covered entity's notice of privacy practices required by a specified provision of the HIPAA Privacy Rule[127] and *must* specify that the notice include the following statements:

(1) The individual's protected health information will be disclosed to the approved health information exchange to facilitate the provision of health care to the individual.

(2) The approved health information exchange maintains appropriate safeguards to protect the privacy and security of protected health information.

(3) Only authorized individuals may access and use protected health information from the approved health information exchange.

(4) The individual or the individual's personal representative has the right to request in writing that the covered entity do either or both of the following: (a) not disclose any of the individual's protected health information to the approved health information exchange, or (b) not disclose specific categories of the individual's protected health information to the exchange.

(5) Any restrictions on the disclosure of protected health information an individual requests as described in (4)(a) or (b), above, may result in a health care

[127] 45 C.F.R. 164.520.

provider not having access to information that is necessary for the provider to render appropriate care to the individual.

(6) Any restrictions on the disclosure of protected health information an individual requests as described in (4)(a), above, must be honored by the covered entity.

(7) Any restrictions on the disclosure of protected health information an individual requests as described in (4)(b), above, must be honored if the restriction is consistent with rules the Director is required to adopt.

## General Assembly's intent

(R.C. 3798.02)

The bill specifies that it is the General Assembly's intent in enacting all of the provisions discussed above (concerning the use and disclosure of protected health information by covered entities, standard authorization forms, and approved health information exchanges) to make the laws of Ohio governing these items consistent with, but generally not more stringent[128] than, the HIPAA Privacy Rule for the purpose of eliminating the barriers to the adoption and use of electronic health records and health information exchanges. The bill specifies that it is also the General Assembly's intent in enacting these provisions to supersede any judicial or administrative ruling issued in Ohio that is inconsistent with the provisions discussed above.

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[128] "More stringent" is defined in federal regulations (45 C.F.R. 160.202) to mean (in the context of a comparison of a provision of state law and a standard, requirement, or implementation specification adopted by the HIPAA Privacy Rule) a state law that meets one or more of the following criteria: (1) with respect to a use or disclosure, the law prohibits or restricts a use or disclosure in circumstances under which such use or disclosure otherwise would be permitted under the HIPAA Privacy Rule, except if the disclosure is (a) required by the U.S. Secretary of Health and Human Services in connection with determining whether a covered entity is in compliance with the HIPAA Privacy Rule, or (b) to the individual who is the subject of the individually identifiable health information, (2) with respect to the rights of an individual who is the subject of the individually identifiable health information, regarding access to or amendment of individually identifiable health information, permits greater rights of access or amendment, as applicable, (3) with respect to information to be provided to an individual who is the subject of the individually identifiable health information about a use, a disclosure, rights, and remedies, provides the greater amount of information, (4) with respect to the form, substance, or the need for express legal permission from an individual, who is the subject of the individually identifiable health information, for use or disclosure of individually identifiable health information, provides requirements that narrow the scope or duration, increase the privacy protections afforded (such as by expanding the criteria for), or reduce the coercive effect of the circumstances surrounding the express legal permission, as applicable, (5) with respect to recordkeeping or requirements relating to accounting of disclosures, provides for the retention or reporting of more detailed information or for a longer duration, (6) with respect to any other matter, provides greater privacy protection for the individual who is the subject of the individually identifiable health information.

# DEPARTMENT OF INSURANCE (INS)

- Eliminates a requirement that employers who employ more than ten workers establish cafeteria plans to allow employees to pay for health insurance coverage by a salary reduction arrangement.

### Cafeteria plans and health insurance coverage by salary reduction

(R.C. 4113.11 (repealed))

The bill eliminates the current law requirement that employers who employ more than ten workers establish cafeteria plans to allow employees to pay for health insurance coverage by a salary reduction arrangement. The current law requirement is contingent on the Superintendent of Insurance receiving written confirmation from the federal government that the rules adopted by the Superintendent pursuant to this provision would permit employers to establish cafeteria plans in accordance with federal law; it appears that this confirmation has not been received.

# DEPARTMENT OF JOB AND FAMILY SERVICES (JFS)

## I. General

- Eliminates the requirement that the Ohio Department of Job and Family Services (ODJFS) report twice a year on the characteristics of individuals participating in or receiving services from programs ODJFS operates.

- Eliminates provisions specifying certain procedures ODJFS is permitted or required to follow in preparing and submitting reports on its programs.

- Requires ODJFS to prepare an annual (rather than biennial) Title XX social services plan and to report on the use of Title XX funds each federal fiscal year (rather than each state fiscal year).

## II. Child Care

- Requires ODJFS to suspend a contract to provide publicly funded child care if (1) the provider receives an improper payment, or (2) ODJFS receives notice that the provider has been charged with certain criminal offenses.

- Prohibits a suspended provider from providing publicly funded child care and requires ODJFS to withhold payment for publicly funded child care provided by a suspended provider.

## III. Temporary Assistance for Needy Families

- Permits ODJFS to adopt rules specifying circumstances under which a county department of job and family services (CDJFS) is not required to take action to recover erroneous payments made under Ohio Works First.

## IV. Health Programs (including Medicaid)

- Requires the ODJFS Director to submit Medicaid reports to the General Assembly semiannually, rather than quarterly, on programs for cost containment, efficiency, and health promotion, and eliminates provisions requiring that each report include information on specified topics.

- Revises the law governing criminal records checks of non-waiver Medicaid providers, applicants for non-waiver Medicaid provider agreements, and owners and prospective owners, officers and prospective officers, board members and prospective board members, and employees and prospective employees of the providers and applicants.

- Permits ODJFS to require a non-waiver Medicaid provider or applicant to determine whether an employee or prospective employee is included in databases specified in rules before requiring the provider or applicant to require the employee or prospective employee to undergo a criminal records check.

- Authorizes the ODJFS Director to adopt rules specifying the circumstances under which a non-waiver Medicaid provider or applicant is prohibited from employing a person who is found by a database review to be included in a database.

- Revises the list of disqualifying offenses that may make an individual ineligible to be a non-waiver Medicaid provider or employee, owner, officer, or board member of a provider or applicant.

- Permits a criminal records check to be made available to a non-waiver Medicaid provider or applicant that requires the criminal records check and to a court, hearing officer, or other necessary individual involved in a case dealing with a civil or criminal action regarding Medicaid.

- Revises the law governing criminal records checks for employment positions that involve providing home and community-based services provided by waiver agencies under ODJFS-administered Medicaid waiver programs.

- Establishes a database review system to precede a criminal records check regarding such positions.

- Permits the ODJFS Director to adopt rules requiring employees to undergo database reviews and criminal records checks as a condition of continuing employment in such positions.

- Revises the list of disqualifying offenses for which a criminal records check regarding such a position is to search.

- Eliminates obsolete provisions regarding existing employees in such positions but provides that the elimination does not preclude ODJFS from taking action against a person who failed to comply with the provisions.

- Revises the law governing criminal records checks of persons seeking or holding Medicaid provider agreements as independent providers under ODJFS-administered Medicaid waivers, including by revising the list of disqualifying offenses for which such a criminal records check is to search.

- Eliminates a provision that excludes the Medicaid managed care system in general from a requirement that ODJFS issue orders regarding Medicaid provider agreements and final fiscal audits pursuant to an adjudication under the Administrative Procedure Act (R.C. Chapter 119.) and, instead, provides that the adjudication requirement does not apply to any action or decision by ODJFS regarding whether to contract with a managed care organization for purposes of the Medicaid managed care system.

- Requires the ODJFS Director to include quality factors and quality-based incentive payments in rules to be adopted under the Medicaid program that modify the hospital inpatient capital reimbursement methodology, establish new diagnosis-related groups, and implement other changes to hospital inpatient and outpatient reimbursement methodologies.

- Permits, rather than requires, ODJFS to designate the Department of Aging to perform assessments of whether Medicaid applicants and recipients need the level of care provided by nursing facilities.

- Requires the ODJFS to recalculate franchise permit fees charged nursing homes, hospital long-term care units, and intermediate care facilities for the mentally

retarded (ICFs/MR) when conditions of existing law are met and 75% or more of the total number of nursing homes, hospital long-term care units, and ICFs/MR receive enhanced Medicaid payments or other state payments equal to 75% or more of their franchise permit fees.

- Requires ODJFS, on receipt of a notice from the Director of Health that an ICF/MR has converted one or more of its beds to providing home and community-based services, to (1) terminate the ICF/MR's franchise permit fee if the Director's notice indicates that the ICF/MR's Medicaid certification has been terminated or (2) redetermine the ICF/MR's franchise permit fee if the Director's notice indicates that the ICF/MR's Medicaid-certified capacity has been reduced.

- Provides for all of the ICF/MR franchise permit fees and associated penalties to be deposited into the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund.

- Requires ODJFS to certify quarterly to the Director of the Office of Budget and Management (OBM) the amount in the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund as of the last day of each quarter and requires the OBM Director to transfer the amount so certified to the Department of Developmental Disabilities (ODODD) Operating and Services Fund.

- Makes a nursing facility's wheelchair and resident transportation costs reimbursable under Medicaid as part of direct care costs rather than ancillary and support costs.

- Clarifies that certain tax costs are a separate category for purposes of nursing facilities' Medicaid rates.

- Provides that all days for which payments are made under the Medicaid program to reserve ICF/MR beds during Medicaid recipients' temporary absences are considered inpatient days and Medicaid days for the purpose of the formulas used to determine Medicaid rates for ICFs/MR.

- Provides that 50% of the days for which payments are made under the Medicaid program to reserve nursing facility beds during Medicaid recipients' temporary absences are considered inpatient days and Medicaid days for the purpose of the formulas used to determine nursing facilities' Medicaid rates.

- Provides for qualifying nursing facilities to receive critical access incentive payments as part of their Medicaid rates.

- Permits the ODJFS Director to seek federal approval for converting up to 500 beds from providing ICF/MR services to home and community-based services.

- Requires that such a conversion of beds be approved only by the ODODD Director rather than both that Director and the ODJFS Director.

- Requires ODJFS, subject to federal approval to increase the Medicaid rate paid to a provider under the Individual Options waiver by 52¢ for each 15 minutes of routine homemaker/personal care provided to an individual for up to a year if (1) the individual was a resident of an ICF/MR, or former ICF/MR, that converted some or all of its beds to providing services under the Individual Options waiver immediately before enrolling in the waiver, (2) the provider begins serving the individual on or after July 1, 2011, and (3) the ODODD Director determines that the increased rate is warranted by the individual's special circumstances and that serving the individual through the Individual Options waiver is fiscally prudent for the Medicaid program.

- Repeals an obsolete law that exempted a nursing facility or ICF/MR from laws regarding the collection of Medicaid debts if the facility underwent a change of operator, closed, or voluntarily ceased participating in Medicaid or on or before September 30, 2005, and provided written notice of the action not later than June 30, 2005.

- Provides that an individual participating in the Money Follows the Person demonstration project may potentially qualify for the Home First component of the Ohio Home Care Program by residing, at the time the individual applies for the program, in an institution for children certified by ODJFS.

- Expresses in statute the authority of the ODJFS Director to operate the existing HOME Choice demonstration component of the Medicaid program to the extent that funds are available under a federal Money Follows the Person demonstration project and authorizes the Director to adopt rules for administration and operation of the component.

- Permits a contract between ODJFS and an entity regarding Ohio Access Success Project fiscal management services to provide for the contract entity to receive a portion of a project participant's benefits.

- Renames the Medicaid Revenue and Collections Fund the Health Care/Medicaid Support and Recoveries Fund.

- Provides for both of the following to be credited to the Health Care/Medicaid Support and Recoveries Fund: (1) federal reimbursement received for disproportionate share hospital payment adjustments made under Medicaid to state mental health hospitals and (2) revenues ODJFS receives from another state agency

for Medicaid services pursuant to an interagency agreement, other than such revenues required to be deposited into the Health Care Services Administration Fund.

- Provides for the first $750,000 that ODJFS receives in a fiscal year for performing eligibility verification services necessary for compliance with a federal regulation regarding independent, certified audits for disproportionate share hospital payments to be credited the Health Care/Medicaid Support and Recoveries Fund and for the remainder to be credited to the Health Care Compliance Fund.

- Permits ODJFS, for fiscal years 2012 and 2013, to deposit into the OHP Health Care Grants Fund federal grants for the administration of health care programs that ODJFS receives under the federal health care reform acts enacted in 2010 and requires ODJFS to use the money in the fund to pay for expenses incurred in carrying out duties that ODJFS assumes by accepting the federal grants.

## I. General

### Reports on ODJFS programs

(R.C. 5101.97 (repealed))

Current law requires the Ohio Department of Job and Family Services (ODJFS) to report twice a year on the characteristics of the individuals who participate in or receive services through the programs operated by ODJFS and the outcomes of their participation in or receipt of services through the programs. The reports must include information on (1) work activities, developmental activities, and alternative work activities established under the Ohio Works First Program, (2) programs of publicly funded child care, (3) child support enforcement programs, and (4) births to Medicaid recipients. The bill eliminates these reports.

Additionally, whenever the federal government requires that ODJFS submit a report on a program it operates or which is otherwise under the ODJFS's jurisdiction, current law requires ODJFS to prepare and submit the report in accordance with the federal requirements applicable to that report. To the extent possible, ODJFS is permitted to coordinate the preparation and submission of a particular report with any other report, plan, or other document required to be submitted to the federal government, as well as with any report required to be submitted to the General Assembly. The reports required by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 may be submitted as an annual summary. The bill eliminates these express requirements and authority from the Revised Code

(although ODJFS would still be required by federal law to comply with any federal requirements regarding reports).

### Title XX state plan and reporting

(R.C. 5101.46)

Current law requires ODJFS, the Ohio Department of Mental Health (ODMH), and the Ohio Department of Developmental Disabilities (ODODD), with their respective local agencies, to provide social services funded by Title XX of the Social Security Act, also known as the Social Services Block Grant. ODJFS is required to prepare a biennial comprehensive Title XX social services plan on the intended use of Title XX funds. For each state fiscal year, ODJFS must prepare a report on the actual use of Title XX funds.

The bill requires instead that ODJFS prepare an ***annual*** Title XX social services plan. Additionally, it requires that ODJFS's report on the actual use of Title XX funds be prepared for each ***federal*** fiscal year. The bill makes corresponding changes to the duties of ODMH, ODODD, and local agencies with respect to their portions of the annual plan and report.

## II. Child Care

### Publicly funded child care contracts suspended for improper payments or criminal activity

(R.C. 5104.37)

Purchases of publicly funded child care are made pursuant to contracts entered into between ODJFS and an eligible child care provider. Under current law, ODJFS may withhold any money due for providing publicly funded child care, and may recover any money erroneously paid, if evidence exists of less than full compliance with the child day-care statutes and rules.

The bill requires ODJFS to suspend immediately a contract to provide publicly funded child care when ODJFS initiates an investigation concerning the provider for either of the following reasons: (1) the provider receives an improper child care payment, or (2) ODJFS receives notice and a copy of an indictment, information, or complaint charging the provider or the owner or operator of the provider with committing either of the following:

(a) An act that is a felony or misdemeanor relating to providing or billing for publicly funded child care or providing management or administrative services relating to providing publicly funded child care;

(b) An act that would constitute one of the offenses that currently disqualify a person from being a child care provider: a violation of the laws prohibiting extortion, aggravated arson, arson, disrupting public services, vandalism, inciting to violence, aggravated riot, riot, inducing panic, intimidation, escape, or aiding escape or resistance to lawful authority, or two violations of the laws against operating a vehicle under the influence of alcohol or drugs if committed while providing child care.

The contract suspension continues until ODJFS completes its investigation or all criminal charges are disposed of through dismissal, a finding of not guilty, conviction, or a plea of guilty. If ODJFS initiates the termination of a contract that has been suspended, the suspension continues until the termination process is completed.

The bill prohibits a provider from providing publicly funded child care while the provider's contract is under suspension. Further, ODJFS must withhold payment to the provider for publicly funded child care as of the date the contract is suspended.

The bill requires ODJFS to notify the provider not later than five days after suspending the contract. The notice must include all of the following:

(1) A description of the investigation or indictment, information, or complaint that resulted in the suspension, which need not disclose specific information concerning any ongoing administrative or criminal investigation;

(2) A statement that the provider is prohibited from providing publicly funded child care while the contract is under suspension;

(3) A statement that the suspension will continue until ODJFS completes its investigation or all criminal charges are disposed of through dismissal, a finding of not guilty, conviction, or a plea of guilty, and that if ODJFS initiates the termination of the contract, the suspension will continue until the termination process is completed.

## III. Temporary Assistance for Needy Families

### Rules governing Ohio Works First erroneous payments

(R.C. 5107.05)

Current law authorizes ODJFS to adopt rules providing that a county department of job and family services (CDJFS) is not required to take action to recover an erroneous payment made under Ohio Works First that is below an amount ODJFS specifies. The bill provides instead that ODJFS may adopt rules providing that a CDJFS is not required to take action to recover an erroneous payment under circumstances the rules specify.

## IV. Health Programs (including Medicaid)

### Medicaid cost containment reports

(R.C. 5111.091)

The ODJFS Director is required to submit quarterly reports to the President and Minority Leader of the Senate, Speaker and Minority Leader of the House of Representatives, and chairpersons of the finance committees of the Senate and House of Representatives on the establishment and implementation of programs designed to control the increase of the cost of the Medicaid program, increase the efficiency of the program, and promote better health outcomes.

Rather than quarterly, the bill requires the Director to submit the reports semiannually – one not later than June 30 and the other not later than December 31 of each calendar year. The bill eliminates the requirement that each report include information regarding the following: provider network management, electronic claims submission and payment systems, limited provider contracts and payments based on performance, efforts to enforce third party liability, implementation of the Medicaid Information Technology System, expansion of the Medicaid Data Warehouse and Decision Support System, and development of infrastructure policies for electronic health records and e-prescribing.

### Criminal records checks for Medicaid providers

(R.C. 5111.032 (primary), 109.57, 109.572, and 5111.031)

Under current law, ODJFS is permitted to require that any of the following submit to a criminal records check: Medicaid providers, applicants to be providers, employees and prospective employees of providers, owners and prospective owners of providers, officers and prospective officers of providers, and board members and prospective board members of providers.

The bill revises this law. The following is a discussion of this law as it is to exist under the bill. Some of the provisions discussed below are included in, or are similar to, current law.

#### Inapplicability

The provisions discussed below do not apply to individuals who are subject to criminal records checks under other provisions of law regarding hospice care programs, nursing homes, residential care facilities, county and district homes, adult day-care programs, Medicaid waiver agencies and independent providers providing home and community-based services available under ODJFS-administered waivers, ODODD,

county boards of developmental disabilities, providers and subcontractors of specialized services for individuals with mental retardation or developmental disabilities, chief executive officers of businesses that provide supported living, independent providers of supported living, and community-based long-term care agencies.

### ODJFS authority to require criminal records checks and database reviews

ODJFS is permitted to do any of the following:

(1) Require that a Medicaid provider or applicant to be a provider submit to a criminal records check as a condition of having a Medicaid provider agreement;

(2) Require that a Medicaid provider or applicant to be a provider require an owner or prospective owner, officer or prospective officer, or board member or prospective board member of the provider or applicant submit to a criminal records check as a condition of being an owner, officer, or board member of the provider or applicant;

(3) Require that any Medicaid provider or applicant to be a provider (a) conduct, if so required by rules the ODJFS Director may adopt, a database review of any employee or prospective employee of the provider or applicant and (b) require the employee or prospective employee to submit to a criminal records check as a condition of being an employee of the provider or applicant unless the provider or applicant is prohibited from employing the employee or prospective employee because of the results of a database review.

### Notice of criminal records check and database review requirements

ODJFS must inform each Medicaid provider and applicant for a Medicaid provider agreement whether the provider or applicant must undergo a criminal records check. The notice must specify which of the provider's or applicant's employees or prospective employees, owners or prospective owners, officers or prospective officers, or board members or prospective board members must undergo criminal records checks. A notice also must specify which of a provider's or applicant's employees are to undergo database reviews.

If ODJFS requires a person who is an owner or prospective owner, officer or prospective officer, or board member or prospective board member of a provider or applicant to undergo a criminal records check, the provider or applicant must inform the person of the requirement. If ODJFS requires an employee or prospective employee of a provider or applicant to undergo a database review or criminal records check, the

provider or applicant must notify the employee or prospective employer of the requirement.

### Termination or denial of Medicaid provider agreement

ODJFS or its designee must terminate a Medicaid provider's provider agreement or deny an applicant's application for a provider agreement if the provider or applicant is required to undergo a criminal records check and either of the following applies:

(1) The provider or applicant fails to obtain the criminal records check after being given information about accessing and completing the criminal records check form prescribed by the Bureau of Criminal Identification and Investigation (BCII) and the standard fingerprint impression sheet prescribed by BCII.

(2) Except as otherwise provided in rules to be adopted by the ODJFS Director, the provider or applicant is found by the criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, date of entry of the guilty plea, or the date the provider or applicant was found eligible for intervention in lieu of conviction.

### Restrictions on being an owner, officer, or board member

A Medicaid provider or applicant for a Medicaid provider agreement may not permit a person to be an owner, officer, or board member of the provider or applicant if the person is required to undergo a criminal records check and either of the following applies:

(1) The person fails to obtain the criminal records check after being given information about accessing and completing the BCII criminal records check form and the BCII standard fingerprint impression sheet.

(2) Except as otherwise provided in rules to be adopted by the ODJFS Director, the person is found by the criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, date of entry of the guilty plea, or the date the person was found eligible for intervention in lieu of conviction.

### Restrictions on being an employee

A Medicaid provider or applicant for a Medicaid provider agreement may not employ a person if any of the following apply:

(1) The person has been excluded from providing services or items under Medicaid, Medicare, or any other federal health care program.

(2) If the person is required to undergo a database review, the person is found by the review to be included in a database and rules the ODJFS Director is to adopt prohibit the provider or applicant from employing a person included in that database.

(3) If the person is required to undergo a criminal records check, either of the following apply:

(a) The person fails to obtain the criminal records check after being given information about accessing and completing the BCII criminal records check form and the BCII standard fingerprint impression sheet.

(b) Except as otherwise provided in rules to be adopted by the ODJFS Director, the person is found by the criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, date of entry of the guilty plea, or the date the person was found eligible for intervention in lieu of conviction.

### Conditional employment

A Medicaid provider or applicant for a Medicaid provider agreement is permitted to employ conditionally a person required to undergo a criminal records check before the provider or applicant obtains the results of the criminal records check if both of the following apply:

(1) The provider or applicant is not prohibited from employing the person because of the results of a database review.

(2) The person submits a request for the criminal records check not later than five business days after the person begins conditional employment.

A provider or applicant that employs a person conditionally must terminate the person's employment if the results of the criminal records check are not obtained within the period ending 60 days after the date the request is made. Regardless of when the results are obtained, if the results indicate that the person has been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, the provider or applicant must terminate the person's employment unless rules to be adopted by the ODJFS Director permit the provider or applicant to employ the person and the provider or applicant chooses to employ the person.

### Disqualifying offenses

The following is the list of disqualifying offenses:

(1) Cruelty to animals (R.C. 959.13); cruelty against a companion animal (R.C. 959.131); aggravated murder (R.C. 2903.01); murder (R.C. 2903.02); voluntary manslaughter (R.C. 2903.03); involuntary manslaughter (R.C. 2903.04); reckless homicide (R.C. 2903.041); felonious assault (R.C. 2903.11); aggravated assault (R.C. 2903.12); assault (R.C. 2903.13); permitting child abuse (R.C. 2903.15); failing to provide for a functionally impaired person (R.C. 2903.16); aggravated menacing (R.C. 2903.21); menacing by stalking (R.C. 2903.211); menacing (R.C. 2903.22); patient abuse or neglect (R.C. 2903.34); patient endangerment (R.C. 2903.341); kidnapping (R.C. 2905.01); abduction (R.C. 2905.02); criminal child enticement (R.C. 2905.05); extortion (R.C. 2905.11); coercion (R.C. 2905.12); rape (R.C. 2907.02); sexual battery (R.C. 2907.03); unlawful sexual conduct with a minor (R.C. 2907.04); sexual imposition (R.C. 2907.05); sexual imposition (R.C. 2907.06); importuning (R.C. 2907.07); voyeurism (R.C. 2907.08); public indecency (R.C. 2907.09); compelling prostitution (R.C. 2907.21); promoting prostitution (R.C. 2907.22); procuring (R.C. 2907.23); soliciting (R.C. 2907.24); prostitution (R.C. 2907.25); disseminating matter harmful to juveniles (R.C. 2907.31); pandering obscenity (R.C. 2907.32); pandering obscenity involving a minor (R.C. 2907.321); pandering sexually oriented matter involving a minor (R.C. 2907.322); illegal use of a minor in nudity-oriented material or performance (R.C. 2907.323); deception to obtain matter harmful to juveniles (R.C. 2907.33); aggravated arson (R.C. 2909.02); arson (R.C. 2909.03); disrupting public service (R.C. 2909.04); support of terrorism (R.C. 2909.22); terroristic threats (R.C. 2909.23); terrorism (R.C. 2909.24); aggravated robbery (R.C. 2911.01); robbery (R.C. 2911.02); aggravated burglary (R.C. 2911.11); burglary (R.C. 2911.12); breaking and entering (R.C. 2911.13); theft (R.C. 2913.02); unauthorized use of a vehicle (R.C. 2913.03); unauthorized use of property (R.C. 2913.04); telecommunications fraud (R.C. 2913.05); passing bad checks (R.C. 2913.11); misuse of credit cards (R.C. 2913.21); forgery (R.C. 2913.31); criminal simulation (R.C. 2913.32); Medicaid fraud (R.C. 2913.40); acts constituting prima-facie evidence of purpose to defraud (R.C. 2913.41); tampering with records (R.C. 2913.42); securing writings by deception (R.C. 2913.43); personating an officer (R.C. 2913.44); unauthorized display of emblems related to law enforcement on motor vehicles (R.C. 2913.441); defrauding creditors (R.C. 2913.45); illegal use of Supplemental Nutrition Assistance Program benefits or WIC program benefits (R.C. 2913.46); insurance fraud (R.C. 2913.47); Workers' Compensation fraud (R.C. 2913.48); identity fraud (R.C. 2913.49); recovering stolen property (R.C. 2913.51); inciting to violence (R.C. 2917.01); aggravated riot (R.C. 2917.02); riot (R.C. 2917.03); inducing panic (R.C. 2917.31); abortion without informed consent (R.C. 2919.12); unlawful abortion (R.C. 2919.121); unlawful distribution of an abortion-inducing drug (RU-486) (R.C. 2919.123); endangering children (R.C. 2919.22);

interference with custody (R.C. 2919.23); contributing to unruliness or delinquency (R.C. 2919.24); domestic violence (R.C. 2919.25); intimidation (R.C. 2921.03); perjury (R.C. 2921.11); falsification (R.C. 2921.13); compounding a crime (R.C. 2921.21); disclosure of confidential information (R.C. 2921.24); assaulting police dog, horse, or assistance dog (R.C. 2921.321); escape (R.C. 2921.34); aiding escape or resistance to authority (R.C. 2921.35); prohibited conveying of certain items onto property of state facilities (R.C. 2921.36); impersonation of certain officers (R.C. 2921.51); carrying concealed weapons (R.C. 2923.12); conveyance or possession of deadly weapons or dangerous ordnance in school safety zone (R.C. 2923.122); illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance in a courthouse (R.C. 2923.123); having weapons while under disability (R.C. 2923.13); improperly discharging firearm at or into habitation or school safety zone (R.C. 2923.161); discharge of firearm on or near prohibited premises (R.C. 2923.162); improperly furnishing firearms to minor (R.C. 2923.21); engaging in a pattern of corrupt activity (R.C. 2923.32); criminal gang activity (R.C. 2923.42); corrupting another with drugs (R.C. 2925.02); trafficking (R.C. 2925.03); illegal manufacture of drugs or cultivation of marihuana (R.C. 2925.04); illegal assembly or possession of chemicals used to manufacture a controlled substance (R.C. 2925.041); funding of drug or marihuana trafficking (R.C. 2925.05); illegal administration or distribution of anabolic steroids (R.C. 2925.06); sale or use of drugs not approved by the U.S. Food and Drug Administration (R.C. 2925.09); drug possession (R.C. 2925.11); permitting drug abuse (R.C. 2925.13); use, possession, or sale of drug paraphernalia (R.C. 2925.14); deception to obtain a dangerous drug (R.C. 2925.22); illegal processing of drug documents (R.C. 2925.23); tampering with drugs (R.C. 2925.24); illegal dispensing of drug samples (R.C. 2925.36); unlawful purchase or receipt of a pseudoephedrine product (R.C. 2925.55); unlawful sale of a pseudoephedrine product (R.C. 2925.56); ethnic intimidation (R.C. 2927.12); or adulteration of food (R.C. 3716.11);

(2) Felonious sexual penetration in violation of former law (former R.C. 2907.12);

(3) A violation of the former offense of child stealing as that offense existed before July 1, 1996 (former R.C. 2905.04);

(4) A violation of conspiracy, attempt to commit an offense, or complicity in the commission of an offense when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in (1) to (3) above;

(5) A violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in (1) to (4) above.

### Release of criminal records check report

The report of a criminal records check is not a public record and is not to be available to any person other than the following:

(1) The subject of the report;

(2) The ODJFS Director and the staff of ODJFS in the administration of Medicaid;

(3) ODJFS's designee;

(4) The Medicaid provider or applicant for a Medicaid provider agreement who required the subject of the report to undergo the criminal records check;

(5) A court, hearing officer, or other necessary individual involved in a case dealing with (a) the denial or termination of a Medicaid provider agreement, (b) a person's denial of employment, termination of employment, or employment or unemployment benefits, or (c) a civil or criminal action regarding Medicaid.

### Rules

The ODJFS Director is permitted to adopt rules to implement the provisions discussed above. If the Director adopts such rules, the rules must designate the times at which a criminal records check must be conducted. The rules may do any of the following:

(1) Designate the categories of persons who are to undergo criminal records checks;

(2) Specify circumstances under which ODJFS or its designee may continue or issue a Medicaid provider agreement when the Medicaid provider or applicant for the Medicaid provider agreement is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense;

(3) Specify circumstances under which a provider or applicant may permit a person to be an employee, owner, officer, or board member of the provider or applicant, when the person is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense;

(4) Specify all of the following:

(a) The circumstances under which a database review must be conducted to determine whether an employee or prospective employee of a provider or applicant is included in a database;

(b) The procedures for conducting the database review;

(c) The databases that are to be checked;

(d) The circumstances under which a provider or applicant is prohibited from employing a person who is found by the database review to be included in a database.

## Medicaid waiver agency criminal records checks

(R.C. 5111.033 (primary), 109.57, and 109.572)

Under current law, the chief administrator of a waiver agency that provides home and community-based services under a Medicaid waiver administered by ODJFS must require employees and applicants to undergo a criminal records check conducted by BCII.

The bill revises this law. The following is a discussion of this law as it is to exist under the bill. Some of the provisions discussed below are included in, or are similar to, current law.

### Inapplicability

The provisions discussed below do not apply to an agency certified under Medicare.

### Database reviews

As a condition of employing an applicant in a position that involves providing home and community-based services available under an ODJFS-administered Medicaid waiver, the chief administrator of a waiver agency must conduct a database review of the applicant in accordance with rules to be adopted by the ODJFS Director. If the rules so require, the waiver agency's chief administrator must conduct a database review of an employee in accordance with the rules as a condition of continuing to employ the employee in a position that involves providing home and community-based services under an ODJFS-administered Medicaid waiver. A database review must determine whether an applicant or employee is included in any of the following:

(1) The excluded parties list system operated by the United States General Services Administration (GSA);

(2) The list of excluded individuals and entities operated by the Office of Inspector General (OIG) in the United States Department of Health and Human Services;

(3) The registry of MR/DD employees operated by ODODD;

(4) The Internet-based sex offender and child-victim offender database operated by BCII;

(5) The Internet-based database of inmates operated by the Department of Rehabilitation and Correction (DRC);

(6) The state nurse aide registry operated by the Department of Health;

(7) Any other database, if any, the ODJFS Director is permitted to specify in rules.

A waiver agency may not employ an applicant or continue to employ an employee in a position that involves providing home and community-based services under an ODJFS-administered Medicaid waiver if a database review reveals any of the following:

(1) The applicant or employee is included in GSA's excluded parties list system, OIG's list of excluded individuals and entities, the registry of MR/DD employees, BCII's Internet-based sex offender and child-victim offender database, or DRC's Internet-based database of inmates.

(2) There is in the state nurse aide registry a statement detailing findings by the Director of Health that the applicant or employee neglected or abused a long-term care facility or residential care facility resident or misappropriated property of such a resident.

(3) The applicant or employee is included in one or more of the other databases that the ODJFS Director may specify in rules and the rules prohibit the waiver agency from employing the applicant or employee.

### Criminal records check

The chief administrator of a waiver agency must require an applicant to request that BCII conduct a criminal records check of the applicant. A chief administrator is to require an employee to request that BCII conduct a criminal records check of the employee if rules adopted by the ODJFS Director so require. However, neither an applicant nor an employee is to undergo a criminal records check if a waiver agency is prohibited from employing the applicant or employee as a result of a database review.

A waiver agency's chief administrator must provide each applicant and employee required to undergo a criminal records check information about accessing, completing, and forwarding the form that BCII has prescribed for requesting criminal records checks and BCII's standard fingerprint impression sheet. A chief administrator also must notify such applicants and employees that they must instruct BCII to submit the results of the criminal records check directly to the chief administrator. A waiver agency is prohibited from employing an applicant or employee who fails to access, complete, or forward the criminal records check form or impression sheet or to instruct BCII to submit the results directly to the chief administrator.

A waiver agency may require an applicant to pay to BCII the fee for conducting the criminal records check. Or, a waiver agency may charge the applicant a fee if the waiver agency pays the BCII fee and notifies the applicant at the time of initial application for employment of the amount of the fee and that, unless the fee is paid, the applicant will not be considered for employment. The amount a waiver agency charges an applicant may not exceed the amount of the BCII fee that the waiver agency pays. A waiver agency is not authorized to charge an employee for the BCII fee.

### Notice to applicants

At the time of each applicant's initial application, the chief administrator or a waiver agency must inform the applicant of both of the following:

(1) That a database review will be conducted to determine whether the waiver agency is prohibited from employing the applicant;

(2) That, unless the database review reveals that the applicant may not be employed, a criminal records check will be conducted and the applicant must provide a set of the applicant's fingerprint impressions as part of the criminal records check.

### Conditional employment

A waiver agency is permitted to employ conditionally an applicant required to undergo a criminal records check before obtaining the results of the criminal records check if both of the following apply:

(1) A database review does not reveal that the waiver agency is prohibited from employing the applicant.

(2) The waiver agency's chief administrator requires the applicant to request a criminal records check not later than five business days after the applicant begins the conditional employment.

A waiver agency that employs an applicant conditionally must terminate the employment if the results of the criminal records check, other than results of any request for information from the Federal Bureau of Investigation, are not obtained within the period ending 60 days after the date the request for the criminal records check is made. Regardless of when the results are obtained, if the results indicate that the applicant has been convicted of, pleaded guilty to, or has been found eligible for intervention in lieu of conviction for a disqualifying offense, the waiver agency must terminate the applicant's employment unless circumstances specified in rules adopted by the ODJFS Director exist that permit the waiver agency to employ the applicant and the waiver agency chooses to employ the applicant.

### Disqualifying offenses

Except as provided in rules adopted by the ODJFS Director, a waiver agency may not employ an applicant or continue to employ an employee in a position that involves providing home and community-based services available under an ODJFS-administered Medicaid waiver if the applicant or employee is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, date of entry of the guilty plea, or the date the applicant or employee was found eligible for intervention in lieu of conviction.

The following is the list of disqualifying offenses:

(1) Cruelty to animals (R.C. 959.13); cruelty against a companion animal (R.C. 959.131); aggravated murder (R.C. 2903.01); murder (R.C. 2903.02); voluntary manslaughter (R.C. 2903.03); involuntary manslaughter (R.C. 2903.04); reckless homicide (R.C. 2903.041); felonious assault (R.C. 2903.11); aggravated assault (R.C. 2903.12); assault (R.C. 2903.13); permitting child abuse (R.C. 2903.15); failing to provide for a functionally impaired person (R.C. 2903.16); aggravated menacing (R.C. 2903.21); menacing by stalking (R.C. 2903.211); menacing (R.C. 2903.22); patient abuse or neglect (R.C. 2903.34); patient endangerment (R.C. 2903.341); kidnapping (R.C. 2905.01); abduction (R.C. 2905.02); criminal child enticement (R.C. 2905.05); extortion (R.C. 2905.11); coercion (R.C. 2905.12); rape (R.C. 2907.02); sexual battery (R.C. 2907.03); unlawful sexual conduct with a minor (R.C. 2907.04); sexual imposition (R.C. 2907.05); sexual imposition (R.C. 2907.06); importuning (R.C. 2907.07); voyeurism (R.C. 2907.08); public indecency (R.C. 2907.09); compelling prostitution (R.C. 2907.21); promoting prostitution (R.C. 2907.22); procuring (R.C. 2907.23); soliciting (R.C. 2907.24); prostitution (R.C. 2907.25); disseminating matter harmful to juveniles (R.C. 2907.31); pandering obscenity (R.C. 2907.32); pandering obscenity involving a minor (R.C. 2907.321); pandering sexually oriented matter involving a minor (R.C. 2907.322); illegal use of a minor in nudity-oriented material or performance (R.C. 2907.323); deception to

obtain matter harmful to juveniles (R.C. 2907.33); aggravated arson (R.C. 2909.02); arson (R.C. 2909.03); disrupting public service (R.C. 2909.04); support of terrorism (R.C. 2909.22); terroristic threats (R.C. 2909.23); terrorism (R.C. 2909.24); aggravated robbery (R.C. 2911.01); robbery (R.C. 2911.02); aggravated burglary (R.C. 2911.11); burglary (R.C. 2911.12); breaking and entering (R.C. 2911.13); theft (R.C. 2913.02); unauthorized use of a vehicle (R.C. 2913.03); unauthorized use of property (R.C. 2913.04); telecommunications fraud (R.C. 2913.05); passing bad checks (R.C. 2913.11); misuse of credit cards (R.C. 2913.21); forgery (R.C. 2913.31); criminal simulation (R.C. 2913.32); Medicaid fraud (R.C. 2913.40); acts constituting prima-facie evidence of purpose to defraud (R.C. 2913.41); tampering with records (R.C. 2913.42); securing writings by deception (R.C. 2913.43); personating an officer (R.C. 2913.44); unauthorized display of emblems related to law enforcement on motor vehicles (R.C. 2913.441); defrauding creditors (R.C. 2913.45); illegal use of Supplemental Nutrition Assistance Program benefits or WIC program benefits (R.C. 2913.46); insurance fraud (R.C. 2913.47); Workers' Compensation fraud (R.C. 2913.48); identity fraud (R.C. 2913.49); recovering stolen property (R.C. 2913.51); inciting to violence (R.C. 2917.01); aggravated riot (R.C. 2917.02); riot (R.C. 2917.03); inducing panic (R.C. 2917.31); abortion without informed consent (R.C. 2919.12); unlawful abortion (R.C. 2919.121); unlawful distribution of an abortion-inducing drug (RU-486) (R.C. 2919.123); endangering children (R.C. 2919.22); interference with custody (R.C. 2919.23); contributing to unruliness or delinquency (R.C. 2919.24); domestic violence (R.C. 2919.25); intimidation (R.C. 2921.03); perjury (R.C. 2921.11); falsification (R.C. 2921.13); compounding a crime (R.C. 2921.21); disclosure of confidential information (R.C. 2921.24); assaulting police dog, horse, or assistance dog (R.C. 2921.321); escape (R.C. 2921.34); aiding escape or resistance to authority (R.C. 2921.35); prohibited conveying of certain items onto property of state facilities (R.C. 2921.36); impersonation of certain officers (R.C. 2921.51); carrying concealed weapons (R.C. 2923.12); conveyance or possession of deadly weapons or dangerous ordnance in school safety zone (R.C. 2923.122); illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance in a courthouse (R.C. 2923.123); having weapons while under disability (R.C. 2923.13); improperly discharging firearm at or into habitation or school safety zone (R.C. 2923.161); discharge of firearm on or near prohibited premises (R.C. 2923.162); improperly furnishing firearms to minor (R.C. 2923.21); engaging in a pattern of corrupt activity (R.C. 2923.32); criminal gang activity (R.C. 2923.42); corrupting another with drugs (R.C. 2925.02); trafficking (R.C. 2925.03); illegal manufacture of drugs or cultivation of marihuana (R.C. 2925.04); illegal assembly or possession of chemicals used to manufacture a controlled substance (R.C. 2925.041); funding of drug or marihuana trafficking (R.C. 2925.05); illegal administration or distribution of anabolic steroids (R.C. 2925.06); sale or use of drugs not approved by the U.S. Food and Drug Administration (R.C. 2925.09); drug possession (R.C. 2925.11); permitting drug abuse (R.C. 2925.13); use, possession, or sale of drug paraphernalia (R.C. 2925.14); deception to obtain a dangerous drug (R.C.

2925.22); illegal processing of drug documents (R.C. 2925.23); tampering with drugs (R.C. 2925.24); illegal dispensing of drug samples (R.C. 2925.36); unlawful purchase or receipt of a pseudoephedrine product (R.C. 2925.55); unlawful sale of a pseudoephedrine product (R.C. 2925.56); ethnic intimidation (R.C. 2927.12); or adulteration of food (R.C. 3716.11);

(2) Felonious sexual penetration in violation of former law (former R.C. 2907.12);

(3) A violation of the former offense of child stealing as that offense existed before July 1, 1996 (former R.C. 2905.04);

(4) A violation of conspiracy, attempt to commit an offense, or complicity in the commission of an offense when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in (1) to (3) above;

(5) A violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in (1) to (4) above.

### Release of criminal records check report

The report of a criminal records check is not a public record and is not to be available to any person other than the following:

(1) The applicant or employee who is the subject of the report or the representative of the applicant or employee;

(2) The waiver agency's chief administrator or the administrator's representative;

(3) The ODJFS Director and the staff of ODJFS in the administration of Medicaid;

(4) A court, hearing officer, or other necessary individual involved in a case dealing with (a) an applicant's or employee's denial of employment, (b) an applicant's or employee's employment or unemployment benefits, (c) a civil or criminal action regarding Medicaid.

### Rules

The ODJFS Director is required to adopt rules to implement the provisions discussed above.

The rules may do the following:

(1) Require employees to undergo database reviews and criminal records checks;

(2) If the rules require employees to undergo database reviews and criminal records checks, exempt one or more classes of employees from the requirements;

(3) Specify additional databases that are to be checked as part of a database review.

The rules must specify all of the following:

(1) The procedures for conducting a database review;

(2) If the rules require employees to undergo database reviews and criminal records checks, the times at which the database reviews and criminal records checks are to be conducted;

(3) If the rules specify other databases to be checked as part of a database review, the circumstances under which a waiver agency is prohibited from employing an applicant or continuing to employ an employee who is found by the database review to be included in one or more of those databases;

(4) The circumstances under which a waiver agency may employ an applicant or employee who is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

### ODJFS not precluded from taking action authorized under former law

The bill eliminates an obsolete law that required a person who, on September 26, 2003, was employed by a waiver agency in a position that involved providing home and community-based services available under an ODJFS-administered Medicaid waiver to comply with the law governing criminal records checks for waiver agencies unless the person previously underwent a criminal records check relating to that position. This is obsolete because the person was required to comply within 60 days after September 26, 2003.

Although the bill eliminates the obsolete provision, it provides that ODJFS is not precluded from taking action against a person who failed to comply with the provision.

## Independent provider criminal records checks

(R.C. 5111.034 (primary), 109.57, and 109.572)

Under current law, ODJFS must require an individual applying for a Medicaid provider agreement to provide home and community-based services as an independent provider under an ODJFS-administered Medicaid waiver, and an independent provider

holding such a Medicaid provider agreement, to undergo criminal records checks conducted by BCII.

The bill revises this law. The following is a discussion of this law as it is to exist under the bill. Some of the provisions discussed below are included in, or are similar to, current law.

### Restriction on issuing or renewing Medicaid provider agreement

ODJFS or its designee must require an individual who applies for a Medicaid provider agreement as an independent provider to complete a criminal records check conducted by BCII before entering into the provider agreement with the applicant. ODJFS or its designee must require an individual holding a Medicaid provider agreement as an independent provider to complete a BCII-conducted criminal records check at least annually.

ODJFS or its designee must provide certain information to each applicant and independent provider required to undergo a criminal records check. They are to receive information about accessing, completing, and forwarding to BCII the form prescribed by BCII for requesting a criminal records check and BCII's standard fingerprint impression sheet. They are also to receive information about instructing BCII to submit the results of the criminal records check directly to ODJFS or its designee. ODJFS or its designee must deny an applicant's application for a Medicaid provider agreement and must terminate an independent provider's provider agreement if the applicant or independent provider fails to access, complete, or forward to BCII the form or impression sheet or fails to instruct BCII to submit the results directly to ODJFS or its designee.

### Disqualifying offenses

Except as provided in rules adopted by the ODJFS Director, ODJFS or its designee must deny an applicant's application for a Medicaid provider agreement as an independent provider and must terminate an independent provider's provider agreement if the applicant or independent provider is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense, regardless of the date of the conviction, date of entry of the guilty plea, or the date the applicant or employee was found eligible for intervention in lieu of conviction.

The following is the list of disqualifying offenses:

(1) Cruelty to animals (R.C. 959.13); cruelty against a companion animal (R.C. 959.131); aggravated murder (R.C. 2903.01); murder (R.C. 2903.02); voluntary

manslaughter (R.C. 2903.03); involuntary manslaughter (R.C. 2903.04); reckless homicide (R.C. 2903.041); felonious assault (R.C. 2903.11); aggravated assault (R.C. 2903.12); assault (R.C. 2903.13); permitting child abuse (R.C. 2903.15); failing to provide for a functionally impaired person (R.C. 2903.16); aggravated menacing (R.C. 2903.21); menacing by stalking (R.C. 2903.211); menacing (R.C. 2903.22); patient abuse or neglect (R.C. 2903.34); patient endangerment (R.C. 2903.341); kidnapping (R.C. 2905.01); abduction (R.C. 2905.02); criminal child enticement (R.C. 2905.05); extortion (R.C. 2905.11); coercion (R.C. 2905.12); rape (R.C. 2907.02); sexual battery (R.C. 2907.03); unlawful sexual conduct with a minor (R.C. 2907.04); sexual imposition (R.C. 2907.05); sexual imposition (R.C. 2907.06); importuning (R.C. 2907.07); voyeurism (R.C. 2907.08); public indecency (R.C. 2907.09); compelling prostitution (R.C. 2907.21); promoting prostitution (R.C. 2907.22); procuring (R.C. 2907.23); soliciting (R.C. 2907.24); prostitution (R.C. 2907.25); disseminating matter harmful to juveniles (R.C. 2907.31); pandering obscenity (R.C. 2907.32); pandering obscenity involving a minor (R.C. 2907.321); pandering sexually oriented matter involving a minor (R.C. 2907.322); illegal use of a minor in nudity-oriented material or performance (R.C. 2907.323); deception to obtain matter harmful to juveniles (R.C. 2907.33); aggravated arson (R.C. 2909.02); arson (R.C. 2909.03); disrupting public service (R.C. 2909.04); support of terrorism (R.C. 2909.22); terroristic threats (R.C. 2909.23); terrorism (R.C. 2909.24); aggravated robbery (R.C. 2911.01); robbery (R.C. 2911.02); aggravated burglary (R.C. 2911.11); burglary (R.C. 2911.12); breaking and entering (R.C. 2911.13); theft (R.C. 2913.02); unauthorized use of a vehicle (R.C. 2913.03); unauthorized use of property (R.C. 2913.04); telecommunications fraud (R.C. 2913.05); passing bad checks (R.C. 2913.11); misuse of credit cards (R.C. 2913.21); forgery (R.C. 2913.31); criminal simulation (R.C. 2913.32); Medicaid fraud (R.C. 2913.40); acts constituting prima-facie evidence of purpose to defraud (R.C. 2913.41); tampering with records (R.C. 2913.42); securing writings by deception (R.C. 2913.43); personating an officer (R.C. 2913.44); unauthorized display of emblems related to law enforcement on motor vehicles (R.C. 2913.441); defrauding creditors (R.C. 2913.45); illegal use of Supplemental Nutrition Assistance Program benefits or WIC program benefits (R.C. 2913.46); insurance fraud (R.C. 2913.47); Workers' Compensation fraud (R.C. 2913.48); identity fraud (R.C. 2913.49); recovering stolen property (R.C. 2913.51); inciting to violence (R.C. 2917.01); aggravated riot (R.C. 2917.02); riot (R.C. 2917.03); inducing panic (R.C. 2917.31); abortion without informed consent (R.C. 2919.12); unlawful abortion (R.C. 2919.121); unlawful distribution of an abortion-inducing drug (RU-486) (R.C. 2919.123); endangering children (R.C. 2919.22); interference with custody (R.C. 2919.23); contributing to unruliness or delinquency (R.C. 2919.24); domestic violence (R.C. 2919.25); intimidation (R.C. 2921.03); perjury (R.C. 2921.11); falsification (R.C. 2921.13); compounding a crime (R.C. 2921.21); disclosure of confidential information (R.C. 2921.24); assaulting police dog, horse, or assistance dog (R.C. 2921.321); escape (R.C. 2921.34); aiding escape or resistance to authority (R.C. 2921.35); prohibited conveying of certain items onto property of state

facilities (R.C. 2921.36); impersonation of certain officers (R.C. 2921.51); carrying concealed weapons (R.C. 2923.12); conveyance or possession of deadly weapons or dangerous ordnance in school safety zone (R.C. 2923.122); illegal conveyance, possession, or control of a deadly weapon or dangerous ordnance in a courthouse (R.C. 2923.123); having weapons while under disability (R.C. 2923.13); improperly discharging firearm at or into habitation or school safety zone (R.C. 2923.161); discharge of firearm on or near prohibited premises (R.C. 2923.162); improperly furnishing firearms to minor (R.C. 2923.21); engaging in a pattern of corrupt activity (R.C. 2923.32); criminal gang activity (R.C. 2923.42); corrupting another with drugs (R.C. 2925.02); trafficking (R.C. 2925.03); illegal manufacture of drugs or cultivation of marihuana (R.C. 2925.04); illegal assembly or possession of chemicals used to manufacture a controlled substance (R.C. 2925.041); funding of drug or marihuana trafficking (R.C. 2925.05); illegal administration or distribution of anabolic steroids (R.C. 2925.06); sale or use of drugs not approved by the U.S. Food and Drug Administration (R.C. 2925.09); drug possession (R.C. 2925.11); permitting drug abuse (R.C. 2925.13); use, possession, or sale of drug paraphernalia (R.C. 2925.14); deception to obtain a dangerous drug (R.C. 2925.22); illegal processing of drug documents (R.C. 2925.23); tampering with drugs (R.C. 2925.24); illegal dispensing of drug samples (R.C. 2925.36); unlawful purchase or receipt of a pseudoephedrine product (R.C. 2925.55); unlawful sale of a pseudoephedrine product (R.C. 2925.56); ethnic intimidation (R.C. 2927.12); or adulteration of food (R.C. 3716.11);

(2) Felonious sexual penetration in violation of former law (former R.C. 2907.12);

(3) A violation of the former offense of child stealing as that offense existed before July 1, 1996 (former R.C. 2905.04);

(4) A violation of conspiracy, attempt to commit an offense, or complicity in the commission of an offense when the underlying offense that is the object of the conspiracy, attempt, or complicity is one of the offenses listed in (1) to (3) above;

(5) A violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any of the offenses listed in (1) to (4) above.

### Release of criminal records check report

The report of a criminal records check is not a public record and is not to be available to any person other than the following:

(1) The person who is the subject of the report or the person's representative;

(2) The ODJFS Director and the staff of ODJFS in the administration of Medicaid;

(3) ODJFS's designee;

(4) An individual who receives home and community-based services from the person who is the subject of the report;

(5) A court, hearing officer, or other necessary individual involved in a case dealing with (a) a denial or termination of a Medicaid provider agreement related to the criminal records check or (b) a civil or criminal action regarding Medicaid.

### Rules

The ODJFS Director is required to adopt rules to implement the provisions discussed above. The rules must specify circumstances under which ODJFS or its designee may approve an applicant's application for a Medicaid provider agreement as an independent provider or allow an independent provider to maintain an existing provider agreement even though the applicant or independent provider is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

## Medicaid managed care contract decisions excluded from administrative hearings

(R.C. 5111.06)

Current law generally requires ODJFS to do the following by issuing an order pursuant to an adjudication under the Administrative Procedure Act (R.C. Chapter 119.): (1) enter into or refuse to enter into a Medicaid provider agreement with a provider, (2) suspend, terminate, renew, or refuse to renew an existing provider agreement, or (3) take any action based upon a final fiscal audit of a provider.[129] This process, however, does not apply to most actions taken by ODJFS regarding the Medicaid managed care system.

The bill eliminates the provision that excludes the Medicaid managed care system in general from the requirement that ODJFS issue orders regarding provider agreements and final fiscal audits pursuant to an adjudication under the Administrative Procedure Act. Instead, the bill provides that the adjudication requirement does not apply to any action taken or decision made by ODJFS with respect to entering into or refusing to enter into a contract with a managed care organization.

[129] A number of exemptions apply under which ODJFS may take these actions without having to comply with the requirement to issue an order pursuant to an adjudication.

## Hospital quality factors and incentive payments under Medicaid

(Sections 601.40 and 601.41)

The bill revises a provision enacted by Am. Sub. H.B. 153 of the 129th General Assembly regarding Medicaid payments to hospitals for fiscal years 2012 and 2013. H.B. 153 requires the ODJFS Director to implement purchasing strategies and rate reductions for hospital and other Medicaid-covered services that result in payment rates for those services being at least 2% less than the respective payment rates for fiscal year 2011. In implementing the purchasing strategies and rate reductions, the Director is required to modernize hospital inpatient and outpatient reimbursement methodologies by (1) modifying the hospital inpatient capital reimbursement methodology, (2) establishing new diagnosis-related groups in a cost-neutral manner, and (3) implementing other changes the Director considers appropriate. The Director is required to adopt rules as necessary to implement those three requirements as well as other requirements established by H.B. 153. The bill requires that the rules regarding the three provisions discussed above include quality factors and quality-based incentive payments.

## Designation of agency to perform level of care assessments

(Section 209.20)

The bill provides that ODJFS is permitted rather than required to designate the Department of Aging to perform assessments of whether Medicaid applicants and recipients need the level of care provided by nursing facilities.

## Franchise permit fees

### Federal guarantee test

(R.C. 3721.51 and 5112.31)

Continuing law requires nursing homes and hospital long-term care units to pay franchise permit fees. Intermediate care facilities for the mentally retarded (ICFs/MR) must also pay franchise permit fees.

To avoid causing a reduction in federal funds for Medicaid, the franchise permit fees must meet certain federal requirements. One requirement is that there cannot be a hold harmless provision with respect to a fee, which means that a state cannot directly or indirectly reimburse nursing facilities, hospital long-term care units, or ICFs/MR for the fees they pay. However, the hold harmless prohibition does not apply if the fee passes a two-part guarantee test. The fee passes the first part of the test if it is applied at a rate that produces revenues not exceeding 6% of the net patient revenues received by

the nursing facilities, hospital long-term care units, and ICFs/MR. However, a fee that fails the first part still passes the guarantee test if it passes the second part. It passes the second part if less than 75% of nursing facilities, hospital long-term care units, and ICFs/MR receive no more in enhanced Medicaid payments or other state payments than an amount equal to 75% of the franchise permit fees they pay.[130]

Current state law requires ODJFS to recalculate the franchise permit fees using rates that differ from the rates otherwise required by state law if those rates cause the fees to fail the first part of the guarantee test. Under the bill, ODJFS is not required to make the recalculation unless that the fees fail to pass both parts of the guarantee test.

### Redetermining a converted ICF/MR's franchise permit fee

(R.C. 5112.331 (primary), 5112.31, 5112.33, and 5112.341)

The bill revises the law governing the ICF/MR franchise permit fee to reflect current law that authorizes an ICF/MR to convert some or all of its beds from providing ICF/MR services to providing home and community-based services under a Medicaid waiver administered by ODODD.

Continuing law requires ODJFS to determine each ICF/MR's franchise permit fee for a fiscal year not later than August 15. If, after ODJFS makes the determination, it receives a notice from the Director of Health that an ICF/MR has converted one or more of its beds, ODJFS is required by the bill either to terminate or redetermine the ICF/MR's franchise permit fee.

ODJFS is to terminate an ICF/MR's franchise permit fee if the Director of Health's notice indicates that the ICF/MR's Medicaid certification has been terminated. (Continuing law provides for an ICF/MR's Medicaid certification to be terminated if it converts all of its beds.) The franchise permit fee is to be terminated effective on the first day of the quarter immediately following the quarter in which ODJFS receives the notice.

ODJFS is to redetermine an ICF/MR's franchise permit fee if the Director of Health's notice indicates that ICF/MR's Medicaid certified capacity has been reduced. (Continuing law provides for an ICF/MR's Medicaid certification to be reduced by the number of beds it converts if it does not convert all of its beds.) To redetermine the ICF/MR's franchise permit fee, ODJFS must multiply the franchise permit fee rate ($17.99 for fiscal year 2012 and $18.32 for each fiscal year thereafter) by the product of (1) the number of the ICF/MR's beds that remain certified under Medicaid as of the date

[130] 42 C.F.R. 433.68(f).

the conversion takes effect and (2) the number of days remaining in the fiscal year as of the first day of the quarter immediately following the quarter in which ODJFS receives the Director of Health's notice, including that first day. The ICF/MR is required to pay its franchise permit fee as redetermined in installment payments not later than 45 days after the last day of each of the quarters remaining in the fiscal year for which the redetermination is made.

### Use of money raised by ICF/MR franchise permit fee

(R.C. 5112.37 (primary), 5112.31, 5112.371, and 5112.39)

The bill revises the law governing the funds into which money raised by the ICF/MR franchise permit fee is deposited. Current law requires that 81.77% of the franchise permit fees and penalties associated with the fees that ICFs/MR pay for fiscal year 2012 be deposited into the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund. 82.2% of all such fees and penalties paid for fiscal year 2013 and thereafter are to be deposited into that fund. The remaining amount of the fees and penalties paid for a fiscal year must be deposited into the Department of Developmental Disabilities Operating and Services Fund. The bill requires instead that all the fees and penalties be deposited into the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund and that the ODJFS Director, as soon as possible after the end of each quarter, certify to the Director of the Office of Budget and Management (OBM) the amount of money in that fund as of the last day of that quarter. On receipt of the certification, the OBM Director must transfer the amount so certified to the Department of Developmental Disabilities Operating and Services Fund.

Because the bill provides for all of the money in the Home and Community-Based Services for the Mentally Retarded and Developmentally Disabled Fund to be transferred to the Department of Developmental Disabilities Operating and Services Fund, the bill eliminates a requirement that ODJFS and ODODD use the money in the former fund for the Medicaid program and home and community-based services to persons with mental retardation or developmental disabilities. With all of the money being transferred to the Department of Developmental Disabilities Operating and Services Fund, the money is to be used in accordance with the law governing that fund. The bill does not change the purpose for which money in that fund is to be used. Money in that fund must be used for the expenses of the programs that ODODD administers and ODODD's administrative expenses.

## Nursing facilities' wheelchair, resident transportation, and tax costs

(R.C. 5111.20, 5111.242, and 5111.254)

Continuing law establishes formulas that are used to calculate Medicaid rates for services provided by nursing facilities and ICFs/MR. There are different formulas for the various groups of costs that nursing facilities and ICFs/MR incur, such as ancillary and support costs, direct care costs, and tax costs.

The bill makes a nursing facility's wheelchair and resident transportation costs reimbursable under Medicaid as part of direct care costs rather than ancillary and support costs. This means that wheelchair and resident transportation costs are to be calculated in accordance with the formula governing direct care costs rather than the formula governing ancillary and support costs.

The bill also clarifies that certain tax costs are a separate category for purposes of nursing facilities' Medicaid rates. Current law defines "ancillary and support costs," in part, as all reasonable costs incurred by nursing facilities other than direct care and capital costs. The bill revises the definition by adding tax costs with direct care and capital costs as costs that are not ancillary and support costs. Continuing law establishes a formula for determining Medicaid rates for nursing facilities' tax costs that is separate from the formula used to determine Medicaid rates for nursing facilities' ancillary and support costs. "Tax costs" are defined as the commercial activity tax, real estate taxes, personal property taxes, and corporate franchise taxes.

## Inpatient days and Medicaid days

(R.C. 5111.20 (primary), 3721.50, and 5111.23)

The bill revises the definitions of "inpatient days" and "Medicaid days" in the law governing the formulas used to determine Medicaid rates for nursing facilities and ICFs/MR. The amount Medicaid pays a nursing facility or ICF/MR is based in part on the number of the nursing facility's or ICF/MR's inpatient days and Medicaid days.

Current law defines "inpatient days" as all days during which a resident, regardless of payment source, occupies a bed in a nursing facility or ICF/MR that is included in the facility's Medicaid certified capacity. Therapeutic or hospital leave days for which payment is made to reserve a nursing facility or ICF/MR bed during a Medicaid recipient's temporary absence are considered inpatient days proportionate to the percentage of the nursing facility's or ICF/MR's per resident per day rate paid for those days.

Under the bill, the term "inpatient days" is defined separately for nursing facilities and ICFs/MR. In the context of nursing facilities, inpatient days are (1) all days during which a resident, regardless of payment source, occupies a bed in a nursing facility that is included in the nursing facility's Medicaid certified capacity and (2) 50% of the days for which payment is made to reserve a nursing facility bed during a Medicaid recipient's temporary absence. In the context of ICFs/MR, inpatient days are (1) all days during which a resident, regardless of payment source, occupies a bed in an ICF/MR that is included in the ICF/MR's Medicaid certified capacity and (2) all days for which payment is made to reserve an ICF/MR bed during a Medicaid recipient's temporary absence.

Medicaid days are similar to inpatient days but Medicaid days concern only days in which Medicaid recipients, rather than any individuals, occupy beds. Current law defines "Medicaid days" as all days during which a resident who is a Medicaid recipient eligible for nursing facility services occupies a bed in a nursing facility that is included in the nursing facility's Medicaid certified capacity. Therapeutic or hospital leave days for which payment is made to reserve a bed during a Medicaid recipient's temporary absence are considered inpatient days proportionate to the percentage of the nursing facility's per resident per day rate paid for those days. There is a problem with the definition in that it includes a reference to the section of law that authorizes Medicaid payments to reserve ICF/MR beds, as well as the section of law authorizing payments to reserve nursing facility beds, even though the definition otherwise only references nursing facilities.

The bill revises the definition of "Medicaid days" in a manner similar to the revision of the definition of "inpatient days." The bill also corrects the problem with the definition of "Medicaid days" regarding ICFs/MR. In the context of nursing facilities, Medicaid days are (1) all days during which a resident who is a Medicaid recipient eligible for nursing facility services occupies a bed in a nursing facility that is included in the nursing facility's Medicaid certified capacity and (2) 50% of the days for which payment is made to reserve a nursing facility bed during a Medicaid recipient's temporary absence. Regarding ICFs/MR, Medicaid days are (1) all days during which a resident who is a Medicaid recipient eligible for ICF/MR services occupies a bed in an ICF/MR that is included in the ICF/MR's Medicaid certified capacity and (2) all days for which payment is made to reserve an ICF/MR bed during a Medicaid recipient's temporary absence.

The bill fixes an ambiguity in current law governing Medicaid rates for the direct care costs of ICFs/MR. The formula used to determine the rates uses the term "Medicaid inpatient day." For example, ODJFS is required to set the maximum cost per case-mix unit for each peer group of ICFs/MR with more than eight beds at a certain

percentage above the cost per case-mix unit of the ICF/MR in the group that has the group's median *Medicaid inpatient days* for the calendar year preceding the fiscal year in which the rate will be paid. This is ambiguous because the term "Medicaid inpatient day" is not defined and the terms "Medicaid days" and "inpatient days" have different meanings. The bill fixes the ambiguity by replacing the term "Medicaid inpatient days" with the term "Medicaid days."

## Critical access incentive payments

(R.C. 5111.246 (primary) and 5111.222)

The bill requires ODJFS to pay, each fiscal year, a critical access incentive payment to each nursing facility that qualifies as a critical access nursing facility. A nursing facility qualifies as a critical access nursing facility for a fiscal year if it meets all of the following requirements:

(1) It must be located in an area that, on December 31, 2011, was designated as an empowerment zone under the federal Internal Revenue Code.

(2) It must have an occupancy rate of at least 85% as of the last day of the calendar year preceding the fiscal year.

(3) It must have a Medicaid utilization rate of at least 65% as of the last day of the calendar year preceding the fiscal year.

A critical access nursing facility's critical access incentive payment for a fiscal year is to equal 5% of the other parts of its Medicaid rate for the fiscal year. The following are the other parts of a nursing facility's Medicaid rate: (1) the direct care costs rate, (2) the ancillary and support costs rate, (3) the tax costs rate, (4) the capital costs rate, and (5) the quality incentive payment.

## Conversion of ICF/MR beds

(R.C. 5111.874, 5111.877, and 5111.878)

To increase the number of slots available for home and community-based services provided under an ODODD-administered Medicaid waiver, current law authorizes the operator of an ICF/MR to convert some or all of its beds to providing those services. Currently, the maximum number of beds that can be converted by ICFs/MR is 100; however, the ODJFS Director is authorized to seek federal approval for up to 200 slots under the waiver. The bill increases to 500 both the total number of ICF/MR beds that may be converted and the maximum number of slots for which the ODJFS Director may seek federal approval.

When some or all of an ICF/MR's beds are to be converted, the operator must notify the directors of Health, ODJFS, and ODODD of the operator's intent to make the conversion. The bill eliminates the requirement to notify the ODJFS Director. Additionally, current law requires that the conversion be approved by both the ODODD Director and the ODJFS Director. The bill requires that the conversion be approved only by the ODODD Director.

### Rates for waiver providers serving converted facility residents

(Section 263.20.70 of Am. Sub. H.B. 153 of the 129th General Assembly)

The main operating budget for fiscal years 2012 and 2013, Am. Sub. H.B. 153 of the 129th General Assembly, requires ODJFS to increase, subject to approval by the U.S. Centers for Medicare and Medicaid Services, the Medicaid rate paid to a provider under the Individual Options waiver program for up to a year if (1) the individual was a resident of a developmental center immediately before enrolling in the waiver, (2) the provider begins serving the individual on or after July 1, 2011, and (3) the ODODD Director determines that the increased rate is warranted by the individual's special circumstances and serving the individual through the Individual Options waiver is fiscally prudent for the Medicaid program. The rate is to be increased by 52¢ for each 15 minutes of routine homemaker/personal care provided to an individual.

The bill provides for the rate increase also to apply when an individual was a resident of a converted facility immediately before enrolling in the Individual Options waiver. A converted facility is an ICF/MR, or former ICF/MR, that converted some or all of its beds to providing home and community-based services under the Individual Options waiver pursuant to continuing law that authorizes such conversions.

### Collection of long-term care facility Medicaid debts

(R.C. 5111.651 (repealed))

The bill repeals an obsolete law regarding the collection of Medicaid debts owed by nursing facilities and ICFs/MR. Continuing law establishes Medicaid debt collection procedures for nursing facilities and ICFs/MR that undergo a change of operator, close, or voluntarily cease to participate in Medicaid.

The obsolete law that the bill repeals provides that the Medicaid debt collection requirements did not apply to a nursing facility or ICF/MR that underwent a change of operator, closed, or voluntarily ceased to participate in Medicaid on or before September 30, 2005, and provided written notice of the action to ODJFS on or before June 30, 2005.

## Ohio Home Care Program's Home First component

(R.C. 5111.862)

The bill revises the eligibility requirements for the Home First component of the Ohio Home Care Program. The program is authorized by a federal Medicaid waiver and offers home and community-based services to eligible, disabled individuals under age 60 who require the level of care provided by nursing facilities or hospitals. The Home First component enables individuals meeting certain requirements to be enrolled in the program ahead of others.

To qualify for the Home First component, an individual must be eligible for the Ohio Home Care Program and meet one of various sets of requirements. One of the sets of requirements concerns individuals who participate in the Money Follows the Person demonstration project at the time they apply for the Ohio Home Care Program. Such an individual may qualify for the Home First component if the individual resides in a residential treatment facility or inpatient hospital setting. Current law defines "residential treatment facility" as a residential facility licensed by ODMH that serves children and either has more than 16 beds or is part of a campus of multiple facilities that, combined, have more than 16 beds. The bill provides that a residential treatment facility also is an institution for children that is certified by ODJFS and either has more than 16 beds or is part of a campus of multiple institutions that, combined, have more than 16 beds.

## HOME Choice demonstration component of Medicaid

(R.C. 5111.96)

The bill codifies (i.e., places in the Revised Code) the existing Helping Ohioans Move, Expanding (HOME) Choice demonstration component of the Medicaid program. Under the bill, the ODJFS Director is permitted, to the extent funds are available under a Money Follows the Person (MFP) demonstration project, to operate the HOME Choice demonstration component to transition Medicaid recipients to community settings. Federal law authorizes the U.S. Secretary of Health and Human Services to award grants to states for MFP demonstration projects that are designed to achieve certain objectives with respect to institutional and home and community-based long-term care services provided under a state's Medicaid program.

The ODJFS Director is permitted to adopt rules for the administration and operation of the HOME Choice demonstration component. The Director is to follow the Administrative Procedure Act (R.C. Chapter 119.) in adopting the rules.

## Ohio Access Success Project

(R.C. 5111.97)

The bill revises the law governing the Ohio Access Success Project. Continuing law permits the ODJFS Director to establish the project to help Medicaid recipients transition from residing in a nursing facility to residing in a community setting. The benefits provided under the project may include payment for the first month's rent in a community setting, rental deposits, utility deposits, moving expenses, and other expenses not covered by the Medicaid program that facilitate a Medicaid recipient's move from a nursing facility to a community setting. If the project is established as a non-Medicaid program (as opposed to being integrated into a new or existing Medicaid waiver component that provides home and community-based services), no participant may receive more than $2,000 worth of benefits under the project.

The bill provides that if ODJFS enters into a contract with an entity to provide fiscal management services regarding the Ohio Access Success Project, the contact may provide for a portion of a participant's benefits under the project to be paid to the contracting entity. The contract must specify the portion to be paid to the contracting entity.

The bill revises terminology used in the law governing the Ohio Access Success Project to make the terminology more consistent with other Medicaid law. Specifically, the bill uses the term "home and community-based services Medicaid waiver component" instead of referring to a program of Medicaid-funded home and community-based services authorized by the United States Department of Health and Human Services. Continuing law defines "home and community-based services Medicaid waiver component" as a Medicaid waiver component under which home and community-based services are provided as an alternative to hospital, nursing facility, or intermediate care facility for the mentally retarded services. The bill also provides that if the project is integrated into a home and community-based services Medicaid waiver component, the rules the ODJFS Director adopts regarding the project are to be adopted under continuing law governing rules for Medicaid waiver components.

## Health Care/Medicaid Support and Recoveries Fund and Health Care Compliance Fund

(R.C. 5111.941 (primary), 5111.171, and 5111.946; Sections 601.40, 601.41, and 512.50)

The bill renames the Medicaid Revenue and Collections Fund the Health Care/Medicaid Support and Recoveries Fund. Current law provides for the nonfederal share of all Medicaid-related revenues, collections, and recoveries to be deposited into

the fund unless another statute or the Controlling Board provides otherwise. The bill provides for the following also to be credited to the fund:

(1) Federal reimbursement received for disproportionate share hospital payment adjustments made under Medicaid to state mental health hospitals maintained and operated by ODMH;

(2) Revenues ODJFS receives from another state agency for Medicaid services pursuant to an interagency agreement, other than such revenues required to be deposited into the Health Care Services Administration Fund;

(3) The first $750,000 that ODJFS receives in a fiscal year for performing eligibility verification services necessary for compliance with a federal regulation regarding independent, certified audits for disproportionate share hospital payments.

The remainder of the money that ODJFS receives in a fiscal year for performing those eligibility verification services is to be credited to the Health Care Compliance Fund. Continuing law provides for that fund also to receive (1) all fines imposed on and collected from Medicaid managed care organizations for failure to meet performance standards or other requirements specified in provider agreements or ODJFS's rules and (2) all of the fund's investment earnings.

### OHP Health Care Grants Fund

(Section 506.10)

The bill authorizes ODJFS, for fiscal years 2012 and 2013, to deposit into the OHP Health Care Grants Fund federal grants for the administration of health care programs that ODJFS receives under the federal health care reform acts enacted in 2010. ODJFS is required to use the money in the fund to pay for expenses incurred in carrying out duties that ODJFS assumes by accepting the federal grants, including expenses for the administration of health care programs.

## JUDICIARY, SUPREME COURT (JSC)

- Eliminates references to shorthand reporters, stenographers, and stenographic records and notes, replaces the procedure for paying for transcribed records with a procedure for providing copies of records and electronic records, and adds references to electronic records, reporters, assistant reporters, and electronically recording actions in statutes relating to court reporters.

### Modernization of language in court reporter statutes

(R.C. 1509.36, 1571.14, 2301.03, 2301.18, 2301.19, 2301.20, 2301.21, 2301.22, 2301.23, 2301.24, 2301.25, 2301.26, 2319.27, 2501.16, 2501.17, 2743.09, 2746.03, 2746.04, 2939.11, and 3745.05)

The bill modernizes the language of Revised Code sections related to court reporting by eliminating references to shorthand reporters, stenographers, and stenographic records and notes, eliminating the payment procedure for transcribing copies of transcripts of testimony, adding a procedure for making copies of transcripts at cost or providing an electronic copy free, and adding references to electronic records, reporters, assistant reporters, and electronically recording actions. The bill repeals the section (R.C. 2301.19) that authorizes a court of common pleas to appoint assistant shorthand reporters.

## LEGAL RIGHTS SERVICE (LRS)

- Continues as members of the Public Employees Retirement System (PERS) employees of the Legal Rights Service (LRS) on September 30, 2012 (the day before the LRS is abolished) who continue as employees of the nonprofit entity that will replace LRS on October 1.
- Specifies that employees of the nonprofit entity whose employment begins on or after October 1, are not members of PERS.

### Legal Rights Service employees

(R.C. 145.01 and 145.012)

Effective October 1, 2012, Am. Sub. H.B. 153 of the 129th General Assembly (the current biennial budget bill) abolishes the Ohio Legal Rights Service (LRS) and replaces it with a nonprofit entity that has as its purpose providing advocacy services and client assistance for people with disabilities.

The bill provides that employees of LRS on September 30, 2012 (the day before LRS is abolished) who continue as employees of the new nonprofit entity continue as PERS members as long as they continue employment with the nonprofit entity. The bill further specifies that employees of the nonprofit entity whose employment begins on or after October 1, are not members of PERS.

## Local boards of health

- Clarifies that local boards of health may contract with each other for the provision of either some or all public health services, rather than only for all services.

- Specifies that the effectiveness of a contract in which one local board of health agrees to provide some, but not all, public health services on behalf of another local board of health is not dependent on the Director of Health's approval.

- Specifies that local boards of health are bodies corporate and politic and have all rights and responsibilities inherent with this designation, including the ability to sue and be sued; to acquire, hold, possess, and dispose of real and personal property; and to take and hold in trust for the use of the relevant health district any grant or devise of land or any donation or bequest of money or other personal property.

- Requires a board of county commissioners to provide office space and utilities to the county's general health district board of health through FY 2013.

- Requires the board of county commissioners to pay in FY 2014 through FY 2017 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 2017.

- Relieves the board of county commissioners of its obligation to provide office space and utilities if the board of health rents, leases, lease-purchases, or acquires office space on its own.

- Permits a board of county commissioners, in FY 2018 and thereafter, to provide office space and utilities to the general health district board of health, by contract.

- Authorizes the board of county commissioners, at any time, to provide office space and utilities for the board of health free of charge.

## General health districts

- Exempts a general health district from certain requirements governing the submission of an appropriation measure and revenue estimate for a fiscal year if the district will not receive an appropriation for that fiscal year from the municipal corporations or townships that comprise the district.

- Provides that, for the purpose of calculating the amount to be appropriated to a general health district, the district's revenue for an upcoming year includes any

surplus money in the District Health Fund that may be carried forward to that year to fund ongoing operations.

### Joint county departments of job and family services

- Permits the boards of county commissioners of any two or more counties to enter into a written agreement to form a joint county department of job and family services.

### County officers and employees

- Eliminates a provision prohibiting boards of county commissioners from contracting for or purchasing group health insurance, coverage, or benefits once the Department of Administrative Services implements for counties best practices health care insurance plans that include or address those benefits.

- Authorizes a county auditor, if authorized by a resolution of the board of county commissioners, to serve as the fiscal officer of any department, office, or agency of the county.

- Authorizes the county sealer to share the services of a weights and measures inspector with another county sealer, so long as the inspector remains a part-time employee of each county by whom the inspector is employed.

- Authorizes the county sealer, in lieu of appointing or sharing a weights and measures inspector, to enter into an employment contract with a private person to perform the same services that an appointed inspector would perform.

### Other provisions

- Requires a municipal corporation, county, township, or school district under a fiscal watch or fiscal emergency to identify in its financial plan the actions to be taken to enter into shared services agreements with other political subdivisions, if they are so authorized by statute.

- Increases the competitive bidding thresholds for specified political subdivisions.

- Requires the effective period of a county quarterly spending plan for a county office to expire the earlier of two fiscal years or until the elected official administering the office no longer administers the office.

- Requires the arresting authorities or a court, upon the request of the prosecutor or victim, to cause a defendant charged with specified sexual offenses to undergo an

existing procedure testing for sexually transmitted diseases within 48 hours after the date on which the complaint, information, or indictment in the case is filed.

## Local boards of health

### Inter-board contracts to perform services

(R.C. 3709.08; R.C. 3709.081 (repealed))

The bill clarifies that local boards of health may contract with each other for the provision of either some or all public health services, rather than only for all services, as has been interpreted by some under current law.[131] Such contracts must be approved as follows:

(1) If the contract is with a city constituting a city health district, the chief executive of that city, with the majority of the members of the legislative authority of that city, must approve the contract. This is not a change from current law.

(2) If the contract is with the board of health of a general health district (which is all areas of a county that are not city health districts), the chairperson of the district advisory council of the general health district, with the majority of the members of the district advisory council, must approve the contract. This is not a change from current law.

(3) If the contract is with an authority having the duties of a board of health under a city charter, the majority of the members of the authority's governing body must approve the contract. Current law does not address this situation.

The bill also specifies that the effectiveness of a contract in which one local board of health agrees to provide some, but not all, public health services on behalf of another local board of health is effective immediately and is not dependent on the Director of Health's approval. Under current law, the Department of Health must first determine that the health department or local board of health is organized and equipped to provide "adequate health service." The bill does not alter this requirement for contracts in which one local board of health agrees to provide all public health services on behalf of another local board of health.

[131] Telephone interview with representatives of the Association of Ohio Health Commissioners (Feb. 23, 2012).

### Boards as bodies corporate and politic

(R.C. 3709.36)

The bill specifies that a local board of health is, for the purpose of providing public health services, a "body politic and corporate." As such, it is capable of suing and being sued; contracting and being contracted with; acquiring, holding, possessing, and disposing of real and personal property; and taking and holding in trust for the use and benefit of the relevant city or general health district or authority any grant or devise of land and any domain or bequest of money or other personal property. In 1989, the Ohio Attorney General issued an opinion consistent with this provision.[132]

### Office space and utilities

(R.C. 3709.34)

#### County responsibility for office space and utilities

The bill requires a board of county commissioners to provide office space and utilities through fiscal year 2013 for the board of health having jurisdiction over the county's general health district. Current law provides that a board of county commissioners, as well as the legislative authority of a city, "may" furnish suitable quarters for any board of health or health department having jurisdiction over all or a major part of the county or city. The Attorney General has advised that a board of county commissioners, but not a city, *is required* to provide and pay for "office space and utilities" under this law.[133]

After fiscal year 2013, the bill requires the board to make decreasing payments for office space and utilities for the board of health, based upon a written estimate of their total cost, until fiscal year 2018, at which time the board no longer has the duty to provide or pay for the board of health's office space and utilities.

#### Estimate of total cost

The bill requires the board of county commissioners, not later than September 30 of 2012, 2013, 2014, and 2015 to make a written estimate of the total cost for the ensuing fiscal years 2014, 2015, 2016, and 2017, respectively, to provide office space and utilities to the board of health of the county's general health district. The estimate of total cost must include all of the following:

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[132] *See* 1989 Op. Att'y Gen. No. 89-032.

[133] *See* 1996 Op. Att'y Gen. No. 96-016, 1989 Op. Att'y Gen. No. 89-038, 1986 Op. Att'y Gen. No. 86-037, 1985 Op. Att'y Gen. No. 85-003, and 1980 Op. Att'y Gen. No. 80-086.

- The total square feet of space to be used by the board of health.
- The total square feet of any common areas that should be reasonably allocated to the board of health, and the method for making this allocation.
- The actual cost per square foot for both the space used by and the common areas allocated to the board of health.
- An explanation of the method used to determine the actual cost per square foot.
- The estimated cost of providing utilities, including an explanation of how this cost was determined.
- Any other estimated costs the board of county commissioners anticipates will be incurred to provide office space and utilities to the board of health, including a detailed explanation of those costs and the rationale used to determine them.

The board of county commissioners must forward a copy of the estimate of total cost to the director of the board of health not later October 5 of 2012, 2013, 2014, and 2015. The director must review the estimate and, not later than 20 days after its receipt, notify the board of county commissioners that the director agrees with or objects to the estimate, giving specific reasons for any objections.

If the director agrees with the estimate, it becomes the final estimate of total cost. Failure of the director to make objections to the estimate by the 20th day after its receipt is deemed to mean that the director is in agreement with the estimate.

If the director timely objects to the estimate and provides specific objections to the board of county commissioners, the board must review the objections and may modify the original estimate, and within ten days after receipt of the objections, send a revised estimate of total cost to the director. The director must respond to a revised estimate within ten days after receiving it. If the director agrees with the estimate, the revised estimate becomes the final estimate of total cost. If the director fails to respond within the ten-day period, the director is deemed to have agreed with the revised estimate. If the director disagrees with the revised estimate, the director must send specific objections to the board of county commissioners within the ten-day period.

If the director timely objected to the original estimate or sends specific objections to a revised estimate within the required time, or if there is no revised estimate, the probate judge of the county must determine the final estimate of total cost and certify

this amount to the director and the board of county commissioners before January 1 of 2013, 2014, 2015, or 2016, as applicable.

**Payment schedule**

Under the bill, a board of county commissioners must pay for the board of health's office space and utilities until fiscal year 2018, based on the following percentages of the final estimate of total cost:

(1) 80% for fiscal year 2014;

(2) 60% for fiscal year 2015;

(3) 40% for fiscal year 2016;

(4) 20% for fiscal year 2017.

In fiscal years 2014, 2015, 2016, and 2017, the board of health is responsible for the payment of the remainder of any costs incurred in excess of the amount payable under (1) through (4), above, as applicable, for its office space and utilities, including any unanticipated or unexpected increases in costs beyond the final estimate of total cost.

Beginning in fiscal year 2018, the board of county commissioners has no obligation to make payments for, or provide, office space and utilities for the board of health.

**Other methods to obtain office space and utilities**

After fiscal year 2017, the board of county commissioners and the board of health of the county's general health district may enter into a contract for the board of county commissioners to provide office space for the use of the board of health and to provide utilities for that office space. The term of the contract cannot exceed four years and may be renewed for additional periods not to exceed four years.

Notwithstanding the bill's requirements and payment schedule, in any fiscal year the board of county commissioners, in its discretion, may provide office space and utilities for the board of health free of charge.

**Board of health obtains own office space**

If at any time the board of health rents, leases, lease-purchases, or otherwise acquires office space to facilitate the performance of its functions, or constructs, enlarges, renovates, or otherwise modifies buildings or other structures to provide office space to facilitate the performance of its functions, the board of county

commissioners of the county served by the general health district has no further obligation to provide office space or utilities, or to make payments for office space or utilities, for the board of health, unless the board of county commissioners enters into a contract with the board of health to provide office space for the use of the board of health and to provide utilities for that office space, or exercises its option to provide office space and utilities to the board of health free of charge.

## General health district appropriation measures

(R.C. 3709.28)

Current law requires a general health district to adopt an itemized appropriation measure and revenue estimate for every fiscal year. The bill provides an exception to this requirement for general health districts that will not receive appropriations from the subdivisions that comprise the district for the upcoming year. Under the bill, such districts may alternatively adopt an appropriation measure similar to that required for other political subdivisions.

### Appropriation measure and revenue estimate requirements

Under current law, a general health district appropriation measure must show the amounts that the district wishes to appropriate for expenses in the upcoming year. The itemized revenue estimate must list the district's expected sources of revenue for that year, including any amounts that the district expects to receive from the state or to collect in fees. The bill additionally specifies that the revenue estimate must include any amounts that the district will receive from taxes levied on its behalf.

### Appropriation procedures

A general health district must certify its appropriation measure and revenue estimate to the county auditor, who submits the information to the county budget commission. The commission reviews the information and fixes an aggregate appropriation amount for the district. The district's expected revenue and any estimated balance carried forward from the previous appropriation is then subtracted from the aggregate appropriation amount. The resulting amount (the net appropriation needed by the district for the upcoming year) is apportioned among the municipal corporations and townships that comprise the district according to the proportion of the subdivision's taxable property located in the district. The bill modifies the calculation of a district's net appropriation to instead require that the aggregate appropriation amount be subtracted by the district's expected revenue and any surplus money in the District Health Fund that may be carried forward to fund ongoing operations in the upcoming year.

### Appropriation measure alternative

Under the bill, if a general health district will not receive appropriations from the municipal corporations or townships that comprise the district in an upcoming year, the district may choose to submit an appropriation measure as required under current law or, alternatively, to comply with other state law governing the submission of appropriation measures by subdivisions. If the district chooses the latter, the district must submit an appropriation measure that shows the amount to be appropriated to each office, department, or division within the district and, within those appropriations, the amount dedicated to personal services. The total amount appropriated under the measure cannot exceed the amount of estimated revenue certified for the district for the upcoming year by the county budget commission. (R.C. 5705.38, 5705.39, and 5705.40.)

### Revenue

Current law requires all of a general health district's revenue to be deposited into a District Health Fund. The bill modifies this requirement to clarify that all revenue must be so deposited unless a statute or rule requires otherwise. The bill also specifies that all revenue in the District Health Fund must be used and maintained in accordance with the purpose for which the revenue was received.

## Joint county departments of job and family services

(R.C. 329.01, 329.40, 329.41, 329.42, 329.43, 329.44, 329.45, 329.46, 330.04, and 5101.01)

### Authority to form a joint department

Current law permits the boards of county commissioners of Hocking, Ross, and Vinton counties, by entering into a written agreement, to form a county department of job and family services (CDJFS) as a joint CDJFS. The formation of this joint CDJFS is a pilot project, without a specified ending date, as authorized under Sub. H.B. 225 of the 129th General Assembly.

The bill expands the authority to establish a joint CDJFS beyond the counties of Hocking, Ross, and Vinton and eliminates the qualification that the formation of a joint CDJFS is a pilot project. Under the bill, any two or more counties are permitted to form a joint CDJFS.

The procedures for forming and operating a joint CDJFS under the bill are the same as H.B. 225's procedures for the pilot project authorized in Hocking, Ross, and Vinton counties. These procedures are described in detail below.

### Agreement by boards of county commissioners

The bill permits the boards of county commissioners of any two or more counties, by entering into an agreement, to form a joint CDJFS to perform the duties, provide the services, and operate the programs required of a single CDJFS. The agreement must be ratified by resolution of the board of county commissioners of each county that entered into the agreement.

### Notice of the agreement

Each board of county commissioners that enters into an agreement to form a joint CDJFS must give notice of the agreement to the Ohio Department of Job and Family Services (ODJFS) at least 90 days before the agreement's effective date. The agreement takes effect not earlier than the first day of the calendar quarter following the 90-day notice period. The ODJFS Director is required to adopt, as an internal management rule under the abbreviated rulemaking procedure, the form in which the notice must be given.

### Components of the agreement

An agreement to establish a joint CDJFS must specify all of the following:

- The obligations of each board of county commissioners in operating the joint CDJFS, including requiring each board to provide state, federal, and county funds to the operation of the joint CDJFS and the schedule for providing those funds;
- How and which facilities, equipment, and personnel will be shared;
- Procedures for the division of resources and obligations if one or more counties withdraw from the joint CDJFS or if the CDJFS ceases to exist;
- Any contributions of participating counties establishing the joint CDJFS and the rights of those counties in lands or personal property, or rights or interests therein, contributed to or otherwise acquired by the joint CDJFS.[134]

The agreement also may set forth any or all of the following:

- Quality, timeliness, and other standards to be met by each county;

[134] R.C. 329.40(B)(1).

- Which family service programs and functions are to be included in the joint CDJFS;

- Procedures for the operation of the board of directors (described below), including procedures governing the frequency of meetings and the number of members of the board required to constitute a quorum to take action;

- Any other procedures or standards necessary for the joint CDJFS to perform its duties and operate efficiently.

### Board of directors

The boards of county commissioners of the counties forming a joint CDJFS constitute, collectively, the board of directors of the joint CDJFS. On the effective date of the agreement, the board of directors takes control of and manages the joint CDJFS subject to all laws that govern the authority and responsibilities of a single board of county commissioners in the operation of a single CDJFS. Costs incurred in operating the joint CDJFS must be paid from a joint general fund created by the board of directors, except as may be otherwise provided in the agreement.

The board of directors, by a majority vote, may amend the agreement, but no amendment may divest a participating county of any right or interest in lands or personal property without its consent. The board of directors of the joint CDJFS must appoint and fix the compensation of a director of the joint CDJFS. The director serves at the pleasure of the board of directors. Under the direction and control of the board, the director has full charge of the joint CDJFS as set forth in continuing law for the director of a single CDJFS. The board of directors also may appoint up to three administrators to oversee services provided by the joint CDJFS. Administrators are in the unclassified service.

The board of directors may acquire, by purchase or lease, real property, equipment, and systems to improve, maintain, or operate family service programs within the territory served by the joint CDJFS. A board of county commissioners may acquire, within its county, real property or any estate, interest, or right therein, by appropriation or any other method, for use by the joint CDJFS in connection with its provision of services. Appropriation proceedings must be conducted under property appropriation laws unchanged by the bill (R.C. Chapter 163.).

A board of county commissioners that formed the joint CDJFS may contribute lands or rights or interests therein, money, other personal property or rights or interests therein, or services to the joint CDJFS. The board of county commissioners may issue bonds or bond anticipation notes of the county to pay the cost of acquiring real property

and of constructing, modifying, or upgrading a facility to house employees of the joint CDJFS. The board of directors may reimburse the county for the use of such a facility if it is required to do so under the agreement forming the joint CDJFS.

### Employees

Employees of a joint CDJFS must be appointed by the director of the joint CDJFS and are in the classified service. The employees must be considered county employees for the purposes of the Department of Administrative Services civil service law (R.C. Chapter 124.) and all other provisions of state law applicable to county employees. Instead of or in addition to appointing these employees, the board of directors may agree to use the employees of one or more of the counties that formed the joint CDJFS in the service of the joint CDJFS and to share in their compensation in any manner that may be agreed upon.

Notwithstanding any other state law, if an employee's separation from county service occurs in connection with a county joining or withdrawing from a joint CDJFS, the board of county commissioners that initially appointed the employee has no obligation to pay any compensation with respect to unused vacation or sick leave accrued to the credit of the employee if the employee accepts employment with the joint CDJFS or a withdrawing county (discussed below). At the effective time of separation from county service, the joint CDJFS or the withdrawing county, as the case may be, must assume such unused vacation and sick leave accrued to the employee's credit.

### Fiscal officer and treasurer

The county auditor of the county with the largest population that formed a joint CDJFS must serve as the fiscal officer of the CDJFS, and the county treasurer of that county must serve as the treasurer of the CDJFS, unless the counties forming the joint CDJFS agree to appoint the county auditor and county treasurer of another county that formed the CDJFS. In either case, these county officers are required to perform any applicable duties for the joint CDJFS as each typically performs for the county of which the individual is an officer. The board of directors of the joint CDJFS may pay to that county any amount agreed upon by the board of directors and the board of county commissioners of that county to reimburse the county for the costs that are properly allocable to the service of its officers as fiscal officer and treasurer of the CDJFS.

### Prosecuting attorney

The prosecuting attorney of the county with the largest population that formed a joint CDJFS must serve as the legal advisor of the board of directors of the joint CDJFS, unless the counties that formed the joint CDJFS agree to appoint the prosecuting attorney of another county that formed the joint CDJFS as legal advisor of the board. As

reimbursement for this service, the board of directors may pay to the county of the prosecuting attorney who is the legal advisor of the board any amount agreed upon by the board of directors and the board of county commissioners of that county. The prosecuting attorney must provide such services to the board of directors as are required or authorized to be provided to other county boards.[135]

If the board of directors of the joint CDJFS wishes to employ other legal counsel on an annual basis to serve as the board's legal advisor in place of the prosecuting attorney, the board may do so with the agreement of the prosecuting attorney. And if the board of directors of the joint CDJFS wishes to employ other legal counsel to represent or advise the board on a particular matter in place of the prosecuting attorney, the board may do so with the agreement of the prosecuting attorney. If the prosecuting attorney does not agree, the board of directors may apply to the court of common pleas of the county with the largest population that formed the joint CDJFS for authority to employ other legal counsel on an annual basis or for that particular matter.

The prosecuting attorney who is the legal advisor of the board of directors must be given notice of an application to employ other legal counsel on an annual basis to serve as the board's legal advisor, or an application to employ other legal counsel to represent or advise the board on a particular matter, in place of the prosecuting attorney, and must be afforded an opportunity to be heard. After the hearing, the court may authorize the board of directors to employ other legal counsel on an annual basis or for a particular matter only if it finds that the prosecuting attorney refuses or is unable to provide the legal services that the board requires. If the board of directors employs other legal counsel on an annual basis or for a particular matter, the board may not require the prosecuting attorney to provide legal advice, opinions, or other legal services during the period or to the extent that the board employs the other legal counsel.

### Withdrawal and dissolution

A board of county commissioners that entered into an agreement to form a joint CDJFS may pass a resolution requesting to withdraw from the agreement. The board of county commissioners must deliver a copy of the resolution to the board of directors of the joint CDJFS. The board of directors must deliver written notice of the requested withdrawal to the boards of county commissioners of the other county or counties that formed the joint CDJFS. Within 30 days after receiving the notice, each of those boards of county commissioners must adopt a resolution either accepting the withdrawal or

[135] R.C. 329.43(A) and (B).

objecting to the withdrawal, and deliver a copy of the resolution to the board of directors.[136]

If any of the boards of county commissioners that formed a joint CDJFS adopts a resolution objecting to the requested withdrawal, the board of directors must deliver written notice of the objection to each other board of county commissioners of the counties that formed the joint CDJFS, including the board of county commissioners of the county proposing withdrawal. Not later than 30 days after sending the notice, the board of directors must hold a meeting to discuss the objection. After the meeting, the board of directors must determine whether the county requesting withdrawal desires to proceed with the withdrawal and, if the county does, the board of directors is required to accept the withdrawal. Not later than 30 days after the determination was made, the board of directors must deliver written notice of the withdrawal to the boards of county commissioners that formed the joint CDJFS and to the board of county commissioners that requested withdrawal, and commence the withdrawal process.

If all of the boards of county commissioners that formed a joint CDJFS, except for the board of county commissioners requesting the withdrawal, each adopt a resolution accepting the withdrawal, the board of directors must declare the withdrawal to be accepted. Not later than 30 days after the declaration, the board of directors must deliver written notice of the withdrawal to all of the boards of county commissioners that formed the joint CDJFS, including the board of county commissioners of the county requesting withdrawal, and commence the withdrawal process.

If a county requesting to withdraw decides to remain as a party to the agreement establishing a joint CDJFS, the board of county commissioners of that county must rescind its original resolution requesting withdrawal and must deliver a copy of the rescission to the board of directors of the joint CDJFS not later than 30 days after adopting the rescission.[137]

If a county withdraws from an agreement, under the withdrawal process, the board of directors must ascertain, apportion, and order a division of the funds on hand, credits, and real and personal property of the joint CDJFS, either in money or in kind, on an equitable basis between the joint CDJFS and the withdrawing county according to the agreement forming the joint CDJFS and consistent with any prior contributions of

[136] R.C. 329.45(A)(1).

[137] R.C. 329.45(A)(5).

the withdrawing county to the CDJFS. Any debt incurred individually remains the responsibility of that county, unless otherwise specified in the agreement.[138]

The board of directors is required to give notice to ODJFS of the withdrawal of a county at least 90 days before the withdrawal becomes final. The ODJFS Director must adopt, as an internal management rule, the form in which the notice must be given. The withdrawal becomes final not earlier than the first day of the calendar quarter following the 90-day notice period. On and after that day, the withdrawing county ceases to be a part of the joint CDJFS, and its members of the board of directors cease to be members of that board.

If the withdrawal of one or more counties would leave only one county participating in a joint CDJFS, the board of directors must ascertain, apportion, and order a final division of the funds on hand, credits, and real and personal property of the joint CDJFS. On and after the day on which the latest withdrawal of a county becomes final, the joint CDJFS is dissolved. When a joint CDJFS is dissolved and any indebtedness remains unpaid, the boards of county commissioners that formed the joint CDJFS must pay the indebtedness of the joint CDJFS in the amounts established by the agreement at the time the indebtedness was incurred.

### Removal of a county

A board of county commissioners that formed a joint CDJFS, by adopting a resolution, may propose the removal of another county that formed the joint CDJFS. The board of county commissioners must send a copy of the resolution to the board of directors of the joint CDJFS. Not later than ten days after receiving the copy of the resolution, the board of directors must send a copy of the resolution to each board of county commissioners that formed the joint CDJFS, except the board of county commissioners proposing removal. Not later than 30 days after sending a copy of the resolution, the board of directors must hold a hearing at which any county commissioner whose county formed the joint CDJFS may present arguments for or against the removal. At the hearing, approval or disapproval of the removal must be determined by a two-thirds vote of the county commissioners of the counties that formed the joint CDJFS, with the exception of the county commissioners of the county proposed for removal.

In addition, the board of directors of a joint CDJFS, by adopting a resolution by a majority vote of the members of the board, may propose removal of a county that formed the joint CDJFS. Not later than ten days after adopting the resolution, the board of directors must send a copy of the resolution to the board of county commissioners of

[138] R.C. 329.45(B).

each county that formed the joint CDJFS, including the board of county commissioners of the county proposed for removal. Not later than 30 days after sending the copy of the resolution, the board of directors must hold a hearing at which any member of the board may present arguments for or against the removal. At this hearing, approval or disapproval of the resolution proposing removal must be determined by a two-thirds vote of the members of the board of directors, with the exception of the board members who represent the county proposed for removal.

If removal of a county is approved, the board of directors must give written notice of the approval to ODJFS at least 90 days before the removal takes effect. The ODJFS Director must adopt, as an internal management rule, the form in which the notice must be given. Removal of a county takes effect not earlier than the first day of the calendar quarter following the 90-day notice period. If, at any time, the county proposed for removal notifies the board of directors, by a majority vote of that county's board of county commissioners, that it chooses to withdraw from the joint CDJFS, the withdrawal procedure established by the bill must be put immediately into motion.

### Health insurance coverage for county officers and employees

(R.C. 305.171)

The bill eliminates a provision that prohibits boards of county commissioners from contracting for or purchasing group health insurance, policies, or benefits once the Department of Administrative Services implements for counties health care insurance plans that include or address those benefits and that contain best practices.[139]

### County auditor

(R.C. 319.09)

The bill authorizes a county auditor, if authorized by a resolution of the board of county commissioners, to serve as the fiscal officer of any department, office, or agency of the county.

### Sharing of county weights and measures inspectors

(R.C. 319.59)

The county auditor is the county sealer of weights and measures and, as the county sealer, must appoint inspectors to compare weights and measures used in the

[139] Under R.C. 9.901, as amended by the biennial operating budget, Am. Sub. H.B. 153 of the 129th General Assembly.

county or that are brought to the county sealer's office for that purpose. The bill authorizes the county sealer to share the services of a weights and measures inspector with another county sealer, so long as the inspector remains a part-time employee of each county by whom the inspector is employed. If the inspector becomes a full-time employee of one county, the inspector's employment with the other county is to be terminated.

The bill also authorizes the county sealer, in lieu of appointing or sharing an inspector, to enter into a contract with a private person to employ the person to perform the same services that an appointed inspector would perform. Each private person employed must meet the training and continuing education requirements established by the Director of Agriculture for weights and measures inspector personnel.

Under continuing law, appointed inspectors receive a salary fixed by the county sealer. The bill requires that private persons employed by the county sealer as weights and measures inspectors are to receive the compensation specified in the employment contract.

## Fiscal distress financial plan requirements

(R.C. 118.023, 118.06, 3316.04, and 3316.06)

The Auditor of State may place a municipal corporation, county, township, and school district under a fiscal watch when certain conditions exist, such as when accounts are unpaid or overdue, or there are operating deficits. If more dire circumstances exist, such as defaults on debt obligations, the Auditor of State may determine that a fiscal emergency exists. In either case, a financial plan for the municipal corporation, county, township, or school district must be submitted to the Auditor of State. The financial plan must identify actions to be taken to eliminate the fiscal watch or fiscal emergency conditions.

The bill requires a municipal corporation, county, township, or school district under a fiscal watch or fiscal emergency, when identifying in its financial plan actions to be taken, to include any actions to be taken to enter into shared services agreements with other political subdivisions, if so authorized by statute, for the joint exercise of any power, performance of any function, or rendering of any service. Continuing law allows some political subdivisions, when authorized by their respective legislative authorities, to enter into agreements with other political subdivisions for the performance of services. One example of this is found in R.C. 9.482, which allows a contracting political subdivision, under an agreement, to exercise any power, perform any function, or render any service for another contracting recipient political subdivision.

## Increased competitive bidding thresholds

(R.C. 723.52, 723.53, 731.141, 735.05, 737.03, 749.26, 749.28, 749.31, 753.15, 755.29, 755.30, and 6115.20)

The bill increases the competitive bidding thresholds for statutory cities and villages from $25,000 and $30,000 to $50,000. The bill also increases from $10,000 to $50,000, the competitive bidding threshold for a board of hospital trustees of a municipal hospital having donated property under the jurisdiction of a board of hospital trustees. Similarly, the bill increases from $10,000 to $50,000, the competitive bidding threshold for a joint board having management control over (1) a workhouse erected for the joint use of a city and a county or (2) real estate held for the purpose of erecting and maintaining a workhouse thereon. The bill also increases from $25,000 to $50,000, the threshold for a board of park commissioners having control of parks and park facilities to contract for the performance of any work, the cost of which exceeds that amount, and changes the threshold from $10,000 to $50,000 for any contract for work or supplies. Lastly, the bill increases the bidding thresholds for sanitary districts from $10,000 to $50,000. Costs or contracts in amounts below the thresholds do not require competitive bidding; costs or contracts in amounts above the threshold must meet current statutory requirements for competitive bidding.

## Effective period of quarterly county spending plans

(R.C. 5705.392)

Under continuing law, a board of county commissioners may adopt a quarterly spending plan setting forth a quarterly schedule of expenditures for any county office, department, or division that, during the previous fiscal year, spent 110% or more of the total amount appropriated for personal services. Current law requires this plan or amended plan to remain in effect for two fiscal years or, if later, 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.

The bill limits the effective period of a spending plan to no longer than two fiscal years, but the plan would expire in any of those fiscal years in which the particular elected official who administered the office at the time the office became subject to the plan is no longer administering that office.

### STD testing for a person charged with a sexual offense

(R.C. 2907.27)

Under existing law, if a person is charged with rape, sexual battery, unlawful sexual conduct with a minor, soliciting, loitering to engage in solicitation, or prostitution, or a substantially equivalent municipal ordinance, the arresting authorities or a court, upon the request of the victim or the prosecutor, must cause the accused person to submit to one or more tests to determine if the accused is suffering from a venereal disease. The bill requires the arresting authorities or a court, upon such a request, to cause the accused in any such case to submit to testing for venereal disease not later than 48 hours after the date on which the complaint, information, or indictment is filed against the accused.

## OHIO LOTTERY COMMISSION (LOT)

- Changes from the Director of Budget and Management to the Director of the State Lottery Commission, the person who judges whether there are excess proceeds or net proceeds in the State Lottery Fund that may be transferred to the Lottery Profits Education Fund.

### Transfer of state lottery fund excesses or net proceeds

(R.C. 3770.06(B))

The bill changes from the Director of Budget and Management (OBM Director) to the Director of the State Lottery Commission, the person who judges whether there are amounts in the State Lottery Fund, not including amounts that represent proceeds from statewide joint lottery games, that are in excess of the amount needed to meet the maturing obligations and working capital of the Commission, and amounts in the State Lottery Fund that represent net proceeds from statewide joint lottery games, that are to be transferred to the Lottery Profits Education Fund. The Director of the State Lottery Commission is required to recommend the amounts to be transferred, but the OBM Director may, but is not required, to transfer the excess proceeds or net proceeds to the Lottery Profits Education Fund. Current law requires the OBM Director to transfer whatever excess proceeds or net proceeds the OBM Director judges should be transferred.

The bill eliminates the crediting to the Lottery Profits Education Fund of repayments of loans from the Educational Excellence Investment Fund. The Educational Excellence Investment Fund, according to the Office of Budget and Management, is defunct.

## MANUFACTURED HOMES COMMISSION (MHC)

- Transfers regulatory authority related to manufactured home parks from the Department of Health and the Public Health Council to the Manufactured Homes Commission.
- 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 into 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 747.10.10)[140]

The bill transfers the authority to do all of the following from the Department of Health and the Public Health Council to the Manufactured Homes Commission:

- 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;
- Inspect the installation, blocking, tiedown, foundation, and base support systems of manufactured housing in a park;
- License persons who operate a park;
- Inspect each park for compliance with the Manufactured Home Park Law;
- Approve any development in a park;
- Approve any park development in a 100-year flood plain;
- 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);
- Provide permits for the repair/alteration of homes damaged in a flood event;
- Compel a county prosecuting attorney, city director of law, or the Attorney General to prosecute to termination, or bring an action for injunction against a person, that has violated Manufactured Home Park Law.

The bill requires the Commission to adopt rules regulating manufactured home parks not later than December 1, 2012. After adopting the rules, the Commission immediately must notify the Director of Health. The rules governing manufactured

[140] R.C. 3733.01 to 3733.20 under current law are renumbered within the range of 4781.26 to 4781.52 by the bill.

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 2013.

The bill also revises who may inspect the installation, blocking, tiedown, foundation, and base support systems of manufactured housing in a manufactured home park. Under the bill, the person must be certified by the Commission pursuant to rules the Commission adopts. Under current law, the person must have completed an installation training course approved by the Commission.

### Commission membership

(R.C. 4781.02; Section 747.10.30)

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. The term of the Department of Health representative ends on the effective date of this provision. The initial term of the registered sanitarian ends on the date when the term of the Department of Health's representative would have expired.

### Board of health responsibilities

(R.C. 4781.26(D), 4781.04(C), and 4781.33)

Under the bill, the Commission may enter into contracts to fulfill the Commission's annual inspection responsibilities for manufactured home parks. 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 bill requires the park operator to notify the Manufactured Homes Commission in addition to the board of health that has jurisdiction at that location as under current law. After receiving notification from the park operator, the bill requires the Commission to 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. 4743.05, 4781.121, 4781.28, and 4781.54; Section 747.10.20)

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 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 administration and enforcement of 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(A)(13))

The bill requires the Commission to develop a policy regarding the maintenance of records for any inspection authorized or conducted under the Manufactured Home Park 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 the person making those alterations, repairs, or changes obtain a permit.

## 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 following: (1) licensure requirements for the installation of manufactured housing, (2) licensure requirements for the display or sale of manufactured or mobile homes, (3) licensure requirements for the operation of manufactured home parks, or (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 of up to $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 and 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)

### Adult care facilities

- Eliminates separate licensing requirements for adult care facilities and residential facilities for persons with mental illness and instead makes adult care facilities a type of residential facility for purposes of licensure by the Ohio Department of Mental Health (ODMH).

- Requires ODMH licensure as a residential facility to serve the following individuals: (1) children with serious emotional disturbances or in need of mental health services and (2) adults who are recipients under the Residential State Supplement Program.

- Adds certain provisions to the law governing ODMH-licensed residential facilities that are based on existing provisions in the adult care facilities law.

- Requires the operator of a facility to be the applicant for an initial or renewed license to operate a residential facility and to pay a nonrefundable application fee specified in rules to be adopted by the ODMH Director.

- Permits, rather than requires, imposition of a monetary penalty against a person for violating any of the ODMH residential facility licensing laws; refers to the penalty as a fine, rather than a civil penalty; and increases the monetary penalty amount to $500 (from $100) for a first offense and to $1,000 (from $500) for each subsequent offense.

- Grants qualified immunity from civil liability and criminal prosecution to a person making a complaint regarding the licensing or operation of an ODMH-licensed residential facility.

- Requires the ODMH Director to adopt additional rules regarding residential facilities that establish: (1) procedures for conducting criminal records checks for residential facility operators and staff, (2) fees for initial and renewed licenses, and (3) standards and procedures under which the Director may waive any of the residential facility licensure rules.

### Residential State Supplement Program

- Specifies that, if ODMH does not designate an entity to serve as an area's residential state supplement administrative agency, ODMH is responsible for administering the Residential State Supplement (RSS) Program in that area.

- Make clarifying changes regarding the process for approval of living arrangements under the RSS Program for persons with mental disabilities.

### Exchange of confidential health information

- Authorizes ODMH to exchange psychiatric hospitalization records, other mental health treatment records, and other pertinent information with boards of alcohol, drug addiction, and mental health services and community mental health agencies to ensure continuity of care for inmates or offenders who are receiving mental health services in an Ohio Department of Rehabilitation and Correction (ODRC) institution and are scheduled for release within six months.

- Eliminates ODMH's duty to notify an inmate and receive consent before disclosing the inmate's psychiatric hospitalization records, other mental health treatment

records, and other pertinent information to ODRC for purposes of ensuring the inmate's continuity of mental health care.

- Eliminates a requirement that the custodian of records in an ODMH hospital, institution, or facility, a community mental health agency, or an ODMH-licensed hospital attempt to obtain patient consent before disclosing the patient's records to a payer or health care provider if the purpose of the exchange is to facilitate continuity of care.

## Contract dispute process

- Restores a law eliminated by Am. Sub. H.B. 153 of the 129th General Assembly regarding the involvement of ODMH in a contract dispute between a board of alcohol, drug addiction, and mental health services and a community mental health agency or facility.

## Commitment for treatment of defendants

- Eliminates the requirement that an examiner who is appointed to evaluate the mental condition of a defendant and who believes that the defendant is mentally ill or retarded and incapable of understanding the criminal proceedings or assisting in the defense make a recommendation as to whether the defendant is amenable to engagement in mental health treatment or developmental disability services.

- Authorizes additional commitment options for certain criminal defendants who are found incompetent to stand trial or not guilty by reason of insanity.

- Eliminates the prosecutor's authority, in the case of a defendant who is charged with a misdemeanor that is not an offense of violence and who is incompetent to stand trial, to hold the charges in abeyance while the defendant engages in mental health treatment or developmental disability services.

- Requires the place of commitment to which certain persons found incompetent to stand trial or not guilty by reason of insanity are committed to provide to the board of alcohol, drug addiction, and mental health services or the local community mental health board information received from the prosecutor.

- Authorizes involvement of community mental health boards in the development of a plan to implement recommendations for a termination or change in conditions of commitment of certain persons found incompetent to stand trial or not guilty by reason of insanity and requires the Department of Mental Health to consult with the board of alcohol, drug addiction, and mental health services or the local community

mental health board serving the area before the recommendation and plan are sent to the court.

- Makes changes to conform to the foregoing provisions, changes "developmental disability" to "mental retardation" in certain places, and makes changes to clarify existing references to the program to which a defendant is committed.

## Inclusion of adult care facilities as ODMH-licensed residential facilities

(R.C. 5119.22 (primary), 5119.70 (repealed), 5119.701 (repealed), 5119.71 (repealed), 5119.711 (repealed), 5119.712 (repealed), 5119.72 (repealed), 5119.73 (repealed), 5119.731 (repealed), 5119.74 (repealed), 5119.75 (repealed), 5119.76 (repealed), 5119.77 (repealed), 5119.78 (repealed), 5119.79 (repealed), 5119.80 (repealed), 5119.81 (repealed), 5119.82 (repealed), 5119.83 (repealed), 5119.84 (repealed), 5119.85 (repealed), 5119.86 (repealed), 5119.87 (repealed), 5119.88 (repealed), 5119.99; Section 751.10.10; conforming changes in 109.57, 109.572, 140.01, 140.08, 173.14, 173.21, 173.26, 173.42, 173.45, 173.46, 340.03, 340.05 (repealed), 2317.02, 2317.422, 2903.33, 3313.65, 3701.07, 3701.74, 3721.01, 3721.02, 3737.83, 3737.841, 3781.183 (repealed), 3791.04, 3791.043 (repealed), 3794.01, 3794.03, 5101.60, 5101.61, 5111.113, 5119.61, 5119.614 (repealed), 5119.69, 5119.692, 5123.19, 5123.61, 5701.13, 5709.12, and 5731.39)

### Background

The Ohio Department of Mental Health (ODMH) licenses both (1) residential facilities serving persons with mental illness and mental disabilities and (2) adult care facilities, which provide accommodations, supervision, and personal care services to three to 16 unrelated adults. Responsibility for licensing adult care facilities was recently transferred to ODMH from the Ohio Department of Health by the main operating budget act, Am. Sub. H.B. 153 of the 129th General Assembly.

**Licensure as a residential facility** – A publicly or privately operated home or facility that provides one of the following is required to be licensed by ODMH as a residential facility:

- Room and board, personal care services, and community mental health services to one or more persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;

- Room and board and personal care services to one or two persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;

- Room and board to five or more persons with mental illness or persons with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner.

**Licensure as an adult care facility** – Any residence, facility, institution, hotel, congregate housing project, or similar facility that provides accommodations and supervision to three to 16 unrelated adults, at least three of whom require personal care services, is an adult care facility and must be licensed by ODMH, regardless of how the facility holds itself out to the public. Adult care facilities are identified as follows:

- An adult family home – a residence or facility that provides accommodations and supervision to three to five unrelated adults, at least three of whom require personal care services;

- An adult group home – a residence or facility that provides accommodations and supervision to six to 16 unrelated adults, at least three of whom require personal care services.

### Licensure of residential facilities

The bill eliminates ODMH's separate licensing procedures for residential facilities and adult care facilities. With modifications and without being referred to as an adult care facility, such a facility is made a type of residential facility for purposes of ODMH licensure.

The bill modifies and expands the types of facilities that must be licensed as residential facilities by ODMH. Under the bill, a publicly or privately operated home or facility that provides one of the following is required to be licensed as a residential facility:

- Accommodations, supervision, personal care services, and community mental health services for one or more of the following unrelated persons who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner:

  --Adults with mental illness;

--Persons of any age with severe mental disabilities;

--Children with serious emotional disturbances or in need of mental health services.

- Accommodations, supervision, and personal care services for three to 16 unrelated adults or for one or two of the following unrelated persons:

--Persons of any age with mental illness who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;

--Persons of any age with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;

--Adults who are recipients under the Residential State Supplement Program.

- Accommodations for five or more of the following unrelated persons:

--Adults with mental illness who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner;

--Adults with severe mental disabilities who are referred by or are receiving community mental health services from a community mental health agency, hospital, or practitioner.

For all residential facilities, the licensing requirement applies when the residents are unrelated. The bill defines "unrelated" to mean that a resident is not related to the owner or operator of a residential facility or to the owner's or operator's spouse as a parent, grandparent, child, stepchild, grandchild, brother, sister, niece, nephew, aunt, or uncle, or as the child of an aunt or uncle.

The bill adds definitions of "child" and "adult." Under the bill, "child" is defined as a person who is under age 18 or a person with a mental disability who is under age 21. "Adult" is defined as a person who is age 18 or older, other than a person with a mental disability who is between the ages of 18 and 21.

In addition to current law provisions that exclude certain facilities from ODMH licensure as residential facilities, the bill specifies that the following are not residential facilities for this purpose: (1) a facility operated by a hospice care program used

exclusively for care of hospice patients, (2) an alcohol or drug addiction program, (3) a facility licensed to provide methadone treatment, (4) any facility that receives funding from the Department of Development to provide emergency shelter housing or transitional housing for the homeless, (5) a terminal care facility for the homeless that has entered into an agreement with a hospice care program, and (6) a facility approved by the federal Veterans Administration and used exclusively for the placement and care of veterans.

### Services provided by residential facilities

As described above, the bill modifies the services that are provided by a residential facility licensed by ODMH. Depending on the type of residential facility, the services that are provided under current law are room and board, personal care services, and community mental health services. The bill provides that accommodations (rather than room and board) are provided by a residential facility and adds supervision to the services to be provided by a facility.

Under the bill, "accommodations" means housing, daily meal preparation, laundry, housekeeping, arranging for transportation, social and recreational activities, maintenance, security, and other services that do not constitute personal care services or skilled nursing care. "Supervision" means (1) observing a resident to ensure the resident's health, safety, and welfare while the resident engages in activities of daily living or other activities, (2) reminding a resident to perform or complete an activity, and (3) assisting a resident in making or keeping an appointment.

### Transition from adult care facility license to residential facility license

For purposes of the transition from being licensed as an adult care facility to licensure as a residential facility, the bill authorizes the ODMH Director to convert an adult care facility license that is in effect immediately before the bill's effective date to a residential facility license. Until the Director converts the license or issues an order denying the conversion, the adult care facility license is deemed to be a residential facility license. All rules, orders, and determinations pertaining to the adult care facility license continue in effect as rules, orders, and determinations pertaining to the residential facility license.

### Provisions from adult care facilities law

The bill adds all of the following provisions to the law governing ODMH-licensed residential facilities that are based on the existing law governing adult care facilities:

--Prohibits the owner, operator, or manager of a residential facility whose license has been revoked or denied renewal (other than for nonpayment of fees) from applying for another license until two years have elapsed, and permanently prohibits such a person from applying if the revocation or refusal was based on abuse, neglect, or exploitation of a resident;

--Authorizes ODMH to issue an order suspending the admission of residents to a residential facility if the facility is in violation of ODMH's licensing requirements;

--Requires a court that grants injunctive relief concerning unlicensed operation of a residential facility to include an order suspending admission of new residents and requiring the facility to assist in relocating its residents;

--Authorizes the following to enter a residential facility at any time: (1) employees designated by the ODMH Director, (2) employees of a board of alcohol, drug addiction, and mental health services (ADAMHS board) when a resident of the facility is receiving mental health services provided by another ADAMHS board or a mental health agency under contract with another ADAMHS board, and (3) employees of a mental health agency in either of the following circumstances: (a) when a client is residing in the facility and (b) when the agency is acting as an agent of an ADAMHS board other than the board with which it is under contract;

--Authorizes ODMH employees to enter, for purposes of investigation, any institution, residence, facility, or other structure that ODMH has reasonable cause to believe is operating as a residential facility without a license;

--Adds provisions relative to residential facilities that pertain to matters of local zoning.

### License to operate residential facility – application process

The bill requires the operator of a residential facility to be the applicant for an initial or renewed license to operate a facility. When applying for an initial or renewed license, a facility operator is required by the bill to pay to ODMH a nonrefundable application fee specified in rules to be adopted by the ODMH Director. Under the bill, "operator" means the person that is responsible for the administration and management of a residential facility.

ODMH is required by current law to send a copy of a licensure application to the ADAMHS board serving the county in which the person seeks to operate a residential facility. In place of current law's requirement that the ADAMHS board review the application and recommend to ODMH whether the application should be approved, the bill instead requires the ADAMHS board to review the application and provide to

ODMH any information about the applicant or the facility that the ADAMHS board would like ODMH to consider in reviewing the application.

### Fines

The bill permits, rather than requires, the imposition of monetary penalties for violating the residential facility licensing laws. It refers to the penalty as a fine, rather than a civil penalty. The bill increases the penalty amount to $500 (from $100) for a first offense and to $1,000 (from $500) for each subsequent offense. When imposing a fine, the ODMH Director must comply with procedures established under the Administrative Procedure Act (R.C. Chapter 119.). It eliminates a provision specifying that the Attorney General is to bring an action to collect unpaid penalties when requested by the ODMH Director and eliminates a provision requiring that amounts collected be deposited into the state treasury and credited to the Mental Health Sale of Goods and Services Fund.

### Qualified immunity

The bill provides that any person who makes a complaint to ODMH regarding the licensing or operation of a residential facility or who participates in an administrative or judicial proceeding resulting from such a complaint is immune from civil or criminal liability, other than for perjury, unless the person acted in bad faith or with malicious purpose.

### Rules

The bill adds all of the following to the rules that must currently be adopted by the ODMH Director regarding licensing and operation of residential facilities:

(1) Procedures for conducting criminal records checks for prospective operators, staff, and other individuals who, if employed by a residential facility, would have unsupervised access to facility residents;

(2) Procedures for residential facility operators to notify the appropriate ADAMHS board when the facility is serving residents with mental illness or severe mental disability, including the circumstances under which a facility operator is required to make such a notification;

(3) Procedures for issuing and terminating orders of suspension of admission of residents to a residential facility;

(4) Fees for new and renewed licenses;

(5) Standards and procedures under which the Director may waive the requirements of any of the residential facility licensure rules.

### Access to facility records

The bill specifies that ODMH, in conducting an inspection of a residential facility, is to have access to copy (rather than only examine) all records, accounts, and other documents relating to the operation of the facility. The bill further specifies that the records that ODMH must be able to examine and copy include records pertaining to facility residents.

### Self-administration of medication

The bill eliminates a provision prohibiting a person from being admitted to or retained by a residential facility unless the person is capable of taking the person's own medication and biologicals, as determined by the person's physician. Current law generally prohibits residential facility staff members from administering medication to facility residents but they may assist residents in self-administration of medication.

## Residential State Supplement Program administrative agency

(R.C. 340.091, 5119.61, 5119.69, and 5119.691)

The bill specifies that ODMH is responsible for administering the Residential State Supplement (RSS) Program in any area where ODMH does not designate an entity to serve as that area's residential state supplement administrative agency. The RSS Program provides supplemental payments to eligible aged, blind, or disabled adults who receive benefits under the federal Supplemental Security Income (SSI) program. The RSS payments must be used for the provision of accommodations, supervision, and personal care services.

If ODMH serves as the RSS administrative agency for an area, the following existing law duties of an RSS administrative agency are applicable to ODMH:

(1) Determining whether the environment in which an individual will be living while receiving RSS payments is appropriate for the individual's needs;

(2) Referring individuals with a mental disability to a community mental health agency to determine whether a living environment is appropriate for the individual

while receiving RSS payments and making a determination based on the agency's recommendation;[141]

(3) Implementing the RSS Program's Home First provisions under which a person on the RSS waiting list who has been admitted to a nursing facility may be approved to participate in RSS ahead of others on the list.

## Exchange of confidential health information by ODMH and ODRC or ADAMHS boards or community mental health facilities

(R.C. 5122.31(A)(14))

The bill authorizes ODMH to exchange psychiatric hospitalization records, other mental health treatment records, and other pertinent information with boards of alcohol, drug addiction, and mental health services (ADAMHS boards) and community mental health agencies to ensure continuity of care for inmates or offenders who are receiving mental health services in an Ohio Department of Rehabilitation and Correction (ODRC) institution and are scheduled for release within six months. This authority mirrors ODMH's existing authority to exchange similar records and information with ODRC. The release of records is limited to records regarding an inmate's or offender's medication history, physical health status and history, summary of course of treatment, summary of treatment needs, and discharge summary.

The bill also eliminates a provision requiring ODMH to notify and receive consent from an inmate before disclosing the inmate's psychiatric hospitalization records, other mental health treatment records, and other pertinent information to ODRC for purposes of ensuring the inmate's continuity of mental health care.

## Exchange of confidential health information by ODMH hospitals and community mental health facilities with payers and other providers

(R.C. 5122.31(B))

Under law unchanged by the bill, documents pertaining to the hospitalization of the mentally ill and criminal trials of persons alleged to be insane generally must be kept confidential and not be disclosed unless the patient consents to disclosure. There are several exceptions to this rule, one of which permits ODMH hospitals, institutions, and facilities, as well as community mental health agencies, to exchange psychiatric records and other pertinent information with payers and health care providers if the purpose of the exchange is to facilitate continuity of care.

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[141] The bill includes clarifying changes regarding the process for approval of RSS Program living arrangements for individuals with mental disabilities.

The bill eliminates a requirement that the custodian of records in an ODMH hospital, institution, or facility; a community mental health agency; or an ODMH-licensed hospital attempt to obtain patient consent before disclosing the patient's records to a payer or health care provider if the purpose of the exchange is to facilitate continuity of care.

## Contract dispute process regarding ADAMHS boards and providers

(R.C. 340.03)

The bill restores a law eliminated by Am. Sub. H.B. 153 of the 129th General Assembly regarding the ODMH's involvement in a contract dispute between a board of alcohol, drug addiction, and mental health services (ADAMHS board) and a community mental health agency or facility. Under the law being restored, an ADAMHS board or community mental health agency or facility must provide notice if the board, agency, or facility proposes not to renew a contract or proposes substantial changes in contract terms. The notice must be given at least 120 days before the expiration of the current contract. During the first 60 days of the 120-day period, both parties are required to attempt to resolve any dispute through good faith collaboration and negotiation to continue to provide services to persons in need.

Before H.B. 153, either party was permitted to notify the ODMH if a contract dispute was not resolved 60 days before the contract's expiration. The ODMH Director was authorized to require both parties to submit the dispute to a third party with the cost to be shared by the ADAMHS board and agency or facility. The Director was required to adopt rules establishing the procedures of the dispute resolution process. H.B. 153 eliminated the ODMH's and Director's involvement in the contract disputes with the result that an ADAMHS board and agency or facility are to submit a dispute directly to a third party.

The bill restores the ODMH's and Director's involvement. Instead of submitting a dispute directly to a third party, an ADAMHS board and agency or facility are to notify ODMH. The Director is permitted to require the parties to submit the dispute to a third party. The bill also restores the Director's rule-making responsibility regarding the procedures for the dispute resolution process.

## Commitment for treatment of defendants who are incompetent to stand trial or not guilty by reason of insanity

(R.C. 2945.371, 2945.38, 2945.39, 2945.40, and 2945.401)

### Examination of defendant who may be incompetent to stand trial or who pleads not guilty by reason of insanity

If the issue of a defendant's competence to stand trial is raised or if a 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 at the time the offense occurred. If the court orders an evaluation, it appoints an examiner to evaluate the defendant. The examiner must file a report with the court within 30 days after the court orders the evaluation. If the evaluation is ordered to determine the defendant's competence to stand trial, the examiner's report must include, among other things, a finding as to whether the defendant is capable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense. Under existing law, if the defendant is charged with a misdemeanor that is not an offense of violence and the examiner believes that the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense and that the defendant is presently mentally ill or mentally retarded, the examiner must make a recommendation as to whether the defendant is amenable to engagement in mental health treatment or developmental disability services. The bill eliminates the requirement for such a recommendation.

### Optional places of commitment

Under existing law, a court must commit criminal defendants who fall within one of the following three categories to ODMH for treatment, continuing evaluation and treatment, or placement at a hospital, facility, or agency that ODMH determines is clinically appropriate:

(1) A defendant whom the court finds to be incompetent to stand trial and for whom there is a substantial probability of becoming competent to stand trial within a year if provided with a course of treatment or a felony defendant whom the court finds to be incompetent to stand trial but who requires further evaluation before the likelihood of becoming competent to stand trial can be determined;

(2) A defendant who is charged with aggravated murder, murder, an offense of violence for which death or life imprisonment may be imposed, a first or second degree felony offense of violence, or a first or second degree felony attempt, complicity, or conspiracy to commit any such offense, is incompetent to stand trial, and, after the expiration of the maximum allowable time for treatment (one year) to become

competent or after the court finds that the defendant is not substantially likely to become competent, is found by clear and convincing evidence to have committed the charged offense and to be a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order;

(3) A defendant who is found not guilty by reason of insanity and is found, by clear and convincing evidence at a subsequent, statutorily required hearing, to be a mentally ill person subject to hospitalization by court order or a mentally retarded person subject to institutionalization by court order.

In the above-described situations, the bill retains the possibility of commitment to ODMH but also gives the court other commitment options. A defendant in category (1) may be committed to a facility certified by ODMH as being qualified to treat mental illness, to a public or community mental health facility, or to a psychiatrist or another mental health professional for treatment or continuing evaluation and treatment. A defendant in category (2) or (3) may be committed to another medical or psychiatric facility. In each case, the bill requires that ODMH obtain court approval for the placement. In each case, the bill eliminates a requirement that the court, in ordering the commitment, specify the least restrictive alternatives on the defendant's freedom of movement that are necessary to protect public safety. However, the bill requires in each case that the court, in determining the place of commitment, consider the extent to which the person is a danger to the person or others, the need for security, and the type of crime involved and order the least restrictive available placement that is consistent with public safety and the person's welfare.

### Prosecutor's authority to hold charges in abeyance

The bill eliminates the prosecutor's authority, in the case of a defendant who is charged with a misdemeanor that is not an offense of violence and who is incompetent to stand trial, to hold the charges in abeyance while the defendant engages in mental health treatment or developmental disability services.

### Provision of information to ADAMH or community mental health board

In the case of a defendant described above in category (2) or (3), existing law requires the prosecutor to provide the place of commitment with all reports of the defendant's current mental condition and other relevant information including, but not limited to, a transcript of the hearing held in the case, copies of relevant police reports, and copies of any prior arrest and conviction records that pertain to the defendant. The bill additionally requires the place of commitment, upon the defendant's admission, to send to the board of alcohol, drug addiction, and mental health services or the community mental health board serving the county in which the charges against the

defendant were filed copies of reports of the defendant's current mental condition, relevant police reports, prior arrest and conviction records, and the other relevant information furnished by the prosecutor (including, if provided, a transcript of the hearing held to determine whether the defendant committed the offense charged and was subject to hospitalization or institutionalization).

### Termination or change in conditions of commitment

In the case of a person described in category (2) or (3), the court retains jurisdiction over the person. Except with regard to certain mentally retarded persons being cared for by the Department of Developmental Disabilities, DMH may recommend termination of the person's commitment or a change in the conditions of commitment. The statute establishes a procedure for an investigation and a hearing in connection with the recommendation, including involvement by the local forensic center. If the forensic center agrees with the recommendation, or if the forensic center disagrees but DMH does not withdraw the recommendation, the designee must work with community mental health agencies, programs, facilities, or boards of alcohol, drug addiction, and mental health services to develop a plan to implement the recommendation. The bill additionally requires the designee to work with community mental health boards to develop that plan. When the plan has been developed, DMH must send the recommendation and plan to the court, the prosecutor, and counsel for the committed person for a hearing and determination. The bill requires the DMH designee to consult with the board of alcohol, drug addiction, and mental health services or the community mental health board serving the area before sending the recommendation and plan to the trial court, prosecutor, and counsel.

### Conforming changes

The bill makes other changes to conform with the provisions described above and to refer to treatment for mental retardation rather than developmental disability. The bill adds "the director of the program" and "program" to several existing provisions dealing with the person in charge of the place to which a defendant is committed or dealing with the place to which a defendant is committed to be consistent with other existing provisions of law.

## DEPARTMENT OF NATURAL RESOURCES (DNR)

- With respect to expenditures from the Oil and Gas Well Fund related to idle and orphaned wells, specifies that competitive bidding does not apply if the Chief of the Division of Oil and Gas Resources Management reasonably determines that an emergency situation exists requiring immediate action for the correction of the

applicable health or safety risk rather than if the Chief reasonably determines that correction of the health or safety risk requires immediate action as in current law.

- Exempts contracts and purchases of material related to such an emergency situation from certain competitive bidding requirements and Controlling Board approval.

- Specifies that a requirement in current law related to the inspection of projects by a licensed professional engineer or professional surveyor does not apply to expenditures from the Oil and Gas Well Fund under contracts for plugging idle and orphaned wells or addressing imminent health or safety risks at such wells.

- Allows the Chief to engage in cooperative projects involving idle and orphaned wells with any agency of Ohio, another state, or the United States; any other governmental agency; or any state university or college.

- Specifies that a contract entered into for purposes of such a cooperative project is not subject to certain competitive bidding requirements or Controlling Board approval.

- Authorizes the Director of Natural Resources to request the Director of Budget and Management to transfer money from the Forestry Mineral Royalties Fund to the Parks Mineral Royalties Fund, and requires the Director of Budget and Management to transfer the money if the Director consents to the request.

- Exempts maintenance of specified hiking and bridle trails in the Shawnee Wilderness Area from the existing prohibition against the operation of motorized vehicles or motorized equipment in the Area, and subjects the Twin Creek Fire Tower to the existing prohibitions against conducting specified activities in the Area.

- Requires a person that desires to take a wild animal that is interfering with, or may interfere with, the operations of an energy facility to obtain a permit to do so from the Chief of the Division of Wildlife.

## Oil and Gas Well Fund – idle and orphaned wells

(R.C. 1509.071)

The bill exempts from competitive bidding requirements certain expenditures from the Oil and Gas Well Fund related to plugging orphaned oil and gas wells. Specifically, the bill declares that competitive bidding does not apply if the Chief of the Division of Oil and Gas Resources Management reasonably determines that an emergency situation exists requiring immediate action for the correction of the

applicable health or safety risk. Current law instead states that the competitive bidding requirements do not apply if the Chief reasonably determines that correction of the applicable health or safety risk requires immediate action.

In addition, the bill declares that a contract or purchase of materials for purposes of addressing the emergency situation is not subject to provisions of current law that require such a purchase to be made by competitive bidding or to be approved by the Controlling Board. The bill also declares that contracts for plugging idle and orphaned wells or addressing imminent health or safety risks at such wells entered into by the Chief are not subject to a requirement in current law related to the inspection of projects by a licensed professional engineer or professional surveyor.

Finally, the bill authorizes the Chief, for purposes of the statute governing idle and orphaned wells, to engage in cooperative projects with any agency of Ohio, another state, or the United States; any other governmental agencies; or any state university or college. A contract entered into for purposes of a cooperative project is not subject to competitive bidding requirements or Controlling Board approval.

## Transfers from Forestry Mineral Royalties Fund

(R.C. 1503.012 and 1541.26)

The bill authorizes the Director of Natural Resources to request the Director of Budget and Management to transfer money from the Forestry Mineral Royalties Fund to the Parks Mineral Royalties Fund. The Director of Budget and Management must transfer the money pursuant to the request if the Director consents to the request. Money that is transferred to the Parks Mineral Royalties Fund must be used for the stated statutory purposes of the Fund.

Under current law, both Funds consist of money derived from leases for oil and gas production on land under the control of the Division of Parks and Recreation or the Division of Forestry, as applicable. Money in the Parks Mineral Royalties Fund must be used by the Division of Parks and Recreation to acquire land and to pay capital costs, including equipment and repairs and renovations of facilities, that are owned by the state and administered by the Division. Money in the Forestry Mineral Royalties Fund must be used by the Division of Forestry to acquire land and to pay capital costs, including equipment and repairs and renovations of facilities, that are owned by the state and administered by the Division of Forestry.

### Shawnee Wilderness Area

(R.C. 1503.43)

Current law in part prohibits motorized vehicles and motorized equipment from being operated in the Shawnee Wilderness Area. The bill exempts from the prohibition the use of those vehicles and equipment for trail maintenance purposes on certain hiking and bridle trails in the Area. Specifically, the exemption applies to the hiking trail west of Upper Twin Creek Road known as the Wilderness Loop, the Buckhorn Ridge Bridle Trail, and the Cabbage Patch Bridle Trail. However, the bill specifies that the exemption will not apply if the Chief of the Division of Forestry makes a determination that the exemption is no longer necessary for the administration of the Shawnee State Forest or the state forest system.

The bill also subjects the Twin Creek Fire Tower to the existing prohibition against conducting specified activities in the Shawnee Wilderness Area. The prohibited activities include exploring for or extracting coal, oil, gas, or minerals or operating a commercial enterprise. Currently, the prohibited activities may be conducted at the Twin Creek Fire Tower.

### Permit to take wild animals at energy facility

(R.C. 1533.081)

Under the bill, a person desiring to take a wild animal that is interfering with, or may interfere with, the operations of an energy facility must obtain a permit to do so from the Chief of the Division of Wildlife. The bill requires the Chief to adopt rules that are necessary to administer the requirement.

## OFFICE OF THE PUBLIC DEFENDER (PUB)

- Modifies the distribution of the money in the Indigent Defense Support Fund by reducing to at least 88% the amount of the Fund that must be used to reimburse counties for providing counsel for indigent defendants.

- Increases to not more than 12% the amount of the Fund that may be used for other specified existing purposes and for providing training, developing and implementing electronic forms, or establishing and maintaining an information technology system.

- Allows the State Public Defender to use some of the 88% of the money in the Indigent Defense Support Fund for the purpose of operating its system pursuant to

which the State Public Defender provides legal representation to indigent persons pursuant to a contract between a county public defender commission, joint county public defender commission, or board of county commissioners and the State Public Defender.

- Specifies the source of data that identifies the number of indigent residents in a county and that is to be used for allocating financial assistance to legal aid societies from the Ohio Legal Aid Fund.

## Indigent Defense Support Fund

(R.C. 120.08)

Under existing law, the State Public Defender must use at least 90% of the money in the Indigent Defense Support Fund for the purpose of reimbursing county governments for expenses incurred in providing counsel for indigent defendants. The State Public Defender may not use more than 10% of the money in the fund for the purposes of appointing assistant state public defenders or for providing other personnel, equipment, and facilities necessary for the operation of the State Public Defender office.

The bill reduces to at least 88% the amount of the money in the fund that the State Public Defender must use for the purpose of reimbursing county governments for expenses incurred. The bill allows the State Public Defender to also use that money for the purpose of operating its system pursuant to which the State Public Defender provides legal representation to indigent persons pursuant to a contract between a county public defender commission, joint county public defender commission, or board of county commissioners and the State Public Defender. The bill increases to not more than 12% the amount of money in the fund that the State Public Defender may use for the purposes of appointing assistant state public defenders or for providing other personnel, equipment, and facilities necessary for the operation of the State Public Defender office. It also permits the State Public Defender to use that 12% for providing training, developing and implementing electronic forms, or establishing and maintaining an information technology system used for the uniform operation of the law regarding public defenders.

### Allocation of funds from the Legal Aid Fund

(R.C. 120.53)

The bill amends current law that governs the Ohio Legal Assistance Foundation's allocation of financial assistance from the Ohio Legal Aid Fund to legal aid societies. Under continuing law, the part of the money that is apportioned among counties served by eligible legal aid societies that have applied for financial assistance and that is allocated to those eligible legal aid societies that have applied for financial assistance is based on the ratio of the number of indigents who reside in a county to the total number of indigents who reside in all counties served by eligible legal aid societies that have applied for financial assistance. The bill amends the source of data used to identify the number of indigent persons who reside in a county. Under current law, the source of data is the most recent decennial census figures from the United States Census Bureau. The bill instead requires the Ohio Legal Assistance Foundation to select the source of data from the best available figures maintained by the United States Census Bureau.

## DEPARTMENT OF PUBLIC SAFETY (DPS)

- Changes the name of the State Board of Emergency Medical Services to the "State Board of Emergency Medical and Transportation Services," eliminates the Ohio Medical Transportation Board, and assigns the duties of that Board to the renamed State Board of Emergency Medical and Transportation Services.

- Provides that the renamed State Board of Emergency Medical and Transportation Services be composed of 12 members of the former State Board of Emergency Medical Services and 6 former members of the Ohio Medical Transportation Board.

- Repeals laws that: (1) require the Director of Public Safety to prepare a "declaration of material assistance/nonassistance to a terrorist organization" document to be used for the licensing, business, and employment purposes described in clauses (2) to (5), (2) require the state to identify state-issued licenses for which a holder with terrorist connections presents a potential risk, (3) generally require the denial of a state-issued license to a person who discloses material assistance to a terrorist organization, (4) generally prohibit the state and political subdivisions from doing business with a person or entity unless it is certified as not providing material assistance to a terrorist organization, and (5) generally prohibit the state, state instrumentalities, and political subdivisions from employing a person who discloses the provision of material assistance to a terrorist organization.

- Repeals a law that requires the Director of Public Safety to adopt rules that specify substances and agents used in the illegal manufacture of a chemical, biological, radiological, or nuclear weapon or an explosive device.

- In regard to money from the sale of property forfeited under federal law (1) codifies two existing funds for the deposit of money received by the Highway Patrol and (2) creates two new funds for the deposit of money received by the Investigative Unit of the Department of Public Safety; specifies that all such money, including any interest or other earnings, be used in accordance with any federal or other associated requirements.

- Transfers the driver's license examination function from the State Highway Patrol (a division of the Department of Public Safety) to the Department of Public Safety and makes the Director of Public Safety, rather than the Superintendent of the Highway Patrol, responsible for (1) appointing examiners and clerical personnel and (2) conducting training schools for prospective driver's license examiners.

- Eliminates the Elementary School Program Fund and the Trauma and Emergency Medical Services Grants Fund, and directs all state and local seatbelt violation fine money to the existing Trauma and Emergency Medical Services Fund.

- Directs all other money that currently is deposited into the Trauma and Emergency Medical Services Grants Fund to the Trauma and Emergency Medical Services Fund instead.

- Makes clear that the State Highway Patrol has discretionary authority to enforce criminal laws in privately owned correctional facilities operated under agreement with the Department of Rehabilitation and Correction.

- Requires the Department of Public Safety to conduct a study of the safety and security of the Ohio Statehouse complex.

## State Board of Emergency Medical Services and the Ohio Medical Transportation Board

(R.C. 307.05, 307.051, 307.055, 505.37, 505.375, 505.44, 505.72, 4503.49, 4513.263, 4765.02, 4765.03, 4765.04, 4765.05, 4765.06, 4765.07, 4765.08, 4765.09, 4765.10, 4765.101, 4765.102, 4765.11, 4765.111, 4765.112, 4765.113, 4765.114, 4765.115, 4765.116, 4765.12, 4765.15, 4765.16, 4765.17, 4765.18, 4765.22, 4765.23, 4765.28, 4765.29, 4765.30, 4765.31, 4765.32, 4765.33, 4765.37, 4765.38, 4765.39, 4765.40, 4765.42, 4765.48, 4765.49, 4765.55, 4765.56, 4766.01, 4766.02, 4766.03, 4766.04, 4766.05, 4766.07, 4766.08, 4766.09, 4766.10, 4766.11,

4766.12, 4766.13, 4766.15, 4766.22, and 5502.01; Section 335.10 of Am. Sub. H.B. 153; Section 205.10 of Am. Sub. H.B. 114; Sections 747.20.10 and 747.20.20)

The bill changes the name of the State Board of Emergency Medical Services to the "State Board of Emergency Medical and Transportation Services." It eliminates the Ohio Medical Transportation Board and assigns the duties of that board to the renamed State Board of Emergency Medical and Transportation Services. The bill provides that the renamed State Board of Emergency Medical and Transportation Services be composed of 12 members of the former State Board of Emergency Medical Services and 6 former members of the Ohio Medical Transportation Board.

The bill provides that on the effective date of the amendments the bill makes to the Revised Code section that establishes the renamed State Board of Emergency Medical and Transportation Services, the following members of the current State Board of Emergency Medical Services will cease to be members of the renamed Board:

(1) The member who is a physician certified by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine and is active in the practice of emergency medicine and is actively involved with an emergency medical service organization;

(2) The member who is a member of the Ohio Ambulance Association;

(3) Of the two members who were appointed to the Board as emergency medical technicians-basic, the member who is not designated by the Governor to continue to be a member of the Board;

(4) Of the three members who were appointed to the Board as emergency medical technicians-intermediate, the two members who are not designated by the Governor to continue to be members of the Board.

In addition, on that same effective date, all members of the former State Board of Emergency Medical Services who do not cease to be members of the renamed State Board of Emergency Medical and Transportation Services as specified in the bill will continue to be members of the renamed State Board of Emergency Medical and Transportation Services, and the dates on which the terms of those continuing members expire remain unchanged.

On that same effective date, the bill provides that the following members of the former Ohio Medical Transportation Board become members of the State Board of Emergency Medical and Transportation Services for the terms specified:

(1) The person who owns or operates a private emergency medical service organization operating in this state, as designated by the Governor, for a term that ends November 12, 2012;

(2) The person who owns or operates a nonemergency medical service organization that provides only ambulette services, for a term that ends November 12, 2012;

(3) The person who is a member of the Ohio Ambulance Association, for a term that ends November 12, 2013;

(4) The person who is a consumer of emergency medical services who is not associated with any public or private emergency medical service organization, for a term that ends November 12, 2013;

(5) The person who is a member of the Ohio Association of Critical Care Transport and represents air-based services, for a term that ends November 12, 2014;

(6) The person who is a member of the Ohio Association of Critical Care Transport and represents a ground-based mobile intensive care unit organization, for a term that ends November 12, 2014.

All subsequent terms of office for these six positions on the State Board of Emergency Medical and Transportation Services will be for three years as provided in current law governing the State Board.

Under the bill, the various organizations and entities that currently nominate candidates for various positions on the State Board of Emergency Medical Services no longer will nominate candidates; rather, these organizations and entities are to recommend candidates to the Governor for those positions on the renamed State Board, but the Governor, in the Governor's discretion, may refuse to appoint any of the recommended candidates.

In conducting investigations of alleged violations of laws and rules governing emergency medical service transportation entities and personnel and complaints alleging such violations, the bill eliminates an existing provision that permits the Ohio Medical Transportation Board to use any method of communication, including a telephone conference call, to receive descriptions of evidence for reviewing allegations and for voting on a suspension. The bill also requires the affirmative vote of a majority of the members of the State Board of Emergency Medical and Transportation Services to suspend without a hearing a medical transportation-related license the State Board issues. Current law requires the affirmative vote of at least four members of the Ohio Medical Transportation Board to suspend such a license.

The bill requires the Department of Public Safety to administer the laws and rules relative to not only trauma and emergency medical services but also any laws and rules relative to commercial medical transportation services.

## Licensing or employment of, or doing business with, an entity or person with ties to a terrorist organization

(R.C. 2909.21, 2909.32, 2909.33, 2909.34, and 5502.011)

The bill repeals the following provisions that pertain to the licensing or employment of, or doing business with, an entity or person with ties to a terrorist organization:

(1) Currently, the Director of Public Safety must prepare a document, in a specified form, to serve as a "declaration of material assistance/nonassistance" and that is used in determining whether a person or entity has provided material assistance to an organization listed on the Department of State Terrorist Exclusion List (the TEL), for the purposes described below in (2) to (4); currently, "material assistance" is defined for purposes of all of this provision and the provisions described below in (2) to (4).

(2) Currently, the Director of Public Safety must adopt rules identifying licenses, other than driver's licenses or two other specified exempt licenses, the state issues for which the holder would present a potential risk to Ohio residents if that person has a connection to a terrorist organization. Agencies that issue licenses the Director identifies must include a copy of the declaration the Director prepares with the application form for a license or renewal, along with a copy of the TEL, and an applicant must complete the declaration. A person's answer of "yes" to any question, or failure to answer "no" to any question, serves as a disclosure of the provision of material assistance to an organization on the TEL, and a disclosure of material assistance requires denial of the license or renewal. The failure of an applicant to complete a declaration, the failure to disclose material assistance to an organization on the TEL, or making false statements regarding material assistance to an organization on the TEL results in the denial of the application and the revocation of any license and in some cases is a criminal offense. An agency may revoke a license, pursuant to specified hearing procedures, of a person who, after providing a declaration, takes an action that would result in an answer of "yes" to any question, had the declaration been readministered after taking that action.

(3) Currently, the state, an instrumentality of the state, or a political subdivision of the state generally are prohibited from conducting business with or providing funding to any person or entity, or any person with a controlling interest in an entity, unless the person or entity certifies that it does not provide material assistance to an

organization on the TEL. Certain business transactions are excepted from the provision. The Director of Public Safety must post a copy of the declaration the Director prepares, along with a copy of the TEL, on the Department's Internet web site. A person or entity that wants to conduct business with or receive funding from a government entity must certify that it is not providing material assistance to an organization on the TEL by completing the declaration. The law provides procedures for pre-certification of a person or entity. A person's or entity's answer of "yes" to any question, or failure to answer "no" to any question, serves as a disclosure of the provision of material assistance to an organization on the TEL, and a disclosure of material assistance is a denial of certification. A person or entity that had not provided material assistance at the time a declaration was answered, but subsequently starts providing material assistance during the course of doing business or receiving funding from a government entity, is prohibited from entering into additional contracts to do business with or receive funding from any government entity for a specified period of time. A person or entity that provides a false certification is permanently banned from conducting business with or receiving funding from a government entity and is subject to criminal penalties.

(4) Currently, the state, an instrumentality of the state, or a political subdivision of the state is prohibited from employing any person who discloses the provision of material assistance to an organization on the TEL (the Director of Public Safety may establish categories of employment that are exempt from the provision). A government entity must provide a copy of the declaration the Director prepares and a copy of the TEL to any person under final consideration for a category of employment for which disclosure is required, and the person must complete the declaration prior to employment. A person's answer of "yes" to any question, or failure to answer "no" to any question, serves as a disclosure of the provision of material assistance to an organization on the TEL. It is a criminal offense for an applicant for employment to fail to disclose the provision of material assistance to an organization on the List, or to make false statements regarding material assistance to an organization on that List. A government entity may terminate, pursuant to specified hearing and due process procedures, the employment of any person who, after providing a declaration, takes an action that would result in an answer of "yes" to any question, had the declaration been readministered after taking that action.

(5) Currently, an appeals process is provided that a person may use if denied a license, denied employment, or prohibited from doing business due to a disclosure of material assistance to an organization on the TEL under the provisions described above.

## Identification of components of certain illegal dangerous devices

(R.C. 2909.28 and 5502.011)

The existing offense of "illegal assembly of possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device" prohibits a person, with intent to manufacture any such weapon or device, from knowingly assembling or possessing one or more toxins, toxic chemicals, precursors or toxic chemicals, vectors, biological agents, or hazardous radioactive substances, including, but not limited to, those listed in rules the Director of Public Safety adopts, that may be used to manufacture any such weapon or device.

The bill repeals the requirement that the Director of Public Safety adopt rules that specify the listed substances and agents used in the illegal manufacture of a chemical, biological, radiological, or nuclear weapon or an explosive device and removes the reference to the rules from the offense of "illegal assembly of possession of chemicals or substances for the manufacture of a chemical weapon, biological weapon, radiological or nuclear weapon, or explosive device."

## Law enforcement funds for property forfeitures under federal law

(R.C. 2981.14)

In order to fully segregate moneys received by the Highway Patrol and the Investigative Unit of the Department of Public Safety from the sale of property forfeited under federal law, the bill (1) codifies the existing Highway Patrol Treasury Contraband Fund and the Highway Patrol Justice Contraband Fund and (2) creates the Investigative Unit Treasury Contraband Fund and the Investigative Unit Justice Contraband Fund. The bill specifies that moneys in the funds must be used in accordance with any federal or other requirements associated with the moneys received.

For purposes of money received from the sale of property forfeited under federal law only, the bill eliminates from existing codified law the reference to the Contraband, Forfeiture, and Other Fund of the Highway Patrol or the Department of Public Safety. Existing codified law requires all interest and other earnings of these two funds to be deposited into whichever of the two funds is appropriate; the bill continues this requirement for the funds it renames in codified law and the two funds of the Investigative Unit that it creates. The Contraband, Forfeiture, and Other Fund of the Highway Patrol and the Contraband, Forfeiture, and Other Fund of the Department are

retained in law not affected by the bill to receive money from the sale of property forfeited under state law.[142]

## Responsibility for driver examinations

(R.C. 4503.031, 4507.01, 4507.011, 4507.12, 5503.21 (5502.05), 5503.22 (5502.06), and 5503.23 (5502.07))

The bill generally transfers the driver's license examination function from the State Highway Patrol (a division of the Department of Public Safety) to the Department of Public Safety and makes the Director of Public Safety, rather than the Superintendent of the Highway Patrol, responsible for (1) appointing examiners and clerical personnel and (2) conducting training schools for prospective driver's license examiners.

As part of the transfer, the bill does the following:

- Creates a driver's license examination section in the Department of Public Safety, rather than as a division of the State Highway Patrol;
- Requires the Director and the Registrar of Motor Vehicles to determine when it is possible to locate a driver's examination station at or near a deputy registrar's office, rather than requiring the Registrar and the Superintendent to cooperate to the fullest extent possible in co-location of the offices;
- Requires the Director, rather than the Superintendent, to remit a proportionate share of rent plus a share of utility costs to a deputy registrar when a driver's examination station is located in a deputy registrar's office;
- Requires a deputy registrar assigned to a driver's license examination station to remit a rental fee to the Director, rather than the Superintendent, and continues the requirement of existing law that any such rental fees be deposited into the Registrar Rental Fund and used only to pay rent and expenses of driver's license examination stations;
- Allows the Director, rather than the Superintendent with the Director's approval, to appoint driver's license examiners and clerical personnel and to set qualifications for examiners.

[142] R.C. 2981.13, not in the bill.

## Distribution of fines for seatbelt violations

(R.C. 4511.191, 4513.263, 4765.07, and 5503.04)

The bill requires all state and local seatbelt violation fine money to be deposited into the existing Trauma and Emergency Medical Services Fund. The bill retains the existing grant program of the State Board of Emergency Medical Services, but it eliminates the Trauma and Emergency Medical Services Grants Fund and requires all money that currently is deposited into that fund to be deposited instead into the Trauma and Emergency Medical Services Fund, which now will be the source for grants made under the grant program. The bill also eliminates the Elementary School Program Fund, which is used by the Department of Public Safety to establish and administer elementary school programs that encourage seatbelt use.

The current distribution of seatbelt violation fine money is as follows:

(A) 8% to the Elementary School Program Fund;

(B) 2% to the Occupational Licensing and Regulatory Fund;

(C) 36% to the Trauma and Emergency Medical Services Fund;

(D) 54% to the Trauma and Emergency Medical Services Grants Fund.

The other money that currently is deposited into the Trauma and Emergency Medical Services Grants Fund consists of portions of certain driver's license reinstatement fees, fees and fines collected by the State Board of Emergency Medical Services, and portions of certain bail forfeitures.

## Highway Patrol authority in privately owned prisons

(R.C. 5503.02(A))

The bill makes it clear that the existing discretionary authority of the Superintendent and troopers of the State Highway Patrol to enforce the criminal laws in state institution extends to any privately owned correctional facility that houses Ohio inmates in Ohio and is being operated under an agreement with the Department of Rehabilitation and Correction.

### Ohio Statehouse Safety and Security Study

(Section 701.10.10)

The bill requires the Department of Public Safety to conduct a study of the safety and security of the Ohio Statehouse complex. The study is to include recommendations for improving the security protocols while providing for the health, safety, and convenience of those who work in, or visit, the Statehouse. The report must be submitted to the Capitol Square Review and Advisory Board for adoption not later than December 1, 2012.

## PUBLIC UTILITIES COMMISSION (PUC)

### Motor-carrier regulation

- Revises and reorganizes the laws governing motor-carrier regulation by the Public Utilities Commission (PUCO), effective immediately.
- Changes the term "motor transportation company" to "for-hire motor carrier."
- Makes changes to certain motor-carrier laws to bring the laws into compliance with requirements for federal funding, including:

  --removing certain regulatory exemptions;

  --restricting other exemptions to intrastate commerce;

  --clarifying that public-utility exemptions do not extend to for-hire motor carriers or private motor carriers; and

  --increasing the cap on forfeitures from $10,000 to $25,000.
- Removes a provision defining private motor carriers as persons providing transportation "for hire."
- Repeals public highway operation permit requirements for private motor carriers, and requirements that private motor carriers a duty to pay annual taxes to the PUCO and file liability insurance.
- Repeals a provision that would require publication of notice of a for-hire motor carrier's application for a certificate of public convenience and necessity, and repeals a requirement that would subject those applications to hearings.

- Explicitly states the manner in which certain exemptions for public utilities, for-hire motor carriers, and private motor carriers are to be construed.

- Permits the PUCO to grant temporary, emergency, intrastate operation, regulatory exemptions, and exemptions additional to those specified in the bill, for for-hire motor carriers or private motor carriers, but not persons who do not qualify as one of those types of carriers.

- May broaden the scope of rules to be adopted by the PUCO, governing the transportation of persons or property and the transportation or offering for transportation of hazardous materials, by clarifying that the rules apply to interstate and intrastate commerce.

- Applies the rules governing the transportation of persons or property to for-hire motor carriers or private motor carriers, but likely applies the rules regarding hazardous materials more broadly, to those carriers and to persons engaged in the transportation or offering for transportation of hazardous materials.

- Requires various rules of the PUCO governing transportation, including general liability insurance requirements, to be "not incompatible with" requirements of the United States Department of Transportation.

- Requires inspectors and employees to conduct motor vehicle and driver inspections (and declare out-of-service violations) consistent with the North American Standard Inspection Procedure of the Commercial Vehicle Safety Alliance and the standards of the United States Department of Transportation.

- Eliminates caps on fees for roadside inspections and compliance reviews, of $1,000 and $10,000, respectively.

- Eliminates a provision that would require freight cargo insurance for the issuance of a certificate of public convenience and necessity to a for-hire motor carrier, but maintains the requirement for household goods carriers.

- Eliminates provisions governing the cancellation or lapse of freight cargo insurance.

- Limits the laws governing the transportation of household goods to intrastate commerce, but maintains the PUCO's authority to enforce federal consumer protection provisions related to the transportation of household goods in *interstate* commerce.

- Requires the PUCO to adopt rules governing the suspension and revocation of certificates of public convenience and necessity for for-hire motor carriers, and requires suspension upon request of a for-hire motor carrier.

- Requires unified carrier registration fees to be identical to those established by the Unified Carrier Registration Act Board.

- Expressly requires the PUCO to adopt rules applicable to the filing of annual update forms by for-hire motor carriers.

- Limits the payment of annual taxes by for-hire motor carriers to those operating solely in intrastate commerce.

- Removes requirements regarding the PUCO's determination of the amount of the apportioned per-truck registration fee for uniform registration for the transportation of hazardous materials.

- Abolishes and requires the transfer of balances from five funds, as well as $21 million from the Public Utilities Fund, into the Public Utilities Transportation Safety Fund, created by the bill.

- Requires most of the fees, taxes, fines, and forfeitures under the bill to be deposited into the Public Utilities Transportation Safety Fund, for the PUCO's nonrailroad transportation activities.

- Requires that certain excess fees, taxes, fines, and forfeitures, after a point of parity is reached between the Public Utilities Transportation Safety Fund and the appropriation from the fund, be deposited into the GRF, whereas some of those fees go to the Department of Public Safety under existing law.

- Removes the PUCO from the functions of regulating rates, routes, and territories of motor carriers, and eliminates the requirement that would apply to for-hire motor carriers, requiring them to file time and service schedules; also changes state policy accordingly.

- Removes references to the bill's provisions that govern motor carriers in sections dealing exclusively with railroads, since the bill provides that motor-carrier law no longer applies to railroads.

## Revisions to motor-carrier regulations

(R.C. 4905.01, 4909.01, 4909.17, 4921.01, 4921.05, 4923.01; technical and conforming changes in various R.C. sections; R.C. 4511.01, 4766.01 (not in the bill))

Effective immediately, the bill revises and reorganizes the regulations governing motor carriers. Mainly, the revisions are accomplished by repealing Chapters 4919., 4921., and 4923., as well as other individual sections, and reenacting new Chapters 4921. and 4923., and enacting other new sections. But, much of the bill's new language consists of the repealed language that is recodified and reenacted. So, underlined text in the bill for these areas does not necessarily indicate change. This analysis endeavors to specify what actual changes are being made by the bill.[143]

### Altering terminology

The motor-carrier revisions include changing the following terms and redefining them, resulting in the following differences:

| Existing law | Bill |
|---|---|
| **"Motor transportation company" or "common carrier by motor vehicle"**[144] | **"For-hire motor carrier"** |
| Specifies that the transportation is "for the public in general." | No provision. |
| Specifies that the transportation is "for hire." | Specifies that the transportation is "for compensation." |
| Excludes an entity engaged or proposing to engage as a private motor carrier as defined in existing law. | No provision. |
| Excludes entities transporting property exclusively within the territorial limits of a municipal corporation, or within that municipal corporation and the territorial limits of immediately contiguous municipal corporations. | No provision. This alleviates a compliance issue with requirements for federal funding under the Motor Carrier Safety Assistance Program (see "**Public-utility exemptions do not extend to for-hire motor carriers**"). |

[143] Note that "existing" R.C. sections referred to in footnotes in this portion of the analysis are not designated in the bill by the number referenced. Resort must be made to published versions of the Revised Code to examine those sections.

[144] Existing R.C. 4921.02.

| Existing law | Bill |
|---|---|
| **"Motor transportation company" or "common carrier by motor vehicle"**[144] | **"For-hire motor carrier"** |
| Excludes the transportation of persons in taxicabs, certain transportation of farm supplies or farm products, the distribution of newspapers, the transportation of crude petroleum from gathering wells, the transportation of compost or shredded bark mulch, and the transportation of persons in carpool vehicles. | Same, except restricts the exemptions to intrastate commerce (e.g., an interstate taxicab would still be subject to regulation as a for-hire motor carrier). This alleviates a compliance issue with requirements for federal funding under the Motor Carrier Safety Assistance Program (see "**Public-utility exemptions do not extend to for-hire motor carriers**"). The bill defines "intrastate" commerce as any trade, traffic, or transportation in any state that is not "interstate commerce" (which itself is defined in the bill as trade, traffic, or transportation in the United States that is between a place in a state and a place outside of that state (including a place outside of the United States), between two places in a state through another state or a place outside of the United States, or between two places in a state as part of trade, traffic, or transportation originating or terminating outside the state or the United States). |
| Excludes the transportation of the injured, ill, or deceased by hearse or ambulance. | Same, except restricts the exemption to intrastate commerce, and defines "ambulance" as any motor vehicle that is specifically designed, constructed, or modified and equipped and is intended to be used to provide basic life support, intermediate life support, advanced life support, or mobile intensive care unit services and transportation of persons on Ohio's streets or highways who are seriously ill, injured, wounded, or otherwise incapacitated or helpless. This alleviates a compliance issue with requirements for federal funding under the Motor Carrier Safety Assistance Program (see "**Public-utility exemptions do not extend to for-hire motor carriers**"). |
| No provision. | Includes a vehicle that is designed and used solely for the transportation of nonstretcher-bound persons, whether hospitalized or handicapped or whether ambulatory or confined to a wheelchair, if the vehicle otherwise would qualify as a for-hire motor carrier. |
| Excludes transportation of pupils in school buses to or from school sessions or events. | Same, except restricts the exemption to intrastate commerce, and defines "school bus" as a bus designed for carrying more than nine passengers that is owned by a public, private, or governmental agency or institution of learning and operated for the transportation of children to or from a school session or a school function, or owned by a private person and operated for compensation for the transportation of children to or from a school session or a school function, but excludes |

| Existing law | Bill |
|---|---|
| **"Motor transportation company" or "common carrier by motor vehicle"**[144] | **"For-hire motor carrier"** |
| | from the "school bus" definition all of the following if they are *not* devoted exclusively to the transportation of children to and from a school session or a school function (i.e., they could be subject to regulation as for-hire motor carriers):<br><br>--a bus operated by a municipally owned transportation system;<br><br>--a mass transit company operating exclusively within the territorial limits of a municipal corporation, or within those limits and the territorial limits of immediately contiguous municipal corporations;<br><br>--a "common passenger carrier."<br><br>Also excludes from the "school bus" definition (i.e., this type could be subject to regulation as a for-hire motor carrier) a van or bus used by a licensed child day-care center or type A family day-care home to transport children from the child day-care center or type A family day-care home to a school if the van or bus does not have more than 15 children in the van or bus at any time. |
| Specifies that the terms include every corporation, company, association, joint-stock association, person, firm, or copartnership, and their lessees, legal or personal representatives, trustees, and receivers or trustees appointed by any court. | Specifies that the term includes the carrier's agents, officers, and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers and employees concerned with the installation, inspection, and maintenance of motor-vehicle equipment and accessories. |
| Specifies that the regulations apply whether the transportation is directly or by lease or other arrangement. | No provision. |
| Specifies that the transportation is "in or by motor-propelled vehicles," defined as any automobile, automobile truck, motor bus, or any other self-propelled vehicle not operated or driven upon fixed rails or tracks. | Specifies that the transportation is by "motor vehicle" (defined in the bill as any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of persons or property, except a vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service). |

| Existing law | Bill |
|---|---|
| **"Motor transportation company" or "common carrier by motor vehicle"**[144] | **"For-hire motor carrier"** |
| Specifies that all laws regulating the business of motor transportation, the context notwithstanding, apply to motor transportation companies or common carriers by motor vehicle. | No provision. |

| Existing law | Bill |
|---|---|
| **"Private motor carrier" or "contract carrier by motor vehicle"**[145] | **"Private motor carrier"** |
| Specifies that the transportation is "for hire." | No provision. |
| Specifies that the business is the "private carriage" of persons or property. | Specifies that the business is "transporting" persons or property. |
| Excludes an entity engaged or proposing to engage as a private owner or operator of motor vehicles employed or used by a private motor carrier. | No provision. |
| Excludes an entity engaged or proposing to engage as a private owner or operator of motor vehicles employed or used by a for-hire motor carrier. | No provision. |
| Excludes entities transporting property exclusively within the territorial limits of a municipal corporation, or within that municipal corporation and the territorial limits of immediately contiguous municipal corporations. | No provision. This alleviates a compliance issue with requirements for federal funding under the Motor Carrier Safety Assistance Program (see "**Public-utility exemptions do not extend to for-hire motor carriers**"). |
| Excludes not-for-hire church buses if the transportation is exclusively within the territorial limits of a municipal corporation, or within that municipal corporation and the | No provision. |

[145] Existing R.C. 4923.02.

| Existing law | Bill |
|---|---|
| **"Private motor carrier" or "contract carrier by motor vehicle"**[145] | **"Private motor carrier"** |
| territorial limits of immediately contiguous municipal corporations. | |
| Excludes the transportation of persons in taxicabs, the transportation of farm supplies to the farm or farm products from farm to market, the transportation of crude petroleum from gathering wells, the transportation of compost or shredded bark mulch, the operation of motor vehicles for contractors on public road work, towing of disabled or wrecked motor vehicles, and the transportation of persons in carpool vehicles. | Same, except restricts the exemptions to intrastate commerce (e.g., an interstate taxicab would be subject to regulation as a private motor carrier). This alleviates a compliance issue with requirements for federal funding under the Motor Carrier Safety Assistance Program (see "**Public-utility exemptions do not extend to for-hire motor carriers**"). |
| No provision. | Excludes the intrastate transportation of farm supplies to food fabricating plants. |
| Excludes the transportation of newspapers. | Limits the exclusion to the "distribution" of newspapers, and limits the exclusion to intrastate commerce. |
| Excludes the transportation of the injured, ill, or deceased by hearse or ambulance. | Same, except restricts the exemption to intrastate commerce, and defines "ambulance" (as explained above for the "for-hire motor carrier" definition). |
| No provision. | Includes a vehicle that is designed and used solely for the transportation of nonstretcher-bound persons, whether hospitalized or handicapped or whether ambulatory or confined to a wheelchair, if the vehicle otherwise would qualify as a for-hire motor carrier. |
| Excludes the transportation of pupils in school buses to and from school sessions or events. | Same, except restricts the exemption to intrastate commerce, and defines "school bus" (as explained above for the "for-hire motor carrier" definition), which could subject the municipally owned buses, mass transit systems, and common passenger carriers to regulation as private motor carriers if they are *not* devoted exclusively to school transportation. Also as explained above, vans or buses of certain day care centers and homes could be subject to regulation as private motor carriers. |
| Excludes certain motor carriers engaged in the carriage of persons in emergency or additional motor vehicles on charter party trips to or from any point within a county where the motor carrier provides regular | No provision. |

| Existing law | Bill |
|---|---|
| **"Private motor carrier" or "contract carrier by motor vehicle"**[145] | **"Private motor carrier"** |
| route scheduled service, if the vehicle is reported and the applicable tax is paid. | |
| Specifies that the terms include every corporation, company, association, joint-stock association, person, firm, or copartnership, and their lessees, legal or personal representatives, trustees, and receivers or trustees appointed by any court. | Specifies that the term includes the carrier's agents, officers, and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers and employees concerned with the installation, inspection, and maintenance of motor-vehicle equipment and accessories. |
| Defines the terms in part as a corporation, company, etc. "not included in the definition under section 4921.02 of the Revised Code," which defines motor transportation company, among other terms. | Defines the term in part as "a person who is not a for-hire motor carrier." |
| Specifies that the business is the "private carriage" of persons or property. | Specifies that the business is "transporting" persons or property. |
| Specifies that the transportation is "in or by motor-propelled vehicles," defined as any automobile, automobile truck, motor bus, or any other self-propelled vehicle not operated or driven upon fixed rails or tracks. | Specifies that the transportation is "by motor vehicle" (defined in the bill as any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways in the transportation of persons or property, except a vehicle, locomotive, or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service). |

## Regulation as public utilities

### For-hire motor carriers as public utilities

(R.C. 4905.01, 4905.02, 4905.03, and 4921.01)

The bill changes the term "motor transportation company" to "for-hire motor carrier," and redefines the term, within the definition of a "public utility." The effect is that for-hire motor carriers, as defined by the bill, would be subject to regulation as public utilities. Any resulting diversity between the two definitions would subject or

exempt certain entities from regulation as public utilities. The following are the major differences between the two definitions:

- The bill includes as a public utility the carrier's agents, officers, and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers and employees concerned with the installation, inspection, and maintenance of motor-vehicle equipment and accessories.

- The bill uses "for compensation" whereas existing law uses "for hire."

- The bill replaces "by motor-propelled vehicle," with "by motor vehicle," (definition discussed above in table).

- The bill strikes "for the public in general, over any public street, road, or highway in this state" but retains "upon the highways" in defining "motor vehicle."

- The bill strikes "carrying and" from "engaged in the business of carrying and transporting persons or property."

Also, the bill does not exclude from regulation as a public utility a for-hire motor carrier transporting property exclusively within the territorial limits of a municipal corporation, or within that municipal corporation and the territorial limits of immediately contiguous municipal corporations. Existing law, though unclear, could be construed to permit an exclusion for this type of transportation.[146]

**Public-utility exemptions do not extend to for-hire motor carriers**

(R.C. 4905.02(B)(1))

The bill clarifies that the following existing exemptions for certain entities from regulation as public utilities do not extend to for-hire motor carriers operated in connection with such entities:

- Nonprofit electric light companies;

- Nontelephone utilities owned and operated by and for the customers;

- Railroads;

[146] Existing R.C. 4921.02.

- Providers, with respect to their provision of advanced telecommunications services, broadband service, information service, Internet protocol-enabled services, and newer telecommunication services.

This clarification would alleviate a compliance issue noted by the Federal Motor Carrier Safety Administration, under the Motor Carrier Assistance Program (MCSAP). Under MCSAP, states can receive funding to increase motor-carrier safety.[147] To qualify for funding, states must adopt certain federal motor carrier safety and hazardous materials regulations, and enforce them against certain motor carriers.[148]

## Limitations to exemptions and exclusions

### Public utility exemptions do not exempt private motor carriers

(R.C. 4905.02(B)(2))

The bill specifies that existing exemptions for certain entities from regulation as public utilities (specifically those listed in "**Regulation as public utilities**") must not be construed to exempt a private motor carrier operated in connection with any such entity from compliance with Chapter 4923. of the Revised Code, which applies in part to private motor carriers, the law governing uniform registration and permitting of persons engaged in the highway transportation of hazardous materials, or the law governing unified carrier registration.

This provision is probably unnecessary. First, private motor carriers are not classified as public utilities. So a provision governing private motor carriers, such as those in Chapter 4923., would apply to those carriers regardless of any connection that a carrier might have to a nonpublic utility. Second, the law governing uniform registration and permitting and unified carrier registration apply broadly to "persons," not just private motor carriers. So those laws would also apply regardless of any connection that a "person" had with a non public utility.

### For-hire motor carrier exclusions do not exempt persons

(R.C. 4921.01(B), 4923.01(B), and 4923.04(A)(1))

The bill specifies that the exclusions from the definition of "for-hire motor carrier" (such as taxicab transportation, school bus transportation, and the

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[147] U.S. Department of Transportation, Federal Motor Carrier Safety Administration, "Motor Carrier Safety Assistance Program," available at <http://www.fmcsa.dot.gov/safety-security/safety-initiatives/mcsap/mcsap.htm> (last visited March 16, 2012).

[148] 49 Code of Federal Regulations (C.F.R.) 350.201(a).

transportation of farm supplies; see the chart within "**Motor-carrier regulations**" for the full list) must not be construed to exempt persons from compliance with the law governing uniform registration and permitting, or the law governing unified carrier registration. The bill also specifies that the same exclusions must not be construed to exempt persons from compliance with the Public Utilities Commission's (PUCO's) rules applicable to the transportation and offering for transportation of hazardous materials, rules governing motor vehicle inspections, rules governing motor carrier or vehicle audits, rules governing the highway routing of hazardous materials, or rules regarding commercial driver's licenses.

The provisions limiting how the exclusions are to be construed are generally unnecessary because most laws and roles described in the previous paragraph apply broadly to "persons," not just for-hire motor carriers. So even if a person would not qualify as a for-hire motor carrier, that person would still be subject to laws that apply to "persons." But, the rules regarding commercial driver's licenses *are* limited to for-hire motor carriers and private motor carriers. Therefore, they would not apply to a "person" who would not qualify as a for-hire motor carrier. Thus, the bill's provision limiting how the exclusions are to be construed may contradict the PUCO's authority regarding rules for commercial driver's licenses.

#### Private-motor-carrier exclusions do not exempt persons

(R.C. 4923.02(D))

The bill specifies that the exclusions from the definition of "private motor carrier" (such as taxicab transportation, school bus transportation, the transportation of farm supplies, and towing; see the chart within "**Motor-carrier regulations**" for the full list) must not be construed to exempt persons from compliance with the PUCO's rules applicable to the transportation and offering for transportation of hazardous materials, rules governing motor vehicle inspections, rules governing motor carrier or vehicle audits, rules governing the highway routing of hazardous materials, or rules regarding commercial driver's licenses.

These provisions limiting how the exclusions are to be construed are generally unnecessary because most of the laws and rules described in the previous paragraph apply broadly to "persons," not just private motor carriers. So even if a person would not qualify as a private motor carrier, that person would still be subject to laws that apply to "persons." But, the rules regarding commercial driver's licenses *are* limited to for-hire motor carriers and private motor carriers. Therefore, they would not apply to a "person" who would not qualify as a private motor carrier. Thus, the bill's provision limiting how the exclusions are to be construed may contradict the PUCO's authority regarding rules for commercial driver's licenses.

## Temporary and additional intrastate exemptions

### Authority to grant the exemptions

(R.C. 4923.02(B) and (C))

The bill permits the PUCO to grant a for-hire motor carrier or a private motor carrier a temporary exemption for intrastate operations in an emergency. The temporary exemption may be from any of the following requirements under the bill:

- Rules applicable to the transportation of persons or property by for-hire motor carriers and private motor carriers;
- Rules applicable to the highway transportation and offering for transportation of hazardous materials (but not uniform registration and permitting);
- Motor vehicle and driver inspections;
- Premises and motor vehicle audits;
- Rules applicable to the highway routing of hazardous materials; or
- Forfeitures.

The bill requires that the emergency be declared by the Governor, or that the PUCO Chairperson (or designee) declares a transportation-specific emergency.

The bill also permits the PUCO to adopt rules, not incompatible with the requirements of the United States Department of Transportation (USDOT), to provide exemptions, in addition to those granted by the bill, for for-hire motor carriers or private motor carriers in intrastate commerce.

### Temporary and additional exemptions not available to persons

(R.C. 4923.02(B) and (C))

The bill does not permit emergency or additional exemptions to be granted to a person who is not a for-hire motor carrier or a private motor carrier. For example, a person engaged in the transportation of crude petroleum would not qualify as a for-hire motor carrier or private motor carrier. But the person would be subject to a motor vehicle inspection or audit, as a person engaged in the transportation of hazardous material. The person would not be eligible for an emergency or additional exemption from the inspection or audit.

#### Temporary and additional exemptions do not exempt persons

(R.C. 4923.02(D))

The bill also specifies that the temporary and additional exemptions must not be construed to exempt "persons" from compliance with the PUCO's rules applicable to the transportation and offering for transportation of hazardous materials, rules governing motor vehicle inspections, rules governing motor carrier or vehicle audits, rules governing the highway routing of hazardous materials, or rules regarding commercial driver's licenses.

The meaning of this provision is unclear in this context, but it appears to be unnecessary regardless of the meaning. Except, as discussed earlier (see, "**For-hire motor carrier exclusions do not exempt persons**" and "**Private-motor-carrier exclusions do not exempt persons**"), it may appear to contradict the PUCO's authority to adopt rules regarding commercial driver's licenses – as that authority is limited to for-hire motor carriers and private motor carriers, and the provision addresses "persons."

### Repeal of requirement for consent of municipal corporation

(R.C. 4921.05, repealed)

The bill repeals a requirement that a for-hire motor carrier carrying persons whose complete ride is wholly within the territorial limits of a municipal corporation, or within those limits and the territorial limits of immediately contiguous municipal corporations, must obtain consent of the municipal corporations.

### PUCO adoption of rules governing transportation

#### Rules for the transportation of persons or property

(R.C. 4905.81(C) and 4923.04(A)(1) and (C))

The bill requires the PUCO to adopt rules applicable to the transportation of persons or property. Existing law permits, but does not require this adoption.[149] The bill limits the rules to transportation by for-hire motor carriers and private motor carriers, whereas existing law may not be limited in this regard. One existing law

[149] Existing R.C. 4919.79(B) and 4923.20(B).

provision is limited to private motor carriers,[150] while two other existing law provisions are not limited to any specific carrier.[151]

But the bill may broaden the scope of the rules to be adopted, by removing, in one provision of existing law, a description of the rules as "safety" rules.[152] But in another provision, the bill maintains the description as "safety" rules.[153] However, violations of rules adopted under this latter provision are not subject to forfeitures under the bill.

The bill also expands from existing law, in both of its nearly identical rulemaking provisions, the scope of the rules to interstate *and* intrastate commerce. The rules may be more limited in existing law: one of three similar provisions in existing law limits the rules to interstate commerce, another limits them to intrastate commerce, and a third does not appear to contain a limitation.[154]

The bill also modifies the scope of the rules by requiring them not to be incompatible with the requirements of the USDOT. A provision in existing law requires the rules to be consistent with, and equivalent in scope, coverage, and content to the federal Motor Carrier Safety Act of 1984, and regulations adopted under it.[155] Two other similar provisions in existing law do not require this equivalency.[156]

Finally, the bill removes a requirement, in the rulemaking provision limited to private motor carriers, that the rules must not affect any rights or duties granted to or imposed on the operator of a motor vehicle under Ohio law governing traffic laws for the operation of motor vehicles.[157]

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[150] Existing R.C. 4923.20(B).

[151] Existing R.C. 4919.79(B) and 4921.04(D).

[152] R.C. 4923.04(A)(1).

[153] R.C. 4905.81(C).

[154] Existing R.C. 4919.79(B), 4921.04(D), and 4923.20(B).

[155] Existing R.C. 4919.79(C).

[156] Existing R.C. 4921.04(D) and 4923.20(B).

[157] Existing R.C. 4923.20(B).

**Rules for the transportation of hazardous materials**

(R.C. 4905.81(D) and 4923.04(A)(2))

In two provisions, the bill requires the PUCO to adopt rules applicable to the highway transportation and offering for transportation of hazardous materials. One of the provisions is limited to for-hire motor carriers and private motor carriers. The other provision also encompasses persons engaged in the highway transportation and offering for transportation of hazardous materials. The more limited provision would likely be out of compliance with requirements for federal funding under MCSAP. But that provision is located in a section specifying general requirements of the PUCO (R.C. Chapter 4905.); the bill does not impose forfeitures for violations of rules adopted under that specific section.

If the bill is interpreted to encompass persons engaged in the highway transportation and offering for transportation of hazardous materials for purposes of these rules, this is likely an expansion from existing law. There are four similar provisions in existing law permitting the adoption of these rules.[158] Only one of the four applies the adopted rules to everyone.[159]

The bill may broaden the scope of the rules to be adopted, by removing, in one provision, a description of the rules as "safety" rules.[160] But in the other provision, the bill maintains the description as "safety" rules.[161]

The bill also expands, in both of the provisions, the scope of the rules to interstate *and* intrastate commerce. The rules may be more limited in existing law: one of the four provisions limits the rules to interstate commerce,[162] and the other three limit the rules to intrastate commerce.[163]

The bill may broaden the scope of the rules further by requiring them not to be incompatible with the requirements of the USDOT. Existing law requires them to be

[158] Existing R.C. 4919.79(A) and (C), 4921.04(E), 4923.03(C), and 4923.20(C).

[159] Existing R.C. 4919.79(A).

[160] Compare R.C. 4923.04(A)(2) to existing R.C. 4919.79(A), 4921.04(E), 4923.03(C), and 4923.20(C).

[161] R.C. 4905.81(D).

[162] Existing R.C. 4919.79(A).

[163] Existing R.C. 4921.04(E), 4923.03(C), and 4923.20(C).

consistent with, and equivalent in scope, coverage, and content to the Hazardous Materials Transportation Act, as amended, and regulations adopted under it.[164]

#### Rules for the highway routing of hazardous materials

(R.C. 4923.11)

The bill modifies the existing law requirement that the rules for the highway routing of hazardous materials be consistent with, and equivalent in scope, coverage, and content to a portion of the federal Hazardous Materials Transportation Act, and regulations adopted under the portion. Instead, the bill requires that the rules not be incompatible with the requirements of the USDOT.[165]

### Inspections

#### Authority of the PUCO

(R.C. 4905.06, 4923.06 and 4923.07)

The bill permits the PUCO, through the PUCO's inspectors or other authorized employees, to enter in or upon any motor vehicle of any for-hire motor carrier, private motor carrier, or person engaging in the transportation of hazardous material or hazardous waste, to inspect the motor vehicle or driver subject to rules adopted under the bill regarding the transportation of hazardous materials, persons, or property. The bill also permits the PUCO, through the inspectors or authorized employees, to enter in or upon the *premises* and motor vehicles of the same carriers and persons, to examine any records, documents, or property, for the purpose of assessing the safety, performance, and management controls associated with the carrier or person.

Given that there are four similar provisions in existing law, each containing some differences, the effect of these provisions of the bill on existing law is difficult to determine.[166] But these provisions of the bill likely represent minimal change to the PUCO's inspection authority.

The bill also expressly permits inspectors and employees authorized to conduct inspections to, under the PUCO's direction, stop motor vehicles to inspect those vehicles and drivers to enforce compliance. The bill requires the inspectors and employees to conduct inspections consistent with the North American Standard Inspection Procedure

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[164] Compare R.C. 4905.81(D) and 4923.04(B) with existing R.C. 4919.79(A), 4921.04(E), 4923.03(C), and 4923.20(C).

[165] Compare R.C. 4923.11 with existing R.C. 4905.81(A).

[166] Existing R.C. 4905.81(C), 4919.79(E), and 4923.20(D).

(NASIP) of the Commercial Vehicle Safety Alliance and the USDOT's standards. The bill permits the inspectors and employees to declare drivers and motor vehicles out-of-service, consistent with the NASIP and the USDOT's standards. The Commercial Vehicle Safety Alliance is an international not-for-profit organization of local, state, provincial, territorial, and federal motor carrier safety officials and industry representatives. It promotes commercial motor vehicle safety and security by providing leadership to enforcement, industry, and policy makers.[167]

The bill permits the PUCO to adopt rules to carry out the inspection laws, but requires that the rules not be incompatible with the USDOT's requirements.

**Authority of the Motor Carrier Enforcement Unit**

(R.C. 4905.06 and 4923.06(B))

The bill may slightly expand the inspection authority under existing law of the Motor Carrier Enforcement Unit with regard to inspections of private motor carriers engaged in the intrastate transportation of persons. The bill permits them to enter in or upon "any property" of a private motor carrier engaged in the intrastate transportation of persons. Existing law limits the unit to "the premises" of not-for-hire private motor carriers.[168] Under existing law, the unit may enter in or upon any property of a motor transportation company engaged in the intrastate transportation of persons as well. The unit is within the Division of State Highway Patrol of the Department of Public Safety.

The bill also eliminates a provision in existing law that appears to permit "authorized employees" of the unit to enter in or upon any motor vehicle of a not-for-hire private motor carrier, for inspection purposes.[169] But the bill permits "authorized employees" of the State Highway Patrol to conduct inspections, regardless of the type of transportation.

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[167] Commercial Vehicle Safety Alliance, "Who We Are," available at <http://www.cvsa.org/about/index.php> (last visited March 16, 2012).

[168] Existing R.C. 4923.20(D).

[169] R.C. 4923.20(D).

### Repeal of permit requirements for private motor carriers

(R.C. 4923.04, 4923.05, 4923.06, 4923.07, 4923.08, 4923.09, 4923.11, 4923.13, and 4923.14, repealed)

The bill repeals a requirement that a private motor carrier obtain a permit to operate on any public highway in Ohio. Consequently, the bill repeals other provisions relating to permitting of private motor carriers, including application requirements, the requirement to give notice by newspaper publication, requirements for changes in operation, the requirements to file liability insurance with the PUCO, and provisions relating to death and dissolution of a private motor carrier.

The bill also eliminates the requirement that private motor carriers pay annual taxes.

### Certificates of public convenience and necessity (CPCNs)

#### CPCN applications and requirements for issuance, including taxes

(R.C. 4921.03, 4921.05, 4921.13(A), and 4921.19(A))

The bill requires the PUCO to issue a certificate of public convenience and necessity (CPCN) to an applicant who does all of the following:

- Files a complete and accurate application ("filing a registration application" is required under existing law), which the bill requires to include a certification that the applicant understands and is in compliance with the applicable service, operation, and safety laws of Ohio, and that the applicant meets the general liability insurance requirements that apply to for-hire motor carriers under the bill. Existing law requires the filing of an application, and meeting the applicable insurance, service, and safety rules of the PUCO.[170]

- Agrees to maintain accurate and current business and insurance information with the PUCO, in accordance with the PUCO's rules.

- Pays all applicable registration fees for unified carrier registration, any forfeitures imposed under the penalty provisions in the bill, and the applicable tax due from a for-hire motor carrier under the bill, in the following amounts: for each motor vehicle used for transporting persons and for each commercial tractor used for transporting property, $30, and

[170] Existing R.C. 4921.08 and 4921.101(A).

for each other motor vehicle transporting property, $20. These tax amounts are the same as are due under existing law for the issuance of a CPCN.[171]

The bill requires the PUCO to adopt rules applicable to the payment of the taxes. The rules must not be incompatible with the requirements of the USDOT, and they must at least address the form and manner in which taxes may be paid. The bill also eliminates the following requirements regarding these taxes:

- That they be reckoned as from the beginning of a quarter in which the CPCN is issued, or from when the use of equipment under any existing CPCN began (but maintains this requirement for annual taxes (see "**Annual taxes on for-hire motor carriers**")); and

- That the PUCO must account for the taxes collected, and pay them to the Treasurer of State on or before the 15th of each month (for the taxes collected in each preceding month).[172]

The bill also eliminates a provision that permits any vehicle or tractor for which the CPCN tax has been paid to be used by another for-hire motor carrier without further payment of the tax.[173]

The bill eliminates a requirement that the CPCN application contain both of the following:

- The principal office or place of business of such motor transportation company; and

- Full information concerning the physical property used or to be used by the applicant.[174]

[171] Existing R.C. 4921.18(A).

[172] Existing R.C. 4921.18(E) and (F).

[173] Existing R.C. 4921.18(D).

[174] Existing R.C. 4921.08(A) and (B).

#### Freight cargo insurance not required for CPCN

(R.C. 4921.09(B))

The bill does not require a for-hire motor carrier to obtain freight cargo insurance to receive a CPCN, but retains the existing law requirement for certificates for the transportation of household goods – see "**Freight cargo insurance**."[175]

#### General liability insurance requirements for CPCNs

(R.C. 4921.09(C))

The bill requires the PUCO to adopt rules regarding the general liability insurance requirements, which requirements are the same under the bill as they are under existing law.[176] The rules are not to be incompatible with the requirements of the USDOT, which requires very specific levels of financial responsibility for various types of motor carriers, based on the type of property or number of passengers transported, and the vehicle weight.[177] The bill requires the PUCO's rules to address, at minimum, all of the following:

- The minimum levels of financial responsibility for each type of for-hire motor carrier;
- The form and type of documents to be filed with the PUCO;
- The manner by which documents may be filed with the PUCO; and
- The timelines for filing documents with the PUCO.

#### Cancellation or lapses of insurance

(R.C. 4921.09(D))

The bill restricts existing law requirements governing insurance cancellation or lapses to just general liability insurance. In existing law, these requirements appear to apply to both freight cargo insurance and general liability insurance (see "**Freight cargo insurance**").[178] The bill also modifies these requirements to clarify that all operations under a CPCN must cease immediately when general liability insurance

[175] Compare R.C. 4921.09(B) with existing R.C. 4921.11(C).

[176] See R.C. 4921.09(A).

[177] 49 Code of Federal Regulations (C.F.R.) 387.9 and 387.303.

[178] Existing R.C. 4921.11(D).

lapses or is cancelled. The bill also clarifies that operations under the CPCN may not restart until a replacement general liability insurance certificate, policy, or bond is filed with the PUCO.

The bill also removes a requirement that an insurance certificate, policy, or bond "provide that" ten days' written notice must be given to the PUCO of the intent to cancel the insurance. This requirement may apply under existing law to both general liability insurance and freight cargo insurance (see "**Freight cargo insurance**").[179]

**Repeal of notice provisions for CPCN applications**

(R.C. 4921.09, repealed)

The bill repeals a requirement that a motor transportation company must give notice of the filing of a CPCN application, if intrastate operations are proposed, by newspaper publication once a week for three weeks. The bill also eliminates a requirement that the PUCO give written notice of the filing of the application to all like companies operating between fixed termini or over a regular route, street railways, interurban railroads, and railroads operating in Ohio. The bill also eliminates a requirement for a hearing on the application.

**PUCO's authority to deny CPCNs**

(R.C. 4921.03)

The bill expressly permits the PUCO to deny the issuance of a CPCN if an applicant fails to comply with the bill's requirements for CPCN issuances, or rules adopted regarding applications for CPCNs.

**New applications or supplementing applications**

(R.C. 4921.03(D))

The bill permits a for-hire motor carrier to file a new CPCN application or supplement a former application any time after a CPCN is granted or refused. Existing law permits this, but requires the new application or supplementation to be for the purpose of changing, extending, or shortening the route, or doing any other thing not otherwise specifically provided for that the applicant might be permitted to do under Ohio's general statutory laws and regulations.[180]

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[179] *Id.*

[180] Existing R.C. 4921.16.

**CPCN suspension**

(R.C. 4921.07(A) and 4921.19(B))

The bill requires the PUCO to adopt rules regarding procedures and timelines for CPCN suspension, and requires suspension if a for-hire motor carrier does at least any of the following:

- Fails to file a complete and accurate CPCN application (presumably this would require a determination after a CPCN had been granted that the application for that CPCN had not been complete and accurate);
- Fails to maintain accurate and current business and insurance information with the PUCO;
- Fails to maintain proper proof of insurance or proper levels of insurance under the bill's requirements; or
- Fails to pay all applicable unified carrier registration fees, any applicable annual taxes, which would apply under the bill to a for-hire motor carrier operating solely in intrastate commerce, on top of the initial CPCN tax, and any forfeitures imposed under the bill.

The bill also requires suspension upon request of the for-hire motor carrier.

Existing statutory law does not expressly permit or require suspension of a CPCN, though the PUCO's authority to order a suspension has been interpreted to be encompassed within the PUCO's authority to revoke, alter, or amend a CPCN under existing law.[181]

**CPCN revocation**

(R.C. 4921.07(B))

The bill extends, to some extent, the remedy period before revocation of a CPCN may occur. Existing law requires 15 days before a CPCN may be revoked "for good cause," and 60 days before a CPCN may be "cancelled" for failure to give convenient and necessary service.[182] The bill requires 60 days before a CPCN may be revoked, which period may be extended for good cause shown. During this time, the for-hire motor carrier may remedy the deficiency or refute the revocation. Existing law, but not

[181] *Dworkin, Inc. v. Public Utilities Com.*, 159 Ohio St. 174, 181 (1953).

[182] Existing R.C. 4921.10.

the bill, explicitly requires that the for-hire motor carrier receive an "opportunity to be heard" before revocation may occur.[183] The bill also requires that notice be written, and that the notice indicate the nature of the deficiency, a proposed revocation effective date, and the means by which the deficiency may be remedied. The bill requires the PUCO to adopt rules regarding procedures and timelines for CPCN revocation if the CPCN is already suspended and the deficiency is not remedied. The bill also requires that a CPCN first be suspended before it may be revoked.

#### Removal of provisions regarding CPCN transference, death, and dissolution

(R.C. 4921.13, repealed)

The bill repeals provisions governing what happens to a CPCN upon death or dissolution of a partnership, and related provisions governing transference of a CPCN.

### Unified carrier registration and fees

(R.C. 4921.11 and 4921.19(G))

The bill clarifies and modifies the existing law requirement that the PUCO must adopt rules governing unified carrier registration. Existing law describes the requirement as "applicable to motor carrier registration."[184] The bill clarifies that the requirement pertains to the Unified Carrier Registration Plan. The bill also requires the PUCO's rules to be "applicable to" the rules, procedures, and fee schedules adopted under the plan. The bill eliminates an existing law requirement that the PUCO's rules must be equivalent in scope, coverage, and content to the USDOT's registration rules.[185] But the bill requires that the registration *fees* be identical to those established by the Unified Carrier Registration Act Board, as approved by the FMCSA for each year.

The Unified Carrier Registration Plan is the organization of state, federal, and industry representatives responsible for developing, implementing, and administering the payment of fees and the collection and distribution of registration and financial-responsibility information.[186] The bill does not restrict the PUCO's authority regarding unified carrier registration to for-hire motor carriers or private motor carriers. In fact, unified carrier registration applies to motor carriers, motor private carriers, brokers, and leasing companies, as those terms are used in federal law. Under the plan, these

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[183] *Id.*

[184] R.C. 4919.76.

[185] *Id.*

[186] 49 United States Code (U.S.C.) 14504a(a)(8) and (9).

entities must pay annual fees to a "base-state," designated by the entity usually as the state of its principal place of business. States that participate in the plan and that comply with plan requirements may retain a portion of the revenues generated under the plan.[187]

### Annual update forms

(R.C. 4905.81(E) and 4921.13(A))

The bill expressly requires the PUCO to adopt rules applicable to the filing of annual update forms by for-hire motor carriers. The rules must not to be incompatible with the requirements of the USDOT and must address, at minimum:

- The information and certifications that must be provided on an annual update form, including a certification that the carrier continues to be in compliance with Ohio's applicable laws; and

- Documentation and information that must be provided regarding proof of financial responsibility.

The bill is not clear as to whether documentation and information regarding financial responsibility must be provided on an annual basis, or as part of the annual update form.

Existing law requires the PUCO to require "the filing of annual and other reports and of other data" by motor transportation companies. The bill modifies this requirement to read: "the filing of reports and other data" and applies it to for-hire motor carriers. Along the same lines, the bill repeals a provision permitting a motor transportation company owning two or more CPCNs to file a "combined report."[188]

### Annual taxes on for-hire motor carriers

(R.C. 4921.13(A), (C), and (F) and 4921.19(A) to (C))

The bill limits the requirement of the payment of annual taxes by for-hire motor carriers to only those who operate solely in intrastate commerce. Existing law requires that the annual taxes be paid by motor transportation companies "operating in this state."[189] Under both the bill and existing law, the annual taxes are to be paid by for-hire

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[187] 49 U.S.C. 14504a(a)(2), (g), and (f).

[188] Existing R.C. 4921.04(F) and 4921.06.

[189] Existing R.C. 4921.18(A).

motor carriers or motor transportation companies, respectively, in addition to the taxes required for the issuance of a CPCN. The annual taxes are the same amounts as the CPCN taxes, which are also the same amounts as in existing law: for each motor vehicle used for transporting persons and for each commercial tractor used for transporting property, $30, and for each other motor vehicle transporting property, $20.

The bill also expands and makes slightly earlier the time period during which for-hire motor carriers must pay the annual taxes. Existing law requires payment between July 1 and July 15,[190] and the bill requires payment between May 1 and June 30.

The bill requires the PUCO to issue a tax receipt for payment of the annual taxes upon satisfaction of all of the following:

- The filing of a complete and accurate annual update form (see "**Annual update forms**");
- That proof of financial responsibility remains in effect;
- Payment of applicable unified carrier registration fees, "all applicable taxes" (which could be interpreted as the annual taxes and those required for the issuance of a CPCN), and any forfeitures imposed under the bill.

The bill requires the for-hire motor carrier to carry a copy of the tax receipt in each motor vehicle operated by the carrier, and to maintain the original copy at the carrier's primary place of business.

The bill limits and modifies the applicability of an existing law requirement that taxes be reckoned as from the beginning of a quarter.[191] The bill applies this requirement to the annual taxes, whereas existing law applies it to both the CPCN taxes and the annual taxes. Also, the bill requires that the taxes be reckoned from the beginning of the quarter in which the *tax receipt* is issued, or from when the use of equipment under "any existing tax receipt" began. Existing law requires that the taxes be reckoned from the beginning of the quarter in which the *CPCN* is issued, or from when the use of equipment under any existing CPCN began.

The bill also eliminates a provision requiring the PUCO to account for the annual taxes collected, and pay them to the Treasurer of State on or before the 15th of each

[190] Existing R.C. 4921.18(A).

[191] Existing R.C. 4921.18(F).

month (for the annual taxes collected in the preceding month, which would be only July under existing law).[192]

The bill also eliminates a provision that permits any vehicle or tractor for which the annual tax has been paid to be used by another for-hire motor carrier without further payment of the tax. The bill eliminates a similar exemption for a city transit company engaged principally in the transportation of persons within the territorial limits of a municipal corporation, or within contiguous municipal corporations to each other, that extends its operations outside of the municipal corporations.[193]

The bill requires the PUCO to adopt rules applicable to the payment of annual taxes by for-hire motor carriers. The rules must not be incompatible with the requirements of the USDOT. The rules must at least address the form and manner in which the taxes may be paid.

**Uniform registration and permitting for transportation of hazardous materials**

(R.C. 4921.15)

The bill clarifies that existing law governing the uniform registration and permitting for the highway transportation of hazardous materials applies broadly to persons (not just for-hire motor carriers or private motor carriers). Existing law uses both "persons" and "carriers."

The bill removes the requirement that PUCO consider certain factors in determining when the apportioned per-truck registration fee is to be levied and, if the fee is levied, the amount of the fee. With regard to whether or not the fee is to be levied, the bill removes the requirement that PUCO consider the difference between the appropriation for the Hazardous Materials Registration Fund and revenue from the operation of the laws governing uniform registration. With regard to the amount of the fee, the bill removes the requirement that the total revenue from the fee not exceed the appropriation for the Hazardous Materials Registration Fund (abolished by the bill). The bill also eliminates a provision that permits an interested party to appeal, to the Court of Appeals of Franklin County, an order establishing the apportioned per-truck registration fee.[194]

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[192] Existing R.C. 4921.18(E).

[193] Existing R.C. 4921.18(D) and 4921.20.

[194] Compare R.C. 4921.15 to existing R.C. 4905.80.

## Transportation of household goods

### General changes

(R.C. 4921.30, 4921.32, 4921.34, 4921.36, and 4921.38)

The bill names the certificate required for operation as a household goods carrier as a "certificate for the transportation of household goods." It also limits the laws governing household goods motor carriers to intrastate commerce. But the bill maintains the PUCO's authority to enforce federal consumer protection provisions related to the delivery and transportation of household goods in *interstate* commerce. The bill is not clear as to whether this enforcement authority would be limited to only those intrastate household goods carriers that also engage in interstate commerce. Finally, the bill removes a provision limiting the laws governing household goods carriers to the transportation of household goods "over a public highway."[195]

### Applications for the certificates for the transportation of household goods

(R.C. 4921.19(I) and 4921.34(A))

The bill clarifies that an application fee must be paid before a certificate for the transportation of household goods may be issued. The bill requires the fees to be set in amounts sufficient to carry out the purposes of the bill's provisions governing the transportation of household goods, and the bill's provisions regarding forfeitures. To the extent necessary, the PUCO is required by the bill to change the fee structure to ensure that neither over nor under collection of the fees occurs. The bill requires the fees to take into consideration the revenue generated from forfeitures "regarding the consumer protection provisions applicable to for-hire motor carriers engaged in the transportation of household goods."

Accordingly, the bill eliminates a requirement that the PUCO must consider, in determining fee amounts, the amount of fees collected versus the appropriations for the administration of household-goods-transportation requirements. Under existing law, fees must then be reduced if the collected fees exceed the appropriations in a fiscal year.[196]

The bill may slightly expand the requirement that an applicant meet insurance requirements before a certificate for the transportation of household goods may be issued. The bill requires that the applicant's financial responsibility is in accordance

[195] Existing R.C. 4921.36, 4921.37, 4921.38, 4921.39, and 4921.40 were generally recodified by the bill as 4921.30, 4921.32, 4921.34, 4921.36, and 4921.38, respectively.

[196] Existing R.C. 4921.38(C).

with the PUCO's rules under the bill's provisions governing insurance. These provisions govern both freight cargo insurance requirements and requirements for general liability insurance, which is required for operation under a CPCN. Existing law requires only that the applicant's financial responsibility *relating to freight cargo insurance* is in accordance with the rules.[197]

**Freight cargo insurance**

(R.C. 4921.09(B), (D), and (E))

The bill requires a for-hire motor carrier to have adequate freight cargo insurance, only for the issuance of a certificate for the transportation of household goods. Under existing law, a motor transportation company must have freight cargo insurance in order to operate at all (under a CPCN).[198]

The bill requires that the PUCO's rules for cargo insurance (which the PUCO may adopt under existing law) must not be incompatible with the requirements of the USDOT. The USDOT requires household goods motor carriers to have $5,000 of security for loss or damage to goods on any one motor vehicle, and $10,000 for loss or damage occurring at any one time or place.[199] The bill removes an existing requirement that freight cargo insurance must insure the carrier against "all loss, in excess of [$1,000] and within the limits fixed in [the freight cargo insurance]."[200]

As discussed in "**Cancellation or lapses of insurance**," the bill eliminates requirements that may govern what happens when freight cargo insurance is cancelled or lapses. It also eliminates a provision that may require a freight cargo insurance certificate, policy, or bond to "provide that" ten days' written notice must be given to the PUCO of the intent to cancel the insurance. But existing law that is largely unchanged by the bill permits the PUCO to adopt rules governing cargo insurance. These rules could specify requirements regarding the cancellation or lapse of freight cargo insurance.[201]

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[197] Existing R.C. 4921.38(A).

[198] Existing R.C. 4921.11.

[199] 49 C.F.R. 387.301(b) and 387.303(c).

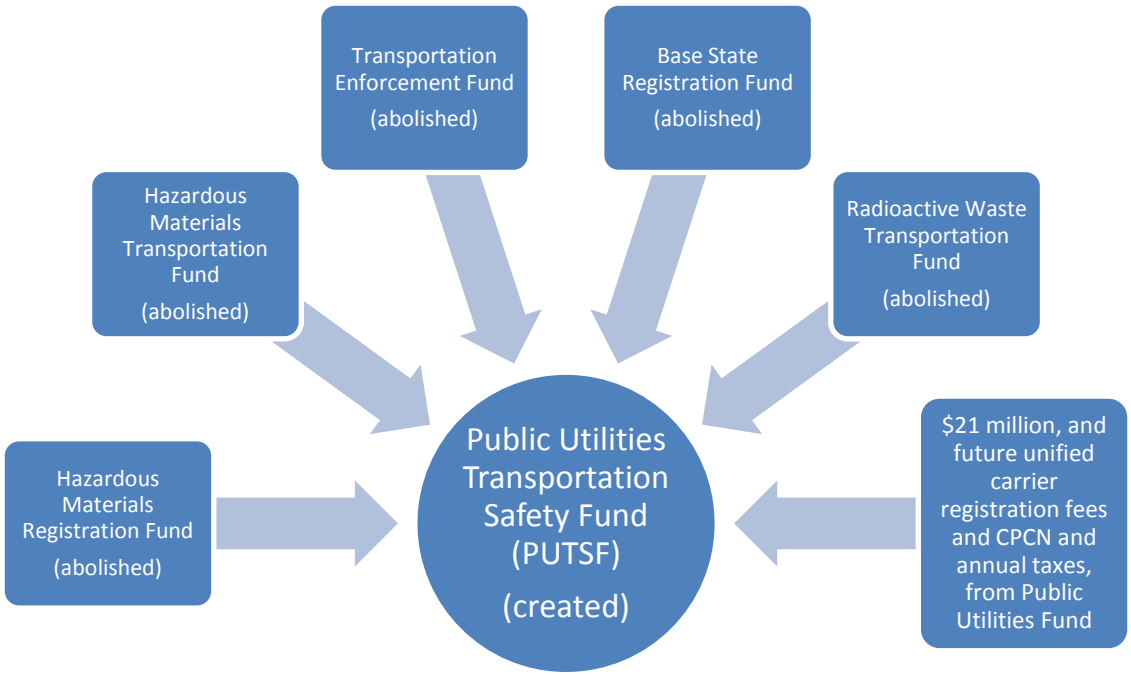
[200] Existing R.C. 4921.11(C).

[201] R.C. 4921.09(E) and existing R.C. 4921.11(E).

## Funds and disposition of fees, taxes, and forfeitures

### Consolidation into the Public Utilities Transportation Safety Fund

(Section 601.40; R.C. 4905.57, 4163.07, 4921.21(B) and (C), and 4921.38(E))




The bill abolishes five funds (shown above), and requires their cash balances to be transferred to the Public Utilities Transportation Safety Fund (PUTSF), created by the bill. The bill also requires that $21 million be transferred from the Public Utilities Fund, and that the necessary encumbrances for motor-transportation regulation be reestablished. The bill redirects the deposit of all fines, fees, and forfeitures from the abolished funds into the PUTSF. In addition, the bill redirects forfeitures from enforcement of federal consumer protection provisions related to the delivery and transportation of household goods in interstate commerce from the GRF to the PUTSF.[202] Also, the bill appears to contain a conflicting provision requiring all forfeitures under the bill to go to the GRF, rather than the PUTSF.[203] The bill also requires that unified carrier registration fees and the CPCN and annual taxes be

[202] Existing R.C. 4921.40(E).

[203] R.C. 4905.57.

deposited into the PUTSF. These generally go into the Public Utilities Fund under existing law.[204]

The bill specifies that the purpose of the PUTSF is for defraying all expenses incident to maintaining the nonrailroad transportation activities of the PUCO.

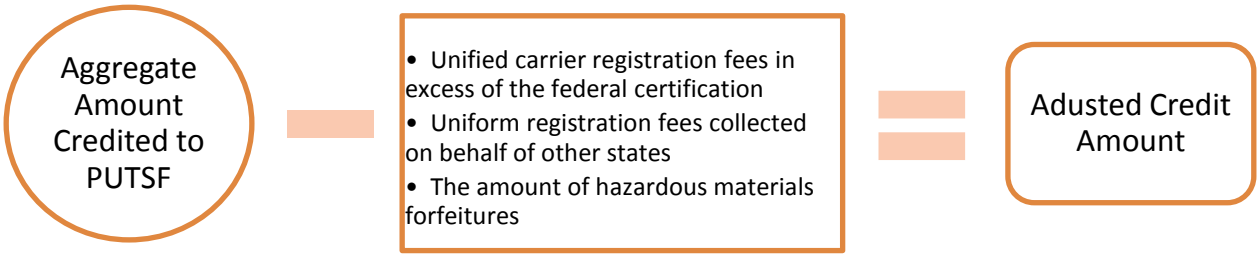
**Disposition of excess funds to the GRF**

(R.C. 4921.21(B))

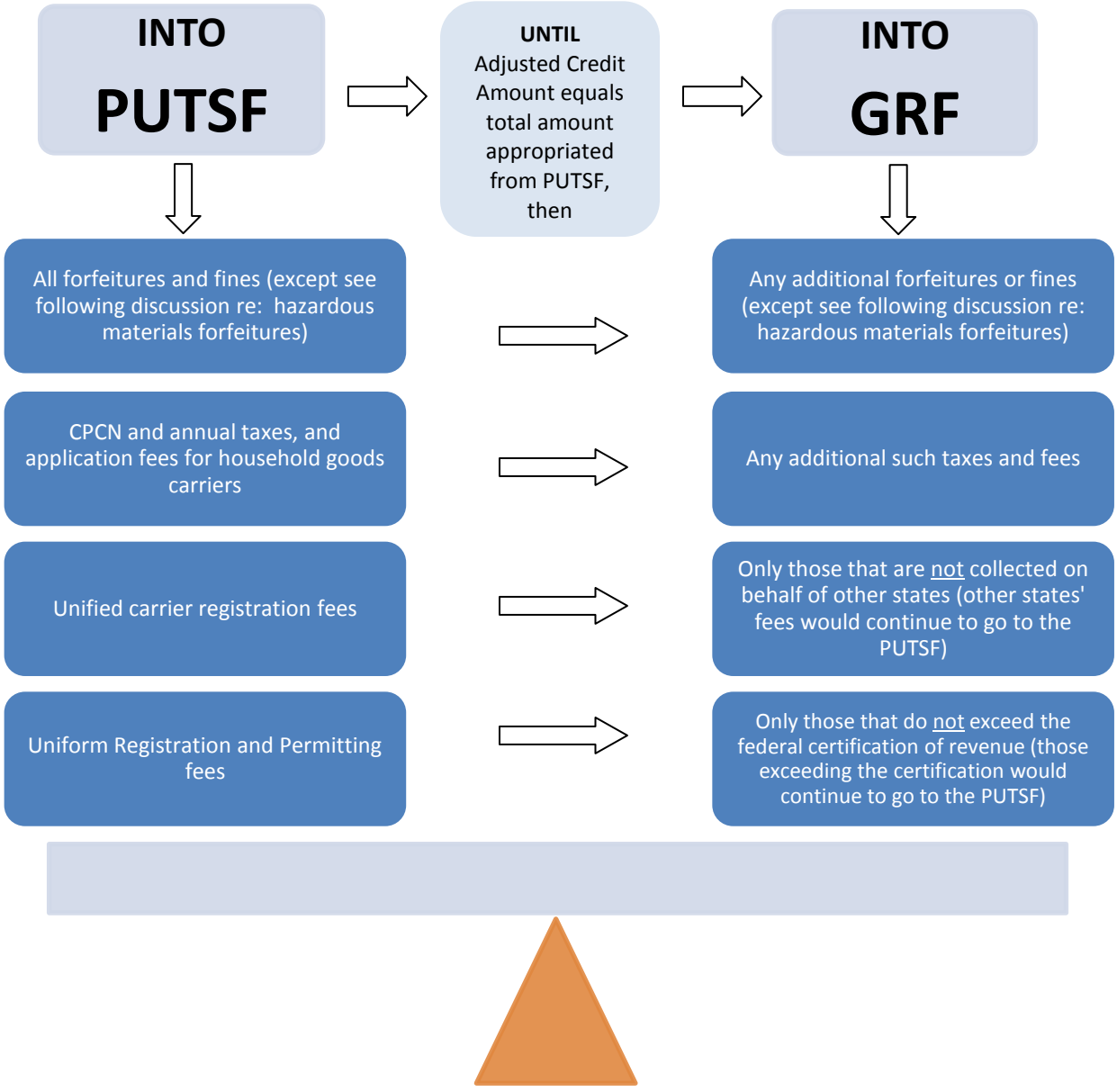
The bill requires many of the fines, fees, taxes, and forfeitures to go into the PUTSF only until the credit to the fund, minus certain fees and forfeitures, is sufficient to meet the appropriation. The fees and forfeitures that are subtracted from the total credit are either designated for specific purposes or they may be subject to federal requirements. After the point of parity, the bill requires additional receipts of certain fees, taxes, and forfeitures to go to the GRF. The graphics below explain the bill's requirements with more specificity.

[204] Existing R.C. 4923.12(A) and (B).

## Adjusted Credit Amount Calculation




## Disposition Based on the Adjusted Credit Amount



The bill prescribes a different point at which deposits are to be redirected from the PUTSF to the GRF for forfeitures from violations of rules governing the highway transportation and offering for transportation of hazardous materials. That is, the first $800,000 of those forfeitures is required to be deposited into the PUTSF, and amounts over $800,000 go to the GRF. This requirement is similar to existing law repealed by the bill. That existing law requires the first $800,000 of forfeitures for violations of various current laws governing the transportation of hazardous materials to go to the Hazardous Materials Transportation Fund, abolished by the bill. After that point, under existing law, additional amounts are required to go to the GRF.[205]

#### Elimination of excess funds to the Department of Public Safety

(R.C. 4923.12(A) and (B), repealed)

The bill removes a provision in existing law that is similar to the bill's parity provision, explained above (see "**Disposition of excess funds to the GRF**"). But existing law requires that after the point of parity is reached, the additional amounts must go to the State Highway Safety Fund. This money must be used for the operation and maintenance of the Department of Public Safety. This provision in existing law is limited to the unified carrier registration fees, the CPCN and annual taxes, and fees for the filing of insurance information for certain carriers. (The insurance fees are not required under the bill.) Existing law requires them to be deposited to the Public Utilities Fund, until the aggregate credit from those fees and taxes in a fiscal year meets the appropriation from the Public Utilities Fund for the PUCO's nonrailroad transportation expenses.

#### Federal Commercial Vehicle Transportation Systems Fund

(R.C. 4921.21(D))

The bill modifies a requirement governing the purpose of the Federal Commercial Vehicle Transportation Systems Fund. Existing law requires the fund to be used in part to "improve safety of motor carrier operations through electronic exchange of data by means of on-highway electronic systems."[206] The bill removes the phrase "by means of on-highway electronic systems."

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[205] Existing R.C. 4905.80(E).

[206] Existing R.C. 4923.26.

### Motor Carrier Safety Fund

(R.C. 4921.21(E) and 4923.09)

The bill modifies the description of the input to and the purpose of the Motor Carrier Safety Fund. The bill specifies that the fund is to consist of money received from the USDOT for motor carrier safety. Existing law, modified only slightly by the bill, also requires the following to go into the fund: grants-in-aid, cash, and reimbursements received under cooperative agreements with the USDOT, and any other federal agency or commission to enforce the federal and state economic and safety laws and rules concerning highway transportation by motor vehicles. The bill also removes the reference to enforcement of the "economic" laws.

The bill requires the fund to be used to administer the state's Motor Carrier Safety Assistance Program and associated grants, or their equivalents. Existing law eliminated by the bill requires the fund to be used for the purpose of carrying out the law that permits the PUCO to adopt motor carrier safety rules, which is required for federal funding under MCSAP.[207]

### Removal of rate regulation

(R.C. 4921.03(C) and 5503.34)

The bill effectively removes the PUCO from the business of regulating motor-carrier rates, and removes references to the economic regulation of motor carriers. The bill may expand the existing prohibition on the PUCO's regulation of motor-carrier rates, by stating that the PUCO has no power to fix, alter, or establish rates for the "transportation of persons or property," whereas existing law states that the PUCO has no power to regulate rates "for the transportation of passengers, for hire, within this state." The bill repeals or eliminates all other provisions relating to rate regulation of motor carriers.[208]

### Removal of route regulation

(R.C. 4921.02, 4921.07, 4921.08, 4921.09, 4921.101, 4921.12, 4921.14, 4921.19, 4921.26, 4921.27, 4923.01, and 4923.02, repealed)

The bill repeals or removes all provisions governing the regulation of regular and irregular routes, including provisions that do the following:

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[207] Existing R.C. 4919.79(D).

[208] Existing R.C. 4921.101(B), 4921.23, and 4921.27.

- Permit a motor transportation company to use and operate, on its own routes, the authorized and tax-paid trailers for the transportation of property or motor vehicles for the transportation of persons, belonging to it or to any other motor transportation company, for the movement of traffic between any points on connecting routes, if there are joint rates;

- Contain requirements regarding notice and hearings of CPCN applications;

- Require notice for applications to abandon motor vehicle operation on a regular route;

- Permit cancellation of CPCNs for failure to provide convenient and necessary service over an irregular route; and

- Permit the PUCO to determine commercial zones for regular and irregular routes.

### Removal of provisions requiring the filing of time and service schedules

(R.C. 4921.23 and 4921.24, repealed)

The bill repeals provisions requiring the filing of time and service schedules by motor transportation companies.

### Removal of provisions regarding territory overlap

(R.C. 4921.10, repealed)

The bill removes a provision permitting the PUCO, after notice and hearing, to grant a CPCN to an applicant requesting to serve the territory of an existing motor transportation company, only when the existing company does not provide the service required or the particular kind of equipment necessary to furnish the service to the satisfaction of the PUCO. The removed provision also permits the PUCO to issue limited CPCNs.

### Changes in seating or carrying capacity

(R.C. 4921.28, repealed)

The bill repeals a provision requiring a motor transportation company to pay additional taxes that may be due on any equipment because of a change in seating or carrying capacity of motor vehicles.

### PUCO authority to examine persons under oath

(R.C. 4923.04(C)(2))

The bill expands the PUCO's authority to examine under oath certain officers, agents, or employees. Under the bill, this authority extends to an officer, agent, or employee of a person subject to the following requirements under the bill:

- Rules applicable to the transportation of persons or property by for-hire motor carriers or private motor carriers;
- Rules applicable to the highway transportation and offering for transportation of hazardous materials (but not uniform registration and permitting);
- Motor vehicle and driver inspections;
- Premises and motor vehicle audits;
- Rules applicable to the highway routing of hazardous materials; and
- Forfeitures.

Under existing law, the authority is limited to an officer, agent, or employee of a person who transports or offers for transportation hazardous materials subject to the safety rules adopted under existing law in relation to the transportation and offering for transportation of hazardous materials.[209]

### Forfeitures

(R.C. 4923.99)

#### Increase of forfeiture cap

The bill increases the maximum forfeiture amount from $10,000[210] to $25,000 for each day of each violation. This alleviates a compliance issue with requirements for federal funding under MCSAP. The bill provides for forfeitures for every requirement of the bill on for-hire motor carriers, private motor carriers, or persons subject to the laws governing the transportation of persons or property. This applicability is essentially the same as existing law.

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[209] Existing R.C. 4905.81(D).

[210] Existing R.C. 4905.83, 4921.99, and 4923.99.

#### Forfeitures determined at roadside inspections and compliance reviews

The bill modifies the PUCO's duty under existing law to be "consistent with" federal and related guidelines in determining forfeitures for violations discovered at roadside inspections and compliance reviews, by adding the phrase "to the extent practicable." The bill also eliminates caps on the fees for roadside inspections and compliance reviews, of $1,000 and $10,000, respectively.[211]

#### Removal of $10,000 general forfeitures

(R.C. 4905.54)

The bill removes a provision that would have otherwise permitted the PUCO to assess a forfeiture of no more than $10,000 for a public utility's violation of the law governing for-hire motor carriers and private motor carriers. These forfeitures as imposed under existing law go into the GRF.

#### Referral to the Attorney General for hazardous waste forfeitures

(R.C. 4905.83(A), repealed)

The bill removes a provision permitting the PUCO to refer hazardous waste violations to the Attorney General for enforcement under law pertaining to environmental protection.

### State policy

(R.C. 4905.80)

The bill replaces in state-policy language references to economic regulation[212] with references to safety regulation, as follows:

- Changes "foster sound economic conditions in [transportation by motor carriers]" to "foster *safe* conditions in . . .";
- Replaces "[p]romote adequate, economical, and efficient service" with "[p]romote *safe and secure* service"; and
- Removes a reference to the promotion of reasonable charges for motor-carrier service.

[211] Existing R.C. 4921.99 and 4923.99.

[212] Existing R.C. 4921.03.

### Scope of PUCO authority

(R.C. 4905.81)

The bill generally expands provisions that describe the PUCO's regulatory authority to include private motor carriers and for-hire motor carriers, whereas existing law is limited to motor transportation companies in these descriptions. The bill expressly grants the PUCO rulemaking authority for administration and enforcement of all motor-carrier law within the PUCO's jurisdiction. The bill eliminates the PUCO's authority to designate stops for service and safety on established routes. The bill eliminates a requirement that the PUCO provide uniform accounting systems for motor transportation companies.[213] Finally, the bill expands to for-hire motor carriers the PUCO's authority to hear and determine complaints that a person is engaged as such a carrier. Existing law applies this complaint provision only to private motor carriers.[214]

### Notification of radioactive waste transportation

(R.C. 4905.801, repealed)

The bill removes a provision permitting the PUCO, consistent with national security requirements, to notify any law enforcement agency or other state or local entity affected by the shipment of certain radioactive material.

### Common carriers and discriminatory service

(R.C. 4907.37)

The bill removes a prohibition that a "common carrier" subject to the motor-carrier law may not provide discriminatory service. "Common carrier," in this context, could have been intended to refer only to railroad common carriers, as the provision is located in a chapter governing railroads. Under this interpretation, the bill merely removes an unnecessary reference to motor-carrier law, as railroads are not subject to that law under the bill.

[213] Existing R.C. 4921.04.

[214] Existing R.C. 4923.03.

### Railroad references

(R.C. 4905.58, 4907.02, 4907.04, 4907.19, 4907.28, 4907.35, 4907.43, 4907.49, 4907.57, 4907.59, 4907.60, 4907.62, 4909.02, 4909.03, 4909.22, 4909.24, and 4909.28)

The bill removes references to the bill's provisions that govern for-hire motor carriers and private motor carriers in sections dealing exclusively with railroads.

### References to the Interstate Commerce Commission

(R.C. 306.04, 306.36, and 4923.09)

The bill replaces references to the Interstate Commerce Commission with references to the Federal Motor Carrier Safety Administration, or removes the references.[215] The Interstate Commerce Commission no longer exists.

### Transportation of liquor

(R.C. 4303.22)

The bill limits the issuance of Permit H by the PUCO for the transportation of beer, intoxicating liquor, or alcohol for delivery or use in Ohio to for-hire motor carriers, which the bill does not define for this purpose. Existing law allows issuance of the permit to a "carrier by motor vehicle." Additionally, the bill states that the law governing Permit H does not prevent the Division of Liquor Control from contracting with a for-hire motor carrier, and that any such carrier is eligible for Permit H. Existing law applies these provisions to "common or contract carriers."

## OHIO BOARD OF REGENTS (BOR)

- Eliminates several mandated reports by the Chancellor of the Board of Regents and consolidates requirements for other reports into one Revised Code section.
- Clarifies that non-resident spouses and dependents of veterans who died after military discharge still may qualify for in-state tuition.
- For purposes of the current authority of a state institution of higher education to enter into an arrangement with a conduit entity and an independent funding source relative to the lease/leaseback of any of the institution's auxiliary facilities, expands

[215] Existing R.C. 4919.77 and 4919.79(D).

the definition of "conduit entity" to include any appropriate legal entity selected by the institution.

## Chancellor reports

### Eliminated reports

(R.C. 3333.04, 3333.123, and 3333.21; repealed R.C. 3333.049 and 3354.23)

The bill eliminates the following reports required of the Chancellor of the Board of Regents:

(1) Goals and timetables for increased access to higher education, job training, adult literacy, research, excellence in higher education, and graduate program redundancy reduction (R.C. 3333.04(P));

(2) Quality of institutions that offer teacher preparation programs (R.C. 3333.049);

(3) Performance of current Ohio Academic Scholars and the effectiveness of the formula to select scholars for the Ohio Academic Scholarship (R.C. 3333.21); and

(4) Evaluation of the pilot program for displaced homemakers required to be conducted at Cuyahoga Community College (R.C. 3354.23).

### Consolidation of statutes

(R.C. 3333.041, 3333.60, 3333.61, 3333.71, 3333.72, 3345.28, and 3345.692; repealed R.C. 3333.0411, 3333.33, 3333.70, 3333.80, and 3334.111)

The bill consolidates reporting requirements on the following topics, currently separate, into one Revised Code section (R.C. 3333.041), with the report or reports all due not later than December 31 each year to the Governor and the General Assembly:

(1) Aggregate academic growth data for students assigned to graduates of teacher preparation programs (R.C. 3333.0411);

(2) Use of minority and women investment managers in programs of the Ohio Tuition Trust Authority (R.C. 3334.111);

(3) Status of implementation of faculty improvement programs at state institutions of higher education, particularly regarding professional leave (R.C. 3345.28);

(4) The number and types of biobased products purchased by state institutions of higher education and the amount spent on such purchases (R.C. 3345.692);

(5) A description of dual enrollment programs offered by school districts, community schools, and chartered nonpublic high schools (R.C. 3333.33);

(6) The academic and economic impact of the Ohio Innovation Partnership (R.C. 3333.70); and

(7) The academic and economic impact of the Ohio Co-Op/Internship Program (R.C. 3333.80).

The bill also expands the dual enrollment report described in (5) to cover dual enrollment programs offered by STEM schools and the newly authorized college-preparatory boarding schools. The bill maintains the current law requirement that this dual enrollment report also must be posted on the Chancellor's web site.

## In-state tuition for military survivors

(R.C. 3333.31)

The bill clarifies that a spouse or dependent of a veteran may remain eligible for in-state tuition at state institutions of higher education if the veteran dies after being discharged from the military. Under current law, a veteran, or a veteran's spouse or dependent, who has not lived in Ohio for the customary 12 months nonetheless may qualify for in-state tuition if the veteran (1) served at least one year on active military duty and (2) was honorably discharged or received a medical discharge that was related to military service. The bill makes a simple wording change acknowledging cases in which the veteran has died following discharge. As under current law, the spouse or dependent still must establish domicile in Ohio by the first day of the academic term.

## Leasing campus auxiliary facilities

(R.C. 3345.54)

State institutions of higher education are currently authorized to enter into an arrangement with a conduit entity and an independent funding source relative to the lease/leaseback of any of the institution's auxiliary facilities. "Conduit entity" is defined as a nonprofit organization qualified as a public charity under the Internal Revenue Code.

The bill expands the definition of "conduit entity" to include any other appropriate legal entity selected by the state institution.

- Requires the Director of Rehabilitation and Correction to deposit all moneys received from commissions on specified services provided to prisoners and all moneys received from commissions on all telephone systems into the existing Prisoner Programs Fund.

- Makes every person serving a term in a community-based correctional facility or district community-based correctional facility responsible for medical treatment and services that the person requests and receives.

- Eliminates a limitation of the fee for medical treatment and services in a community-based correctional facility or district community-based correctional facility to actual cost.

- Eliminates a requirement that any fee paid by an offender in a community-based correctional facility or district community-based correctional facility for treatment or services requested and received be deducted from medical or dental costs that the person is ordered to reimburse under a court-imposed financial sanction or to repay under a county policy that requires repayment of the costs of confinement.

- Eliminates a requirement that the governing board of a community-based correctional facility or district community-based correctional facility establish a policy requiring non-indigent offenders to pay for any medical treatment or service requested by and provided to an offender.

- Requires that a Department of Rehabilitation and Correction (DRC) prisoner who is released from prison early under a risk reduction sentence be placed after release under post-release control sanctions (instead of on "supervised release") and specifies that the Felony Sentencing Law definition of "stated prison term" includes any period of time by which a felon's prison term is shortened under a risk reduction sentence.

- Requires a sentencing court to determine the days of credit an offender receives for time served in relation to the offense, provides for the correction of errors in the determination, and requires DRC to adjust a prisoner's stated prison term or parole eligibility in accordance with the court's determination.

- Specifies that DRC and the Adult Parole Authority are not liable for any claim for damages arising from the DRC's or Authority's issuance, denial, or revocation of a certificate of achievement and employability or for the DRC's or Authority's failure to revoke a certificate under required circumstances.

- Eliminates the Adult Parole Authority's power to recommend to the Governor the medical release of a prisoner.

- Eliminates the requirement that the Adult Parole Authority use the currently specified procedures for recommending a pardon, commutation, medical release, or reprieve prior to making a recommendation to the Governor regarding an inmate's release because the inmate is terminally ill, medically incapacitated, or in imminent danger of death, if the Adult Parole Authority is directed to investigate the inmate prior to the Governor ordering the release of the inmate.

- Requires the Director to adopt rules providing for the use of no more than 15% (10% under existing law) of appropriations for the Halfway House, Reentry Center, and Community Residential Center Program to pay for contracts *with licensed halfway houses* for specified nonresidential services for offenders supervised by the Adult Parole Authority.

- Revises the procedures for the possible release of certain DRC prisoners who serve 80% of their stated prison term and corrects erroneous cross-references in that mechanism to mandatory prison terms imposed under R.C. 2929.14.

- Provides that if a DRC prisoner is eligible to earn credits for productive participation in a DRC program or activity and if other specified provisions do not limit the prison to earning one day of credit for each month of such participation, for each month of such participation the prisoner may earn five days of credit, and the date of the prisoner's offense is irrelevant.

- Specifies that DRC's Division of Parole and Community Services, instead of the Division's Adult Parole Authority, must notify the sentencing court of the pendency of a transfer to transitional control of a DRC prisoner and of the fact that the court may disapprove of the transfer.

- Makes probation departments that supervise offenders sentenced by municipal courts eligible for probation improvement grants and probation incentive grants.

## Funding of the Prisoner Programs Fund

(R.C. 120.132)

The bill requires the Director of Rehabilitation and Correction to deposit all moneys received by the Department of Rehabilitation and Correction (DRC) from services provided to prisoners in relation to electronic mail, inmate trust fund deposits,

and the purchase of music, digital music players, and other electronic devices into the existing Prisoner Programs Fund. Under existing law, the Director must deposit all moneys received by the Department from commissions on telephone systems *established for the use of prisoners* into the Fund. The bill removes the italicized language so that the Director must deposit all such commissions on any telephone system. The bill does not change the purposes for which the Fund may be used.

## Responsibility for medical expenses in a community-based correctional facility

(R.C. 2301.571)

The bill makes every person confined in a community-based correctional facility or district community-based correctional facility, rather than just a person who is not indigent, financially responsible for any medical treatment or service the person requests and receives. It eliminates a requirement that a facility's governing board establish a policy requiring non-indigent offenders to pay for such treatment or services and eliminates a limitation on the fee for the medical treatment or service to the actual cost of the treatment or service provided. The bill also eliminates a requirement that any fee paid by an offender for treatment or services requested and received be deducted from medical or dental costs that the offender is ordered to reimburse under a court-imposed financial sanction or to repay under a county policy that requires repayment of the costs of confinement.

The bill provides that nothing in this provision may cause a community-based correctional facility or a district community-based correctional facility to be responsible for the payment of any medical or other health-care expenses incurred in connection with an offender who is serving a term in the facility that is imposed as a community residential sanction for a felony.

## Risk reduction sentencing

(R.C. 2929.01, 2929.19, 2967.28, and 5120.036)

### Current law

Current law enacted in Am. Sub. H.B. 86 of the 129th General Assembly sets forth a mechanism for "risk reduction sentencing" pursuant to which a judge who sentences a convicted felon to a prison term may recommend risk reduction sentencing for the felon in specified circumstances, DRC assesses the recommended felon for appropriateness of that type of sentence, and, if the felon successfully completes treatment or programming required by the Department, the felon is granted release to

"supervised release" after serving all mandatory prison terms and a minimum of 80% of all other prison terms.

Current law defines the term "stated prison term" for purposes of the Felony Sentencing Law as the prison term, mandatory prison term, or combination of all prison terms and mandatory prison terms imposed by the sentencing court under that Law, and specifies that the term includes any credit received by the felon for time spent in jail awaiting trial, sentencing, or transfer to prison for the offenses and any time spent under house arrest after earning credits under the existing Earned Credits Mechanism. The term is used in many contexts throughout the Felony Sentencing Law.

### Operation of the bill

The bill modifies the law governing risk reduction sentencing to specify that, if a sentencing court recommends risk reduction sentencing for a convicted felon, if DRC determines that the felon is eligible for risk reduction and provides the felon treatment and programming, and if the felon successfully completes the required treatment or programming, the felon will be released to post-release control (instead of "supervised release") under one or more post-release control sanctions after serving all mandatory prison terms and a minimum of 80% of all other prison terms. The placement under post-release control sanctions will be under terms set by the Parole Board, under the procedures it currently follows in post-release control sanctions for felons who complete their prison term and are released under a period of post-release control, and it will be subject to the existing provisions that currently apply to violations of post-release control sanctions. The period of post-release control will be for the length of time specified under existing law for felons who are subjected to post-release control upon being released from prison upon completion of their prison term, determined by the felon's offense.

Related to the changes described in the preceding paragraph, the bill expands the following existing provisions so that they expressly apply to risk reduction sentences: (1) the existing provision that requires that sentences to prison for a felony include a requirement that the felon, upon being released from prison upon completion of the prison term, either be subject to mandatory post-release control or be subject to post-release control at the discretion of the Parole Board, depending upon the felony, (2) the existing provisions that, depending upon the felony, either require or authorize the imposition of one or more post-release control sanctions upon a felon released from prison upon the completion of the prison term, and (3) the existing provision that requires that a felon sentenced to prison be notified at the time of sentencing that the felon, depending upon the felony, either will be or may be subject to supervision under one or more post-release control sanctions upon being released from prison upon completion of the prison term.

The bill also expands that the Felony Sentencing Law's definition of "stated prison term" to specify that, in addition to the things the definition currently includes, if an offender is serving a prison term as a risk reduction sentence, "stated prison term" includes any period of time by which the prison term imposed upon the offender is shortened by the offender's successful completion of all assessment and treatment or programming under the sentence.

## Determination of credit for time served by offender

(R.C. 2929.19(B)(2)(h) and 2967.191)

The bill requires a court that determines at a sentencing hearing that a prison term is necessary or required to determine, notify the offender of, and include in the sentencing entry the number of days that the offender has been confined for any reason arising out of the offense for which the offender is being sentenced and by which DRC must reduce the offender's stated prison term. The court's calculation may not include the number of days, if any, that the offender previously served in DRC custody arising out of the offense for which the prisoner was convicted and sentenced. In making the determination, the court must consider the arguments of the parties and conduct a hearing if one is requested. The court retains continuing jurisdiction to correct any error not previously raised at sentencing in making its determination. At any time after sentencing, the offender may file a motion in the sentencing court to correct any error in the determination, and the court has discretion to grant or deny the motion. If the court changes its determination, it must cause the entry granting the change to be delivered promptly to DRC. The bill provides that the Revised Code sections governing new trial motions and petitions for post-conviction relief do not apply to motions under R.C. 2929.19 for a redetermination of time served. The bill also states that an inaccurate determination is not grounds for setting aside the offender's conviction or sentence and does not otherwise render the sentence void or voidable.

The bill requires DRC to reduce a prisoner's stated prison term or, if the prisoner is serving a term for which there is parole eligibility, the minimum and maximum term or the parole eligibility date of the prisoner, in accordance with the court's determination.

## Certificates of achievement and employability

(R.C. 2961.22)

Continuing law, unchanged by the bill, permits any prisoner serving a prison term in, or who has been released from, a state correctional institution who satisfies certain specified conditions to apply to the DRC or the Adult Parole Authority for a certificate of achievement and employability.

The bill specifies that DRC and the Adult Parole Authority are not liable for any claim for damages arising from the DRC's or Authority's issuance, denial, or revocation of a certificate of achievement and employability or for the DRC's or Authority's failure to revoke a certificate of achievement and employability if the person is convicted of or pleads guilty to any offense other than a minor misdemeanor or a traffic offense.

## Recommendation for prisoner's medical release

(R.C. 2967.03 and 2967.05)

Eliminates the Adult Parole Authority's power to recommend to the Governor the medical release of a prisoner. The Authority currently may recommend to the Governor the medical release of a prisoner if in the Authority's judgment there is reasonable ground to believe that granting a medical release would further the interests of justice and be consistent with the welfare and security of society.

Under existing law, the Governor may order an inmate's release upon the recommendation of the Director of Rehabilitation and Correction, accompanied by a certificate of the inmate's attending physician that the inmate is terminally ill, medically incapacitated, or in imminent danger of death. Under the bill, if the Governor directs the Authority to investigate an inmate who is terminally ill, medically incapacitated, or in imminent danger of death prior to the Governor ordering the release of the inmate, the Authority would no longer be required to follow the procedures under current law (recommendation for pardon, commutation, medical release, or reprieve) prior to making a recommendation pertaining to the inmate's release to the Governor.

## Halfway house nonresidential services

(R.C. 2967.14(B))

Under existing law, DRC may use no more than 10% of the amount appropriated each fiscal year for the Halfway House, Reentry Center, and Community Residential Center Program to pay for contracts for nonresidential services for offenders being supervised by the Adult Parole Authority. The nonresidential services may include, but are not limited to, treatment for substance abuse, mental health counseling, counseling for sex offenders, and electronic monitoring services. The bill increases the amount that DRC may spend for such contracts to 15% of appropriations; requires the Director of DRC to adopt rules governing the use of the funds; specifies that the contracts must be with licensed halfway houses; provides that the offenders being supervised may include offenders who are supervised under an agreement between the Authority and a court of common pleas of a county in which there is no county probation department; and expands the permissible uses of the funds to include aftercare and other nonresidential services that the Director identifies by rule.

## 80% early release mechanism for DRC prisoners

(R.C. 2967.19 and 5120.66)

### Current law

Current law provides an "80% release mechanism" pursuant to which the DRC Director may petition the sentencing court for the release from prison of an inmate who is serving a stated prison term of one year or more, who is eligible under specified criteria, and who has served at least 80% of the stated prison term that remains to be served after becoming eligible for use of the mechanism. An inmate serving a stated prison term that includes a "disqualifying prison term" (a defined term) never is eligible for release under the mechanism. An inmate serving a stated prison term that includes one or more "restricting prison terms" (a defined term) is not eligible for release during the restricting prison terms but becomes eligible after having fully served each restricting prison term if the offender has an "eligible prison term" (a defined term) to serve after service of the restricting prison terms. An inmate serving a stated prison term that consists solely of one or more eligible prison terms becomes eligible upon commencement of service of the term. If a court grants a petition under the mechanism, it must order the release of the inmate and place the inmate under one or more appropriate community control sanctions under appropriate conditions and under the supervision of the court's department of probation, and reserve the right to reimpose the sentence that it reduced and from which the offender is released if the offender violates the sanctions. If the sentence from which the inmate is released was imposed for a first or second degree felony, a court that grants a petition under the mechanism also must consider ordering that the inmate be monitored by means of a GPS device.

### Operation of the bill

The bill modifies the 80% release mechanism as follows:

(1) Instead of requiring the DRC Director to petition the sentencing court for the release of an inmate as the initiating act under the mechanism, it requires the Director to send a written notice to the sentencing court recommending that the court consider releasing an inmate under the mechanism.

(2) It provides that the time of making the recommendation described in (1) is not earlier than 90 days prior to the date on which the inmate becomes eligible and that only an inmate recommended by the Director may be considered for early release under the mechanism.

(3) It specifies that the mechanism applies to any inmate confined in a prison on or after September 30, 2011.

(4) It specifies that an inmate serving one or more "restricting prison terms" and one or more "eligible prison terms" becomes eligible for release under the mechanism after having fully served all restricting prison terms and having served 80% of the term that remains to be served after all restricting prison terms have been fully served. It also specifies that an inmate serving only one or more "eligible prison terms" becomes eligible for release under the mechanism after having served 80% of those terms.

(5) In existing provisions that require notification to the appropriate prosecutor and the victim and posting on DRC's database when the Director petitions a court for release of an inmate under the mechanism, it replaces the references to the Director petitioning the court with references to the Director submitting a notice to the court, as described above in (1).

(6) It requires the Director's notice to the court and the information provided to the prosecutor and victim to include contact information for a DRC employee who can answer questions about the inmate.

(7) It replaces the current procedure that governs a court in determining whether to grant an inmate a release under the mechanism – under the bill: (a) the court upon receipt of the notice from the Director either must hold a hearing to consider the inmate's release or inform DRC that it will not be conducting a hearing, (b) the court cannot grant an early release to an inmate without holding a hearing, (c) if the court declines to hold a hearing, it may later consider release of the inmate under the mechanism on its own motion and conduct a hearing, and (d) the court must notify DRC within 30 days of receipt of the notice from the Director whether it will hold a hearing for an inmate.

(8) It conforms language in other portions of the mechanism to the changes described above in (1) to (7).

(9) In the definition of "restricting prison term," it corrects erroneous cross-references to mandatory prison terms imposed under R.C. 2929.14.

## Earned credits for DRC prisoners

(R.C. 2967.193; Section 729.10)

### Current law

Currently, a prisoner in a DRC correctional facility generally may earn one or five days of credit toward satisfaction of the prisoner's prison term for each completed month during which the prisoner productively participates in an education program, vocational training, prison industries employment, substance abuse treatment, or any

other constructive DRC program. A prisoner who successfully completes two such programs or activities may, in addition, earn up to five days of credit toward satisfaction of the prisoner's prison term for the successful completion of the second program or activity. No prisoner serving a prison term for any of a list of specified disqualifying offenses may be awarded any days of credit under the mechanism. The determination of whether a prisoner may earn one day of credit or five days of credit under the mechanism for each completed month of productive participation in a program or activity depends upon the offenses for which the prisoner is confined (this does not apply to the portion of the mechanism regarding days of credit for successful completion of a second program or activity). Unless barred from earning days of credit as described above:

(1) The prisoner may earn one day of credit if: (a) the most serious offense for which the prisoner is confined is any of a list of specified serious offenses (e.g., a violation of R.C. 2903.03, 2905.01, 2907.24, 2909.02, 2911.01, 2919.13, 2921.34, 2923.01, etc.) that is a first or second degree felony, or is a conspiracy or attempt to commit, or complicity in committing, any offense for which the maximum penalty is life imprisonment or any of the specified serious offenses, (b) the prison term the prisoner is serving includes a term for a sexually oriented offense that the prisoner committed prior to September 30, 2011 (prisoners serving a term for a sexually oriented offense committed on or after that date are barred from earning any days of credit), or (c) the prison term the prisoner is serving includes a term for a felony other than carrying a concealed weapon, an essential element of which is any conduct or failure to act expressly involving a deadly weapon or dangerous ordnance.

(2) If the most serious offense for which the prisoner is confined is a first or second degree felony and paragraph (1), above, does not apply, the prisoner may earn one day of credit if the prisoner committed that offense prior to September 30, 2011, and may earn five days of credit if the prisoner committed that offense on or after that date.

(3) If the most serious offense for which the prisoner is confined is a third, fourth, or fifth degree felony or an unclassified felony and paragraphs (1)(b) and (c), above, do not apply, the prisoner may earn one day of credit if the prisoner committed that offense prior to September 30, 2011, and may earn five days of credit if the prisoner committed that offense on or after that date.

### Operation of the bill

The bill modifies the provisions described above in paragraphs (2) and (3) that govern the determination of whether a prisoner serving a prison term for a felony that is not within the scope of the provisions described above in paragraph (1) may earn one day of credit or five days of credit for each completed month during which the person

productively participates in a program or activity, so that the date of the prisoner's offense is irrelevant in determining the number of days of credit the prisoner may earn and so that the prisoner always may earn five days.

Under the bill, unless barred from earning days of credit as described above, a prisoner in a DRC correctional facility may earn credits for productive participation in a DRC program or activity as follows: (1) if the most serious offense for which the prisoner is confined is a first or second degree felony and paragraph (1) above does not apply, the prisoner may earn five days of credit, regardless of the date of that offense, and (2) if the most serious offense for which the prisoner is confined is a third, fourth, or fifth degree felony or an unclassified felony and paragraphs (1)(b) and (c) above do not apply, the prisoner may earn five days of credit, regardless of the date of that offense. The bill specifies that these changes apply to the calculation of credit earned by a prisoner for programs or activities that the prisoner participates in on or after the first day of the calendar month that immediately follows the calendar month in which the bill takes effect. The bill also adds language to the provisions described above in clauses (a) and (c) of paragraph (1) confirming that those provisions apply regardless of the date of the prisoner's offense.

## DRC transitional control program

(R.C. 2967.26)

### Current law

Current law authorizes DRC, by rule, to establish a transitional control program for closely monitoring a prisoner's adjustment to community supervision during the final 180 days of the prisoner's confinement. Under the program, the Adult Parole Authority of DRC's Division of Parole and Community Services may transfer eligible prisoners to transitional control status during the final 180 days of their confinement and under terms and conditions established by DRC. DRC must define which prisoners are eligible for the program. DRC may adopt rules for the issuance of passes for specified limited purposes to prisoners who are transferred to transitional control. A prisoner who violates any rule established with respect to the transitional control program may be transferred to a prison, but the prisoner receives credit towards completing the prisoner's sentence for the time spent under transitional control.

At least three weeks prior to transferring a prisoner to transitional control under the program, the Authority must give notice of the pendency of the transfer to the common pleas court of the county in which the prisoner was indicted and of the fact that the court may disapprove the transfer of the prisoner and must include a report prepared by the head of the prison in which the prisoner is confined regarding the

prisoner's activities and conduct in the prison. If the court disapproves of the transfer of the prisoner, it must notify the Authority of the disapproval within 30 days after receipt of the notice. If the court timely disapproves the transfer, the Authority cannot proceed with the transfer. If the court does not timely disapprove the transfer, the Authority may transfer the prisoner to transitional control.

#### Operation of the bill

The bill requires that DRC's Division of Parole and Community Services, instead of the Authority, give the notice to the court of common pleas of the pendency of the transfer of a prisoner to transitional control and of the court's authority to disapprove the transfer. The bill does not otherwise modify the program.

### Probation department grant eligibility

(R.C. 5149.311)

DRC administers the Probation Improvement Grant and the Probation Incentive Grant for court of common pleas probation departments that supervise felony offenders. The bill extends eligibility for the two grants to any common pleas court or municipal court probation department that supervises any offenders.

## REHABILITATION SERVICES COMMISSION (RSC)

- Grants exclusive authority to administer the daily operation and provision of vocation rehabilitation services to the administrator of the Rehabilitation Services Commission (RSC).
- Requires the RSC administrator is to establish a fee schedule for vocational rehabilitation services.
- Authorizes, rather than requires, RSC to solicit funds from private or public entities for the purpose of receiving the maximum amount of federal funds possible to support the RSC's activities.
- Replaces current law permitting RSC to terminate a funding agreement with a third-party only with good cause and three months' notice with a provision permitting RSC to terminate such an agreement as follows: (1) for just cause at any time or (2) for any other reason with 30 days' notice.
- Eliminates a requirement that the duration of each funding agreement be at least six months.

## Rehabilitation Services Commission administrator

(R.C. 3304.14 and 3304.16)

The Rehabilitation Services Commission (RSC) administers programs providing vocational rehabilitation services. RSC's governing authority consists of a Commission of seven members appointed by the Governor with the advice and consent of the Senate. The RSC administrator is appointed by the Governor and serves at the pleasure of the Governor. Current law specifies the duties of the Commission but does not specify the duties of the RSC administrator.

The bill grants to the RSC administrator exclusive authority to administer the daily operation and provision of vocation rehabilitation services. The bill requires the RSC administrator to establish a fee schedule for vocational rehabilitation services in accordance with federal law.[216]

## Solicitation of funds

(R.C. 3304.16 and 3304.181)

The bill authorizes, rather than requires, RSC to solicit funds from private or public entities for the purpose of receiving the maximum amount of federal funds possible to support the activities of RSC. Federal law establishes maintenance of effort requirements necessary for a state to receive the entire allotment of federal funds for vocational rehabilitation services.[217] Federal law also provides that a state may receive additional amounts as a reallotment from other states if a state is able to supply additional matching funds.[218]

## Funding agreements with third parties

(R.C. 3304.182)

RSC is authorized by current law to enter into agreements with private entities for the purpose of receiving the maximum amount of federal funds possible. The agreement must last at least six months and it cannot be discontinued by RSC without first providing three months' notice. Agreements may be terminated only for good cause under current law.

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[216] 34 C.F.R. 361.50.

[217] 34 C.F.R. 361.62 and 361.65.

[218] 34 C.F.R. 361.65.

The bill eliminates the requirement that the duration of each agreement be at least six months. The bill also eliminates current law under which RSC is permitted to terminate a funding agreement only with good cause and with three months' notice. Instead, the bill provides that an agreement may be terminated as follows: (1) for just cause at any time or (2) for any other reason with 30 days' notice.

The bill preserves current law specifying that the maximum amount that RSC may receive under an agreement is 25% of the funds available.

## BOARD OF TAX APPEALS (BTA)

- Creates a small claims division of the Ohio Board of Tax Appeals (BTA) with the authority to hear certain appeals involving nonbusiness real property or where the amount in controversy is less than $10,000 and all parties give written consent.
- Allows for parties to file notice of appeal to the BTA by fax or e-mail.
- Requires the BTA to establish a case management schedule for appeals.

### Small claims division

(R.C. 5703.021, 5717.01, 5717.011, and 5717.02)

The Board of Tax Appeals (BTA), as established in existing law, is a separate, quasi-judicial, administrative agency that acts as the state's administrative tax court. The BTA consists of three members appointed by the Governor who provide taxpayers, corporate entities, and government entities with a forum in which to resolve tax disputes. The BTA resolves appeals from decisions and orders of the Tax Commissioner, the Director of Development, the Director of Job and Family Services, county boards of revision, county budget commissions, and municipal boards of tax appeal. Decisions of the BTA are recorded in a journal maintained by the secretary of the BTA and can be appealed to district courts of appeals or the Supreme Court of Ohio.

The bill creates a small claims division of the BTA. The small claims division would have the authority to hear appeals from county boards of revision involving nonbusiness real property, municipal income tax appeals from municipal boards of appeal where the amount in controversy is less than $10,000, and appeals from final determinations of the Tax Commissioner, the Director of Development, and the Director of Job and Family Services if the amount in controversy is less than $10,000. The BTA has authority to modify, by rule, this jurisdictional dollar threshold. Written consent of

all the involved parties is required in order for any appeal to be heard by the small claims division.

Under the bill, appeals within the above jurisdictional limits may be filed in the small claims division at the election of the appellant or reassigned there by the BTA. The BTA must reassign an appeal docketed in the small claims division to the regular docket in all of the following circumstances: (1) a party to the appeal requests reassignment, (2) the appeal presents a constitutional issue, (3) the appeal presents an issue of great public or general interest, or (4) the BTA determines that the appeal is outside the jurisdiction of the small claims division.

The operation and procedures of the small claims division are intended to be informal and will be prescribed by rules adopted by the BTA. Subject to these rules, it is permissible for appeals assigned to the small claims division to be heard over the telephone. The bill provides that parties are permitted, but not required, to have an attorney appear on their behalf. Entities that are not natural persons are permitted to participate in appeals before the small claims division as a taxpayer or claimant. These entities may appear through an attorney, a bona fide officer, partner, member, trustee, or salaried employee. Unless the entity is represented by an attorney, however, its representative may not engage in cross-examination, argument, or other acts of advocacy.

Decisions and orders of the small claims division must be recorded in the journal maintained by the secretary of the BTA. The journal is held open for public inspection. Unlike the BTA decisions, however, decisions and orders of the small claims division do not have precedential value for any other case and are not subject to appeal.

## Facsimile and e-mail filing to the Board

(R.C. 5717.01, 5707.011, and 5717.02)

Under current law, an appeal from a decision of the county board of revision must be filed by sending a notice of appeal to the county board of revision and the BTA within 30 days after notice of the decision is mailed. An appeal from a decision of a municipal board of appeal must be filed by sending a notice of appeal to the municipal board of appeal, the opposing party, and either the BTA or the court of common pleas (depending on where the taxpayer or tax administrator elects to seek appellate review) within 60 days after the day the appellant receives notice of the decision. An appeal from a final determination or action of the Tax Commissioner, a county auditor, the Director of Development, or the Director of Job and Family Services must be filed by sending a notice of appeal to the BTA and the official whose final determination or

action is the subject of the appeal within 60 days after service of the notice of the final determination or action is completed.

In all such appeals, the current law permits the appellant to file the notice of appeal in person, by certified mail, by express mail, or by authorized delivery service. If the notice is filed in person, the date of delivery is treated as the date of filing. If notice is filed by certified mail or express mail, the date of the United States postmark on the sender's receipt is treated as the date of filing. If notice is filed by authorized delivery service, the date of receipt recorded by the delivery service is treated as the date of filing.

The bill allows for parties, in addition to the methods that already exist, to file a notice of appeal to the Board of Tax Appeals by fax or e-mail. When these methods are used, the date of transmission is treated as the date of filing.

### Case management schedule

(R.C. 5717.02)

The bill creates a new requirement that the BTA institute procedures to control and manage appeals of decisions of the Tax Commissioner, county auditors, the Director of Development, and the Director of Job and Family Services. These procedures must include the establishment of a case management schedule by the attorney examiners of the BTA in consultation with the parties and their counsel. Current law does not explicitly require the BTA to establish a case management schedule.

## DEPARTMENT OF TAXATION (TAX)

### I. Financial Institutions Tax

- Replaces the existing taxes on financial institutions and dealers in intangibles with a new business-privilege tax on both classes of businesses, beginning with tax year 2014.

- Imposes the tax on the basis of the total equity capital in proportion to the taxpayer's gross receipts situsedin Ohio, with situs based on where a taxpayer's customers are deemed to benefit from the taxpayer's services.

- Sets the initial tax rate at 0.8% on the first $500 million in apportioned total equity capital and 0.25% on apportioned total equity capital in excess of $500 million,

subject to adjustment after the first year if the revenue generated by those rates exceeds or falls below 10% of the "target" revenue of $225 million for 2014.

- Sets the minimum annual tax at $1,000.

- Requires financial institutions to report and pay the tax on a consolidated basis with related companies (both bank and nonbank), with the consolidation based on which entities are included in regulatory reports to federal authorities or, for institutions not subject to such federal regulatory jurisdiction, on the basis of majority ownership or control; liability for the tax is joint and several among the institutions included in a consolidated reporting group.

- Permits taxpayers subject to the new tax to claim the following tax credits if the taxpayer otherwise qualifies: job creation, job retention, venture capital loan loss, historic building rehabilitation, New Markets, and motion picture production tax credits, and the credit for regulatory assessments paid to the Department of Commerce's Division of Financial Institutions.

- Provides for how the tax is to be paid, reported, enforced, and administered.

## II. Natural Resource Taxation

- Levies a severance tax at a rate of 4% of the spot market value of oil and condensate produced by horizontal wells and provides a temporary reduction for certain new wells until initial costs are recovered.

- Levies a severance tax at a rate of 1% of the spot market value of gas produced by horizontal wells.

- Distributes revenue from severance taxes on horizontal wells to the Department of Natural Resources and to provide temporary personal income tax rate reductions.

- Adjusts rate of severance tax on gas from non-horizontal wells from the current 2½¢ per 1,000 cubic feet (MCF) to the lesser of 3¢ per MCF or 1% of spot market value.

- Exempts from severance tax gas produced by a non-horizontal well that produces fewer than 10 MCF per day in a calendar quarter.

- Prescribes a method for determining the true value of processed hydrocarbons and processed gas from wet gas reserves for the purposes of real property taxation.

- Requires a horizontal well owner to pay a $25,000 fee to the county in which the well is located, distributes the fees to taxing units impacted by the well's operation, and requires units receiving such fees to repay received amounts to the owner.

## III. Commercial Activity Tax

- Removes the requirement that receipts "contribute to the production of gross income" of a business in order to be considered gross receipts subject to the CAT.

- Requires a commercial activity taxpayer that pays on a quarterly basis must exclude the taxpayer's first $1 million of taxable gross receipts in the first quarter of a year and may carry-forward any unused portion of the exclusion amount only to quarters within the same calendar year.

- Eliminates references to "test" periods that ended in 2011 and that were used to adjust the rate of the CAT if revenue from the tax exceeded estimates.

- Removes current law provisions that refer to commercial activity taxpayers "electing" to pay the tax on an annual basis.

- Requires the Tax Commissioner to list the effective date that a taxpayer's CAT account was cancelled rather than the date the taxpayer requests cancellation.

- Requires CAT registration fees to be deducted from the first tax payment due instead of remitted separately and modifies the information that a taxpayer must provide on CAT registration forms.

- Authorizes businesses subject to the CAT to claim the motion picture production tax credit against that tax.

- Amends the commercial activity tax (CAT) exclusion for affiliates of financial organizations to require that, in order to qualify for exclusion, the affiliate must engage in certain financial activities.

- Amends the CAT exclusion for affiliates of insurance companies to require that, in order to qualify for exclusion, the affiliate must be authorized to conduct an insurance business in the state.

## IV. Sales and Use Tax

- Eliminates the special sales tax vendor license categories of "service vendor" and "delivery vendor," but allows the Tax Commissioner to create specific classes of vendor licenses.

- Permits the Tax Commissioner to cancel a vendor's license if the vendor fails to notify the commissioner of a change of address and if ordinary mail sent to the address on the vendor's license is returned as undeliverable.

- Requires all vendors to display their vendor licenses, not just transient vendors.

- Requires the Tax Commissioner to notify all vendors and sellers, not just those registered through the Streamlined Sales Tax Central Registration System, when local sales tax rates change.

- Specifies that all vendors making sales from a printed catalog do not have to apply changes in local sales tax rates that differ from the catalog rates until the beginning of a calendar quarter that follows 120 days after the Tax Commissioner notifies vendors of the rate change.

- Includes, as a taxable sale under the sales tax, the transfer of ownership interests in a pass-through entity if its sole assets are boats, planes, motor vehicles, or other recreational property used primarily by the entity's owners.

- Harmonizes the existing sales tax exemption for water bought for "residential use" with the definition of sales tax-exempt "food."

## V. Personal Property Tax Reimbursements

- Makes technical changes to the formula used to reimburse taxing units for utility tangible personal property tax fixed-rate levy losses.

- Provides that, beginning in 2012, reimbursements for tangible personal property tax levy losses attributable to a tax levied on behalf of a public library must be calculated separately from the other levy losses of a taxing unit and reimbursed directly to the public library.

- Provides that the formula used to reimburse municipal corporations for business personal property current expense levy losses does not include certain values related to reimbursements the municipal corporation received for non-current expense levy losses.

- Clarifies that, for purposes of calculating reimbursements of business and utility tangible personal property tax losses, fixed-rate levies will be reimbursed only to the extent that the levy continues to be charged and payable.

- Decreases, beginning in 2012, the percentage of business tangible personal property tax fixed-sum levy losses reimbursed to non-school taxing units, from 100% of the taxing unit's fixed-sum levy loss to 50% of taxing unit's fixed-sum levy loss.

- Extends the deadline by which the state must make the second of two semiannual reimbursements to non-school taxing units for their loss of business tangible personal property tax revenue, from November 20 to November 30 of each year.

- Shortens the time period in which a county treasurer must distribute tangible personal property tax reimbursement payments to local taxing units after receiving the payments in the county treasury, from 40 days to 30 days.

## VI. Public Utility Taxation

- Specifies that tangible personal property of an electric distribution utility used to generate, transmit, or distribute electricity is not "phase-in-recovery property" for the purposes of the law governing such a utility's authority to recover certain as-yet uncompensated costs by securitizing the costs, and therefore the property is not exempted from taxes on public utility tangible personal property.

- States that the existing tax exemption for phase-in-recovery property and phase-in-recovery revenues does not "prohibit" the state from levying the Commercial Activity Tax.

- Extends public utility tangible personal property tax and public utility excise tax to pipe-line companies that transport hydrocarbons, natural gas liquids, and condensate and sets rates against such property and companies, respectively.

## VII. Property Tax

- Authorizes the Tax Commissioner, upon the written consent of the parties, to review and issue a final determination for cases involving residential property tax values that have been appealed from a board of revision and are docketed with the Board of Tax Appeals.

- Authorizes the Tax Commissioner, beginning in 2014 and continuing for the next five years, to extend the revaluation of real property required in a county by not more than one year.

- Excuses the Tax Commissioner from certifying certain property tax information that, under current law, must be certified to the Department of Education and Office of Budget and Management in May and June of 2012 and that, if not for recent school funding formula changes, would be used to calculate state aid to schools.

## VIII. Tax Credits

- Increases the annual limit on venture capital loan loss tax credits available to lenders to the state's venture capital loan program that lose money, and the amount of principal and interest payments that may be paid to lenders each year.

- Relaxes limits on the extent to which the program's investments may be concentrated in two or more venture capital funds that are under common management.

- Requires the selection criteria for investment funds to qualify to administer the program to include similar experience and a history of positive investment returns.

- Requires agreements for administering the program to specify that the investment fund administering the program and any fund managers employed by the administrator to have a "significant presence" in Ohio as defined in the agreement.

- Conforms Ohio New Markets Tax Credit to federal law, expands the class of credit-eligible businesses, and adjusts amount of credit that may be claimed each year.

## IX. Tax Administration

- Reduces the statutory interest rate charged for tax underpayments and payable on some tax refunds from the "federal short-term rate" plus 3% to the federal short-term rate plus 1%.

- Increases, by 1%, the interest rate for estate tax underpayments and refunds and for any remaining business tangible personal property tax underpayments or refunds.

- Eliminates the requirement that notification by the Tax Commissioner to county auditors of the interest rate be in writing.

- Lowers the number of income tax returns that a professional tax return preparer may prepare in a year before he or she is required to file all such returns electronically, from 75 to 11.

- Modifies an exception to the electronic filing requirement to provide that a return preparer is exempt from the requirement in one year if, during the previous year, the return preparer prepared ten or fewer (instead of 25 or fewer) income tax returns.

- Allows the Tax Commissioner to cancel a taxpayer's liability for unpaid taxes, penalties, and interest if the total amount due for a single tax period does not exceed $50.

- Provides that interest does not accrue on any portion of a taxpayer's income, corporation franchise, or commercial activity tax refund to the extent that the refund results from the allowance of a refundable credit.

- Removes a provision of current law that requires interest on a tax refund that results from an illegal or erroneous income tax assessment to accrue from the date the taxpayer paid the assessment until the date the refund is paid.

- Specifies that, when an income or pass-through entity withholding tax refund arises from the filing of an amended return, interest on the refund accrues from the date the amended return is filed until the date the refund is paid.

- Requires that a corporation filing a certificate of voluntary dissolution demonstrate that it is current on all state taxes, rather than on only the personal property, corporation franchise, sales, use, and highway use taxes.

- Prescribes the method by which the Tax Commissioner may deliver tax notices or orders by secure electronic means.

- Authorizes the Department of Taxation to impose a $50 penalty on declined or dishonored electronic payments.

- Streamlines the method for distributing revenue from the additional state horse-racing tax by requiring the Tax Commissioner to distribute tax collections directly to local governments, instead of routing distributions through the taxpayer.

- Requires permit holders that pay the additional horse-racing tax to file with the Tax Commissioner, within ten days after a horse-racing meet, a report showing the amount wagered at the meet.

- Eliminates the requirement that certain assets of decedents dying on or after January 1, 2013, not be transferred without the written permission of the Tax Commissioner.

- Authorizes the Tax Commissioner to exempt a motor fuel dealer from a current law requirement that all motor fuel dealers provide a surety bond securing payment of the motor fuel tax if the dealer only sells or distributes fuel for which the tax has already been paid.

- Expressly extends to all kinds of business organizational forms the current provision that assigns personal liability for the motor fuel tax to individual owners, employees, officers, and trustees of the business who are responsible for reporting and paying the tax.

- Imposes a penalty of up to $1,000 for distributing tobacco products without a license, and requires any person doing so to obtain a license and to pay the annual $1,000 license fee for each location where the person acts as a distributor.

- Eliminates statutory references to "brokers" for the purpose of defining who is required to report and pay the tobacco product excise tax.

- Conforms the alcoholic beverage excise tax statute regarding bottled and canned beer with a separate statute requiring S liquor permit holders to pay the tax on those beverages.

- Requires S liquor permit holders to comply with a current law provision that requires alcoholic beverage taxpayers to submit monthly reports to the Tax Commissioner.

- Creates the Peace Officer Training Academy Fund and the Criminal Justice Services Casino Tax Revenue Fund to receive the portion of casino tax proceeds (2%) currently allocated for the purpose of supporting law enforcement training efforts of the Peace Officer Training Academy and the Department of Public Safety's Division of Criminal Justice Services.

- Specifies how the portion of casino tax proceeds currently allocated to the Ohio State Racing Commission Fund and the Problem Casino Gambling and Addictions Fund are to be used.

## I. Financial Institutions Tax

### Overview

(R.C. Ch. 5726., sections 122.17, 122.171, 122.85, 145.114, 145.116, 149.311, 150.01, 150.07, 150.10, 715.013, 742.114, 742.116, 3307.152, 3307.154, 3309.157, 3309.159, 5505.068, 5505.0610, 5701.12, 5703.052, 5703.053, 5703.70, 5707.03, 5709.76, 5711.22, 5725.02, 5725.14, 5725.16, 5725.26, 5725.33, 5733.01, 5733.02, 5733.021, 5733.06, 5747.01, 5747.65, 5747.98, 5751.01, 5751.011, 5751.012, 5751.54, and 5751.98)

The bill enacts a new tax for companies that currently are subject to the corporation franchise tax (primarily banks and other corporations classified as financial institutions) or the tax on "dealers in intangibles" (e.g., mortgage brokers, stockbrokers, finance and loan companies that are not classified as financial institutions). The tax would first apply to tax year 2014; the first tax payment, one of three estimated tax payments for tax year 2014, would be payable by August 15, 2013.

All revenue from the new financial institution tax is to be credited to the General Revenue Fund.[219]

In effect, the tax replaces the corporation franchise tax (R.C. Ch. 5733.) and the dealers in intangibles tax (R.C. 5707.03 and 5725.13 to 5725.17). The corporation franchise tax currently is imposed on financial institutions, bank holding companies, financial holding companies, savings and loan holding companies, affiliates of any of those if the affiliate is majority-owned or -controlled by any of the foregoing (directly or indirectly) and if the affiliate is engaged in a business considered by the Federal Reserve Board to be financial in nature or incidental thereto. The franchise tax also applies to any company that solely facilitates or services securitizations (i.e., transfers of assets to a third person that issues securities backed by the right to receive payment from the asset – e.g., selling loans to a person that packages loans into securities offered in a secondary market). The franchise tax is levied on the basis of net worth (capital, surplus, undivided profits, and reserves apportioned on the basis of various business presence factors, and excluding, among other items, goodwill, appreciation, and abandoned property). The rate of the tax is 1.3%. All the revenue from the franchise tax is credited to the General Revenue Fund.

The dealer in intangibles tax is levied on the basis of a dealer's shares and capital at a rate of 0.8%. Revenue from the tax is credited to the General Revenue Fund.

The bill terminates both the corporation franchise tax and the dealers in intangibles tax at the end of 2013.

## Taxpayers

(R.C. 5726.01)

The tax is imposed on "financial institutions" organized for profit and doing business in Ohio "or otherwise having nexus in or with this state under the Constitution of the United States."[220] Financial institutions are defined for the purposes of the tax as either bank organizations or nonbank organizations. Bank organizations are defined to include the same classes of institutions that are currently subject to the corporation

[219] The new tax's revenue would not affect current law's distribution of state tax revenue to the Local Government Fund or the Public Library Fund. Under current law (R.C. 131.51), the amount of money to be credited to each of those funds after FY 2013 is fixed at the proportion of tax revenue credited to each fund in FY 2013. But the new tax will not produce revenue until after FY 2013.

[220] It is not clear what the scope and extent of the taxable nexus is under the federal constitution for a business privilege tax levied on the basis of equity capital apportioned on the basis of gross receipts assigned to the place where the taxpayer's customers are deemed to receive the benefit of the taxpayer's services.

franchise tax. Holding companies of bank organizations also are classified as financial institutions subject to the tax. Nonbank organizations are substantially the same kinds of businesses that currently are classified as dealers in intangibles for the purposes of the existing tax on such dealers.[221]

Credit unions, insurance companies, and institutions organized under the Federal Farm Loan Act (or a successor) are not bank organizations subject to the new tax (and are not subject to the existing franchise tax).

## Tax base

(R.C. 5726.01(N) and (O), 5726.04, and 5726.05)

The tax is levied on the "total Ohio equity capital" of financial institutions. Under the bill, a financial institution's total equity capital includes all of its equity components, including common stock, perpetual preferred stock, surplus, retained earnings, treasury stock, unearned employee stock ownership plan shares, and accumulated other comprehensive income.

"Total Ohio equity capital" is the portion of the financial institution's total equity capital that is apportioned to Ohio under the bill. The apportionment is based on the proportion of the taxpayer's gross receipts (generally, its total income without deduction for expenses) that can be apportioned to Ohio. Specifically, gross receipts are apportioned to Ohio in proportion to the benefit from services that the taxpayer's customers receive in this state as compared to the benefit from services that all of the taxpayer's customers receive everywhere. The Tax Commissioner must adopt administrative rules to provide additional guidance. The physical location where a customer ultimately receives the benefit is deemed "paramount" in determining where the proportion of benefit is received.[222] The Tax Commissioner, with or without the request of the taxpayer, may apply an alternative situsing method to the taxpayer if the statutory method does not fairly represent the extent of taxpayer's business activity in Ohio.

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[221] This definition includes "qualifying dealers in intangibles" that, under current law, are members of a group of companies related though majority common ownership that also includes a financial institution.

[222] This situsing method is substantially the same as the one prescribed for most services under the commercial activity tax. See R.C. 5751.033(I).

## Tax rate

(R.C. 5726.04)

The tax rate is two-tiered: a rate of 0.8% applies to the first $500 million of a taxpayer's total Ohio equity capital, and a rate of 0.225% applies to the amount of total Ohio equity capital in excess of $500 million. If, based on these rates, a taxpayer's liability does not exceed $1,000, the taxpayer must instead pay a minimum tax of $1,000.

The bill provides for a rate adjustment mechanism that applies if revenue from the new tax in the 2014 tax year (the first year the tax is levied) is more than 110% or less than 90% of a target revenue amount of $225 million. If revenue exceeds 110% of the target revenue amount, the Tax Commissioner must decrease the tax rates for 2015 and subsequent years to the extent that the rates generated revenue above the 110% threshold. For example, if 2014 revenue exceeds the $225 million target by 15%, the rates for 2015 and thereafter would be computed to be the rates that would have raised 10% more than the target (i.e., $247.5 million). If the 2014 rates generate less than 90% of the target (i.e., less than $202.5 million), the rates for 2015 and thereafter would be adjusted upward to the rates that would have raised $202.5 million. In either case, both of the rate tiers would be adjusted by an equal percentage.

## Tax reporting

(R.C. 5726.03)

Each financial institution subject to the tax must file an annual report by March 31 of the tax year. If two or more financial institutions are related by ownership or control in such a way that they are required to be included in the same report to federal regulatory authorities (e.g., Federal Reserve Board), they must file the annual report and pay the tax as a consolidated group composed of all such institutions.[223] For this purpose, the federal reports are the FR-Y9 that holding companies must file with the Federal Reserve Board (and related versions of that form) and the "call report" (or consolidated reports of condition and income) that certain kinds of financial institutions must file with their respective regulatory agencies and as prescribed by the Federal Financial Institutions Examination Council. Both reports are filed on a consolidated basis. If an institution is included in both an FR-Y9 and a call report, that institution must be included in the annual report with the group for which the FR-Y9 is filed and excluded from the group for which the call report is filed. If a financial institution is not

[223] Under the new tax, all members of such a group would collectively be a "financial institution" and a taxpayer, so references to a financial institution or a taxpayer usually refer to the group, not individual institutions.

included in an FR-Y9 or a call report (i.e., it is a nonbank organization) but is part of a majority-owned or -controlled group of other nonbank organizations, the group must file an annual report on a consolidated basis.

The member of any consolidated group that is required to file the annual report on behalf of the whole group is the "reporting person." In the case of FR-Y9 filers, the reporting person is the top-tier holding company required to file the FR-Y9. In the case of call report filers, the entity required to file the call report is the reporting person. And in the case of a group of nonbank financial organizations, the entity that owns or controls the majority of ownership interests in the other members of the group must file the annual report if it is also a nonbank financial organization; if it is not, the group must select its reporting person from among the nonbank financial organizations in the group.

## Tax payments

(R.C. 5726.03 and 5726.06)

The annual tax payment is due by March 31 of the tax year. Estimated payments are due on the preceding August 15, November 15, and February 15. The August payment must equal either the minimum $1,000 tax or one-third of the estimated annual tax, whichever is greater. The November payment must equal one-half of the remaining balance of the estimated annual tax after subtracting the amount of the August payment. The remaining February payment must equal the other remaining one-half. Any reconciliation is made with the March 31 remittance. Payments must be made by electronic funds transfer unless a taxpayer's annual tax liabilities for two consecutive years are each less than $50,000. Electronic payments must be made in a manner substantially the same as is currently required under the corporation franchise tax, and the conditions for penalizing failure to comply are substantially the same.

## Tax credits

The bill authorizes the following tax credits to be claimed by taxpayers subject to the new tax if the taxpayer otherwise qualifies for the credit under the specific terms of the credit as provided in the sections and chapters noted: job creation (R.C. 122.17), job retention (R.C. 122.171), venture capital loan loss (R.C. Ch. 150.), historic building rehabilitation (R.C. 149.311), New Markets (R.C. 5725.33), and motion picture production tax (R.C. 122.85), and the credit for regulatory assessments paid to the Department of Commerce's Division of Financial Institutions.

The bill does not address whether financial institutions or dealers in intangibles that currently are entitled to claim any of the nonrefundable credits may carry their

existing credit over to the new tax, or whether an existing tax credit agreement is applicable to the new tax.

## Administration and enforcement

The bill includes provisions for the administration and enforcement of the new tax that are substantially the same as similar provisions under the existing corporation franchise tax, as follows, except as noted otherwise:

- Penalties for failure to report or pay the tax as required by law (R.C. 5725.21).
- Interest on unpaid taxes, including on underpaid estimated taxes, and on refund payments (R.C. 5726.07 and 5726.32).
- Provisions for issuing assessments to collect unpaid tax, penalty, or interest, except the statute of limitations on issuing an assessment for the new tax is four years instead of three (R.C. 5726.20).
- Provisions for obtaining refunds of tax overpayments, except the statute of limitations on applying for a refund of the new tax is four years instead of three (R.C. 5726.30 and 5726.31).
- Provisions for cancelling the authority of noncompliant business to continue doing business in Ohio, including through a quo warranto action, and for reinstatement of such businesses (R.C. 5726.40 to 5726.43).
- Provisions for companies that discontinue doing business in Ohio to notify the Tax Commissioner (R.C. 5726.36).

## Municipal taxing authority

(R.C. 715.013)

The bill specifies that municipal corporations may not levy a tax that is "the same as or similar to" the new financial institutions tax. Current law prohibits municipal corporations from levying most of the kinds of taxes the state currently levies (the income tax being the major exception). If there were no such prohibition, municipal corporations would be authorized to levy taxes under their home rule authority, without authorization from the General Assembly.[224]

[224] The doctrine of implied pre-emption was abandoned by the Ohio Supreme Court in 1998. Before then, if the state levied a certain kind of tax, municipal corporations were held to be impliedly pre-

### State retirement system investment managers and agents

(R.C. 742.114, 742.116, 3307.152, 3307.154, 3309.157, 3309.159, and 5505.068)

Current law requires that, to qualify as an investment manager or agent for any of the state's five public employee retirement systems, a person must be subject to the dealers in intangibles tax, insurance company tax, the corporation franchise tax, or the personal income tax. The bill adds the new financial institutions tax as a qualifying tax.

## II. Natural Resource Taxation

### Horizontal well severance tax and income tax reductions

#### Severance tax

(R.C. 5749.01 and 5749.02)

Current law levies a tax on a person who severs oil and natural gas in Ohio. The tax, assessed against the severer of such resources, equals 10¢ per barrel of oil and 2½¢ per 1,000 cubic feet (MCF) of natural gas and is paid four times per year in quarterly tax periods. (A separate "cost recovery assessment" is levied in the additional amount of 10¢ per barrel of oil or ½¢ per MCF of natural gas for all oil and gas wells, except very low-volume wells.[225])

The bill distinguishes horizontal versus nonhorizontal wells for the purposes of imposing different severance tax rates on oil and gas produced from such wells and earmarking the revenue from oil or gas produced from such wells (including to fund income tax reductions). The bill also specifies that the gas that is to be taxed under the severance tax is "pipeline quality gas" instead of "natural gas," adjusts the tax rate on such gas, imposes the tax specifically on "condensate" if produced by horizontal wells, and exempts gas produced from wells that consistently produce less than 10,000 cubic feet (10 MCF) per day.

#### Horizontal versus nonhorizontal wells

(R.C. 1509.01 and 5749.01)

The bill creates a distinction between "horizontal" wells and "nonhorizontal" wells. Horizontal wells are defined to be wells drilled to produce oil or natural gas with a wellbore that reaches a horizontal or near horizontal position and that is stimulated to

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empted from levying the same kind of tax unless the General Assembly expressly authorized them to levy the tax.

[225] R.C. 1509.50.

produce. (Stimulation is defined as a "process of enhancing well productivity, including hydraulic fracturing operations.")

### Taxable resources

(R.C. 5749.01)

The bill applies the severance tax to "gas" (as compared to the current "natural gas"), which the bill defines for severance tax purposes as "pipeline quality gas." The bill does not further define "pipeline quality gas," but this term is used in the natural gas industry to refer to "dry" gas (i.e., primarily methane) after purification or processing to remove condensates, other "wet gas" components (e.g., butane, propane, ethane, pentane), and water or other impurities to a degree that the pipeline companies will allow the gas into their main transmission pipelines.[226] It is not clear if pipeline quality gas differs from the natural gas that currently is measured for severance tax purposes because natural gas is not specifically defined for purposes of the severance tax. But the bill also taxes condensates as a separate category of taxable natural resource, if severed by a horizontal well. (Condensates are defined as liquid hydrocarbons that were in the gaseous phase when underground – presumably including butane, propane, ethane, and pentane.) The implication appears to be that the severance tax on gas from both horizontal and nonhorizontal wells is to be based on gas without condensates, and that condensates will be taxed if produced by a horizontal well at the same rate oil is taxed.

### Small, non-horizontal well exemption

(R.C. 5749.031)

The bill exempts from the severance tax the severance of gas from a well that is not a horizontal well that produces fewer than 10 MCF of gas per day in a quarterly tax period. However, the severer is still required to file a severance tax return for the well to report the severance of such gas.

### Horizontal well severance tax rates

(R.C. 1509.01 and 5749.02)

The severance of oil, gas, or condensate from a horizontal well is to be taxed at special rates. The bill levies the tax on oil and condensate extracted from a horizontal well at a rate of 4% of the spot market value of the oil or condensate – i.e., the metered

[226] See, e.g., "About U.S. Natural Gas Pipelines," United States Energy Information Administration, available at: http://www.eia.gov/pub/oil_gas/natural_gas/analysis_publications/ngpipeline/process.html.

volume of the oil or condensate in the quarter multiplied by the average of the daily closing spot "WTI Cushing" (oil) or "Mont Belvieu" (condensate) prices for that quarter listed on the New York Mercantile Exchange. This rate may be reduced for early stages of extraction (see, "**Reduction in tax rate for horizontal wells**," below).

The bill taxes gas extracted from a horizontal well at a rate of 1% of the metered volume of the gas in the quarter multiplied by the average of the daily closing spot "Henry Hub" prices for that quarter listed on the New York Mercantile Exchange.

### Horizontal well severance tax proceeds; income tax rate reduction

(R.C. 5749.02, 131.44(C), 131.46, and 5747.02(B); Section 105.10)

All severance tax revenue collected from severers using horizontal wells to extract oil, gas, or condensate is credited to a new special fund, the Horizontal Well Tax Fund. The revenue is to be used to fund the Department of Natural Resources (DNR) and, to the extent the revenue exceeds what would be collected on those severances at current severance tax rates, to fund reductions in personal income tax rates. The portion for DNR is to be used for DNR's regulation, oversight, and management of oil and gas resources and extraction.

In order to determine the portion earmarked for DNR and the excess available for income tax reductions, the Tax Commissioner, by September 15 of each year, must calculate and certify to the Director of Budget and Management the total amount of severance tax that would have been collected during the preceding fiscal year on those severances from horizontal wells if current severance rates were paid rather than the new rates set by the bill. Not later than September 25, the Director of Budget and Management, after consulting with the Director of Natural Resources, is required to transfer the certified amount to funds used by the Department of Natural Resources for the regulation, oversight, and management of oil and gas resources and extraction. Not later than September 30, the Director of Budget and Management must transfer money remaining in the Horizontal Well Tax Fund from collections during the preceding fiscal year into the Shale Resource Income Tax Relief Fund to reduce state personal income tax rates.

Income tax rates are to be reduced if the amount transferred to the Shale Resource Income Tax Reduction Fund, plus any balance remaining in that fund from a prior transfer, exceeds 0.35% of the income tax revenue that the Director of Budget and Management estimates will be raised in the current fiscal year.[227] The Director must

[227] A balance would remain in the Shale Resource Income Tax Reduction Fund from a prior year only if the prior year's balance was less than or equal to the 0.35% threshold for that year.

make this estimate by October 5 and certify the percentage reduction in income tax rates (if greater than 0.35%) to the Tax Commissioner by October 10. Upon receipt of the Director's certification, the Tax Commissioner must reduce personal income tax rates by the prescribed percentage for the year in which such certification is made (e.g., if the certification is made in October 2013, the rates for 2013 would be reduced accordingly). Resulting rates are rounded to the nearest 0.001%. The Director is required to transfer money from the Shale Resource Income Tax Relief Fund to the General Revenue Fund, the Local Government Fund, and the Public Library Fund as necessary to offset reductions in revenue to those funds as a result of the income tax reduction.

### Reduction in tax rate for horizontal wells

(R.C. 1509.01, 1509.51, and 5749.02(A)(10))

The bill provides a horizontal well owner with the opportunity to apply for a reduced severance tax rate for oil and condensate extracted from the owner's well for up to two years. Before the owner begins to sever or sell oil and condensate extracted by a horizontal well, the owner may apply to the Director of Natural Resources for a reduced tax rate. The Director is required to issue a certificate to the owner if the owner remits a fee set by DNR, establishes that the owner's well is a horizontal well, and submits any other information required by the Director. An issued certificate expires after one year, but the certificate may be extended four times for three additional months with each extension. To qualify for each three-month extension, an owner must meet the same requirements for an initial certificate, remit a separate fee, and establish that the "payout date"—the date on which gross receipts from the horizontal well first exceed the costs of constructing and operating the well—has not occurred during the preceding certificate period. Such costs include construction materials, lease or royalty payments to landowners, and employee labor costs at the well. No certificate extension may be granted for a well if the payout date has occurred for that well.

The Director is required to send a copy of any issued certificate to the Tax Commissioner. An owner that holds an unexpired certificate is entitled to a severance tax rate equal to 1½% of the metered volume of the oil or condensate in the quarter multiplied by the average of the relevant daily closing spot prices for that quarter listed on the New York Mercantile Exchange, rather than the 4% of such value that would otherwise be owed. The Director may revoke a certificate if the owner provides false or fraudulent information on the owner's application.

### Tax levy

The parts of the bill adjusting and expanding the severance tax and the rates thereof levy a tax within the meaning of Section 1d, Article 2 of the Ohio Constitution.[228] Thus, the tax levy is not subject to referendum and would, in the absence of any limiting provision, take immediate effect. However, the effective date of this part of the bill is delayed for 91 days following the date on which the changes would otherwise be effective if it were subject to the referendum.

## Property tax value of wet gas reserves

(R.C. 5713.052)

The bill prescribes the method to be used to determine the value, for real property tax purposes, of "wet gas" reserves from Utica shale that is extracted, transmitted, and processed into methane and "other hydrocarbons." The valuation method is identical to the method that continuing law provides for extracted oil and gas reserves, but the new valuation applies to wet gas extracted through use of developed and producing horizontal wells and transferred to and separated into methane gas and other hydrocarbons at a mid-stream processing facility. Wet gas generally is extracted from Utica shale by horizontal wells and is composed of several hydrocarbons, including ethane, propane, butane, and pentane ("other hydrocarbons") as well as residual amounts of methane gas ("gas"). A mid-stream processing facility separates the gas from the other hydrocarbons. The new valuation method applies to valuations for tax lien dates beginning with tax year 2013. The bill does not define "horizontal wells," but in the bill, in the oil and gas extraction regulation law (R.C. Ch. 1509.), a "horizontal well" is a well in which the wellbore reaches a horizontal or near-horizontal position and is stimulated by fluid or another method.

The bill's valuation method is a form of net income capitalization valuation. Generally, the gross value of production is computed on the basis of the five-year average price of other hydrocarbons or gas from Ohio horizontal wells, and this gross production value is discounted over a ten-year period to determine the net present value of other hydrocarbons or gas. Production volume is adjusted to account for early "flush" production and production forced by using various secondary recovery methods, and an annual rate of decline in production is stipulated. Gross value is adjusted by netting out royalty expenses, capital recovery expenses, and operating expenses. The unit of production for other hydrocarbons is a barrel; the unit for gas is 1,000 cubic feet (MCF). No per-well average of production is employed, and extractions from wells that share the same meter must be apportioned accordingly to each well.

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[228] See *Grabler Mfg. Co. v. Kosydar*, 35 Ohio St.2d 23, 33, *298 N.E.2d 590 (*1973).

More specifically, total annualized production from a horizontal well that extracts wet gas is adjusted by flush production or production through secondary recovery methods if either of the adjustments applies to the well. (Both adjustments may not be made for the same well for the same period of time.) Flush production is production during the first 12 months after a well first extracts wet gas; for each unit of flush production, 42.5% is subtracted from total production. Production through secondary recovery methods is production stimulated or maintained by applying mechanically induced pressure (e.g., air, nitrogen, water, or carbon dioxide); for each unit of production through secondary recovery methods, per-unit production is reduced by 50%. The result of the adjustments to total production is "stabilized production," which equals total annual production minus 42.5% of flush production, or total annual production minus 50% of production by secondary recovery methods. Stabilized production is converted to an average daily production amount by dividing it by 365, or the number of days during the year since the well began extracting wet gas.

The gross revenue from a well's stabilized production amount is determined by multiplying the production amount by the unweighted five-year average unit price of gas and other hydrocarbons produced and sold from Ohio wells during the most recent five-year period leading up to the tax lien date (January 1), as reported by the Ohio Department of Natural Resources in the case of gas, or on the New York Mercantile Exchange in the case of all other hydrocarbons. Gross revenue per unit of production reflects a stipulated rate of decline in production of 13% per year cumulatively for a ten-year discount period, so that gross revenue per unit in the second year after flush production ends is stipulated to be 87% of gross revenue per unit for the first year after flush production ended, and so on until the tenth year after flush production ended, when it is stipulated to be 28.6% of gross revenue per unit for the first year after flush production ended. Gross revenue per unit is computed for each year of the ten-year discount period.

Once the per-unit gross revenue from a well's other hydrocarbons or gas is computed for each year of the ten-year period, it is adjusted by subtracting the annual royalty expense (stipulated to be 15% of per-unit annual gross revenue), annual operating expense (stipulated to be 40% of annual per-unit gross revenue), and annual capital recovery expense (stipulated to be 30% of annual per-unit gross revenue), amounting to total per-unit expense deductions of 85% of annual gross per-unit revenue. The resulting amount for each year (i.e., 15% of that year's gross revenue per unit) is the per-unit "net income" for that year, which is then discounted at a rate of 13% per year plus the annual rate of interest owed on unpaid state taxes (3% for 2012). The discounted net income per unit for each year is totaled for the ten-year period. If a well produces an average of at least one unit of production per day in the year preceding the tax lien date (i.e., eight MCF of gas or one barrel of other hydrocarbons), the net present

value per unit equals the total discounted net income per unit multiplied by 365. If a well produces less than an average of one unit per day, the net present value per unit of other hydrocarbons (i.e., one barrel) equals 60% of the net present value per unit of a well producing at least one unit per day; the net present value per unit of gas (i.e., eight MCF) equals 50% of the net present value per unit of a well producing at least one unit per day.

### Tax levy

The parts of the bill valuing wet gas reserves for property tax purposes levy a tax within the meaning of Section 1d, Article 2 of the Ohio Constitution.[229] Thus, this part is not subject to referendum and takes immediate effect. However, the changes to property tax valuation for such reserves apply only to tax years starting in 2013.

## Horizontal well impact loan and repayment plan

### Impact fee

(R.C. 321.49, 1509.01, and 1509.06)

The bill requires the owner of a horizontal drilling well, which is defined by the bill as a well in which the wellbore reaches a horizontal or near-horizontal position and is stimulated by fluid or through another method, to pay a $25,000 fee for each such well, with the fee divided among local taxing units according to their demonstrated costs associated with the well or to the county and townships under a "default" formula. Then, the taxing units that receive fee revenue must repay the amount received to the well owner over one or more years.

The fee is payable to the treasurer of the county in which the well is or will be located, and the well owner also must notify the treasurer of the well's parcel number. The fee must be paid and parcel number notification given before the owner begins construction of the "well pad" – defined as the area of land cleared and prepared for drilling. However, if the well is to be located on an existing well pad, the fee must be paid and parcel number notification given before drilling operations begin for the well.

### Distribution

(R.C. 5705.27 and 5705.32(G))

The treasurer must deposit received fees in a fund in the county treasury to be called the Oil and Gas Escrow Fund and notify the county auditor each time a fee deposit is made. The county auditor, within ten days after receiving the notice, must

[229] See *Grabler Mfg. Co. v. Kosydar*, 35 Ohio St.2d 23, 33 (1973).

schedule a hearing of the county budget commission to consider how to distribute the fee revenue. If fees from multiple wells in the same taxing district are deposited in the fund, the commission may consider and disburse all such fees at the same hearing. The hearing must be scheduled no later than 40 days after the deposit of fees in the fund.

At least 30 days before the hearing, the auditor must give notice of the hearing to the taxing authority of each taxing unit that levies a property tax in the taxing district where the well is located. A representative of the taxing unit may appear and testify at the hearing to demonstrate the unit's need to receive a portion of the fee revenue to defray the taxing unit's costs associated with the presence of the well. A taxing authority must respond within 15 days after receiving the county auditor's notice to inform the auditor that a representative will attend and give testimony or evidence. If no taxing authority responds within the 15-day period, the commission may cancel the hearing, and the auditor must notify the treasurer, who must distribute the money under a default formula to the county and the township in which the well is located (see "**Oil and gas escrow fund distribution**," below).

If the scheduled hearing occurs, a representative from any taxing unit whose taxing authority received notice of the hearing may testify and give evidence of the unit's need for money from the fund to defray costs associated with the presence of the well, regardless of whether the taxing authority of that unit notified the auditor that its representative would appear and give evidence or testimony.

After the budget commission concludes its hearing, the bill authorizes the commission to either issue an order distributing money in the Oil and Gas Escrow Fund to one or more taxing units in the proportion and amount decided by the commission. Alternatively, the commission could use the default formula to distribute the money. If the commission issues an order distributing the money to one or more taxing units, the commission must distribute such funds "on the basis of the relationship of each taxing unit's request to the overall impact of the horizontal well or wells on the taxing unit and the estimate of the cost to defray that impact." The commission must state in its order the particular funds of the taxing unit to which the money is to be credited and the amount to be credited to each fund. An order may be appealed to the Board of Tax Appeals (BTA) not later than 30 days after the commission issues the order.[230] After this 30-day period, the county treasurer must distribute the money to taxing units in accordance with the commission's order.

[230] The bill does not state specifically who is authorized to make an appeal, but presumably the affected taxing units could appeal. The bill also does not expressly confer jurisdiction on the BTA to hear such appeals under R.C. 5717.02.

If the commission instead applies the default formula to distribute the fee revenue, the county auditor must so notify the county treasurer, who must distribute 60% of the money to the county and the remaining 40% to the township in which the well will be or is located. The county and township may deposit money received as a result of the default formula to any county or township fund of the respective taxing authority's choosing.

### Repayment

(R.C. 5705.52)

The fiscal officer of a taxing unit that receives money from the county's Oil and Gas Escrow Fund is required to pay back the entire amount received, with no interest, to the owner or owners of the horizontal wells who originally paid the fees. The fiscal officer makes payments to each such owner once per year, beginning in the tax year following the year the taxing unit received money from the fund. The amount of each payment is equal to 50% of the "current taxes" paid by the horizontal well owner for taxable oil and gas reserves for the tax year attributable to that taxing unit. Current taxes are defined as property taxes charged on the tax list for a tax year that have not previously been charged (i.e., delinquent and unpaid taxes from a prior year are not "current taxes"), and do not include any penalties or interest or special assessments.

The taxing unit is required to make such annual payments until the full amount received by the taxing unit for a well is repaid. However, if, in a tax year, a well owner does not pay current taxes on the well's oil and gas reserves, the taxing unit may not make a payment to the owner for that year.

The taxing unit must make its payments from the same fund or funds to which the money from the Oil and Gas Escrow Fund was initially credited in proportion to the amount credited to each fund. If there is insufficient money in any fund such that the amount required to be drawn from that fund cannot be fully paid from the fund, any deficiency must be paid from the general fund of the taxing unit.

### Failure of well owner to pay fees

(R.C. 1509.01(EE))

The bill authorizes the Chief of the Division of Oil and Gas Resources Management to treat the failure of an owner or another person to pay any fee required by the Division, including the $25,000 fee described above, as a material and substantial violation. Such a classification authorizes the Chief to issue an order immediately suspending drilling, operating, or plugging activities that are related to the failure to pay the fee, and suspend and revoke an unused permit if the person fails to comply

with the order after it becomes final and no longer appealable, or if the person is causing, engaging in, or maintaining a condition or activity that the Chief determines presents an imminent danger to public health or safety or that results in or is likely to result in immediate substantial damage to the state's natural resources. A well owner may contest and appeal the Chief's order related to unpaid fees except in cases in which an imminent public health risk is presented.

## III. Commercial Activity Tax

### Definition of gross receipts subject to the CAT

(R.C. 5751.01(F))

Under current law, a business' "gross receipts" subject to the commercial activity tax equals the total amount realized by the business, without deduction for the cost of goods sold or other expenses incurred, from activities that contribute to the production of gross income. The bill removes the requirement that receipts "contribute to the production of gross income." As a result, any receipts realized by a business, regardless of whether those receipts contribute to the production of the gross income of the business, will be considered "gross receipts" unless otherwise exempted.

### CAT: application of exclusion amount

(R.C. 5751.03)

The bill modifies the manner in which a taxpayer with over $1 million of annual taxable gross receipts may exclude the first $1 million of taxable gross receipts from the taxpayer's quarterly commercial activity tax returns.

#### Commercial activity tax exclusion amount

The commercial activity tax is levied on the taxable gross receipts of businesses operating within the state. Taxpayers with between $150,000 and $1 million of taxable gross receipts owe an annual minimum tax of $150. (Businesses with $150,000 or less of taxable gross receipts do not owe the tax.) Taxpayers with taxable gross receipts of over $1 million owe the $150 annual minimum tax on the first $1 million of taxable gross receipts, plus a tax of 0.26% on taxable gross receipts in excess of $1 million. A taxpayer with taxable gross receipts of $1 million or less (a "calendar year taxpayer") files a single annual return, while a taxpayer with over $1 million of taxable gross receipts (a "calendar quarter taxpayer") files quarterly returns. All taxpayers pay the $150 annual minimum tax with the annual or quarterly return filed in May of each year.

To account for the annual minimum tax on a calendar quarter taxpayer's first $1 million of taxable gross receipts, current law requires such taxpayers to exclude the first

$250,000 of taxable gross receipts from the calculation of the taxpayer's liability on each quarterly return. If the taxpayer has less than $250,000 of taxable gross receipts in a quarter, any leftover exclusion amount may be carried forward to the three following quarters, regardless of whether the quarters are in the same calendar year. Consequently, it is possible for such taxpayers to carry forward exclusion amounts to a succeeding calendar year and to accrue a total exclusion amount for that succeeding calendar year in excess of $1 million.

### Changes to the method for applying the exclusion amount

The bill provides that calendar quarter taxpayers must subtract the full $1 million exclusion amount on the taxpayer's first quarterly return of a calendar year. If taxable gross receipts in the first quarter are less than $1 million, the bill allows the taxpayer to carry-forward the unused exclusion amount only to the three subsequent quarters in that same year. Similarly, if a calendar year taxpayer switches to filing as a calendar quarter taxpayer, the taxpayer must take the full $1 million exclusion on the first quarterly return the taxpayer files, and may carry forward any unused exclusion amount to other quarters within the same year. As a result of these changes, the bill prevents situations in which taxpayers may exclude more than $1 million of taxable gross receipts in any calendar year.

## CAT rate adjustments

(R.C. 5751.03 and 5751.032)

At the time the General Assembly enacted the commercial activity tax (CAT) in 2005, the Tax Commissioner was required to measure during three "test" periods the amount of revenue generated by the CAT and compare that amount against the amount projected to be generated by the CAT at the time it was enacted. The Commissioner was originally required to lower or raise the rate of the CAT if the revenue actually collected differed from projected revenue by more than 10% to ensure that the CAT rate could be adjusted to compensate for significantly excessive or insufficient revenue compared to the revenue estimates at that time. The ability of the Commissioner to raise the rate was subsequently removed. The Commissioner did not make any adjustments in the rate. Current law authorizing the test periods no longer has any effect as the final test period ended on June 30, 2011.

The bill repeals current law that obligated the Commissioner to reduce the CAT rate if, during any of the three test periods, the revenue actually collected exceeded projected revenue by more than 10%.

## References to CAT annual filing election

(R.C. 5751.05, 5751.051, and 5751.12)

Under continuing law, commercial activity taxpayers must pay the tax on an annual or quarterly basis, depending upon the taxpayer's level of annual taxable gross receipts. Taxpayers with annual taxable gross receipts of $1 million or less file a single return on or before May 10 of each year, while taxpayers with more than $1 million of annual taxable gross receipts must file quarterly returns.

The bill removes language in current law that refers to commercial activity taxpayers "electing" to pay the tax on an annual basis. Prior to the enactment of H.B. 1 of the 128th General Assembly, taxpayers with annual taxable gross receipts of $1 million or less could pay on an annual basis, but only if the taxpayer elected to do so. (If no election was made, such taxpayers were required to pay quarterly.) H.B. 1 of the 128th General Assembly amended the law to require such taxpayers to pay the tax on an annual basis, rather than allowing taxpayers to "elect" that status. The bill removes references to annual taxpayer "elections" that were not removed in that act.

## Listing of cancelled CAT accounts

(R.C. 5751.12)

Continuing law requires the Tax Commissioner to post an electronic list of all taxpayers who are actively registered to pay the commercial activity tax (CAT). The list must include legal and trade names, addresses, and account numbers of each taxpayer. Current law also requires that the list include all taxpayers that cancelled their CAT registration at any time during the preceding four years and the date on which the taxpayer requested cancellation.

The bill retains the Commissioner's requirement to list taxpayers with cancelled accounts but requires the Commissioner to instead list the effective date of a taxpayer's cancellation rather than the date the taxpayer requested cancellation.

## Registration and fees

### Registration fees

(R.C. 5751.01(F)(2)(z), 5751.011, 5751.012, 5751.04, 5751.051, and 5751.20(B); Section 803.10)

Under current law, a taxpayer is required to register with the Tax Commissioner to pay the commercial activity tax (CAT) when the taxpayer's gross receipts exceed $150,000 in a year or when two or more taxpayers want to be treated as a single

taxpayer (consolidated elected taxpayer or combined taxpayer). A taxpayer registering for the CAT must pay a $15 fee (for electronic applications) or $20 fee (for other applications) with the taxpayer's registration forms. Multiple taxpayers electing to be taxed as a single consolidated elected or combined taxpayer are required to remit a fee of the lesser of $20 per person in the group or $200 for the whole group with the taxpayers' registration forms. Fees must be remitted before the due date of the taxpayer's first return. Fees paid are credited against the taxpayer's first tax payment. The fees are credited to the Commercial Activity Tax Administrative Fund and are used to defray the state's cost of administering the tax.

The bill eliminates the separate CAT registration fee payment requirement. Instead of a separate fee payment that is credited against the first tax payment, the bill specifies that a portion of each taxpayer's first tax payment is to be earmarked for CAT administration and "tax reform implementation." The bill sets the amount to be earmarked at $20 per taxpayer for CAT registration and retains current law's fee scheme for CAT registrations for combined and consolidated elected taxpayers. The earmarked money is to be credited to the new "Revenue Enhancement Fund" created by the bill.

The "Revenue Enhancement Fund" will be composed of the current "Tax Reform Implementation System Fund," to which is deposited 0.085% of annual CAT revenue. The Revenue Enhancement Fund also receives the earmarked money from new CAT registrants. Money in the Revenue Enhancement Fund is used to help defray the state's CAT administrative costs and implement tax reform measures.

### Registration information

(R.C. 5751.04)

The bill modifies the information a taxpayer is required to provide on CAT registration forms. Under the bill, a taxpayer is no longer required to identify the state or country in which the taxpayer is incorporated, the names and addresses of the taxpayer's corporate officers and agents, and the first date of the taxpayer's annual accounting period, all of which are required under current law. However, the bill requires the taxpayer to additionally provide the taxpayer's organizational type, the date the taxpayer is first subject to the CAT, and, if applicable, the names, addresses, federal identification numbers, and organization types of each member that is commonly owned in a consolidated elected taxpayer or combined taxpayer group.

## Motion picture production credit

(R.C. 122.85 and 5751.54)

The bill authorizes businesses subject to the commercial activity tax to claim the motion picture production credit that currently is available to persons subject to the personal income tax and to corporations regardless of whether a corporation is subject to the corporation franchise tax. The credit is a refundable credit equal to a percentage of Ohio production expenditures made by a motion picture production company. Currently, corporations that qualify for the credit may claim a "credit" against the corporation franchise tax, although nonfinancial corporations currently are not subject to the tax. In effect, nonfinancial corporations are not receiving a credit against a tax liability, they are receiving a direct payment from the General Revenue Fund. Under the bill, they would apply the credit against their CAT liability.

## Exclusion for bank and insurance company affiliates

(R.C. 5751.01(E)(8); Section 757.40)

The bill amends the commercial activity tax exclusion for affiliates of banks, bank holding companies, and insurance companies. Under continuing law, certain businesses are exempt from paying the commercial activity tax, including financial institutions that pay the corporation franchise tax, insurance companies that pay the insurance premiums tax, bank and financial institution holding companies, and savings and loan holding companies. In addition, an affiliate of a financial institution or holding company is exempt from the tax if the financial institution or holding company (1) owns the affiliate and (2) engages in activities that are financial in nature, as defined under federal law. Similarly, an affiliate of an insurance company is exempt from the tax if the affiliate is owned by an exempt insurance company that is authorized to conduct an insurance business in the state.

The bill amends the exclusion for affiliates of financial institutions and holding companies to clarify that, in order to qualify for exclusion, the affiliate, rather than (or in addition to) the financial institution or holding company that owns the affiliate, must engage in activities that are financial in nature. Similarly, the bill amends the exclusion for insurance company affiliates to require that the affiliate, in addition to the insurance company that owns the affiliate, must be authorized to conduct an insurance business in the state.

The amendments apply from their effective date (the 91st day after the bill becomes law) through the end of 2012.

## IV. Sales and Use Tax

### Elimination of special sales tax vendor license categories

(R.C. 5739.01(O) and 5739.17)

Existing law requires that, unless a statutory exception applies, any person engaged in making retail sales subject to sales tax is required to have a vendor's license. Application for a vendor's license must be made to the county auditor of each county in which the applicant desires to engage in business. In place of a standard vendor's license, applicants meeting certain criteria may apply for certain special vendor's licenses.

A transient vendor's license authorizes a "transient vendor" to make retail sales in any county in which the transient vendor does not maintain a fixed place of business. "Transient vendor" is defined as:

> any person who makes sales of tangible personal property from vending machines located on land owned by others, who leases titled motor vehicles, titled watercraft, or titled outboard motors, who effectuates [taxable] leases . . . or who, in the usual course of the person's business, transports inventory, stock of goods, or similar tangible personal property to a temporary place of business or temporary exhibition, show, fair, flea market, or similar event in a county in which the person has no fixed place of business, for the purpose of making retail sales of such property.

"Temporary place of business" is defined as a public or quasi-public place that is temporarily occupied for the purpose of making retail sales of goods to the public.

A service vendor's license authorizes a "service vendor" to sell certain taxable services. A service vendor who also makes sales of other services or of tangible personal property must also apply for a vendor's license, a transient vendor's license, or a delivery vendor's license, whichever is appropriate.

A delivery vendor's license authorizes a delivery vendor to make retail sales throughout the state with the caveat that all sales must be reported under the delivery license. A delivery vendor is any person "who maintains no store, showroom, or similar fixed place of business or other location where merchandise is regularly offered for sale or displayed or shown in catalogs for selection or pick up by consumers, or where consumers bring goods" and who engages in one of several specified activities.

The bill eliminates the vendor license categories of "service vendor" and "delivery vendor," but authorizes the Tax Commissioner to create specific classes of vendor licenses. The bill retains standard vendor's licenses and transient vendor's licenses.

## Notification of Tax Commissioner upon moving a fixed place of business

(R.C. 5739.17(B))

Existing law requires vendors who move an existing fixed place of business to a new location to notify the Tax Commissioner. If the new location is within the same county as the vendor's existing fixed place of business, the vendor must either obtain a new vendor's license or submit a request to the Commissioner to transfer the existing vendor's license to the new location. If the new location is in a different county, the vendor must obtain a new vendor's license. The current law does not prescribe a penalty for a vendor who fails to notify the Commissioner upon moving the existing fixed place of business. The bill explicitly permits the Commissioner to cancel a vendor's license if the vendor fails to notify the Commissioner of a change of address and if ordinary mail sent to the address on the vendor's license is returned as undeliverable.

## Display of vendor's license

(R.C. 5739.17(E))

The current law requires transient vendors to display the transient vendor's license issued to them, or a copy thereof, prominently in plain view at every place of business. The bill requires all vendors to display their vendor's licenses, not just transient vendors.

## Notification of changes in local sales tax rates

(R.C. 5739.04 and 5741.08)

Under the current law, the Tax Commissioner is required to notify all vendors and sellers registered through the Streamlined Sales Tax Central Electronic Registration System when local sales tax rates change due to a modification of a county's jurisdictional boundaries or a transit authority's territory. This is required to comply with the Streamlined Sales and Use Tax Agreement, which is intended to allow vendors located throughout the United States to collect states' use taxes, primarily for online or mail-order sales, if the vendor's is required to (because of physical presence in the state) or elects to collect the tax.

The bill requires the Tax Commissioner to notify all vendors and sellers of such a change regardless of whether they are registered through the Streamlined Sales Tax Central Electronic Registration System.

## Delay in application of changes in local sales tax rates for catalog vendors

(R.C. 5739.021, 5739.023, and 5739.026)

The bill specifies that all vendors making sales from a printed catalog, not just vendors registered under the registration system who make catalog sales, do not have to apply changes in local sales tax rates that differ from the catalog rates until the beginning of a calendar quarter that follows 120 days after the Tax Commissioner notifies vendors of the rate change.

## Sales tax on transfer of ownership interest of a pass-through entity

(R.C. 5739.01(B)(6))

The bill expressly includes, as a taxable sale under the sales tax, the transfer of ownership interests in a pass-through entity if its sole assets are boats, planes, motor vehicles, or other recreation property used primarily by the entity's owners.

Currently, the transfer of all the shares of a corporation whose sole assets are boats, planes, motor vehicles, or other recreation property is a taxable sale. This prevents shareholders from using such transfers to avoid the tax that applies to an outright sale of the property itself. The bill retains this concept and extends it to include the transfer of any ownership interest of a pass-through entity whose sole assets are boats, planes, motor vehicles, or other recreational property. "Pass-through entity" is defined to include an S corporation, partnership, limited liability company, or any other person, other than an individual, trust, or estate, if the partnership, limited liability company, or other person is not classified for federal income tax purposes as an association taxed as a corporation.

### Correction of typographical errors

The bill corrects typographical errors in provisions defining prepaid wireless calling services and prepaid wireless services.

### Sales tax exemption for water for residential use

(R.C. 5739.02(B)(25))

The bill harmonizes the existing sales tax exemption for water bought for "residential use" with the definition of sales tax-exempt "food." Existing law imposes a sales tax on each retail sale made in this state.

Under current law, sales of food for human consumption off the premises where sold are exempt from sales tax. "Food" means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food" does not include alcoholic beverages, dietary supplements, soft drinks, or tobacco. According to the Department of Taxation, bottled water, distilled water, mineral water, carbonated water, and ice qualify as "food" and thus qualify for the sales tax exemption. (See the Department's Information Release 2004-1.)

Sales of water to a consumer for "residential use" are also currently exempted from sales tax. However, under current law, bottled water, distilled water, mineral water, carbonated water, and ice are explicitly excluded from the exemption. The bill removes specific references to bottled water, distilled water, mineral water, carbonated water, and ice from R.C. 5739.02(B)(25). The effect is to align the "residential use" exemption with the "food" exemption. The bill does not create a new sales tax exemption; rather, it brings the statutory language in line with current practice of the Department of Taxation.

## V. Personal Property Tax Reimbursements

### Tangible personal property tax loss reimbursements

(R.C. 5727.84, 5727.86, 5751.20, and 5751.22)

Continuing law provides for reimbursements to local taxing units for their loss of tax revenue resulting from the repeal of the business tangible personal property tax and from reductions in the tax rates applicable to certain public utility tangible personal property. The bill makes several changes to the method for calculating and making these reimbursements.

#### Background

In 2001 and 2002, state law reduced the assessment rates for taxes levied by local governments on the personal property of electric and natural gas companies. Then, between 2005 and 2011, state law completely phased-out the taxes levied by local governments on other business personal property. To compensate local taxing units for

their resulting property tax losses, state law established a schedule of "replacement" payments.

Am. Sub. H.B. 153 of the 129th General Assembly modified the schedule for making these reimbursements to local taxing units, with the effect of accelerating a previously legislated phase-out of those reimbursements. In general, that act allows a taxing unit to continue receiving reimbursements for most tax levy losses only if the amount reimbursed to the taxing unit in 2010 (non-school taxing units) or fiscal year 2011 (school districts) exceeds a certain percentage of the taxing unit's total budget.

### Fixed-rate levy loss reimbursement

For the purposes of calculating reimbursements, current law divides the tangible personal property (TPP) tax revenue losses experienced by taxing units 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 or a municipal charter limit). The bill makes three changes to the formula used to calculate reimbursements for fixed-rate levy losses.

#### Current law formula

Under current law, the amount reimbursed to a taxing unit for business TPP fixed-rate levy losses is based on, for school districts, the district's "current expense TPP allocation" and, for non-school taxing units, the taxing unit's "TPP allocation." Current expense TPP allocation is the portion of the business TPP loss reimbursement that a school district received in fiscal year 2011 relating to fixed-rate current expense levies. TPP allocation is the sum of the reimbursements that a 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.")

The base used to calculate reimbursements for utility TPP fixed-rate levy losses is substantially similar. For school districts, the base is the district's "2011 current expense S.B. 3 allocation," and, for non-school taxing units, the base is the taxing unit's "2010 S.B. 3 allocation." The 2011 current expense S.B. 3 allocation is the portion of the utility TPP loss reimbursement that a 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 that a non-school local taxing unit received in tax year 2010 for fixed-rate levy losses. (For ease of explanation, both reimbursements will be referred to as "S.B. 3 allocation.")

To determine whether a taxing unit is entitled to fixed-rate levy loss reimbursement for a fiscal year (school districts) or tax year (non-school taxing units), the taxing unit's TPP allocation and S.B. 3 allocation must exceed a threshold percentage of its "total resources," which is the unit's total receipts over a single fixed period from

certain state and local sources.[231] 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 4% for tax year 2012 and 6% for tax years 2013 and thereafter.

#### Reimbursement of business TPP fixed-rate levy losses

If a taxing unit's TPP allocation does not exceed a threshold percentage of its total resources, it is not entitled to reimbursement of business TPP fixed-rate levy losses. If a taxing unit's TPP allocation does exceed the threshold, its reimbursement for the fiscal or tax year equals the difference between its TPP allocation and the threshold percentage of its total resources.

#### Changes to the reimbursement of utility TPP fixed-rate levy losses

(R.C. 5727.86)

Under current law, a taxing unit is entitled to reimbursement of utility TPP fixed-rate levy losses only if one-half of the unit's S.B. 3 allocation exceeds a threshold percentage of the unit's total resources. The bill instead provides that, similar to the calculation of business TPP fixed-rate levy loss reimbursements, the taxing unit may receive a reimbursement if the taxing unit's full S.B. 3 allocation exceeds a threshold percentage of the taxing unit's total resources. Consequently, it would appear that taxing units that do not currently qualify for reimbursement because one-half of a unit's S.B. 3 allocation does not exceed the threshold may qualify under the bill, if the unit's full S.B. 3 allocation does exceed that threshold. However, the intent of the amendment may be to correct the language as modified by H.B. 153.

Similarly, under current law, when a taxing unit is entitled to reimbursement of utility TPP fixed-rate levy losses, the taxing unit receives two semiannual payments equal to the difference between one-half of the taxing unit's S.B. 3 allocation and the threshold percentage of its total resources. The bill instead provides that each semiannual payment must equal 50% of the difference between the taxing unit's S.B. 3 allocation and the threshold percentage of its total resources.

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[231] "Total resources" is defined separately for each taxing unit. For a detailed discussion of the revenue included in a taxing unit's "total resources," see the LSC Final Analysis of Am. Sub. H.B. 153 of the 129th General Assembly (2011), http://www.lsc.state.oh.us/analyses129/11-hb153-129.pdf.

**New reimbursement formula for library tax levy losses**

(R.C. 5727.84, 5727.86, 5751.20, and 5751.22)

The bill introduces a new formula for calculating and making fixed-rate levy loss reimbursements specifically for losses attributable to a tax levied on behalf of a public library under R.C. 5705.23. Under the bill, such levy losses must be considered separately from the other fixed-rate levy losses of a taxing unit and reimbursed directly to the public library. The effect of the new formula is to cause the amount and continuation of a library's reimbursements to depend on its own budget (i.e., its own total resources) and the percentage of its budget that its recent reimbursements represent, instead of depending on the total resources and recent reimbursements of the taxing unit that levies the reimbursed tax on behalf of the library. Thus, a library's reimbursements would no longer be influenced by the taxing unit's recent reimbursements as a percentage of the taxing unit's total resources, which is likely to be a higher or lower percentage than the library's percentage (and therefore causing the library to receive, respectively, more reimbursement for a longer period or less reimbursement for a shorter period).[232]

Under current law, the board of library trustees of a county, municipal, school district, or township public library may request, pursuant to R.C. 5705.23, that the subdivision's taxing authority propose a tax levy for the library board. To make the request, the library board must pass a resolution requesting the taxing authority to submit the question of the levy to electors in the library's jurisdiction. Upon receiving such a resolution, the taxing authority must pass a resolution placing the tax levy question on the ballot of the election specified by the library board. (Taxing authorities also have the ability to levy a tax for a public library, independent of a library board's request, under R.C. 5705.19 and 5750.191.)

Levy losses attributable to a tax levied under R.C. 5705.23 are treated similarly to the other TPP levy losses of a taxing unit. Any reimbursement that results from such levy losses is included in the calculation of a taxing unit's TPP allocation, S.B. 3 allocation, and total resources. If the taxing unit is eligible for reimbursement, the taxing unit receives the portion of the reimbursement attributable to the R.C. 5705.23 tax levy and forwards that portion to the public library.

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[232] Although the bill changes the language of the statute, it is not clear whether the changes are intended merely to align the language with the current library reimbursement practice as modified by H.B. 153 or actually change the reimbursement practice. Data published by the Department of Taxation indicate that libraries receive reimbursements for TPP losses, but it is not clear whether the figures represent direct reimbursement separately from the taxing unit levying the tax or indirect reimbursement passed through the taxing unit.

The bill excludes reimbursements for levy losses attributable to an R.C. 5705.23 tax levy from the calculation of a taxing unit's TPP allocation, S.B. 3 allocation, and total resources. Instead, the bill introduces a parallel formula for calculating reimbursements for levy losses attributable to such a tax. The bill also requires that such reimbursements be made directly to the public library for which the tax was levied, instead of to the taxing unit that levied the tax.

To determine whether a public library may receive such reimbursements, the bill applies a formula similar to that used to calculate reimbursements for the fixed-rate levy losses of taxing units. If the amount reimbursed to the public library in 2010 for levy losses attributable to an R.C. 5705.23 tax levy (defined in the bill as "TPP allocation for library purposes," in the case of business TPP levy losses, or "S.B. 3 allocation for library purposes," in the case of utility TPP levy losses) does not exceed a threshold percentage of the public library's "total library resources," the library is no longer entitled to reimbursement for that levy loss. If the library's TPP allocation for library resources or S.B. 3 allocation for library purposes exceeds a threshold percentage of the library's total library resources, its reimbursement for the tax year equals the difference between TPP allocation for library resources or S.B. 3 allocation of library resources and the threshold percentage of its total library resources.

Under the bill, a library's total library resources includes: the library's 2010 reimbursement for fixed-rate levy losses attributable to a tax levied under R.C. 5705.23, the library's share of the county undivided local government fund for calendar year 2010, and the amount of the tax levied under R.C. 5705.23 that was charged and payable for tax year 2009. The threshold percentage used to calculate the separate library reimbursement is the same as that used to calculate reimbursements for taxing units (4% for tax year 2012 and 6% for tax years 2013 and thereafter).

**Municipal corporation reimbursement for current expense levy losses**

(R.C. 5751.20(A)(29))

Under current law, municipal corporations and school districts receive a separate reimbursement for fixed-rate levy losses that result from taxes levied for purposes other than current expenses. These separate reimbursements are made according to a different formula than that which compares a taxing unit's TPP allocation or S.B. 3 allocation to its total resources.[233] In order to separate the levy losses reimbursed

[233] The separate reimbursement is based upon the amount reimbursed to a municipal corporation or school district for non-current expense levy losses in 2010. Current law provides that, for municipal corporations, the 2010 reimbursement amount must be reduced by 25% for the payments made in 2011, by 50% for the payments to be made in 2012, and by 75% for the payments to be made in 2013 and thereafter.

through this different formula from the calculation of a municipal corporation's current expense levy losses, the bill clarifies that the municipal corporation's total resources includes only the 2010 business or utility TPP reimbursements that the municipal corporation received for fixed-rate current expense levy losses, rather than for all fixed-rate levy losses.[234]

#### Reimbursement for charged and payable tax levies

(R.C. 5727.84, 5727.86, 5751.20, and 5751.22)

The bill clarifies that, for purposes of calculating reimbursements for business or utility TPP losses, a fixed-rate levy will be reimbursed only to the extent that the levy continues to be charged and payable against property, so that a reduction in the levy will cause a corresponding reduction in the reimbursement. Under current law, the value of a fixed-rate levy is subtracted from a taxing unit's total reimbursement amount if the levy is no longer "imposed."

### Reimbursement of unvoted debt levy losses

(R.C. 5727.86)

Current law provides that, for purposes of calculating utility TPP reimbursements to non-school taxing units, a tax levied within the 10-mill limitation for debt purposes may be reimbursed at 100% of the levy loss through 2016 as long as the tax continues to be imposed for debt purposes. If such a levy is no longer imposed for debt purposes, the reimbursement must be calculated according to the formula used for fixed-rate levies, described above under "**Fixed-rate levy loss reimbursement**."

The bill clarifies that such losses will continue to be reimbursed at 100% only if the tax continues to be "charged and payable" for debt purposes. Similarly, if such a levy becomes charged and payable for a purpose other than debt, the reimbursement must be calculated according to the formula used for fixed-rate levies.

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[234] Although the bill amends the definition of a municipal corporation's total resources, it does not amend continuing law that includes the reimbursements a municipal corporation received for all fixed-rate levy losses in the calculation of the municipal corporation's TPP allocation and S.B. 3 allocation. By comparison, the two formulas used to calculate reimbursements for school district fixed-rate levy losses (current expense vs. non-current expense levy losses) use different values (e.g., "current expense TPP allocation" and "non-current expense TPP allocation"), so that no current expense levy losses are considered in the calculation of reimbursements for non-current expense levies, and vice versa.

### Reimbursement of fixed-sum levy losses

(R.C. 5751.22)

Under current law, taxing units receive reimbursements for fixed-sum levy losses equal to 100% of the taxing unit's fixed-sum levy loss. The bill provides that, beginning in 2012, the amount to be reimbursed to a non-school taxing unit for business TPP fixed-sum levy losses equals 50% of the unit's fixed-sum levy loss. The bill does not alter the calculation of business TPP fixed-sum levy loss reimbursements for school districts or of utility TPP fixed-sum levy loss reimbursements for either school districts or non-school taxing units.

### Timing of reimbursements of business TPP levy losses

(R.C. 5751.22(C))

The bill modifies one of the dates for making reimbursements to non-school taxing units for their loss of business TPP tax revenue. Current law provides for two semiannual reimbursement payments for such losses. The first of the two reimbursements must be made on or before May 31, and the second must be made on or before November 20. The bill moves the date for making the second semi-annual reimbursement from November 20 to November 30.

### Local taxing unit allocation of business TPP reimbursements

(R.C. 5751.22(C))

Under current law, the state deposits all reimbursement payments calculated for every non-school taxing unit in a county into the county's undivided income tax fund. The county treasurer must distribute the payments related to the reimbursement of business TPP levy losses to the appropriate taxing units within 40 days after the county receives the payments. (Continuing law does not prescribe a time limit for the distribution of reimbursement payments related to utility TPP levy losses.) The bill instead requires that distributions of business TPP tax loss payments be made within 30 days after the county receives the payments.

## VI. Public Utility Taxation

### Tax status of electricity distribution company phase-in-recovery property

(R.C. 4928.23 and 4928.2314)

The bill specifies that tangible personal property of an electric distribution utility that is used to generate, transmit, or distribute electricity is not "phase-in-recovery

property" for the purposes of the law governing such a utility's authority to recover certain as-yet uncompensated costs by securitizing the costs (i.e., by issuing securities to cover the costs and repaying security holders over time from charges on ratepayers). Under that law, phase-in-recovery property includes the irrevocable right to impose, adjust, and collect charges from ratepayers to retire the securities, all according to a PUCO order issued for that purpose. The money arising from the exercise of those rights is defined as "phase-in-recovery revenues." That law exempts from all state and local taxes the transfer or ownership of phase-in-recovery property and the receipt of phase-in-recovery revenues.

In the current statute that exempts phase-in-recovery property and revenues from state and local taxation, the amendment adds the following statement: "Nothing in this section prohibits the levy of the tax imposed under Chapter 5751. of the Revised Code" – i.e., the Commercial Activity Tax, which is imposed on persons doing business in Ohio on the basis of gross receipts. Under the CAT law, "gross receipts" means "the total amount realized by a person . . . that contributes to the production of gross income of the person, including the fair market value of any property . . . received, and any debt transferred . . . as consideration" and also includes "amounts realized from the sale, exchange, or other disposition of the taxpayer's property . . . or from [another person's] use of the taxpayer's property or capital." The statement being added by the amendment does not specify how or if it is to be applied specifically to phase-in-recovery revenue.

## Public utility taxes on hydrocarbon pipe-line companies

(R.C. 5727.01 and 5727.111; Section 812.21)

The bill extends the public utility tangible personal property (TPP) tax and public utility excise tax to pipe-line companies that transport liquid or gaseous hydrocarbons, natural gas liquids, or condensate. The bill assesses the public utility TPP tax against property of such companies at 35% of the property's "true value."

### Tangible personal property tax

Under current law, a tax is levied on the tangible personal property (TPP) of a pipe-line public utility company that transports oil, natural gas, and coal. Currently, such TPP is taxed on 88% of the property's "true value" (generally, cost less prescribed annual depreciation allowances). Beginning in tax year 2013, the bill extends the tax to the TPP of pipe-line public utility companies that transport liquid or gaseous hydrocarbons, natural gas liquids, or condensate by defining such companies as "pipe-line companies." The bill taxes such property on 35% of the property's true value, as compared to the current 88% for the pipe-line company property that is currently

taxable. The TPP of a pipe-line company that transports oil or refined oil products or natural methane gas, or "derivatives" thereof, would continue to be assessed at the 88% rate.

#### Public utility excise tax

Continuing law levies a public utility excise tax against pipe-line companies. The tax is 6.75% of a company's gross receipts. Since pipe-line companies are subject to this tax, the bill applies that tax to any companies that become taxable pipe-line companies because of the bill's extended definition of pipe-line company.

#### Tax levy

The parts of the bill adjusting and expanding the public utility TPP tax and public utility excise tax levy a tax within the meaning of Section 1d, Article 2 of the Ohio Constitution.[235] Thus, this part is not subject to referendum and would, in the absence of any limiting provision, take immediate effect. However, the effective date of this part of the bill is delayed until the 91st day following the date on which the changes would otherwise be effective.

## VII. Property Tax

### Tax Commissioner authority to expedite residential property value appeals

(Section 757.30)

Existing law authorizes the appeal of decisions of any county board of revision to the Board of Tax Appeals (BTA). The bill authorizes the Tax Commissioner, upon the written consent of the parties, to review and issue a final determination for such appeals involving residential property tax values. The Commissioner is charged with establishing a practice and procedure for processing the appeals. Requests by parties for transfer of a case to the Tax Commissioner must be made within two years of the effective date of the provision.

### Extending county appraisal cycles

(Section 757.10)

Current law requires reappraisals of property in each county for the purpose of assessing property tax at least once every six years, although the Commissioner may grant a one-year extension for good cause. The Commissioner also must update the values, based on local property market data, three years after the reappraisal.

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[235] See *Grabler Mfg. Co. v. Kosydar*, 35 Ohio St.2d 23, 33, *298 N.E.2d 590* (1973).

The bill authorizes the Commissioner, beginning in 2014 and continuing for five years, to extend the reappraisal or update period of real property in a county by not more than one year "for the purpose of equalizing and regionalizing real property assessment cycles."

## Waiver of property tax value certifications used to calculate school aid

(Section 757.20)

Continuing law requires the Tax Commissioner to certify certain property tax information to the Office of Budget and Management and to the Department of Education, which uses the information to calculate the amount of state aid that will be provided to school districts. The bill excuses the Tax Commissioner from certifying certain information that, if not for recent changes to the school funding formula, would be used to calculate state aid for the 2013 fiscal year.

The bill specifically excuses the Tax Commissioner from issuing three certifications related to valuation changes of taxable property and three certifications related to exempt property located within a school district. Current law requires the Tax Commissioner to make these certifications on or before either May 15, 2012, or June 1, 2012.

### School funding formula background

Am. Sub. H.B. 153 of the 129th General Assembly enacted a temporary formula to fund schools for the 2012 and 2013 fiscal years. In doing so, the bill repealed the previous school funding formula, known as the "Evidence Based Model," enacted in H.B. 1 of the 128th General Assembly. The temporary formula provides for payments to school districts that are based on the per pupil amount of funding paid to a district for fiscal year 2011, adjusted by the district's share of a statewide per pupil adjustment amount that is indexed to the district's relative tax valuation per pupil. Under the formula, a district's relative tax valuation per pupil is based on property tax values used to determine the district's state aid for the 2011 fiscal year. Consequently, because the temporary formula relies upon property tax information certified for the 2011 fiscal year, the updated certifications that the bill excuses the Tax Commissioner from making will not be required to determine fiscal year 2013 state aid to schools.

## VIII. Tax Credits

### Venture capital loan loss tax credits

(R.C. 150.03, 150.05, and 150.07)

The existing venture capital loan loss tax credit program permits financial institutions, insurance companies, dealers in intangibles, natural gas companies, and other companies and individuals to lend money to the program for investment by the program administrator(s) in venture capital funds and to have some or all of any losses they incur on the invested money to be compensated by a refundable tax credit against the applicable state tax. (Certain trust companies may claim the credit even if they are not subject to one of the state taxes.) The program is governed by the Ohio Venture Capital Authority, which prescribes the program's investment policies (subject to statutory restrictions), selects not more than two private investment funds to administer the program (currently only one investment fund has been selected to administer), and issues tax credits. The total amount of credits that currently may be issued under the program over its life is limited to $380 million.

The bill modifies the existing venture capital loan loss tax credit program in four respects.

The bill increases the annual tax credit limit from $20 million to $26.5 million. It also increases the amount of principal and interest payments that may be paid to taxpayers lending money to the investment fund from $20 million to $26.5 million. The bill does not change the existing all-year tax credit limit of $380 million.

The bill relaxes limits on the extent to which the program's investments may be concentrated in two or more venture capital funds that are under common management by applying those limits only to commonly managed funds that have been formed within two years of each other. Accordingly, if two funds have been formed more than two years apart, the concentration limits do not apply, even if the funds are under common management. The current concentration limits prohibit the program from investing more than the lesser of the following in a single venture capital fund or in two or more venture capital funds under common management: (1) $10 million, or (2) a certain percentage of a venture capital fund's total capital from all investors (the percentage is 50% for Ohio-based venture capital funds, and 20% for non-Ohio-based funds).

The bill requires that, when the Ohio Venture Capital Authority solicits requests for proposals from private investment funds to administer the program, the request's description of the evaluation criteria must specifically include the investment fund's past performance "in successfully administering similar programs and achieving

positive investment returns" (among the various other items currently required to be included in the request).

Finally, the bill specifies that the agreement between the OVCA and a program administrator governing the program administrator's administration of the program must require the program administrator, and any fund manager employed by the administrator, to have a "significant presence" in Ohio, and must define how that is to be determined. Currently, a program administrator must have "an established business presence" in Ohio, which is not defined.

## Ohio New Markets Tax Credit

(R.C. 5725.33)

Continuing law authorizes a nonrefundable tax credit with a four-year carryforward against the insurance and financial institution franchise taxes for insurance companies and financial institutions that purchase and hold securities issued by low-income community organizations to finance investments in qualified active low-income community businesses in Ohio, in accordance with the federal New Markets Tax Credit law.

### Federal credit

Federal law provides a credit against the federal income tax, totaling 39% of the cost of the investment at original issue, for making qualified equity investments in investment vehicles known as Community Development Entities (CDEs). A CDE is a United States corporation or partnership with the primary mission of serving or providing investment capital for businesses in low-income communities, that maintains accountability to residents of low-income communities through representation by them on the CDE's governing board or an advisory board, and that is certified as a CDE by the Secretary of the Treasury.

A qualified equity investment is the purchase of capital stock or capital interest in a partnership. The credit provided to the investor is applied over a seven-year period. Substantially all of the taxpayer's investment must in turn be used by the CDE to make qualified investments in "low-income communities."[236]

### Ohio credit

The current Ohio New Markets Tax Credit totals 39% of the "adjusted purchase price" of qualified equity investments in CDEs that use substantially all of the proceeds

[236] 26 U.S.C. 45D (2012).

to make investments in qualified active low-income community businesses. To obtain the Ohio credit, a person must have qualified for the federal credit by holding a qualified equity investment. Under the Federal program, a CDE can make qualified investments in any state. For purposes of the Ohio credit, the "adjusted purchase price" of qualified investments is the percentage of those investments that are made in businesses located in Ohio. A qualified equity investment is an equity investment in a qualified CDE. An investor eligible to receive tax credits for its investment in a qualified CDE must be an insurance company subject to the state's insurance company franchise taxes or a financial institution subject to the state's corporation franchise tax. To be a qualified equity investment, the equity investment must be acquired after October 16, 2009, for cash, and at least 85% of the purchase price must be used by the issuer to make qualified low-income community investments. The investment may be transferred, so long as the transferee's holding would qualify if the transferee were the purchaser at the original issuance.

Credits must be applied over a seven-year period, beginning on the date a qualified equity investment is made and continuing for the next six anniversary dates.

Under continuing law, the amount of the credit that an insurance company or financial institution holding a qualified equity investment may claim is equal to 39% of the adjusted purchase price of qualified low-income community investments. Under current law, the amount of qualified low-income community investments is the total amount of investments that are invested in qualified low-income community businesses, up to $2,564,000 in a fiscal year. A "qualified active low-income community business" is any partnership or corporation that derives less than 15% of its annual revenue from the rental or sale of real property (except for certain special purpose entities owned by the business and created for the purpose of renting or selling the property back to the tenant) and that, for any tax year, satisfies all of the following:

(1) At least 50% of total gross income of the entity is derived from the active conduct of qualified business within a low-income community;

(2) A substantial portion of the use of the tangible property of the entity (whether owned or leased) is within a low-income community;

(3) A substantial portion of the services performed for the entity by its employees are performed in a low-income community;

(4) Less than 5% of the average of the aggregate unadjusted bases of the property of the entity is attributable to collectibles (other than collectibles held primarily for sale in the ordinary course of business);

(5) Less than 5% of the average of the aggregate unadjusted bases of the property of the entity is attributable to nonqualified financial property.[237]

### Credit allowance dates

The bill accelerates an investor's receipt of credit installments by permitting credits of 5% of qualified equity investments in CDEs for the first three years and 6% for the final four years, compared with the current schedule of 0% in the first two years, 7% in the third year, and 8% in the final four years. The amended credit allocation is the same credit allocation used in figuring the federal New Markets Tax Credit.[238]

### Credit-eligible businesses

The bill allows a CDE to make credit-eligible investments in a low-income community business that derives 15% or more of its annual revenue from renting or selling real estate. Under current law, investments in such businesses would not be counted towards the required investment that would allow an investor to be eligible to claim the Ohio credit. The CDE is required to invest at least 85% of the investment in such businesses and at least 75% in the seventh year.

### Designation of qualifying equity investments

Under current law, a qualified CDE is required to designate equity investments it holds as qualified equity investments for the purpose of qualifying for the federal and Ohio New Markets Tax Credit. The bill permits CDEs to designate as a qualifying equity investment those investments committed from any CDE.

### Individual credit limit

Under current law, the maximum allowable credit for each investor is equal to 39% of the maximum qualified equity investment amount of $2,564,000 per fiscal year, or exactly $999,960 per investor. The bill raises the amount of qualified equity investment allowed per investor to $2,564,103, raising the maximum credit amount to $1 million.

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[237] 26 U.S.C. 45D (2012). Nonqualified financial property is financial property (debt, stock, partnership interests, options, futures contracts, forward contracts, warrants, notional principal contracts, annuities, and other similar property) that is not working capital held in cash, cash equivalents, or debt instruments with a term of 18 months or less; or accounts or notes receivable acquired in the ordinary course of business for services rendered, or from the sale of stock or inventory in the taxpayer's ordinary course of business.

[238] 26 U.S.C. 45D.

### Adjusted purchase price

The bill eliminates the requirement that the "adjusted purchase price" of investments be calculated in determining the amount of the credit. However, the bill continues to base the credit on the amount invested in projects located in Ohio.

### Conform to federal law

Under current law, any term not otherwise defined or limited by state law has the meaning as defined under federal New Markets Tax Credit law as that law existed on October 16, 2009, the effective date of Am. Sub. H.B. 1 of the 128th General Assembly. The bill conforms Ohio's New Markets Tax Credit law to reflect any changes made to those terms in federal law between October 16, 2009, and the effective date.

## IX. Tax Administration

## Reduction in interest rate per annum

(R.C. 5703.47)

The bill reduces the statutory interest rate charged for tax underpayments and payable on some tax refunds from the "federal short-term rate" plus 3% to the federal short-term rate plus 1%. Under current law, the Tax Commissioner is required to calculate the interest rate each year by determining the "federal short-term rate," rounding to the nearest whole number, and adding 3%. (The rate for 2012 is 3%.) "Federal short-term rate" is defined as the rate of the average market yield on outstanding marketable obligations of the United States with remaining periods to maturity of three years or less, as determined under section 1274 of the Internal Revenue Code of 1986. The bill changes the computation of the interest rate by requiring the Tax Commissioner to add 1% to the "federal short-term rate" rather than 3%. The interest rate change affects the interest charged for many other sums due to the state or, in certain cases, to private parties, and affects the discount rate used to value oil and gas reserves for property tax purposes.

The bill increases, by one percentage point, the interest rate for underpayments and refunds of estate tax and any remaining business tangible personal property tax. Under current law, the interest rate for those taxes equals the federal short-term rate rounded to the nearest whole number.

The bill eliminates current law's requirement that the Tax Commissioner notify, in writing, each county auditor of the interest rate.

## Electronic filing requirements for income tax preparers

(R.C. 5747.082(C) and (D))

Under continuing law, individuals who prepare income tax returns on behalf of others for profit must comply with certain electronic filing requirements. The bill makes changes to these requirements that apply to returns prepared during 2013 and thereafter.

Current law requires tax return preparers who prepare more than 75 income tax returns per year to file all returns prepared in that year electronically. The 75 returns must be original returns; amended returns are not counted towards the threshold. A return preparer is exempt from the mandatory electronic filing requirement for a year if, during the previous year, he or she prepared 25 or fewer returns. If a return preparer is not exempt, and if he or she prepares more than 75 returns that are not filed electronically, the return preparer must pay a $50 fee for each return over the 75-return threshold that was not filed electronically.

The bill lowers the mandatory electronic filing threshold for tax return preparers from 75 returns to 11 returns. Accordingly, the bill also modifies the exception for tax preparers who file 25 or fewer returns in a preceding year to provide that a return preparer will be exempt from the new electronic filing requirement only if, during the previous year, he or she prepared ten or fewer returns. Under the bill, if a return preparer is not exempt, and if he or she prepares more than 11 returns that are not filed electronically, the $50 fee applies to each return over the 11-return threshold that was not filed electronically.

## Cancellation of certain tax-related debts

(R.C. 5703.061)

The bill authorizes the Tax Commissioner to cancel certain debts arising from unpaid taxes. In order to qualify for cancellation, the total amount of the debt, including the unpaid taxes and any related penalties or interest, may not exceed $50. The total debt must also consist only of unpaid taxes and related penalties or interest due for a single reporting period. The length of a taxpayer's reporting period will depend upon the tax and the frequency with which the taxpayer must file tax returns (i.e., a year in the case of the income tax, a calendar quarter in the case of certain commercial activity taxpayers, a month in the case of certain sales and use taxpayers).

Under continuing law, when the Tax Commissioner is unable to collect unpaid taxes, the debt must be certified to the Attorney General for collection. The Attorney General may cancel a claim with the approval of the Tax Commissioner, but only if the

Attorney General determines that the debt is uncollectible. The Attorney General and Tax Commissioner may also enter into a compromise agreement with the taxpayer, including an agreement that allows the taxpayer to pay the debt over a certain period of time. (R.C. 131.02.)

## Accrual of interest on tax refunds

(R.C. 5733.26, 5747.11, and 5751.08)

Under continuing law, when a taxpayer is entitled to a refund of taxes that were erroneously charged or otherwise overpaid, interest may accrue on the refund amount. The bill makes several changes to the law governing the accrual of interest on such refunds.

### Refunds resulting from the allowance of a refundable credit

The bill clarifies that interest may not accrue on a refund amount if the refund results from the allowance of a refundable credit against the income, corporation franchise, or commercial activity tax. If a refund results from both a refundable credit and another type of overpayment, interest may accrue on only that portion of the refund that results from the other overpayment.

### Interest on income tax refunds

Under current law, interest may accrue on a refund resulting from an income tax overpayment only if the Tax Commissioner does not refund the overpayment within 90 days after the final due date of the taxpayer's return or the date the return was actually filed, whichever is later. If interest is allowed, the interest accrues from the date of the overpayment or the final due date for the taxpayer's return, whichever is later, until the date the refund is paid. The bill removes a separate, possibly inconsistent provision of the same law that provides that such interest must accrue from 90 days after the final due date of the return until the date the refund is paid.

The bill also removes a provision of current law that provides that interest resulting from an illegal or erroneous assessment accrues from the date the taxpayer paid the illegal or erroneous assessment until the date the refund is paid. The bill does not replace the provision with a different rule for the period during which interest accrues in such situations.

Additionally, the bill provides that, when an income or pass-through entity withholding tax refund arises from the filing of an amended return, interest on the tax refund accrues from the date the amended return was filed until the date the refund is

paid. Current law does not provide a specific rule for the accrual of interest on refunds arising from the filing of such amended returns.

## Taxes due when a corporation dissolves voluntarily

(R.C. 1701.86 and 1702.47)

The bill makes changes to the tax information that a corporation is required to provide to the Secretary of State when seeking a voluntary dissolution.

Continuing law allows a corporation, whether for-profit or nonprofit, to dissolve voluntarily under certain circumstances, such as when the corporation has been adjudged bankrupt or when the period of existence specified in the corporation's articles of incorporation expires. In order to dissolve, the corporation must file a certificate of dissolution with the Secretary of State. With the certificate, the corporation must provide documentation showing that that the corporation is current on, or has guaranteed payment of, all workers' compensation premiums, unemployment compensation contributions, and personal property, franchise, sales, use, and highway use taxes owed by the corporation. The corporation must also provide a list of the counties in which it has personal property subject to local personal property taxes, if any.

The bill amends these requirements to provide that a corporation must show that it is current on all state taxes, rather than on only the personal property, franchise, sales, use, and highway use taxes. The bill also removes the requirement that the corporation provide a list of the counties in which it has personal property. (The personal property tax on business property was completely phased-out in 2011.)

## Electronic notice or order

(R.C. 5703.37)

Continuing law generally requires that the Tax Commissioner deliver tax notices and orders to a recipient using personal service, certified mail, or a delivery service. Additionally, the Commissioner may deliver notices or orders to the recipient through secure electronic mail if the recipient consents to this electronic means of delivery.

The bill prescribes a method by which the Commissioner may deliver notices or orders by secure electronic means. Upon receiving the recipient's permission, the Commissioner must inform the recipient, electronically or by mail, that a notice or order is available for electronic review and provide instructions to allow the recipient to access and print the notice or order. If the recipient fails to access the notice or order electronically within ten business days, the Commissioner is required to deliver the

notice or order to the recipient using personal service, certified mail, or a delivery service.

## Declined or dishonored electronic payment fee

(R.C. 5703.261)

Current law authorizes the Department of Taxation to impose a $50 penalty on dishonored checks.

The bill extends this $50 penalty for declined, returned, or dishonored electronic payments by, for example, credit, debit, or prepaid value card or electronic check.

## Horse-racing tax revenue distribution and filing requirement

(R.C. 3769.28)

### Revenue distribution procedure

In addition to the general state horse-racing tax on pari-mutuel wagering and "exotic" wagering (bets on results other than win, place, or show), Ohio levies an additional pari-mutuel wagering tax solely for the benefit of the municipal corporations or townships in which a horse-racing meet is held. The additional tax is levied at a rate of 0.10% on the first $5 million wagered at a meet and 0.15% of the amount wagered above $5 million, with a maximum tax liability per meet of $15,000. Like the general state horse-racing tax, the additional tax is paid by the racing permit holder to the Department of Taxation.

Under current law, all revenue from the additional tax is collected within ten days after the end of a horse-racing meet and sent back to the permit holder who paid the tax. The permit holder then forwards the tax revenue to each municipal corporation or township in which any part of the meet was held. A municipal corporation or township may distribute any portion of the tax revenue it receives to other political subdivisions that incurred expenses related to the meet.

The bill eliminates the step in this distribution procedure that involves returning tax collections to the permit holder who paid the taxes. Instead, the Tax Commissioner must forward the taxes collected directly to the appropriate municipal corporations and townships.

### Final report requirement

The bill codifies an existing administrative rule that requires racing permit holders to submit a final report to the Tax Commissioner within ten days after the end

of each horse-racing meet. The report must show the total amount wagered at the meet and be signed by the permit holder or an authorized agent of the permit holder.

### Estate asset transfer permission requirement

(R.C. 5739.39)

Current estate tax law requires written permission of the Tax Commissioner before certain assets of a decedent held by a corporation, safe deposit company, trust company, life insurance company, or financial institution may be transferred to another person.

The bill eliminates this requirement with respect to decedents dying on or after January 1, 2013. By prior legislation, Ohio's estate tax is scheduled to be terminated for decedents dying on or after that date.

### Taxpayer exemption from motor fuel tax surety bond requirement

(R.C. 5735.02 and 5735.03)

The motor fuel tax is levied on motor fuel dealers that use, distribute, or sell motor fuel in the state. To aid in the administration of the tax, continuing law requires every motor fuel dealer operating in Ohio to hold an unrevoked license issued by the Tax Commissioner. In order to receive such a license, the dealer must submit an application to the Tax Commissioner in which the dealer agrees to pay taxes on the motor fuel that the dealer sells or distributes in the state. Under current law, the dealer's application must be accompanied by a surety bond of at least $5,000 securing the dealer's payment of the motor fuel tax. The dealer may alternatively provide a cash deposit in lieu of the bond.

The bill allows the Tax Commissioner to exempt a motor fuel dealer from the surety bond requirement if the dealer only sells or distributes motor fuel for which motor fuel taxes have already been paid or for which payment of the tax is not required. (The tax does not apply to certain sales of motor fuel, such as motor fuel that is sold for uses other than the operation of motor vehicles on public highways, or motor fuel sold by one wholesale dealer to another wholesale dealer.) (R.C. 5735.05(A)(1) to (10).) Under current law, the Tax Commissioner may increase or reduce the amount of a required bond, but may not completely exempt a dealer from the requirement of providing a bond or cash payment in lieu of a bond.

## Personal liability for the tax

(R.C. 5735.35)

The bill expressly extends to all kinds of business organizational forms the current provision that assigns personal liability for the motor fuel tax to individual owners, employees, officers, and trustees of the business who are responsible for reporting and paying the tax. Current law refers only to such individuals relative to corporations and business trusts.

## Tobacco product excise tax

Existing law imposes a tax on tobacco products other than cigarettes that are received by a distributor or sold by a manufacturer to a retailer in Ohio. The tax equals 17% of the wholesale price of the product. Persons subject to the tax must be registered with the Department of Taxation.

### Unlicensed distributor penalty

(R.C. 5743.61(E))

The bill imposes a penalty of up to $1,000 for distributing tobacco products without having a distributor's license, and requires any person doing so to obtain a distributor's license within ten days after being notified of the registration requirement. The person also must pay the annual $1,000 distributor's license fee for each location where the person acts as a distributor. Failure to obtain a license and pay the license fee appears to be punishable as a fourth degree misdemeanor offense (R.C. 5743.99(F)).

### "Brokers"

(R.C. 5743.20 and 5743.66)

The bill eliminates statutory references to cigarette and tobacco product "brokers" in the law governing the cigarette and tobacco product excise taxes. In current law, "brokers" are not defined, unlike the other kinds of persons subject to the taxes, such as manufacturers and importers.

## Alcoholic beverage tax: S liquor permit holders

(R.C. 4301.42 and 4303.33)

### Tax liability

Am. Sub. H.B. 114 of the 129th General Assembly amended the S liquor permit to allow a beer brand owner, importer, or designated agent of either to sell beer directly to

personal customers in Ohio. (The permit could previously be issued only for direct sales of wine.) The act also provided, in the statute that authorizes the permit, that S permit holders are responsible for applicable state and local taxes on the sale of the beer, including the alcoholic beverage tax on bottled and canned beer. The bill amends a separate Revised Code provision, the statute that levies the bottled and canned beer tax, to similarly provide that S permit holders are subject to the tax.

### Monthly report

The bill requires an S permit holder to submit a monthly report to the Tax Commissioner showing the amount of beer the permit holder sold in the state in the previous month. The report must accompany the permit holder's payment of the alcoholic beverage tax. A similar requirement applies to other alcoholic beverage taxpayers. Under continuing law, S permit holders must already provide certain information to the Tax Commissioner, including beer shipment invoices and an annual report listing each personal customer that received a beer shipment from the permit holder and the amount of beer the customer received.

## Use of casino tax revenue

(R.C. 5753.03)

Existing law imposes a 33% tax on gross casino revenue received by casino operators. (The tax, its rate, and distribution of its proceeds are governed by the constitutional amendment authorizing casino gaming in Ohio. Article XV, Section 6(C).) "Gross casino revenue" is the total amount of money exchanged for the purchase of chips, tokens, tickets, electronic cards, or similar objects by casino patrons, less winnings paid out by the casino operator.

Several funds have been established under current law for the purpose of receiving, distributing, and accounting for proceeds of the tax on gross casino revenue. One such fund is the Ohio Law Enforcement Training Fund, which currently receives 2% of casino tax proceeds to support law enforcement functions in this state. The bill creates two funds to share this allocation of casino tax revenue. Of the amount currently allocated to the Ohio Law Enforcement Training Fund, 85% is to be distributed to the Peace Officer Training Academy Fund, which is created for the purpose of supporting the law enforcement training efforts of the Peace Officer Training Academy. The remaining 15% is to be distributed to the Criminal Justice Services Casino Tax Revenue Fund, which is created for the purpose of supporting the law enforcement training efforts of the Department of Public Safety's Division of Criminal Justice Services. These percentages are already established for use of the Academy and Division; the bill creates special funds to which the revenue is to be credited and held.

### Specifications for use of casino tax proceeds

(R.C. 5753.03; Section 812.20)

The bill stipulates that the 3% portion of casino tax proceeds currently allocated to the Ohio State Racing Commission Fund is to be used by the Commission to promote pari-mutuel horse racing. Under current law, this revenue allocation is to be used for the same purpose, but there is no condition as to whether the money is for use by the Commission or some other person or entity. The bill also specifies that the 2% portion of casino tax proceeds currently allocated to the Problem Casino Gambling and Addictions Fund is for use by the Department of Alcohol and Drug Addiction Services. Current law does not specify which person or entity is to utilize the revenue.

The bill provides that these amendments are exempt from the referendum and will take effect immediately when the bill becomes law.

## DEPARTMENT OF TRANSPORTATION (DOT)

- Permits money in the Airport Assistance Fund to be used to pay operating costs associated with the Office of Aviation of the Ohio Department of Transportation (ODOT).

- Authorizes the ODOT Director to enter into an agreement or contract with any entity to establish a traveler information program to provide real-time traffic conditions and travel time information free to travelers.

- Declares that materials or data provided to the ODOT Director that are trade secrets or commercial or financial information are confidential and are not public records.

- Eliminates the statutory organization of ODOT into eight specified divisions and allows the Director to organize ODOT.

- Replaces the Office of Public Transportation of the Division of Multi-modal Planning and Programs with the Office of Transit, which has responsibility for public transportation grants.

- Defines the "actual cost" component of the "cost of relocation" in the existing highway construction project utility reimbursement law to mean only those costs that are eligible for reimbursement in accordance with relevant provisions of the Code of Federal Regulations, and provides that the information a utility provides to confirm "actual cost" is not a public record.

## Airport Assistance Fund

(R.C. 4561.21)

The bill permits money in the Airport Assistance Fund to be used to pay operating costs associated with the Office of Aviation of the Ohio Department of Transportation (ODOT). This is in addition to the current specified use of Fund money, which is for maintenance and capital improvements to publicly owned airports.

## Traveler information program

(R.C. 5501.03)

The bill authorizes the ODOT Director to enter into cooperative or contractual agreements with any individual, organization, or business to create or promote a traveler information program that provides real-time traffic conditions and travel time information by telephone, text message, internet, or other similar means at no cost to the traveler. Under the bill, the Director may contract with a program manager, and the program manager is responsible for all costs associated with the development and operation of the traveler information program. Under the bill, any compensation due to a program manager or vendor may include deferred compensation in an amount determined by the ODOT Director. Also, excess revenue must be remitted to ODOT for deposit into the Highway Operating Fund.

Without reference to any particular program, the bill establishes that any materials or data submitted to, made available to, or received by the ODOT Director, to the extent that the materials or data consist of trade secrets (as defined in the existing Trade Practices portion of the Ohio Uniform Commercial Code), or commercial or financial information, are confidential and are not public records.

## Organizational divisions

(R.C. 5501.04 and 5501.07; 5501.09 (repealed))

The bill eliminates the existing statutory organization of ODOT into eight separate divisions (business services, engineering policy, finance, human resources, information technology, multi-modal planning and programs, project management, and equal opportunity). Under existing general authority, the bill allows the Director to organize ODOT and distribute the duties, powers, and functions among divisions. As part of the elimination of the eight specific divisions, the bill also does the following: (1) replaces the Office of Public Transportation of the Division of Multi-modal Planning and Programs with the Office of Transit, which will have the continuing responsibility for public transportation grants, (2) eliminates the Office of Maritime Transportation of

the Division of Multi-modal Planning and Programs, (3) eliminates the specific requirement for the ODOT Director to supervise the work of each division, and (4) removes all statutory references to the existing eight divisions.

### Reimbursement to utility companies for relocation of facilities due to a highway construction project

(R.C. 5501.51)

In relation to the existing law that requires the state to reimburse a utility for the cost of relocating any of its facilities due to a highway construction project, the bill defines the "actual cost" component of the "cost of relocation" to mean only those costs that are eligible for reimbursement in accordance with relevant provisions of the Code of Federal Regulations. These provisions concern utility facilities on federal-aid or direct federal highway projects. The bill also provides that the information a utility provides to confirm "actual cost" is not a public record.

## OHIO DEPARTMENT OF VETERANS SERVICES (DVS)

- Removes an obsolete reference to the State Commissioner of Soldiers' Claims from a law that requires various state officers, commissions, boards, and other entities to make an annual report.
- Requires a county recorder's office to make a veteran's record of discharge available to a county veterans service officer who is certified by the Department of Veterans Services.
- Specifies that a county veterans service officer must need access to a record of discharge for the purpose of supporting a veteran's claim for benefits before the record may be requested from, and provided by, the county recorder.
- Removes the requirement that the Director of Veterans Services publish and distribute a listing of veterans service directors and officers in Ohio and elsewhere and their contact information, and requires the Director to publish electronically a listing of county veterans service offices and commissioners.
- Adds a member of the National Guard Association of the United States who is an Ohio resident to the Veterans Advisory Committee.

## Official reports

(R.C. 149.01)

The bill removes an obsolete reference to the State Commissioner of Soldiers' Claims from the law that requires various state officers, commissions, boards, and other entities that receive state money for its use and purpose to make an annual report. This specific position no longer exists.

## County veterans service officer

(R.C. 317.24)

The bill requires a county recorder's office to make a veteran's record of discharge available to a county veterans service officer who is certified by the Department of Veterans Services. Current law specifies that a county recorder's office must make the record of discharge available to only certain authorized parties as are defined in law, including county veterans service officers. The bill expressly requires that a county veterans service officer, in order to be entitled to receive a veteran's record of discharge, must be certified by the Department. The bill also specifies that a county veterans service officer must need access to a veteran's record of discharge for the purpose of supporting the veteran's claim for benefits before the record may be requested from, and provided by, the county recorder.

## Publication of veterans service and organizational information

(R.C. 5902.02(I))

The bill removes a requirement that the Director of Veterans Services annually publish, update, and distribute a listing of county veterans service officers, state directors of veterans affairs, and national and state service officers of accredited veterans organizations and their state headquarters. Instead, the bill requires the Director to publish electronically a listing of county veterans service offices and, under continuing law, county veterans service commissioners. The electronic listing must include, under continuing law, the expiration dates of commission members' terms of office and the organizations they represent; the names, addresses, and telephone numbers of county veterans service offices; and the addresses and telephone numbers of the Ohio offices and headquarters of state and national veterans service organizations.

### Composition of the Veterans Advisory Committee

(R.C. 5902.02(J))

The bill adds to the Veterans Advisory Committee a member of the National Guard Association of the United States who is an Ohio resident. The existing Veterans Advisory Committee is composed of the following members: a member of the Military Officers Association of America who is a resident of Ohio; a state representative of one of the following congressionally chartered veterans organizations: the American Legion, the Veterans of Foreign Wars, the Disabled American Veterans, AMVETS, the Military Order of the Purple Heart of the U.S.A., the Vietnam Veterans of America, or the Korean War Veterans Association; a representative of any other congressionally chartered state veterans organization that has at least one veterans service commissioner in Ohio; three representatives of the Ohio State Association of County Veterans Service Commissioners, who together have one vote; three representatives of the State Association of County Veterans Service Officers, who together have one vote; one representative of the County Commissioners Association of Ohio who is not from the same county as any of the other county representatives; a member of the Advisory Committee on Women Veterans; a representative of a labor organization; and a representative of the Office of the Attorney General.

## BUREAU OF WORKERS' COMPENSATION (BWC)

- Permits the President of the Ohio Township Association, if presently unavailable to serve, to select a designee to serve on the Workers' Compensation Board of Directors Nominating Committee.

- Permits the President of the Ohio County Commissioners Association, if presently unavailable to serve, to select a designee to serve on the Committee.

- Requires the Administrator of Workers' Compensation to make available electronically the joint rules governing the operating procedures of the Bureau of Workers' Compensation (BWC) and the Industrial Commission and all rules adopted by BWC and the Commission rather than making those rules available in two separate printed publications as under current law.

- Requires the Administrator to make available electronically upon request the classifications, rates, rules, and rules of procedure of BWC rather than making those rules available in pamphlet form.

- Eliminates the requirement that the Administrator maintain a mailing list of persons who have requested copies of the BWC and Commission rules.

- Permits the legislative body of any county, district, district activity, or institution to engage in cost allocation for all required Workers' Compensation Program payments to the Public Insurance Fund.

## Workers' Compensation Board Nominating Committee

(R.C. 4121.123)

Both the President of the Ohio Township Association and the President of the Ohio County Commissioners Association serve as members of the Workers' Compensation Board of Directors Nominating Committee.

The bill permits the President of the Ohio Township Association, if presently unavailable to serve, to select a designee to serve on the Committee. The bill also permits the President of the Ohio County Commissioners Association, if presently unavailable to serve, to select a designee to serve on the Committee.

Under current law, no provision is made for what happens in the event that either president is presently unavailable to serve on the Committee. However, under current law, if either presidency is vacant, the governing body authorized to appoint the president has authority to appoint a designee who will serve until the vacancy is filled.

## Publication of rules and orders by the Administrator

(R.C. 4123.20, 4121.30, and 4121.18)

The bill requires the Administrator of Workers' Compensation to make available electronically the joint rules governing the operating procedures of the Bureau of Workers' Compensation (BWC) and the Industrial Commission, all rules adopted by BWC and the Commission, and the BWC classifications, rates, and rules of procedure. The bill eliminates the requirements that the Administrator must publish the joint rules in a single printed publication, all rules adopted by BWC and the Commission in a single publication, and print BWC's classifications, rates, and rules of procedure in pamphlet form to be furnished on demand. Additionally, under the bill, BWC can no longer charge the cost of providing the publication of all the BWC and Commission rules. The bill also eliminates the current law requirement that the Administrator keep

a mailing list of all persons who have requested copies of the rules adopted by BWC and the Commission.

### County payments to the Workers' Compensation Public Insurance Fund

(R.C. 4123.41)

The bill permits the legislative body of any county, district, district activity, or institution to engage in cost allocation for all required Workers' Compensation Program payments to the Public Insurance Fund. These workers' compensation payments include:

- All payments required by any Bureau of Workers' Compensation rating plan (premium contributions);
- Direct administrative costs incurred in the management of the county, district, district activity, or institution's Workers' Compensation Program;
- Indirect costs that are necessary and reasonable for the proper and efficient administration of the Workers' Compensation Program as documented in a cost allocation plan.

The required cost allocation plan for indirect costs must conform to the document entitled "*Cost Principles for State and Local Governments*," which is a publication of the United States Office of Management and Budget. The plan cannot authorize payment from the Public Insurance Fund of any general government expense not associated with the administration of workers' compensation.

Under current law, the legislative body of a county, district, district activity, or institution could only cost allocate for premium contributions to the Public Insurance Fund.

## DEPARTMENT OF YOUTH SERVICES (DYS)

- Requires a criminal court that transfers jurisdiction of a specified type of case back to the juvenile court after a juvenile has been convicted of or pleaded guilty to an offense in the criminal court other than the offense that was the basis of the transfer, and all other agencies that have a record of the conviction or guilty plea, to expunge the criminal record and consider and treat the conviction or guilty plea as a delinquent child adjudication.

- Requires: (1) the Department of Youth Services (DYS) to select a single validated risk assessment tool for assessing a delinquent child's risk to reoffend, (2) prosecutors to use the assessment tool in determining whether to initiate a serious youthful offender (SYO) dispositional sentence process with respect to alleged delinquent children who are eligible for such a sentence, (3) juvenile courts, generally, to use the assessment tool in determining the traditional juvenile disposition to make of adjudicated delinquent children who are under SYO sentencing procedures, (4) prosecutor and juvenile court employees who actually use the assessment tool to be trained and certified by a DYS-certified trainer, and (5) entities that use the assessment tool to develop specified policies and protocols.

- Specifies that judicial release of a child after one year of an aggregate term of commitment to DYS for specifications and underlying delinquent act is a possible alternative to other types of judicial release.

- Specifies that the training standards established by the Adult Parole Authority are for adult probation officers rather than all probation officers.

- Requires DYS to attempt to verify a youth's identity with a birth certificate and social security number before the youth is released from a secure facility under the control of the Department and to issue the youth an identification card if able to so verify the youth's identity.

- Specifies that an identification card issued by DYS is sufficient documentary evidence for the Registrar of Motor Vehicles or a deputy registrar to issue an identification card.

- Requires the Registrar or a deputy registrar to destroy an identification card issued by DYS upon the issuance of an identification card by the Registrar or a deputy registrar.

- Method for determining the allocation of county juvenile program funds.

- Replaces a requirement that moneys in the Felony Delinquent Care and Custody Fund be prioritized to research-supported, outcome-based programs and services with a requirement that research-supported, outcome-based programs and services, to the extent they are available, must be encouraged.

## Transfer of jurisdiction from a criminal court to a juvenile court

(R.C. 2152.121)

Under existing law, if a complaint alleges that a child is a delinquent child, if the child's case is transferred to adult court for prosecution pursuant to R.C. 2152.12(A)(1)(a)(i) or (b)(ii), and if the child subsequently is convicted of or pleads guilty to an offense other than the offense with which the child was originally charged, the court in which the child is convicted of or pleads guilty to that offense must determine whether the child would have been eligible for a mandatory or discretionary transfer to an adult court had a complaint been filed in juvenile court alleging that the child committed the offense of which the child was convicted in the adult court. Under R.C. 2152.12(A)(1)(a)(i), the juvenile court must transfer an alleged delinquent child's case to adult court if the child is alleged to have committed aggravated murder, murder, attempted aggravated murder, or attempted murder, if child was 16 or 17 at the time of the alleged act, and there is probable cause to believe that the child committed the alleged act. Under R.C. 2152.12(A)(1)(b)(ii), a juvenile court must transfer an alleged delinquent child's case to an adult court for prosecution if the child is alleged to have committed a category two offense, the child was 16 or 17 at the time of the act charged, the child is alleged to have had a firearm on or about the child's person or under the child's control while committing the act charged and to have displayed the firearm, brandished the firearm, indicated possession of the firearm, or used the firearm to facilitate the commission of the act charged, and there is probable cause to believe that the child committed the act charged.

If the adult court in which the child is convicted of the offense determines that the child would not have been subject to mandatory or discretionary transfer to an adult court if the child had been alleged to be a delinquent child for committing the offense of which the child was convicted in adult court, that court must transfer the case back to the juvenile court that initially transferred the case to adult court, and the juvenile court must impose one or more traditional juvenile dispositions upon the child under R.C. 2152.19 and 2152.20. Under the bill, when the case is transferred back to the juvenile court, the adult court and all other agencies that have any record of the conviction or guilty plea of the child must expunge the conviction or guilty plea and all records of it. In addition, the conviction or guilty plea must be considered and treated for all purposes other than for the purposes discussed above to have never have occurred, and the conviction or guilty plea must be considered and treated for all purposes other than for the purposes discussed above to have been a delinquent child adjudication of the child.

## Risk assessment tool – use regarding serious youthful offender disposition

(R.C. 2152.131)

### Current law

The Delinquent Child Law, contained in R.C. Chapter 2152., provides in specified circumstances for the imposition of a "serious youthful offender" (SYO) dispositional sentence upon a child who is adjudicated a delinquent child for committing an act that would be a felony if committed by an adult (hereafter, a felony delinquent child). An SYO dispositional sentence consists of both a traditional juvenile disposition and an "adult portion" of the sentence imposed under the Criminal Sentencing Law. The Delinquent Child Law specifies certain circumstances in which an adjudicated felony delinquent child is eligible for mandatory SYO disposition and other circumstances in which an adjudicated felony delinquent child is eligible for discretionary SYO disposition. Not all adjudicated felony delinquent children are eligible for SYO disposition.

Under R.C. 2152.13, not in the bill, with one exception, a juvenile court may impose an SYO dispositional sentence on a child only if the prosecuting attorney of the county initiates the process against the child in a specified manner, and the child is eligible for the dispositional sentence. Special rules, including trial by jury, apply to the trial of an alleged delinquent child for whom a prosecuting attorney seeks an SYO dispositional sentence. The one exception requires, in limited specified circumstances, the imposition of an SYO dispositional sentence upon a child whose case was transferred to adult court for criminal prosecution and who was convicted of an offense in that court.

If a child is adjudicated a felony delinquent child under circumstances that require the juvenile court to impose an SYO dispositional sentence, the court must impose upon the child a sentence available for the violation under the Felony Sentencing Law as if the child were an adult (other than a sentence of death or life without parole). It also must impose one or more traditional juvenile dispositions under the Delinquent Child Law and must stay the adult portion of the dispositional sentence pending the successful completion of the traditional juvenile dispositions imposed.

If a child is adjudicated a felony delinquent child under circumstances that allow, but do not require, the juvenile court to impose an SYO dispositional sentence, the court must determine whether the length of time, level of security, and types of programming and resources available in the juvenile system alone are adequate to provide the court with a reasonable expectation that the purposes of the Delinquent Child Law will be met. If the court determines that those purposes will not be met, it may impose upon the child a sentence available for the violation under the Felony Sentencing Law as if

the child were an adult (other than a sentence of death or life without parole). If it imposes such a sentence, it also must impose one or more traditional juvenile dispositions under the Delinquent Child Law and must stay the adult portion of the dispositional sentence pending the successful completion of the traditional juvenile dispositions imposed. If the court does not find that a sentence should be imposed as described in the preceding sentence, it may impose one or more traditional juvenile dispositions under the Delinquent Child Law.

## Operation of the bill

### Selection and use of a single validated risk assessment tool

The bill requires the Department of Youth Services (DYS), for the purposes described below, to select a single validated risk assessment tool for delinquent children that assesses the delinquent child's risk to reoffend. The assessment tool must be used as follows:

(1) In determining whether to initiate an SYO dispositional sentence process under the provisions of existing law described above in "**Current law**" with respect to an alleged delinquent child who is eligible for the dispositional sentence, a prosecuting attorney must utilize the assessment tool.

(2) If a child is adjudicated a felony delinquent child under circumstances that require the juvenile court to impose an SYO dispositional sentence, or under circumstances that allow, but do not require, the juvenile court to impose an SYO sentence, the court must utilize the assessment tool in determining the traditional juvenile disposition to impose on the child under the Delinquent Child Law, as the juvenile portion of the SYO dispositional sentence or, when authorized, as the alternative to the SYO dispositional sentence. This provision does not apply if the court is required to commit the child to DYS under the juvenile portion of the sentence.

### Training, policies, and protocols regarding the single validated risk assessment tool

For each entity required to use the single validated risk assessment tool selected by DYS, as described above, every employee of the entity who actually uses the tool must be trained and certified by a DYS-certified trainer. Each entity that utilizes the assessment tool must develop policies and protocols regarding: (1) application and integration of the assessment tool into operation, supervision, and case planning, (2) administrative oversight of the use of the assessment tool, (3) staff training, (4) quality assurance, and (5) data collection.

## Judicial release of juvenile

(R.C. 2152.22(B)(1) and (C)(1))

Existing law authorizes the judicial release of a child who is in the custody of DYS. A child may be released *to court supervision* during the *first half* of the prescribed minimum term of commitment or, if the child was committed until the age of 21, during the *first half* of the period that begins on the first day of commitment and ends on the child's 21st birthday, provided that any commitment imposed for specified aggravating circumstances (for example, possession of a firearm) has ended. During the *second half* of the prescribed minimum term of commitment or *second half* of the period that begins on the first day of commitment and ends on the child's 21st birthday, a child may be released to *DYS supervision*, provided that any commitment imposed for specified aggravating circumstances has ended.

Also, under existing law and except as provided in the next sentence, if a child was committed for a prescribed minimum period and a maximum period running until the child's 21st birthday, the court may grant judicial release at any time after the prescribed minimum period. As an *exception* to the authority to grant judicial release as described in the prior sentence, if a child was committed for both (1) one or more definite periods for specified aggravated circumstances and (2) a prescribed minimum period and a maximum period running until the child's 21st birthday, all of the prescribed minimum periods under (1) and (2) are aggregated, and the court may grant judicial release at any time after the child serves one year of the aggregate period.

The bill specifies that judicial release under the exception described in the prior paragraph is an alternative to the two types of judicial release described in the first paragraph above. The authority to grant a judicial release during the first and second halves of a period of commitment described in the first paragraph above apply *unless judicial release is granted under the exception.*

## Training standards for probation officers

(R.C. 2301.27 and 2301.271)

The bill specifies that the training standards established by the Adult Parole Authority for probation officers apply only to adult probation officers rather than to all probation officers.

## Identification cards

(R.C. 4507.51 and 5139.511)

The bill requires DYS to attempt to verify each youth's identification and social security number before the youth is released from a secure facility under the control of DYS. If DYS is able to verify the youth's identity with a verified birth certificate and social security number, DYS must issue an identification card that the youth may present to the Registrar of Motor Vehicles or a deputy registrar. If DYS is not able to verify the youth's identity with both a verified birth certificate and social security number, the youth will not receive an identification card.

Additionally, the bill specifies that an identification card issued by DYS as described in the preceding paragraph is sufficient documentary evidence as required by the Registrar of the age and identity of a person applying to the Registrar for an identification card, upon verification of the applicant's social security number by the Registrar or a deputy registrar. Upon issuing an identification card for a person who has previously been issued an identification card by DYS, the Registrar or a deputy registrar must destroy the identification card issued by DYS.

## Method of determining the allocation of county juvenile program funds

(R.C. 5139.41 and 5139.43)

The bill amends existing law governing DYS' division of county juvenile program allocations among county juvenile courts that administer programs and services for preventions, early intervention, diversion, treatment, and rehabilitation for alleged or adjudicated unruly or delinquent children or for potential unruly or delinquent children. Under existing law, funding is based on a county's previous year's ratio of DYS' institutional and community correctional facility commitments to the county's four-year average of felony adjudications. DYS must give each county a proportional allocation of commitment credits determined according to a statutory funding formula. Under that formula, DYS must determine for each county and for the state *a four-year average* of felony adjudications.

Under the bill, beginning July 1, 2012, DYS must determine an average instead of a four-year average of felony adjudications for each county and for the state to use in allocating commitment credits among counties. Beginning on that date, in determining the average felony adjudications for each county and for the state, DYS will be required to include felony adjudications for fiscal year 2007 and for each subsequent fiscal year through fiscal year 2016. Beginning July 1, 2017, DYS will be required to include the most recent felony adjudication data and to remove the oldest fiscal year data so that a ten-year average of felony adjudication data will be maintained.

The bill does not change the rest of the formula.

### Felony delinquent care and custody fund

(R.C. 5139.43)

Current law, unchanged by the bill, requires a county treasurer to create a felony delinquent care and custody fund within the county treasury, and to deposit certain specified moneys into that fund. The county and the juvenile court that serves the county must use the moneys in its felony delinquent care and custody fund in accordance with rules promulgated by DYS and pursuant to several specified guidelines listed in R.C. 5139.43.

Under current law, one of the specified guidelines for the fund is that money in the fund must not be used to support programs or services that do not comply with federal juvenile justice and delinquency prevention core requirements or to support programs or services that research has shown to be ineffective, and that *moneys in the fund must be prioritized* to research-supported, outcome-based programs and services. The bill instead requires that research-supported, outcome-based programs and services, *to the extent they are available, must be encouraged*.

## MISCELLANEOUS (MSC)

- Adds, as a condition under which the state or a political subdivision may use the abbreviated publication procedure for publishing notices or advertisements, that the second, abbreviated notice or advertisement must be published on the state public notice web site.

- Eliminates the requirement that the first publication of legal advertisements or notices be posted on the state public notice web site.

- Defines "state agency" and "political subdivision" for purposes of the abbreviated publication procedure.

- Requires the departments of Aging, Alcohol and Drug Addiction Services, Development, Developmental Disabilities, Education, Health, Job and Family Services, and Mental Health and the Rehabilitation Services Commission to collaborate to revise eligibility standards and eligibility determination procedures of programs they administer for the purpose of making the standards and procedures more uniform.

- Authorizes the state and boards of county commissioners to enter into agreements for the sale and leaseback of state-owned buildings and county-owned buildings, respectively.

- Adds the State Fire Marshal, or the State Fire Marshal's designee, to the Multi-Agency Radio Communications System Steering Committee.

- Corrects the property description in a previously authorized state land conveyance to the Board of County Hospital Trustees of the MetroHealth System in Cuyahoga County.

- Authorizes the Governor to execute the necessary deeds for the conveyance of 13 parcels of state real estate.

- Authorizes the Ohio Historical Society to execute a deed conveying to the United States, the Ohio Historical Society's right, title, and interest in real estate situated in Ross County.

- Authorizes the Director of Administrative Services to execute a perpetual easement granting to the City of Cambridge, a perpetual easement in real estate associated with an existing water supply line at the Cambridge Developmental Center.

## Publication of legal notices and advertisements

(R.C. 7.10 and 7.16)

R.C. 7.16 allows a state agency or political subdivision that is required by a statute or rule to publish a notice or advertisement two or more times in a newspaper of general circulation to first publish the notice or advertisement in its entirety in the newspaper, but to make the second publication in an abbreviated form in the newspaper and on the newspaper's Internet web site, *if* the statute or rule requiring publication refers to R.C. 7.16. Further publication is not required if the second, abbreviated notice or advertisement meets certain requirements established in ongoing law.

The bill adds to these requirements that the second, abbreviated notice or advertisement must be published on the state public notice web site established under continuing law.[239] The bill eliminates a provision prohibiting a state agency or political subdivision from using the abbreviated procedure if it does not operate and maintain a

[239] R.C. 125.182.

web site. A state agency or political subdivision that otherwise meets the requirements for using the abbreviated procedure would only be prohibited from using that procedure if the state public notice web site is not operational, as stated in continuing law.

The bill also eliminates the requirement that the first publication of legal advertisements or notices be posted on the state public notice web site.

The bill defines "state agency" and "political subdivision" for purposes of the abbreviated publication procedure, as follows:

- A "state agency" is any organized body, office, agency, institution, or other entity established by Ohio law for the exercise of any function of state government, including state institutions of higher education, as defined in continuing law, which are any state university or college, community college, state community college, university branch, or technical college, and includes the University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, Ohio State University, Shawnee State University, University of Toledo, Wright State University, Youngstown State University, and the Northeast Ohio Medical University and its board of trustees.[240]

- A "political subdivision" is 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, and includes, but is not limited to, an appointed 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 created under ongoing law or in existence on December 16, 1964, regional council established by political subdivisions, emergency planning district and joint emergency planning district, joint emergency medical services district, fire and ambulance district, joint interstate emergency planning district established by an agreement, 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

[240] R.C. 3345.011 and 3345.12(A)(1).

community-based correctional facility and program or district community-based correctional facility and program, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program.

## Uniform eligibility standards and procedures

(R.C. 121.35)

The bill requires the Department of Aging, Department of Alcohol and Drug Addiction Services, Department of Development, Department of Developmental Disabilities, Department of Education, Department of Health, Department of Job and Family Services, Department of Mental Health, and the Rehabilitation Services Commission to collaborate to revise eligibility standards and eligibility determination procedures of programs they administer. The purpose of the revisions is to make the programs' eligibility standards and eligibility determination procedures more uniform. An agency is prohibited from making any program's eligibility standards and procedures inconsistent with state or federal law. To the extent authorized by state and federal law, the revisions may provide for the agencies to share administrative operations.

## Sale/leaseback of state and county buildings

(R.C. 123.51 and 307.093)

The bill permits the state to enter into sale and leaseback agreements in which the state agrees to convey a state-owned building to a purchaser who is then immediately required upon closing to lease the building back to the state. The bill provides that such an agreement obligates the lessor to make certain improvements to the building, including renovations and energy conservation measures, that are necessary to improve its functionality and reduce its operating costs. The bill also permits boards of county commissioners to enter into the same type of agreements imposing the same type of requirements regarding county-owned buildings.

The bill specifies that such sale and leaseback agreements are not limited, as applicable, by current law governing the Department of Administrative Services' authority over state property and Board of County Commissioners authority over county property and facilities.

## Multi-Agency Radio Communications System Steering Committee

(Section 701.50)

The bill adds the State Fire Marshal, or the State Fire Marshal's designee, to the existing Multi-Agency Radio Communications System Steering Committee. Current members of the Committee are the designees of the Directors of Administrative Services, Budget and Management, Natural Resources, Public Safety, Rehabilitation and Correction, and Transportation.

## H.B. 153 land conveyance correction

(Section 753.25)

The bill corrects the property description in a state land conveyance that previously was authorized in H.B. 153 of the 129th General Assembly. The bill continues the authorization for the Governor to convey all of the state's right, title, and interest in the described state-owned real estate to the Board of County Hospital Trustees of the MetroHealth System, in the name of Cuyahoga County, its successors and assigns. The consideration and conditions for the conveyance continue as specified in H.B. 153. The authorization for the conveyance expires one year after its effective date.

## Conveyances by Governor's deed

(Sections 753.10, 753.20, 753.30, 753.40, 753.50, 753.60, 753.70, 753.90, 753.110, 753.120, 753.130, 753.140, and 753.150)

The bill authorizes the Governor to execute deeds in the name of the state, conveying all of the state's right, title, and interest in certain real estate, a legal description of which is provided in the bill, to various grantees. Unless otherwise specified, the authority to convey the real estate expires one year after the effective date of the section in which it is contained. Also, the bill generally requires that the grantee pay the costs of the conveyance, including recordation costs of the deed.

For each conveyance, 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 any applicable conditions or requirements. 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, and presented for recording in the Office of the Auditor of State. The deed must be delivered to the grantee, who must present the deed for recording in the office of the county recorder of the county in which the real estate is located.

Listed below is a brief description of the 13 parcels to be conveyed, the grantee specified to receive the conveyance, and the consideration.

(1) Real estate associated with the Marion Armory, the Eaton Armory, and the Eaton MVSB, to a purchaser or purchasers who are to be determined in the manner described below.

(2) Real estate in Defiance County to the City of Defiance for consideration of $90,000, $20,000 of which to be paid at closing, and $70,000 is to be credited at closing for tenant improvements that have been made by the City of Defiance.

(3) Real estate in Erie County to the Spanish War Veteran Association for consideration of $10.

(4) Real estate in Wayne County to a buyer or buyers to be determined in the manner described below.

(5) Real estate in Guernsey County to the Board of County Commissioners of Guernsey County for consideration of $5,000.

(6) Real estate in Gallia County, to a buyer or buyers as to be determined in the manner described below.

(7) Real estate in Franklin County to the Columbus City School District for consideration of $3,131.96.

(8) Real estate in Hamilton County to Robert A. Olson and Nancy A. Olson for consideration of $1,200.

(9) Real estate in Franklin County to the City of Columbus for consideration of $3,070. The City of Columbus is to be credited at closing with the value paid by the city for an existing easement on the real estate in the amount of $3,070.

(10) Real estate in Wayne County, Franklin County, and Brown County held for the use and benefit of The Ohio State University to one or more purchasers.

(11) Real estate in Medina County to the Brunswick City School District for consideration of $10.

(12) Real estate in Delaware County to one or more purchasers for consideration of the purchase price set forth in a purchase agreement(s).

(13) Real estate in Brown County to the Ripley Union Lewis Huntington Local School District for consideration of $10.

The following paragraphs describe provisions in the bill that are unique to the specific land conveyance authorization being discussed. The number prior to each heading corresponds with the number for that land conveyance authorization as listed above.

### 1. Marion Armory, the Eaton Armory, and the Eaton MVSB

The bill requires that the deed for the Marion Armory property contain the following requirement: the grantee must maintain all existing utility lines that traverse the property and service the Marion Engineer Depot, and must bear the entire cost of maintenance of the utilities. The existing utility lines include the water service line, sanitary sewer lines, storm sewer lines, electric pole and power lines, and appurtenances thereto.

Also, the bill requires that if a parcel associated with this conveyance is sold to a municipal corporation, township, or county and that political subdivision sells the parcel within two years after its purchase, the political subdivision must pay to the state, for deposit into the state treasury to the credit of the Armory Improvements Fund, an amount representing one-half of any net profit derived from that subsequent sale.

The bill authorizes the Department of Administrative Services, upon the request of the Adjutant General, to assist in the sale of any of the parcels.

The bill requires the sale of the real estate to be carried out according to the following procedures:

First, the Adjutant General's Department must appraise the parcels or have them appraised by one or more disinterested persons for a fee to be determined by the Adjutant General. The Adjutant General must offer the parcels for sale in their "as is" condition as follows:

The Adjutant General first must offer a parcel for sale at its appraised value to the municipal corporation or township in which it is located. If, after 60 days, the municipal corporation or township has not accepted the Adjutant General's offer to sell the parcel at its appraised value or has accepted the offer but has failed to complete the purchase, the Adjutant General must offer the parcel at its appraised value to the county in which it is located. If, after 60 days, the county has not accepted the Adjutant General's offer to sell the parcel at its appraised value or has accepted the offer but has failed to complete the purchase, the Adjutant General must, in concert with the Department of Administrative Services, arrange a public auction, and the parcel must be sold to the highest bidder at a price acceptable to the Adjutant General. The Adjutant General may reject any and all bids through the auctioneer.

The Adjutant General must advertise each public auction in a newspaper of general circulation within the county in which the parcel is located, once a week for three consecutive weeks prior to the date of the auction. The terms of sale of the parcel pursuant to the public auction must be payment of 10% of the purchase price in cash, bank draft, or certified check on the date of sale, with the balance payable within 60 days after the date of sale. A purchaser who does not timely complete the conditions of the sale must forfeit to the state the 10% of the purchase price paid on the date of sale, as liquidated damages.

Should a purchaser not complete the conditions of sale as described above, the Adjutant General and auctioneer are authorized to accept the next highest bid from the auction by collecting 10% of the purchase price from the secondary bidder and proceed to close the sale, so long as the secondary bid meets all other criteria provided for in the conveyance authorization.

Advertising costs, appraisal fees, and other costs of the sale of the parcels must be paid by the Adjutant General's Department.

The bill requires that the net proceeds of the sale of the parcels be deposited into the state treasury to the credit of the Armory Improvements Fund.

Authority to make the conveyance expires five years after the effective date of the section in which it is contained.

### 2. Real estate in Defiance County to the City of Defiance

The bill requires that the real estate be sold as an entire tract and not in parcels. The bill specifies that prior to the execution of the deed, possession of the real estate must be governed by an existing interim lease between the Department of Administrative Services and the grantee.

The net proceeds of the sale of the real estate must be deposited into the state treasury to the credit of the Armory Improvements Fund.

### 3. Real estate in Erie County to the Spanish War Veteran Association

The bill states that the real estate was originally conveyed to the state of Ohio in 1934 to qualify for a federal Works Projects Administration erosion and tidal wave mediation project. Once the construction project was completed, the state was to have returned title to this property to the Spanish War Veteran Association. The intent of the bill is to correct this oversight.

### 4. Real estate in Wayne County to a buyer or buyers

The bill authorizes the conveyance of specified real estate in Wayne County that the Director of Administrative Services has determined is no longer required for state purposes. The real estate must be sold as an entire parcel and not subdivided. The Director must offer the real estate for sale as is, according to the following process:

The Director of Administrative Services must conduct a public auction, and the real estate must be sold to the highest bidder at a price acceptable to both the Director of Administrative Services and the Director of Developmental Disabilities. The Director of Administrative Services must advertise the public auction in a newspaper of general circulation within Wayne County, once a week for three consecutive weeks prior to the date of the auction. The Director of Administrative Services may reject any and all bids at the public auction. The terms of sale must be 10% of the purchase price in cash, bank draft, or certified check on the date of sale, with the balance payable within 60 days after the date of sale. A purchaser who does not complete the conditions of the sale must forfeit the 10% of the purchase price presented at the time of sale to the state, as liquidated damages. Should a purchaser not complete the conditions of sale, the Director of Administrative Services may accept the next highest bid by collecting 10% of the revised purchase price from that bidder and proceed to close the sale, so long as the secondary bid meets all other required criteria.

The bill requires that advertising costs, appraisal fees, and other costs incident to the conveyance must be paid by the Department of Developmental Disabilities. And the net proceeds of the sale of the real estate must be deposited into the state treasury to the credit of the Mental Health Improvement Fund to offset bond indebtedness for Gallipolis Developmental Center capital projects.

Authority to make the conveyance expires three years after the effective date of the section in which it is contained.

### 5. Real estate in Guernsey County to the Board of County Commissioners of Guernsey County

The authorization in the bill requires that the real estate be sold as an entire tract and not in parcels. The bill specifies that prior to the execution of the deed, possession of the real estate must be governed by an existing interim lease.

### 6. Real estate in Gallia County to a buyer or buyers

The bill requires the real estate to be sold as an entire parcel and not subdivided. The Director of Administrative Services must offer the real estate, and the

improvements and chattels located on the parcel, for sale as is in its present condition, according to the following process:

The Department of Developmental Disabilities, with the assistance of the Department of Administrative Services, must have the parcel appraised by one or more disinterested persons for a fee to be determined by and paid by the Department of Developmental Disabilities. The Director of Administrative Services then must offer the real estate at the appraised value to the Board of County Commissioners of Gallia County. Acceptance of an offer to purchase the real estate must be made by executing a document entitled "Offer to Purchase Real Estate" and delivering it to the Director of Administrative Services. The document must establish the terms of the conveyance. If, after 30 days, the Board of County Commissioners of Gallia County has declined the offer to purchase the real estate at the appraised value, or if the Board of County Commissioners of Gallia County has accepted the offer but has failed to complete the purchase, the Director of Administrative Services must offer the real estate at the appraised value to the Board of Township Trustees of Addison Township. If, after 30 days, the Board of Township Trustees of Addison Township has declined the offer to purchase the real estate at the appraised value, or if the Board of Township Trustees of Addison Township has accepted the offer but has failed to complete the purchase, the Director of Administrative Services must conduct a public auction and the real estate is to be sold to the highest bidder, at a price acceptable to both the Director of Administrative Services and the Director of Developmental Disabilities. The Director of Administrative Services must advertise the public auction in a newspaper of general circulation within Gallia County, once a week for three consecutive weeks prior to the date of the auction. The Director of Administrative Services may reject any and all bids at the public auction. The terms of sale must be 10% of the purchase price in cash, bank draft, or certified check on the date of sale, with the balance payable within 60 days after the date of sale. A purchaser who does not complete the conditions of sale must forfeit the 10% of the purchase price paid at the time of sale to the state, as liquidated damages. Should a purchaser not complete the conditions of sale, the Director of Administrative Services may accept the next highest bid by collecting 10% of the revised purchase price from that bidder and proceed to close the sale, so long as the secondary bid meets all other criteria provided for in the conveyance authorization.

Advertising costs, appraisal fees, and other costs incident to the conveyance must be paid by the Department of Developmental Disabilities. The net proceeds of the sale of the real estate must be deposited into the state treasury to the credit of the Mental Health Improvement Fund (Fund 33) to offset bonded indebtedness for Gallipolis Developmental Center capital projects.

Authority to make the conveyance expires three years after the effective date of the section of law in which it is contained.

### 7. Real Estate in Franklin County to the Columbus City School District

The bill requires that the real estate be sold as an entire tract and not in parcels. The bill specifies that prior to the execution of the deed possession of the real estate must be governed by an existing interim lease between the Department of Administrative Services and the grantee.

The net proceeds of the sale of the real estate must be deposited into the state treasury to the credit of the Department of Developmental Disabilities Fund 1520 (sale of Town Street Extension).

### 8. Real Estate in Hamilton County to Robert A. Olson and Nancy A. Olson

The bill requires that the real estate be sold as an entire tract and not in parcels. The bill specifies that prior to the execution of the deed, possession of the real estate is to be governed by an existing interim lease between the Department of Administrative Services and the grantee.

### 9. Real Estate in Franklin County to the City of Columbus

The bill requires that the real estate be sold as an entire tract and not in parcels. The bill specifies that prior to the execution of the deed, possession of the real estate is to be governed by an existing interim lease between the Department of Administrative Services and the grantee.

### 10. Real Estate in Wayne County, Franklin County, and Brown County to one or more purchasers

The bill specifies that the various parcels may be transferred individually, as a group, or as multiple groups and to a single purchaser or to multiple purchasers. The bill requires that each deed to any real estate must contain any exceptions, reservations, or conditions, and any right of re-entry or reverter, specified in the resolution adopted by the Board of Trustees of The Ohio State University. Any exceptions, reservations, or conditions, or any right of re-entry or reverter, contained in any deed may be released by The Ohio State University without the necessity of further legislation, provided the release is specifically authorized by the Board of Trustees of The Ohio State University.

The net proceeds of the sale of the real estate must be paid to The Ohio State University and deposited into university accounts for purposes to be determined by the Board of Trustees

Authority to make the conveyance expires three years after the effective date of the section of law in which it is contained.

### 11. Real Estate in Medina County to the Brunswick City School District

The bill specifies that prior to execution of the deed, possession of the real estate is to be governed by an existing interim lease between the state and the Brunswick City School District.

The net proceeds of the sale of the real estate must be deposited into the state treasury to the credit of the General Revenue Fund.

### 12. Real estate in Delaware County to one or more purchasers

The bill authorizes the Director of Administrative Services, on behalf of the Department of Youth Services, to enter into one or more real estate purchase agreements for the sale to one or more purchasers of the state's right, title, and interest in certain real estate described in the bill.

The real estate is to be conveyed subject to all easements, covenants, conditions, and restrictions of record, all legal highways, zoning, building, and other laws, ordinances, and regulations, and real estate taxes and assessments not yet due and payable.

The deed may contain any terms and conditions the Director of Youth Services and the Director of Administrative Services determine to be in the best interest of the state. The deed may contain any restrictions that the Director of Administrative Services and the Director of Youth Services determine are reasonably necessary to protect the state's interest in neighboring state-owned land.

The real estate may be sold as an entire tract or in parcels.

The net proceeds from the sale of the real estate must be deposited into the state treasury to the credit of the Juvenile Correctional Building Fund to offset bond indebtedness on state bonds issued for the real estate.

Authority to make the conveyance expires three years after the effective date of the section of law in which it is contained.

### 13. Real estate in Brown County to the Ripley Union Lewis Huntington Local School District

The bill specifies that possession of the premises prior to the conveyance is to be governed by an existing interim lease between the state and the grantee.

The net proceeds of the sale of the real estate must be deposited into the state treasury to the credit of the General Revenue Fund.

## Ohio Historical Society land conveyance

(Section 753.100)

The bill authorizes the Ohio Historical Society (formerly the Ohio State Archaeological and Historical Society) to execute a deed conveying to the United States of America and its successors and assigns, all of the Ohio Historical Society's right, title, and interest in real estate situated in Ross County, a legal description for which is provided in the bill.

Consideration for conveyance of the real estate is the mutual benefit accruing to the society and the United States from the use of the real estate by the National Park Service as a part of the Hopewell Culture National Historical Park.

The real estate must be sold as an entire tract and not in parcels.

The National Park Service must pay the costs of the conveyance.

Within two years after the effective date of the conveyance authorization, the Ohio Historical Society must prepare a deed to the real estate. The deed must state the consideration and the conditions. The deed must be executed by the Ohio Historical Society, presented in the Office of the Auditor of State for recording, and delivered to the National Park Service. The National Park Service must present the deed for recording in the Office of the Ross County Recorder.

Authority to make the conveyance expires two years after the effective date of the section in which it is contained.

## Perpetual Easement to City of Cambridge

(Section 753.80)

The bill authorizes the Director of Administrative Services to execute a perpetual easement in the name of the state, granting to the City of Cambridge, and its successors and assigns, a perpetual easement in real estate, a legal description for which is provided in the bill. The easement is associated with an existing water supply line at the Cambridge Developmental Center in Cambridge, Guernsey County.

The bill states that the Director of Administrative Services exercises general custodial care of all real property of the state, and that the director has determined that the granting of a perpetual easement would be in the best interest of the state.

## EFFECTIVE DATES

(Sections 812.10 to 812.30)

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, appropriations for current expenses go into immediate effect.

## HISTORY

| ACTION | DATE |
|---|---|
| Introduced | 03-16-12 |

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