



# Ohio Legislative Service Commission

## Final Analysis

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### **Am. Sub. H.B. 59\*** 130th General Assembly (As Passed by the General Assembly)

**Reps.** Amstutz, Anielski, Baker, Beck, Blair, Boose, Brown, Burkley, Conditt, Dovilla, Grossman, Hackett, C. Hagan, Hayes, Lynch, McClain, McGregor, Pelanda, Rosenberger, Ruhl, Sears, Sprague, Stebelton, Thompson

**Sens.** Beagle, Burke, Coley, Faber, Hite, Lehner, Oelslager, Peterson, Schaffer, Uecker, Widener

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This final analysis is arranged by state agency, beginning with the Accountancy Board 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 also includes, at the end, a Retirement Systems category, a Local Government category, and a Miscellaneous category.

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

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## ACCOUNTANCY BOARD

- Removes the language specifying the pay ranges in the exempt employee salary schedule from which the Executive Director of the Accountancy Board must be paid.

### Pay range for the Executive Director

(R.C. 4701.03)

The act removes the language specifying the pay ranges in the exempt employee salary schedule from which the Executive Director of the Accountancy Board must be paid. It retains law generally requiring the Board to pay the Executive Director in accordance with the exempt employee salary schedule.



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## DEPARTMENT OF ADMINISTRATIVE SERVICES

### Public employee health care plans

- Ratifies and further amends the section of law that governs the quality of certain public employee health care plans.
- Requires that all health care benefits provided to persons employed by certain public employers must be provided by health care plans that contain best practices established by the Department of Administrative Services (DAS) or the former School Employees Health Care Board.
- Requires all policies or contracts for certain health care benefits that are issued or renewed after the expiration of any applicable collective bargaining agreement to contain all best practices established at the time of renewal.
- Allows a political subdivision, upon consulting with DAS, to adopt a delivery system of benefits that is not in accordance with the DAS's adopted best practices if it is considered by DAS to be most financially advantageous to the political subdivision.
- Requires DAS to assist in the design of health care plans for public employers separate from the health care plans for state agencies.
- Permits the Director of DAS to convene a Public Health Care Advisory Committee.
- Requires a joint self-insurance program to pay the run-off expenses of a participating political subdivision that terminates its participation in the program, under certain circumstances.
- Requires the run-off payment to be limited to an actuarially determined cap or 60 days, whichever is reached first, unless the program and terminating political subdivision specifically agree to maintain enrollment for a specified period.

### Alternative fuel

- Eliminates the following: the annual fleet reporting requirement made by higher education institutions to DAS, the Credit Banking and Selling Program of DAS, and the position of State Alternative Fuel Officer within DAS.
- Transfers control of the State Biodiesel Revolving Fund from DAS to the Development Services Agency.



- Eliminates quarterly and annual reporting on alternative fuel usage by state agencies.

### **Public exigency power**

- Eliminates the power of the Director of DAS to declare a public exigency, a power formerly shared with the Executive Director of the Facilities Construction Commission (FCC).
- Eliminates the ability of the Director to ask FCC, in order to respond to a public exigency, to enter into public contracts without competitive bidding or selection.
- Transfers, from the Director to the Executive Director of FCC, the power to take and use lands, materials, and other property necessary for the maintenance, protection, or repair of the public works during a public exigency.

### **Transfer of Employee Assistance Program**

- Transfers the Employee Assistance Program from the Department of Health to DAS, effective July 1, 2013, and eliminates the separate payroll charge assessed per pay period to all state agencies whose employees are paid by warrant of the Office of Budget and Management to cover the cost of administering the program.
- Requires OBM, at the request of DAS, to make budget changes necessitated by the transfer, including administrative reorganization or program transfers.
- Requires the transfer of employees of the Employee Assistance Program to DAS at their same classifications with retention of their statutory rights concerning layoffs.

### **Vehicle Management Commission**

- Recreates and modifies the Vehicle Management Commission within DAS that was abolished by S.B. 171 of the 129th General Assembly, the Sunset Review Act, effective June 30, 2011.
- Requires the Vehicle Management Commission to periodically review the implementation of the fleet management program by DAS under continuing law, and authorizes it to recommend to DAS and the General Assembly modifications to DAS procedures and functions and other statutory changes.

## Other provisions

- Increases, from pay range 44 to pay range 47, the maximum compensation that each state department may pay to up to five of its unclassified employees who are involved in policy development and implementation.
- Specifies that the positions, offices, and employments for which the Director of DAS must establish job classification plans are those in the service of the state.
- Extends, until July 1, 2015, the Director's temporary authority to implement certain provisions of the civil service law regarding classification plans and appointment incentive programs without adopting rules.
- Clarifies that the Director's authority to approve a policy to grant compensatory time or pay applies only with respect to "employees in the service of the state."
- Renames the Payroll Withholding Fund within the state treasury as the Payroll Deduction Fund.
- Provides that the Life Insurance Investment Fund is to include money from state agencies and removes the requirement that the Fund include amounts from the renamed Payroll Deduction Fund.
- Prohibits the Controlling Board from authorizing transfers of cash balances in excess of needs from the Building Improvement Fund to the GRF or to another fund to which the money would have been credited in the absence of the Building Improvement Fund.
- Codifies the Building Improvement Fund, and provides that the fund consists of payments made by intrastate transfer voucher from the appropriation for office building operating payments, and requires money in the fund to be used for major maintenance or improvements in certain state office buildings.
- Creates the Building Operation Fund within the state treasury and allows DAS to deposit money collected for operating expenses of facilities owned or maintained by DAS into the new fund or into the Building Management Fund as provided in continuing law.
- Replaces the phrase "skilled trade services" used under former law with the phrase "minor construction project management."
- Allows the Director to provide, and collect reimbursements for the cost of providing, the newly renamed minor construction project management services to any state



agency instead of just state agencies that occupy space in a facility not owned by the Department.

- Renames the Skilled Trades Fund in the state treasury as the Minor Construction Project Management Fund, and provides that money collected for minor construction project management services be deposited into the renamed fund.
- Authorizes an appointing authority, in cases where no vacancy exists, and with the written consent of an exempt employee, to assign the duties of a higher classification to the exempt employee for a period of time not to exceed two years.
- Eliminates the requirement that the state make available a long-term care insurance policy that state officials and employees may elect to participate in.
- Requires the Director to deliver a report, to the Governor and General Assembly leaders, that proposes uniform standards for public offices that post public records on the Internet.
- Establishes the Local Government Efficiency Program to be administered by the Local Government Innovation Council.

## **9-1-1 service law changes**

### **Transfer to Statewide Steering Committee**

- Transfers the administration of 9-1-1 services from the Department of Public Safety (DPS) to the Statewide Emergency Services Internet Protocol Network Steering Committee (Steering Committee).
- Transfers to the Steering Committee and its members the same immunity from liability in civil actions arising from any act or omission in connection with the development or operation of a 9-1-1 system enjoyed by the Ohio 9-1-1 Council and the Wireless 9-1-1 Advisory Board in former law.
- Repeals the duty imposed on countywide 9-1-1 planning committees to report, by February 15, 2013, certain information to the Steering Committee, including:
  - Geographic location and population of the 9-1-1 service area;
  - 9-1-1 call statistics;
  - Expenditures of 9-1-1 disbursements; and





--9-1-1 network and equipment information, and repeals the penalty for failure to report.

- Requires any governmental entity or political subdivision operating a public safety answering point (PSAP) to report that same information, as well as any other information needed for the next generation 9-1-1 transition, to the Steering Committee.
- Requires a "9-1-1 service provider" to report to the Steering Committee the number of access lines in Ohio maintained by the provider, the provider's aggregate costs and cost recovery associated with provision of 9-1-1 services, and any other information needed for the next generation 9-1-1 transition.
- Imposes a time limit of 45 days for 9-1-1 service providers and political subdivisions or governmental entities operating a PSAP to make their respective reports after a Steering Committee request for such information.
- Grants the Steering Committee and the 9-1-1 Program Office Administrator, until January 1, 2014, certain duties related to the remittance, disbursement, audit, and assessment of wireless 9-1-1 charges received from wireless 9-1-1 service providers and resellers.

### **Changes to wireless 9-1-1 funds**

- Beginning January 1, 2014:
  - Reduces, from 98% to 97%, the amount of wireless 9-1-1 charge remittances to be deposited in the Wireless 9-1-1 Government Assistance Fund;
  - Replaces the Wireless 9-1-1 Public Safety Administrative Fund with the 9-1-1 Program Fund to defray the Steering Committee's administration of 9-1-1 services;
  - Specifies that 2% of wireless 9-1-1 charges be deposited in the 9-1-1 Program Fund; and
  - Makes the Wireless 9-1-1 Government Assistance Fund and the Next Generation 9-1-1 Fund state treasury funds rather than custodial funds, and removes provisions governing the Treasurer's administration of those funds.

### **9-1-1 entity changes**

- Replaces the 9-1-1 Service Program housed in the Public Utilities Commission and the position of Ohio 9-1-1 Coordinator (set to be repealed as of January 1, 2014) with



the 9-1-1 Program Office led by an administrator who is appointed by the Director and reports to the State Chief Information Officer.

- Repeals the law that creates and governs the Ohio 9-1-1 Council and the Wireless 9-1-1 Advisory Board.

### **County 9-1-1 planning committee changes**

- Repeals the provision that a 9-1-1 planning committee be disbanded and the option that it be replaced if it fails to adopt a final plan on or before the deadline of nine months after the resolution convening the 9-1-1 planning committee.
- Changes the method of amending a final plan for a countywide 9-1-1 system.

### **Public employee health care plans**

(R.C. 9.833, 9.90, 9.901, and 1545.071)

#### **The act in relation to the ambiguous status of R.C. 9.901**

The principal section of law discussed under this heading, R.C. 9.901, addresses the quality of public employee health care plans. Before the act, the status of the section was ambiguous. In the previous biennial budget act, H.B. 153 of the 129th General Assembly, the section was amended extensively. More or less at the same time, in another act, S.B. 171 of the 129th General Assembly, the section was repealed.

Because of these conflicting legislative actions, the act has the effect of ratifying, that is, confirming, the existence of R.C. 9.901 and of amending it further. In other words, language that is not affected by the amendments confirms the result of H.B. 153. Some of the amendments confirm the S.B. 171 repeal. Some amendments change language that results from H.B. 153. And some of the amendments revive, that is, restore to the law, language that was repealed by S.B. 171. These amendatory intents are explained below.

#### **Public employee health care plans to contain best practices**

Under the act, all health care benefits provided to persons employed by public employers must be provided by health care plans that contain best practices established by the Department of Administrative Services (DAS) or the former School Employees Health Care Board. For purposes of this best practice requirement, a "public employer" is a political subdivision, a public school district, or a state institution of higher education.



The act expands the best practice requirement to apply to state institutions of higher education. Prior law did not specifically require employees of state institutions of higher education to be provided health care under health care plans that contain the best practices. Prior law specified only that employees of political subdivisions and public school districts were to be provided health care under health care plans that contain the best practices.

The act also expands to political subdivisions and state institutions of higher education the requirement that policies or contracts for health care benefits that are issued or renewed after the expiration of any collective bargaining agreement must contain the best practices. Prior law specified only that policies or contracts for health care benefits provided to public school district employees that were issued or renewed after the expiration of a collective bargaining agreement had to contain the best practices.

The act also specifies that a political subdivision, upon consulting with the Department, can adopt a delivery system of health care benefits that is not in accordance with the best practices if the system is considered by DAS to be most financially advantageous to the political subdivision. Former law contained a similar provision, but did not indicate that the consideration of financial advantage is to be made by DAS.

### **Duties of the Department**

The act requires DAS to do the following:

- (1) Identify strategies to manage health care costs;
- (2) Study the potential benefits of state or regional consortiums of public employers' health care plans;
- (3) Publish information regarding health care plans offered by public employers and existing consortiums;
- (4) Assist in the design of health care plans for public employers separate from the health care plans for state agencies;
- (5) Adopt and release a set of standards that are considered the best practices for health care plans offered to public employees;
- (6) Require that plans administered by health plan sponsors make readily available to the public all cost and design elements of the plan;

(7) Promote cooperation among all organizations affected by this phase of the act in identifying the elements for its successful implementation;

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

(9) Prepare and disseminate to the public, an annual report on the status of health care plan sponsors' effectiveness in complying with best practices and in making progress toward reducing the rate of increase in insurance premiums and out-of-pocket expenses and in improving the health status of employees and their families.

### **Miscellaneous provisions related to public employee health care**

The act renames the Political Subdivisions and Public Employees Health Care Fund the Public Employees Health Care Fund.

The act allows the Director of DAS to convene a Public Health Care Advisory Committee and specifies that members of the committee serve without compensation. Under prior law, the Committee was created under DAS, and consisted of 15 members appointed by the President of the Senate, the Speaker of the House of Representatives, and the Governor. The act specifies that five members are to be appointed by the President, five members are to be appointed by the Speaker, and five members are to be appointed by the Governor. The members are to include representatives from state and local government employers, state and local government employees, insurance agents, health insurance companies, and joint purchasing arrangements currently in existence.

### **Amendments confirming the S.B. 171 repeal**

The act confirms the S.B. 171 repeal of provisions that require DAS to design health care plans for use by political subdivisions, public school districts, and state institutions of higher education that are separate from plans for state agencies. In more detail, the act confirms the S.B. 171 repeal of provisions that:

(1) Require, upon completion of the consultant's report (see below) and once the plans have been released in final form by DAS, all health care benefits provided to persons employed by public employers to be provided by health care plans designed by DAS;

(2) Permit DAS, in consultation with the Superintendent of Insurance, to negotiate with and contract with one or more insurance companies for the issuance of the plans;

(3) Require DAS, in consultation with the Superintendent of Insurance, to determine what geographic regions exist in Ohio based on the availability of providers,



networks, costs, and other factors relating to providing health care benefits, and then to determine what health care plans offered by public employers and existing consortiums in the region offer the most cost-effective plan;

(4) Require DAS, in consultation with the Superintendent, to develop a request for proposals and solicit bids for health care plans similar to existing plans;

(5) Prohibit requiring a public employer to offer the health care plans designed by DAS until DAS has contracted with an independent consultant;

(6) Permit public employers offering employee health care benefits through a plan offered by a consortium to continue offering consortium plans if they contain the required best practices;

(7) Require DAS to include disease management and consumer education programs;

(8) Require DAS to contract with an independent consultant to analyze costs related to employee health care benefits provided by existing political subdivision, public school district, and state institution plans, and to submit written recommendations to DAS for the development and implementation of a successful program for the acquisition of employee health care plans by pooling purchasing power; and

(9) Require, not more than 90 days before coverage begins for public employees under health care plans designed by DAS, a public employer's governing body, board, or managing authority to provide detailed information about the health care plans to the employees.

### **Run-off expenses for joint self-insurance plans of a political subdivision**

Continuing law authorizes political subdivisions to provide health care benefits to their officers and employees. They may establish individual or joint self-insurance programs and may agree with other political subdivisions to have their programs jointly administered. Funds must be reserved for the individual or joint self-insurance programs as are necessary, in the exercise of sound and prudent actuarial judgment, to cover potential cost of health care benefits for the officers and employees.

Under the act, a joint self-insurance plan is required to pay the run-off expense of a participating political subdivision that terminates its participation in the program as long as the political subdivision has accumulated funds in the reserves for incurred but not reported claims. The act requires the run-off payment to be limited to an actuarially determined cap or 60 days, whichever is reached first. Under the act, a joint self-



insurance plan is excluded from the requirement of paying the run-off expenses of a terminating political subdivision during the term of a specific, separate agreement with the political subdivision to maintain enrollment for a specified period, not to exceed three years.

### **Annual fleet reporting by state higher education institutions**

(R.C. 125.832)

The act eliminates the requirement that state institutions of higher education submit annual reports to DAS concerning their motor vehicle fleets. Specifically, prior law required each state higher education institution to report annually to DAS (1) the methods it used to track the motor vehicles it acquired and managed, (2) whether or not it used a fuel card program to purchase fuel for, or to pay for the maintenance of, the motor vehicles, and (3) whether or not it made bulk purchases of fuel for the motor vehicles.

### **Alternative fuel usage; Credit Banking and Selling Program**

(R.C. 122.075, 125.832, 125.836, 125.837 (repealed), and 125.838 (repealed))

The act eliminates the following: (1) the Credit Banking and Selling Program of DAS, (2) the position of State Alternative Fuel Resource Officer within DAS, and (3) the requirement of quarterly and annual reporting on alternative fuel usage by state agencies. The act also transfers control of the state Biodiesel Revolving Fund from DAS to the Development Services Agency.

The Credit Banking and Selling Program was established for purposes of the federal "Energy Policy Act of 1992." Under that Act, certain entities, including state governments, are required to acquire certain numbers of alternative fuel vehicles (AFVs). Fleets that acquire AFVs in excess of requirements, or prior to requirements, receive acquisition credits. Fleets can bank these credits for application to later years' requirements, or sell or trade the credits to other fleets.

The State Alternative Fuel Resource Officer, who was within DAS, monitored federal activity for any federal action that affected Ohio in its use of motor vehicles that are capable of using an alternative fuel. The officer also was available to explain to state departments and agencies the laws that applied to the purchase of motor vehicles that are capable of using an alternative fuel and the laws that govern alternative fuels, and any other relevant issues that related to motor vehicles that are capable of using an alternative fuel.

DAS was required to compile on a quarterly basis all data relating to the purchase by each state department and agency of alternative fuels, including the amounts of alternative fuels and conventional fuels purchased, the per-gallon prices paid for each fuel, the locations at which alternative fuels were purchased, and the fuel amounts purchased at each such location. By April 1 of each year, DAS had to issue an annual report containing all this data for the previous calendar year.

### **Public exigency power**

(R.C. 123.10, 123.11, 123.23 (repealed), and 126.14)

The act eliminates the power of the Director of DAS to declare a public exigency. The Director previously shared this power with the Executive Director of the Facilities Construction Commission (FCC). Further, the act eliminates the ability of the Director to ask FCC to enter into public contracts without competitive bidding or selection in order to respond to a public exigency. Finally, the act transfers from the Director to Executive Director of FCC the power to take and use lands, materials, and other property necessary for the maintenance, protection, or repair of the public works during a public exigency.

### **Transfer of Employee Assistance Program**

(R.C. 3701.041 (124.88); Section 207.95)

The act transfers the Employee Assistance Program from the Department of Health to DAS, effective July 1, 2013, and eliminates the separate payroll charge assessed per pay period to all state agencies whose employees are paid by warrant of the Office of Budget and Management (OBM) to cover the costs of administering the programs.

Employees of the Employee Assistance Program must be transferred to DAS, effective July 1, 2013, in their same classifications and with their continuing statutory rights concerning layoffs.

The Director of OBM, at the request of the Director of DAS, must make budget changes made necessary by the transfer, including administrative reorganization or program transfers. Effective July 1, 2013, the Director of OBM must cancel any existing encumbrances against appropriation item 440633, Employee Assistance Program, and reestablish them against appropriation item 100622, Human Resources Division – Operating; the act appropriates the reestablished encumbrance amounts. Any business commenced but not completed under appropriation item 440633, Employee Assistance Program, by July 1, 2013, must be completed under appropriation item 100622, Human Resources Division – Operating. The act provides for the transfer of cash balances to the





Human Resources Services Fund and for the abolition of the Employee Assistance Fund.

Any reference to the Employee Assistance Program in any statute, rule, contract, grant, or other document is deemed to refer to the Department.

### **Re-creation of the Vehicle Management Commission**

(R.C. 125.833)

The act recreates and modifies the Vehicle Management Commission within DAS. This Commission was abolished by S.B. 171 of the 129th General Assembly, the Sunset Review Act, effective June 30, 2011.

The Commission is required to periodically review the implementation of the fleet management program by DAS under continuing law, and is authorized to make recommendations to DAS and the General Assembly for modifications to DAS's procedures and functions and other statutory changes.

The Commission consists of seven members, including an officer or employee of DAS appointed by the Director of DAS, an officer or employee of the Department of Public Safety appointed by the Director of Public Safety, two members of the Senate appointed by the President of the Senate, two members of the House of Representatives appointed by the Speaker, and one member appointed by the Governor. The Governor's appointee must have experience in the vehicle leasing, purchasing, and maintenance industry in Ohio.

Initial appointments must be made by October 1, 2013, and the initial meeting of the Commission must be held on that date and twice annually thereafter each year. After the initial appointments, appointments of legislative members to the Commission must be made within 15 days after the commencement of the first regular session of the General Assembly. The Governor must appoint the Commission's chairperson.

The terms of legislative members must be for the duration of the session of the General Assembly in which they are appointed. Members must continue to serve on the Commission until the appointments are made in the following session of the General Assembly, unless they cease to be members of the General Assembly. The member appointed by the Governor serves at the Governor's pleasure.

A vacancy on the Commission must be filled for the unexpired term in the same manner as the original appointment.



## **Maximum pay range of state departments' unclassified employees**

(R.C. 124.11)

The act increases the maximum pay range of certain unclassified employees of each state department, from pay range 44 (up to \$49.50 per hour or \$102,960 annually) to pay range 47 (up to \$64.45 per hour or \$134,056 annually). Under continuing law, the head of the administrative department or other state agency must set the compensation for up to five unclassified positions that the department or agency head determines is involved in policy development and implementation. Under the act, the maximum compensation for these positions is the maximum compensation specified in pay range 47.<sup>1</sup>

The departments to which this compensation change applies are the Departments of Administrative Services, Aging, Agriculture, Commerce, Developmental Disabilities, Education, Health, Insurance, Job and Family Services, Medicaid, Mental Health and Addiction Services, Natural Resources, Public Safety, Rehabilitation and Correction, Taxation, Transportation, Veterans Services, and Youth Services; the Environmental Protection Agency; the Development Services Agency; the Office of Budget and Management; the Ohio Board of Regents; the Department of the Adjutant General; the Bureau of Workers' Compensation; the Industrial Commission; the State Lottery Commission; Opportunities for Ohioans with Disabilities Agency; and the Public Utilities Commission of Ohio.

## **Job classification plans for state employees**

(R.C. 124.14)

Under the act, the Director of DAS must establish job classification plans only for positions, offices, and employments in the service of the state, which includes only positions of trust or employment with the government of the state, and specifically does not include positions with state supported colleges and universities, counties, and general health districts. Under prior law, the Director was required to establish job classification plans for all positions, offices, and employments "the salaries of which are paid in whole or in part by the state."

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<sup>1</sup> R.C. 124.152, not in the act.



## **Job classification plans temporarily not by rule**

(Section 701.61)

The act extends, until July 1, 2015, the Director of DAS's temporary authority to implement certain provisions of the civil service law that otherwise would require the adoption of rules, without adopting rules. These provisions regard the establishment of job classification plans, job classification plan changes, experimental classification plans, establishing, modifying, or rescinding classification plans for county agencies, and establishing an appointment incentive program. The authority previously was to have expired on January 1, 2014.

## **Compensatory time and pay policy approvals**

(R.C. 124.18)

The act clarifies that the Director of DAS's authority to approve a policy under which an appointing authority grants compensatory time or pay to employees who do not receive overtime pay applies only with respect to employees in the service of the state. The phrase "state employees" is replaced with the phrase "employees in the service of the state." The phrase "service of the state" is a defined term in continuing civil service law, meaning "offices and positions of trust or employment with the government of the state."<sup>2</sup>

## **Payroll Withholding Fund**

(R.C. 125.21)

The act renames the Payroll Withholding Fund the Payroll Deduction Fund. The fund is used to consolidate all deductions made for various purposes in any month from the salaries or wages of all officials and employees.

## **Life Insurance Investment Fund**

(R.C. 125.212)

The act removes the requirement that the Life Insurance Investment Fund include amounts from the renamed Payroll Deduction Fund (see above), and adds that the Fund is to include money from state agencies. The fund is used to pay the cost of the state's life insurance benefit program.

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<sup>2</sup> R.C. 124.01, not in the act.



## **Building Improvement Fund**

(R.C. 125.27 and 127.14)

The act prohibits the Controlling Board from authorizing transfers of cash balances in excess of needs from the Building Improvement Fund to the General Revenue Fund or to another fund to which the money would have been credited in the absence of the Building Improvement Fund. The same prohibition exists for numerous other funds.

The act also codifies the Building Improvement Fund, which had been created by the Director of Office of Budget and Management under authority of the previous main operating budget (H.B. 153 of the 129th General Assembly). That law had transferred the building and facility operations of the Ohio Building Authority to DAS.<sup>3</sup> In codifying the fund, the act requires that it consist of any payments made by intrastate transfer voucher from the appropriation item for office building operating payments. It also requires that the fund be used for major maintenance or improvements required in certain state office buildings, specifically the James A. Rhodes or Frank J. Lausche State Office Tower, the Toledo Government Center, the Senator Oliver R. Ocasek Government Office Building, and the Vern Riffe Center for Government and the Arts. The act creates the fund in the state treasury and specifies that it retains the interest it earns.

## **Building Operation Fund**

(R.C. 125.28(C))

The act creates the Building Operation Fund within the state treasury and allows DAS to deposit money collected for operating expenses of facilities owned or maintained by DAS into the new fund or into the Building Management Fund as provided in continuing law.

## **Minor construction project management services**

(R.C. 125.28(B) and (C))

The act replaces the phrase "skilled trade services" used under former law with the phrase "minor construction project management services" and allows the Director of DAS to provide, and collect reimbursements for the cost of providing, the renamed minor construction project management services to any state agency instead of just those state agencies that occupy space in a facility not owned by DAS.

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<sup>3</sup> Section 515.40 of Am. Sub. H.B. 153 (not in the act).



## **Minor Construction Project Management Fund**

(R.C. 125.28(C))

The act renames the Skilled Trades Fund in the state treasury as the Minor Construction Project Management Fund, and provides that money collected for minor construction project management services be deposited into the renamed fund.

## **Exempt employee consent to certain duties**

(Section 701.10)

The act authorizes an appointing authority, in cases where no vacancy exists, and with the written consent of an exempt employee, to assign the duties of a higher classification to the exempt employee for a period of time not to exceed two years. The exempt employee is entitled to compensation at a rate commensurate with the duties of the higher classification. For purposes of this provision, "appointing authority" means an officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution. An "exempt employee" is an employee who holds a position that is not subject to public employee collective bargaining.

Under continuing law, whenever an employee is assigned to work in a higher level position for a continuous period of more than two weeks but not more than two years because of a vacancy, the employee's pay may be established at a rate that is approximately 4% above the employee's current base rate.

## **Long-term care insurance for state employees**

(R.C. 124.84)

The act eliminates the requirement that the state make available a long-term care insurance policy that state officials and employees may elect to participate in. Specifically, the act eliminates the requirement for DAS to negotiate and contract with one or more insurance companies or health insuring corporations for the purchase of such a policy, and instead provides permissive authority for DAS to do so.

## **Report – posting public records online**

(Section 701.30)

The act requires the Director of DAS, not later than May 31, 2014, to deliver a report to the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate that proposes



uniform standards that should apply to a public office that chooses to post public records on an Internet web site maintained by the public office. In developing the standards, the Director must consider, at a minimum, the following factors: any recommended technology and software to use; the projected costs of implementing and maintaining the technology and software; and how a public office is to post a public record on its web site, or on a public web site maintained by the state, so that the public record, or the data contained in the public record, is capable of being searched and downloaded by the public in a uniform manner.

The proposed uniform standards, as articulated in the report, must seek to incorporate, insofar as practical, related practices of the Auditor of State and of other state agencies.

### **Advisory Committee**

The act authorizes the Director, in fulfilling the responsibility of proposing uniform standards, to form, and seek advice from and consult with, an advisory committee. Members of the advisory committee must include, but are not limited to, representatives of state and local governments and individuals having relevant expertise to assist in developing the report.

### **Information Exchange Efficiency and Productivity Report**

The act requires the Director of Development Services, in cooperation with the Local Government Innovation Council, to prepare and issue to the members of the General Assembly, not later than May 31, 2014, a report that recommends various means by which the information exchange may provide local governments with insights regarding efficiency and productivity, and various means by which the information exchange may help local governments improve services to vulnerable populations by providing insights regarding programs that benefit the poor, including general welfare support programs. The report also must include recommendations, developed by the Director and the Council in consultation with the Third Frontier Commission, expressing various means by which data in the information exchange may create opportunities for private sector research institutions to develop value-added products or services that may be commercialized or create jobs, and thereby contribute to the betterment of the state economy.

For purposes of these provisions, "public record" and "public office" have the meanings that generally apply to Ohio Public Records Law.



## Local Government Efficiency Program

(Section 701.40)

The act creates the Local Government Efficiency Program to be administered by the Local Government Innovation Council. The Council must adopt rules under the Administrative Procedure Act as are necessary to administer the program, including application procedures and identification of approved training programs. Under the program, the Council may:

(1) Award scholarships to political subdivision employees, and make grants and loans to political subdivisions, and to regional councils of government or other similar cooperative governmental arrangements consisting of political subdivisions, for training in process efficiency programs including, but not limited to, Six Sigma, Kaizen, and Lean;

(2) Award grants or loans to political subdivisions to assist the political subdivisions in implementing the recommendations in the report published by the Director of DAS regarding the posting of public records online (see above); and

(3) Award a grant, not to exceed \$200,000, to DAS for the provision of training in the process efficiency programs described above.

For purposes of this provision, "political subdivision" means 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, which includes, but is not limited to, the following entities: a county hospital commission, a board of hospital commissioners appointed for a municipal hospital, a board of hospital trustees appointed for a municipal hospital, a regional planning commission, a county planning commission, a joint planning council, an interstate regional planning commission, a port authority, a regional council established by political subdivisions, an emergency planning district and a joint emergency planning district, a joint emergency medical services district, a fire and ambulance district, a joint interstate emergency planning district, a county solid waste management district and a joint solid waste management district, a community school, the county or counties served by a community-based correctional facility and program or a district community-based correctional facility and program, a community-based correctional facility and program or a district community-based correctional facility and program, and the facility governing board of a community-based correctional facility and program or of a district community-based correctional facility and program.





## 9-1-1 service law changes

(R.C. Chapter 128.; Sections 605.40, 605.41, and 815.20; R.C. 167.03, 2913.01, 4742.01, 5502.011, 5705.19, and 5733.55 (conforming changes))

### Introduction

The act modifies the changes made to the 9-1-1 service law in 2012 by H.B. 360 and H.B. 472 of the 129th General Assembly, and recodifies the 9-1-1 service law in Chapter 128. of the Revised Code.<sup>4</sup> The act also transfers all duties assigned to the Department of Public Safety (DPS) and the Public Utilities Commission of Ohio (PUCO), except for the PUCO rate-making duties, to the Statewide Emergency Services Internet Protocol Network Steering Committee (Steering Committee). The Steering Committee consists of four legislators, five gubernatorial appointees representing county, municipal, and township organizations, and the State Chief Information Officer as its nonvoting chairperson. Its duties include (1) advising the state on the dispatch of emergency service providers and implementation, operation, and maintenance of a statewide emergency services Internet protocol network to support state and local government next generation 9-1-1, and (2) providing recommendations for governing and funding the network, transitioning to next generation 9-1-1, and consolidating public safety answering point (PSAP) operations.

The act also modifies some duties and provisions related to the Tax Commissioner's administration, collection, and disbursement of wireless 9-1-1 charges, which generally begin January 1, 2014, under continuing law. These changes are discussed under the **Department of Taxation** heading (see "**Wireless 9-1-1 charges**").

### Transfer of 9-1-1 duties to Steering Committee

(R.C. Chapter 128.)

The act expands the duties of the Steering Committee by establishing it as the entity responsible for the administration of the 9-1-1 service law and transferring duties from DPS and PUCO.

#### Transfers from DPS

A few examples of the duties, rights, and authority transferred from DPS to the Steering Committee include the following:

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<sup>4</sup> Former law, enacted in H.B. 360 of the 129th General Assembly, codified the 9-1-1 service law in R.C. Chapter 5507. The act recodifies this law in Chapter 128. by changing only the chapter number for each section. For example, R.C. 5507.01 is renumbered as R.C. 128.01. Citations for the section of the analysis pertaining to the 9-1-1 law only list the new R.C. section numbers.

- Receive certifications that a political subdivision or a regional council of governments (1) has paid the 9-1-1 system costs for which disbursements from the Wireless 9-1-1 Government Assistance Fund may be used and (2) is providing county wireless enhanced 9-1-1 (R.C. 128.57);
- Monitor compliance with 9-1-1 technical and operational standards for PSAPs that are eligible for reimbursements from the Wireless 9-1-1 Government Assistance Fund (R.C. 128.57);
- Request the Attorney General to begin proceedings against a telephone company that is a wireline service provider to enforce compliance with the 9-1-1 service law (R.C. 128.34); and
- Serve as the agency having jurisdiction over the disclosure or use of certain confidential data from a database that serves a PSAP (1) in times of public emergency or service outage when a wireline telephone company gives access to the database to a public utility or municipal utility handling customer calls and (2) in warning of a public emergency (as determined by the Steering Committee) when a wireline telephone company gives access to the database to a state and local government (R.C. 128.32).

#### **Transfers from PUCO**

(R.C. 128.46(D) and 128.55(A))

Continuing law changed in part by the act, schedules certain duties (formerly duties of PUCO) to expire on January 1, 2014, at which time they will become the responsibility of the Tax Commissioner. Under the act, during the period prior to the transfer of these duties, the Steering Committee, rather than the PUCO:

- Must disburse moneys from the Wireless 9-1-1 Government Assistance Fund to each county in the same manner as the 2012 disbursements (see "**Wireless Government Assistance Fund**" discussed below);
- May conduct audits of wireless service providers or resellers to determine if the provider or reseller has failed to bill, collect, or remit the wireless 9-1-1 charge as required or has retained more than the 2% billing and collection fee allowed under the law; and
- May make assessments against the provider or reseller if an audit finds that a provider or reseller failed to bill, collect, or remit the wireless 9-1-1 charge.



**Assessment process change.** Under temporary assessment authority granted to the Steering Committee and the 9-1-1 Program Office Administrator, the act establishes an assessment process similar to the process in the 9-1-1 service law for the Tax Commissioner (that is scheduled to begin January 1, 2014).

Under this process, an assessment against a wireless provider or reseller is final and payment is due to the Administrator unless a written petition for reassessment is filed with the Steering Committee within 60 days after notification of the assessment. The signed petition may be filed personally or by certified mail and must indicate the objections of the party assessed. Additional written objections may be made if they are received by the Administrator or the Steering Committee before the final assessment determination. If unpaid, the final assessment may be filed with and, upon Steering Committee request, executed by the clerk of the Court of Common Pleas of the county in which the provider or reseller is located, or for those not located in Ohio, the clerk of the Franklin County Court of Common Pleas. Any assessments collected by the Administrator as a result of a judgment must be paid to the state treasurer for deposit in the Wireless 9-1-1 Government Assistance Fund.

Under former law, PUCO had the authority to conduct audits of and make assessments against wireless providers or resellers. Assessments were final unless an assessed party petitioned for a rehearing. Such proceedings were subject to the ongoing PUCO law governing proceedings and hearings.<sup>5</sup>

### **Other changes regarding Steering Committee**

#### **Immunity from liability**

(R.C. 128.32(A))

The act extends to the Steering Committee and any member of the Steering Committee immunity from liability for damages in civil lawsuits arising from any act or omission, except willful or wanton misconduct, in connection with the development or operation of a 9-1-1 system. The act repeals the provision granting the same immunity from liability to the Ohio 9-1-1 Council and to the Wireless 9-1-1 Advisory Board, both of which are also repealed by the act (see "**Ohio 9-1-1 Council and Wireless 9-1-1 Advisory Board repeal**" discussed below).

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<sup>5</sup> R.C. Chapter 4903., not in the act.



## Reports to Steering Committee

(R.C. 128.02(D))

The act changes the type of information that must be provided, and who must provide it, to the Steering Committee. It also requires the information be provided within 45 days of the Steering Committee's request.

**9-1-1 provider report requirement.** The act requires a "9-1-1 service provider" to provide the following information to the Steering Committee:

- The aggregate number of access lines that the provider maintains within Ohio;
- The aggregate amount of costs and cost recovery associated with providing 9-1-1 service, including coverage under tariffs and "bill and keep arrangements" within Ohio (under the act, the term "bill and keep arrangements" has the same meaning as in federal rules, which describe the term as arrangements under which a carrier exchanging telecommunications traffic does not charge for specific transport or termination functions or services);<sup>6</sup>
- Any other information requested by the Steering Committee deemed necessary to support the transition to next generation 9-1-1.

Neither the act nor ongoing law define "9-1-1 service provider." However, in the context of the act, the term may possibly refer to any telecommunications carrier that provides 9-1-1 service. Also, the act does not specify for what time period (if any) or how frequently the information listed above must be reported.

**PSAP operator reporting requirement.** The act requires any political subdivision or governmental entity operating a PSAP to provide certain information to the Steering Committee. The information to be reported includes:

- The geographic location and population of the area for which the planning committee is responsible;
- Statistics detailing the number of 9-1-1 calls received;
- A report of expenditures made from disbursements for 9-1-1;

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<sup>6</sup> 47 C.F.R. 51.713.



- An inventory of and the technical specifications for the current 9-1-1 network and equipment;
- Any other information requested by the Steering Committee that is deemed necessary to support the transition to next generation 9-1-1.

The act does not specify for what time period (if any) or how frequently the information must be reported.

This requirement replaces former law under which each chairperson of a countywide 9-1-1 planning committee (or the chairperson's designee) was required to report information to the Steering Committee by February 15, 2013. The information required under former law was nearly the same as in the act except that former law required a report of expenditures made from disbursements from the Wireless 9-1-1 Government Assistance Fund, rather than requiring a report of disbursements for 9-1-1. Also, former law required reporting "any other information requested by the Steering Committee," rather than the act's more specific requirement to report "any other information requested by the Steering Committee that is deemed necessary to support the transition to next generation 9-1-1."

**Failure to report and suspension of disbursements.** The act removes the provision that required the Steering Committee to notify the Ohio 9-1-1 Coordinator (see "**9-1-1 service program and Ohio 9-1-1 coordinator repeal**" discussed below) of the failure of a county 9-1-1 planning committee chairperson or designee to submit, by February 15, 2013, a 9-1-1 system informational report to the Steering Committee. The act removes the requirement that the Coordinator suspend disbursements from the Wireless 9-1-1 Government Assistance Fund to the county and that the Coordinator resume disbursements upon notification that the Steering Committee received the required information. Also removed by the act are the provisions that, beginning January 1, 2014, would have required (1) the Steering Committee to provide notice to the Tax Commissioner that the information was received and (2) the Tax Commissioner to resume the reimbursements.

### **Remittance of wireless 9-1-1 charges**

(R.C. 128.46(A) and (C))

The act specifies that, until January 1, 2014, wireless service providers and resellers must remit all wireless 9-1-1 charges to, and are liable to the state for any amount not remitted to, the 9-1-1 Program Office Administrator instead of the Coordinator as was required under former law for this period. (The act repeals the position of Coordinator. See "**9-1-1 Program Office**" discussed below.) The act also transfers the administrative duties regarding the remittance of wireless 9-1-1 charges,



including returning or issuing credit for remittances erroneously submitted by the provider or reseller, from the Coordinator to the Administrator for the period prior to January 1, 2014. Beginning on that date, ongoing law requires that administrative duties for the charges be assumed by the Tax Commissioner.

**Changes to wireless 9-1-1 funds**

(R.C. 128.53 and 128.54)

The act repeals the Wireless 9-1-1 Public Safety Administrative Fund and replaces it with the 9-1-1 Program Fund. It also modifies the Wireless 9-1-1 Government Assistance Fund and the Wireless 9-1-1 Administrative Fund as follows:

**Distribution of Wireless 9-1-1 Charges Under the Act**

<b>Fund</b>	<b>Percentage of Wireless 9-1-1 Charge Remittances Prior to January 1, 2014</b>	<b>Entity Authorized to Use Fund</b>	<b>Percentage of Wireless 9-1-1 Charge Remittances Beginning January 1, 2014</b>	<b>Entity Authorized to Use Fund</b>
Wireless 9-1-1 Government Assistance Fund	98%	Steering Committee disburses to counties	97%	Tax Commissioner disburses to counties
Wireless 9-1-1 Administrative Fund	2%	Steering Committee to cover costs	1%	Tax Commissioner to cover costs
Wireless 9-1-1 Public Safety Administrative Fund			1% <b>Repealed</b>	<b>DPS Repealed</b>
9-1-1 Program Fund			2%	Steering Committee to cover costs

**Wireless 9-1-1 Government Assistance Fund**

(R.C. 128.53(B) and (C), 128.54(A) and (B), and 128.55(A))

Until January 1, 2014, the act specifies that the Wireless 9-1-1 Government Assistance Fund receive 98% of the wireless 9-1-1 service charges. The act replaces the Coordinator with the Steering Committee as the entity (1) upon whose order the Treasurer of State, until 2014, disburses money from the Wireless 9-1-1 Government Assistance Fund (to counties for wireless enhanced 9-1-1 service according to a



proportionate share as determined according to former 9-1-1 law as it existed prior to December 20, 2012 – the effective date of H.B. 360<sup>7</sup>) and (2) to which the Treasurer must, until 2014, annually certify the amount of moneys in the Fund. The act also grants the Steering Committee instead of PUCO the authority to transfer funds to the Next Generation 9-1-1 Fund. The transfer amount determination, unchanged by the act, is equal to the funds remaining after disbursements are made to counties.

The act also provides that, as of January 1, 2014, the Wireless 9-1-1 Government Assistance Fund stops being a custodial fund (in the custody of the state treasury but not a part of the state treasury) and becomes a fund that is part of the state treasury. Also as of January 1, 2014, the act applies the repeal of a provision that required the Treasurer to deposit or invest the moneys in the Fund in accordance with the state's Uniform Depository Act and any other provision of law governing public moneys of the state. The Treasurer is still required, under continuing law, to follow the Uniform Depository Act and the other provisions, with regard to this Fund, until 2014. Also as of January 1, 2014, the Treasurer will no longer credit interest earned on the Fund to the Fund. Instead, the interest must *be credited* to the Fund. Finally, the act repeals a provision that required, beginning January 1, 2014, the Treasurer to annually certify to the Tax Commissioner the amount of money in the Fund.

#### **Wireless 9-1-1 Administrative Fund**

(R.C. 128.53(A) and 128.54(A)(1)(b), (2)(b), and (3))

The act provides, that until January 1, 2014, 2% of the remittances from wireless 9-1-1 charges are credited to the Wireless 9-1-1 Administrative Fund. This differs from former law which required the amount credited to the Fund to be an amount determined by the PUCO chairperson that is a "sufficient percentage" not to exceed 2%.

Under the act, the Fund is to be used by the Steering Committee, instead of PUCO. The Fund may be used for nonpayroll costs and payroll costs (at the discretion of the Steering Committee) in carrying out the 9-1-1 service law. Former law specified that the Fund could be used, at PUCO's discretion, for payroll costs incurred in assisting the Coordinator in carrying out the specific provisions of the 9-1-1 service law governing the wireless 9-1-1 charges, remittances, audits, and compliance; the 9-1-1 service program and Coordinator; the Ohio 9-1-1 Council; and the Wireless 9-1-1 Advisory Board. The compensation of the Coordinator and the Coordinator's expenses also were paid from the Fund under prior law.

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<sup>7</sup> Former R.C. 4931.64, not in the act.





Under continuing law, beginning January 1, 2014, 1% of the remittances of the wireless 9-1-1 charges must be paid to the Wireless 9-1-1 Administrative Fund. Also beginning on that date, the Fund is to be used by the Tax Commissioner to defray the costs incurred in carrying out the 9-1-1 service law.

The act repeals a provision that required, beginning January 1, 2014, the Treasurer to credit the interest earned on the Fund to that Fund.

### **9-1-1 Program Fund**

(R.C. 128.54(A)(1)(c), (2)(c), and (4))

The act creates the 9-1-1 Program Fund to replace the Wireless 9-1-1 Public Safety Administrative Fund. Beginning January 1, 2014, 2% of the remittances of the wireless 9-1-1 charges must be credited to this Fund. The Fund is to be used by the Steering Committee to defray the costs incurred in carrying out the 9-1-1 service law. The act also repeals a provision that required, beginning January 1, 2014, the Treasurer to credit the interest earned on the *Wireless 9-1-1 Public Safety Administrative Fund* to that Fund. Although this fund is replaced by the 9-1-1 Program Fund, the act does not enact a similar interest-crediting requirement for the new 9-1-1 Program Fund.

### **Wireless 9-1-1 Public Safety Administrative Fund repeal**

(R.C. 128.54(A)(2)(c))

The act repeals the Wireless 9-1-1 Public Safety Administrative Fund as part of the transfer of duties from DPS to the Steering Committee. Prior law would have required 1% of wireless 9-1-1 charges to be deposited for use by DPS to defray DPS 9-1-1 service costs beginning January 1, 2014.

### **Next Generation 9-1-1 Fund**

(R.C. 128.54(A) and (B))

The act retains the requirement, beginning January 1, 2014, that any excess funds remaining in the administrative funds after paying administrative costs be transferred to the Next Generation 9-1-1 Fund each year.

The act also changes, as of January 1, 2014, the Next Generation 9-1-1 Fund from a custodial fund (in the custody, but not part, of the state treasury) to a fund in the state treasury.

The act repeals a provision that required the Treasurer to deposit or invest the moneys in the Fund in accordance with the state's Uniform Depository Act and any



other provision of law governing public moneys of the state. Also, the act changes to passive voice a provision that required the Treasurer to credit interest earned on the Fund to the Fund, requiring instead that the interest *be credited* to the Fund. Finally, the act repeals a provision that required the Treasurer to annually certify to the Tax Commissioner the amount of money in the Fund.

The act removes language that had expressly created the Fund prior to the act's effective date. Instead, the act contains a provision that expressly creates the Fund "[b]eginning January 1, 2014." But the act does not remove references in continuing law that pertain to the Fund's existence prior to January 1, 2014, implying that the Fund remains in existence despite the absence of creation language for the time prior to 2014.

### **9-1-1 Program Office**

(R.C. 128.40, 128.46, 128.53, and 128.55)

The act replaces the 9-1-1 service program with the 9-1-1 Program Office within the Department of Administrative Services. The Office is headed by an administrator who is appointed by and serves at the pleasure of the Director of Administrative Services. Under the act, the Administrator of the Office reports directly to the State Chief Information Officer, who is the chairperson of the Steering Committee. The Office is responsible for administering the Wireless 9-1-1 Government Assistance Fund until January 1, 2014.

The Administrator is temporarily responsible for receiving (1) remittances of wireless 9-1-1 charges collected by wireless service providers, resellers, and sellers and (2) assessments for failure to bill, collect, or remit the charges. The act does not specify any staffing assistance for the Administrator. Nor does it specify the duties of the Administrator for the period beginning January 1, 2014. (See "**Transfers from PUCO**" and "**Remittance of wireless 9-1-1 charges**" discussed above.)

### **9-1-1 service program and Ohio 9-1-1 Coordinator repeal**

(R.C. 128.40)

The act eliminates the 9-1-1 service program within PUCO headed by the Ohio 9-1-1 Coordinator. Under former law, the Coordinator was appointed by and reported to the PUCO chairperson. The Coordinator administered the Wireless 9-1-1 Government Assistance Fund, carried out duties as assigned by the PUCO chairperson based on recommended duties submitted by the Ohio 9-1-1 Council, and was allowed to be assisted by PUCO employees as assigned by the PUCO chairperson.

## **Ohio 9-1-1 Council and Wireless 9-1-1 Advisory Board repeal**

(R.C. 5507.65 and 5507.66)

The act repeals the Ohio 9-1-1 Council and the Wireless 9-1-1 Advisory Board. Under prior law, the Council was responsible for the following duties:

- Arbitrating or establishing, for 9-1-1 systems in Ohio, technical and operational standards consistent with recognized industry standards and federal law;
- Conducting research and making recommendations or reports regarding any wireline and wireless 9-1-1 issues, any improvements in the provision of service by 9-1-1 systems in Ohio, or any legislation or policies concerning such systems;
- Submitting names of nominees for the position of Coordinator to PUCO and recommending duties for the Coordinator; and
- Conducting and submitting, with recommendations to PUCO, a performance evaluation of the Coordinator.

The Wireless 9-1-1 Advisory Board had no duties under prior law, so its repeal affects no activities.

## **County 9-1-1 planning committee changes**

(R.C. 128.07 and 128.12)

The act repeals the requirement that a county 9-1-1 planning committee cease to exist if it does not adopt a final 9-1-1 plan by the deadline of nine months after the adoption of a resolution to convene the planning committee. It also repeals the option to convene a new planning committee if the first committee ceases to exist for failure to adopt a plan.

The act simplifies procedures for amending a final 9-1-1 plan. It removes the requirement that certain amendments be adopted in the same way as the final plan is adopted, including convening a 9-1-1 planning committee and developing a proposed plan prior to adopting an amended final plan. The types of amendments affected by this change include those proposing to do the following:

- Upgrade any part or all of a system from basic to enhanced wireline 9-1-1;
- Permit a regional council of government to operate a PSAP;



- Change the funding for a PSAP from among the alternatives under the 9-1-1 service law; and
- Provide that the state highway patrol or one or more PSAPs of another 9-1-1 system function as PSAPs for all or part of the territory of the system described in the final plan.

Under the act, these and most other amendments to the final plan may be made by an addendum approved by a majority of the planning committee at a meeting called for considering an addendum by the board of county commissioners.



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## DEPARTMENT OF AGING

### Record checks

- Makes a regional long-term care ombudsman program the responsible party for purposes of database reviews and criminal records checks for the regional program.
- Specifies that the database review and criminal records check requirements regarding community-based long-term care services covered by programs administered by the Ohio Department of Aging (ODA) apply to:
  - (1) A person applying for employment with (or referred by an employment service to) a community-based long-term care provider; and
  - (2) If ODA rules so require, a person already employed by (or referred to) such a provider when the person seeks or holds a direct-care position involving (a) in-person contact with one or more consumers or (b) access to one or more consumers' personal property or records.
- Applies the database review and criminal records check requirements to:
  - (1) Persons under final consideration for employment in a direct-care position with an area agency on aging (AAA), PASSPORT administrative agency (PAA), or subcontractor; and
  - (2) Persons referred to an AAA, PAA, or subcontractor by an employment service for a direct-care position.
- Permits the ODA Director to adopt rules applying the database review and criminal records check requirements to a person (1) employed in a direct-care position by an AAA, PAA, or subcontractor or (2) working in a direct-care position following referral by an employment service to an AAA, PAA, or subcontractor.
- Excludes from the database review and criminal records check requirements for direct-care positions persons whose sole duties are transporting individuals under a county or regional transit system.
- Provides that the database review and criminal records check requirements do not apply to individuals subject to the criminal records check requirement for individuals applying for direct-care positions with nursing homes, residential care facilities, county or district homes, or other Ohio Department of Health-regulated long-term care facilities or adult day-care programs.

- Provides that the ODA Director or the Director's designee may obtain the report of a criminal records check regarding an applicant for a direct-care position with a Department of Health-regulated long-term care facility if the facility is also a community-based long-term care services provider.

### **PASSPORT and Assisted Living programs**

- Requires ODA to establish new appeal procedures for the state-funded components of the PASSPORT and Assisted Living programs.
- Provides that, if the Choices Program is terminated, ODA is authorized to suspend new enrollments and transfer existing participants to either the PASSPORT program or an unified long-term services and support Medicaid waiver component.
- Requires an applicant for the Medicaid-funded or state-funded component of the Assisted Living Program to undergo an assessment to determine whether the applicant needs an intermediate level of care.
- Requires the Ohio Department of Medicaid to enter into an interagency agreement with ODA under which ODA performs assessments to determine if a person requires a nursing facility level of care.
- Permits ODA to design and utilize a payment method for PAA operations that includes a pay-for-performance component.
- Specifies that the spending for PAAs' site operating functions for PASSPORT, Choices, Assisted Living, and PACE are to be 105% of the level provided in fiscal year 2013.
- Requires the Medicaid payment rates for services provided under the PASSPORT program, other than adult day-care services, during fiscal years 2014 and 2015 to be not less than 98.5% of the Medicaid payment rates for the services in effect on June 30, 2011.
- Requires the Medicaid payment rates for adult day-care services provided under the PASSPORT program during fiscal years 2014 and 2015 to be 20% higher than the amount of the Medicaid payment rates for the services in effect on June 30, 2013.

### **Nursing homes**

- Requires ODA to implement a nursing home quality initiative to improve person-centered care and make available a list of quality improvement projects.

- Beginning July 1, 2013, requires nursing homes to participate every two years in at least one quality improvement project listed by ODA.
- Beginning July 1, 2015, requires nursing homes to participate in advance care planning and generally prohibits the use of overhead paging.

### **Board of Executives of Long-Term Services and Supports**

- Transfers the Board of Examiners of Nursing Home Administrators from the Ohio Department of Health to ODA and renames it the Board of Executives of Long-Term Services and Supports.
- Increases to 11 (from 9), the number of Board members and modifies the membership eligibility requirements.
- Requires the Board to enter into a written agreement with ODA for ODA to serve as the Board's fiscal agent.
- Creates the Board of Executives of Long-Term Services and Supports Fund and requires license and registration fees collected by the Board to be deposited to the credit of the Fund instead of the General Operations Fund.
- Requires the Board to create opportunities for education, training, and credentialing of nursing home administrators and others in leadership positions in long-term services and supports settings.
- Provides guidelines for the Board's agency transition, membership changes, and name change, including provisions governing the transfer of duties and obligations.

### **Other provisions**

- Bases the annual fee paid by a long-term care facility for support of regional ombudsman programs on the number of beds the facility was licensed or otherwise authorized to maintain for the previous year, rather than the number of beds maintained for use by residents.
- Eliminates the requirement that ODA prepare an annual report on individuals who, after long-term care consultations, elect to receive home and community-based services covered by ODA-administered Medicaid components.
- Replaces "ombudsperson" with "ombudsman" for ODA programs.



## **Ombudsman-related criminal records checks**

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

As a condition of employment with the Office of the State Long-Term Care Ombudsman program in a position that involves providing ombudsman services, an individual must undergo a database review and, unless the individual fails the database review and therefore cannot be employed, a criminal records check. An existing employee must undergo a database review and criminal records check only if so required by Ohio Department of Aging (ODA) rules.

### **Regional long-term care ombudsman programs**

The act distinguishes individuals applying for employment with, or employed by, the Office of the State Long-Term Care Ombudsman program from individuals applying for employment with, or employed by, regional long-term care programs. Under the act, regional programs have responsibilities regarding the database reviews and criminal records checks that had been assigned to the State Long-Term Care Ombudsman. For example, the State Long-Term Care Ombudsman, or the Ombudsman's designee, was required by prior law to provide information regarding the database reviews and criminal records checks to each individual under final consideration for employment in a position for which a database review and criminal records check must be conducted. Under the act, a regional long-term care ombudsman program, or the program's designee, must provide the information when the individual is under final consideration for employment in such a position with the regional program. The head of a regional program may not act as the program's designee when the head is the employee for whom a database review or criminal records check is being conducted.

### **System for Award Management web site**

Continuing law specifies various databases that are to be checked as part of a database review. The ODA Director is permitted to specify additional databases in rules. The Excluded Parties List System is one of the databases specified in statute. It is maintained by the U.S. General Services Administration. The act specifies that the Excluded Parties List System is available at the federal web site known as the System for Award Management.

### **Standards that permit a disqualified individual to be employed**

Prior law required the ODA Director to adopt rules specifying circumstances under which the State Long-Term Care Ombudsman program could employ an individual 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 who met personal character standards. The act requires instead that the ODA Director adopt rules specifying standards that an individual must meet for the State Long-Term Care Ombudsman or a regional long-term care ombudsman program to be permitted to employ the individual if the individual is found to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.

### **Community-based long-term care, AAA, and PAA record checks**

(R.C. 173.38 (primary), 109.57, 109.572, 173.14, 173.39, 173.391, 173.392, 3701.881, 3721.121, 5164.34, and 5164.342; Sections 110.20, 110.21, and 110.22)

Continuing law requires an individual to undergo a database review and criminal records check when the individual is under final consideration for employment with a community-based long-term care agency (renamed "provider" by the act) in a position that involves providing direct care to an individual, or is referred to such an agency by an employment service for such a position. (The criminal records check is unnecessary if the results of the database review show that the individual cannot be employed in the position.) The ODA Director is permitted to adopt rules also requiring individuals employed by providers in such positions to undergo database reviews and criminal records checks. A provider is a person or government entity that provides community-based long-term care services under an ODA-administered program. Community-based long-term care services are health and social services provided to persons in their own homes or in community care settings.

### **Direct-care positions**

As discussed above, continuing law's database review and criminal records check requirements apply to individuals under final consideration for employment in positions that involve providing direct care with (or referred by an employment service to) community-based long-term care agencies (providers), and, if so required by ODA rules, individuals already employed by providers. The act defines "direct-care position" as an employment position in which an employee has either or both of the following: (1) in-person contact with one or more consumers and (2) access to one or more consumers' personal property or records. "Direct-care position" does not include a person whose sole duties are transporting individuals under a county or regional transit system.<sup>8</sup>

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<sup>8</sup> R.C. Chapter 306.



## **Criminal records checks applied to AAAs, PAAs, and subcontractors**

The act requires additional individuals to undergo database reviews and criminal records checks. The additional individuals are individuals under final consideration for employment with (or referred by employment services to) any of the following in a full-time, part-time, or temporary direct-care position: (1) area agencies on aging (AAAs), (2) PASSPORT administrative agencies (PAAs), and (3) subcontractors.<sup>9</sup> The ODA Director is permitted to adopt rules requiring individuals to undergo database reviews and criminal records checks also when **employed** by AAAs, PAAs, and subcontractors in full-time, part-time, or temporary direct-care positions. The database reviews and criminal records checks are to be conducted for the additional individuals in the same manner as they are conducted for employees (if so required by rules) and prospective employees of community-based long-term care agencies (providers).

## **Subcontractors that are also home health agencies or waiver agencies**

Continuing law establishes similar database review and criminal records check requirements for home health agencies and waiver agencies. A home health agency is a person or government entity (other than a nursing home, residential care facility, hospice care program, or pediatric respite care program) that has the primary function of providing certain services, such as skilled nursing care and physical therapy, to a patient at a place of residence used as the patient's home. A waiver agency is a person or government entity that provides home and community-based services under a Medicaid waiver program, other than (1) such a person or government entity certified under the Medicare program and (2) an independent provider of those services.

It is possible for a community-based long-term care agency (provider) to also be a home health agency, waiver agency, or both. Continuing law provides that the database review and criminal records check requirements regarding providers do not apply to individuals subject to the database review and criminal records check requirements regarding home health agencies and that a provider that is also a waiver agency may provide for employees and prospective employees to undergo database reviews and criminal records checks in accordance with the requirements regarding waiver agencies rather than the requirements regarding providers. The ODA Director, or the Director's designee, may receive the results of a criminal records check conducted in accordance with the requirements regarding home health agencies or waiver agencies when the subject of the check is an employee or prospective employee of a provider that is also a home health agency or waiver agency.

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<sup>9</sup> The ODA Director is to define "subcontractor" in rules.



Similarly, it is possible for a community-based long-term care subcontractor to also be a home health agency or waiver agency. The act applies to such subcontractors the provisions discussed above regarding providers.

### **Exception for individual subject to other criminal records check**

Continuing law requires the chief administrator of a nursing home, residential care facility, county or district home, or other Ohio Department of Health-regulated long-term care facility and the chief administrator of an adult day-care program to request that the Superintendent of the Bureau of Criminal Identification and Investigation (BCII) conduct a criminal records check of each person under final consideration for employment with the facility or program in a direct-care position. The act provides that an individual who is subject to such a criminal records check is not also required to undergo a database review and criminal records check otherwise required for an individual under final consideration for employment with a community-based long-term care agency (provider) in a direct-care position. The ODA Director or the Director's designee is permitted by the act, however, to obtain the report of a criminal records check conducted for an individual under final consideration for a direct-care position with an Ohio Department of Health-regulated long-term care facility if the criminal records check is requested by the chief administrator of such a facility that is also a community-based long-term care agency (provider).

### **System for Award Management web site**

Continuing law specifies various databases that are to be checked as part of a database review. The ODA Director is permitted to specify additional databases in rules. The Excluded Parties List System is one of the databases specified in statute. It is maintained by the U.S. General Services Administration. The act specifies that the Excluded Parties List System is available at the federal web site known as the System for Award Management.

### **Standards that permit a disqualified individual to be employed**

Prior law required the ODA Director to adopt rules specifying circumstances under which a community-based long-term care agency (provider) could employ an individual 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 who met personal character standards. The act requires instead that the ODA Director adopt rules specifying standards that an individual must meet for a provider, subcontractor, AAA, or PAA to be permitted to employ the individual if the individual is found to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for a disqualifying offense.



## State-funded PASSPORT and Assisted Living programs – appeals

(R.C. 173.523, 173.545, and 173.56)

### Appeal procedures

The act requires ODA to adopt rules establishing new procedures for appeals of adverse actions related to services requested or provided under the state-funded components of the PASSPORT and Assisted Living programs. The rules are to be adopted under R.C. 111.15, which does not require public notice or hearings on proposed rules.

The rules ODA is to adopt for appeals must require notice and an opportunity for a hearing. They may allow appeal hearings to be conducted by telephone and permit ODA to record telephone hearings. Revised Code Chapter 119., which establishes procedures for appeals of administrative rulings, is to apply to hearings only to the extent provided for in the rules.

An appeal is commenced by submission of a written request for a hearing to the ODA Director within the time specified in the rules adopted by ODA. The hearing may be recorded, but neither the recording nor a transcript of the recording is part of the official record of the proceeding. The Director must notify the individual bringing the appeal of the Director's decision and of the procedure for appealing the decision.

The Director's decision may be appealed to a court of common pleas. The appeal is to be governed by the Administrative Procedure Act (R.C. Chapter 119.) except as follows:

(1) The appeal is to be in the court of common pleas of the county in which the individual who brings the appeal resides or, if the individual does not reside in Ohio, to the Franklin County common pleas court.

(2) The notice of appeal must be mailed to ODA and filed with the court not later than 30 days after ODA mails notice of the Director's decision. For good cause shown, the court may extend the time for mailing and filing the notice of appeal, but the time cannot exceed six months from the date ODA mails the notice of the Director's decision.

(3) If the court grants an individual's application for designation as an indigent, the individual is not to be required to furnish the costs of the appeal.

(4) ODA is required to file a transcript of the testimony of the state hearing with the court only if the court orders that the transcript be filed. The court may make such an order only if it finds that ODA and the individual bringing the appeal are unable to



stipulate to the facts of the case and that the transcript is essential to a determination of the appeal. ODA must file the transcript not later than 30 days after such an order is issued.

### **When an appeal may be brought**

Under the act, an individual who is an applicant for or participant or former participant in the state-funded component of the PASSPORT or Assisted Living program may appeal an adverse action taken or proposed to be taken by ODA or an entity designated by ODA concerning participation in or services provided under the component if the action will result in any of the following:

- (1) Denial of enrollment or continued enrollment in the component;
- (2) Denial of or reduction in the amount of services requested by or offered to the individual under the component;
- (3) Assessment of any patient liability payment pursuant to rules adopted by ODA.

The appeal is to be made in accordance with the act and rules adopted by ODA.

### **When an appeal may not be brought**

An appeal may not be brought by an individual if any of the following is the case:

- (1) The individual has voluntarily withdrawn the application for enrollment in the component;
- (2) The individual has voluntarily terminated enrollment in the component;
- (3) The individual agrees with the action being taken or proposed;
- (4) The individual fails to submit a written request for a hearing to the Director within the time specified in the rules;
- (5) The individual has received services under the component for the maximum time permitted.

## **Transfer of participants from Choices to PASSPORT**

(R.C. 173.53)

H.B. 153 of the 129th General Assembly required that federal permission be sought to create a unified long-term services and support Medicaid waiver program to provide home and community-based services to eligible individuals of any age who require the level of care provided by nursing facilities. H.B. 153 also provided that, should the waiver component be created, a determination is to be made as to whether the Choices program should continue to operate as a separate Medicaid waiver component or be terminated.

The act provides that, if the Choices program is terminated, ODA, no sooner than six months before Choices ceases to exist, is authorized to do both of the following:

(1) Suspend new enrollment in Choices;

(2) Transfer Choices participants to the unified long-term services and support Medicaid waiver component or, if that component is not created, transfer them to the Medicaid-funded component of the PASSPORT program.

### **Assisted Living Program assessments**

(R.C. 173.546 (primary), 173.42, 173.51, 173.54, 173.541, and 173.544)

The Assisted Living Program, which is administered by ODA, provides assisted living services to eligible individuals living in residential care facilities. The program has a Medicaid-funded component and a state-funded component.

An individual must need an intermediate level of care and meet other requirements to qualify for the Medicaid-funded or state-funded component of the Assisted Living Program. Under prior law, whether an individual needed an intermediate level of care was determined in accordance with an administrative rule. The act establishes in statute an assessment process for determining whether an individual needs an intermediate level of care.

The act's assessment process requires each applicant for the Medicaid-funded or state-funded component of the Assisted Living Program to undergo the assessment to determine whether the applicant needs an intermediate level of care. The assessment may be performed concurrently with a long-term care consultation provided under a program developed by ODA.

The Ohio Department of Medicaid (ODM) or an agency under contract with ODM is to conduct the assessments. ODM is permitted to contract with one or more





agencies to perform the assessments. A contract must specify the agency's responsibilities regarding the assessments.

An applicant or applicant's representative is given the right to appeal an assessment's findings. If an applicant is applying for the Medicaid-funded component of the Assisted Living Program, the appeal is to be made in accordance with an appeals process ODM is to select for the Medicaid program. The act defines "representative" as a person acting on behalf of an applicant for the Medicaid-funded or state-funded component of the Assisted Living Program. A representative may be a family member, attorney, hospital social worker, or any other person chosen to act on an applicant's behalf.

ODM or the agency under contract with ODM must provide written notice of the right to appeal to an applicant or applicant's representative and the residential care facility in which an applicant intends to reside if enrolled in the Assisted Living Program. The notice must include an explanation of the appeal procedures. ODM or the agency under contract with ODM is required to represent the state in any appeal of an assessment's findings.

### **Long-term care assessments**

(Section 209.20)

Continuing law provides that a Medicaid recipient who applies or intends to move to a nursing facility may be required to undergo an assessment to determine if the recipient requires a nursing facility level of care. ODM must conduct the assessment or contract with another entity to conduct the assessment. The act specifies that ODM is permitted to enter into an interagency agreement with ODA under which ODA is designated to perform these assessments.

### **Performance-based reimbursement for PASSPORT operations**

(Section 209.20)

PASSPORT administrative agencies provide assistance for the unified long-term care budget and administer programs on behalf of ODA. The act permits ODA to design and utilize a payment method for PASSPORT administrative agency operations that includes a pay-for-performance incentive component that is earned by a PASSPORT administrative agency when defined consumer and policy outcomes are achieved.

## Spending levels for PASSPORT administrative agencies' functions

(Section 323.53)

The act requires that for fiscal years 2014 and 2015, spending for PASSPORT administrative agencies' site operating functions relating to screening, assessments, general administration, and provider relations for the Medicaid waiver-funded PASSPORT program, Choices program, Assisted Living program, and PACE<sup>10</sup> program be at 105% of the level provided in fiscal year 2013.

## Payment rates for PASSPORT services

(Section 323.263)

The act requires that the Medicaid payment rates for services provided during fiscal years 2014 and 2015 under the PASSPORT program, other than adult day-care services, be not less than 98.5% of the Medicaid payment rates for the services in effect on June 30, 2011. The Medicaid payment rates for adult day-care services provided during fiscal years 2014 and 2015 are to be 20% higher than the amount of the Medicaid payment rates for the services in effect on June 30, 2013.

## ODA nursing home quality initiative

(R.C. 173.60)

For the purpose of improving the provision of person-centered care in nursing homes, the act requires ODA, with the assistance of the Office of the State Long-Term Care Ombudsman Program, to implement a nursing home quality initiative. "Person-centered care" means a relationship-based approach to care that honors and respects the opinions of individuals receiving care and those working closely with them.

The initiative is to include quality improvement projects that provide nursing homes with resources and on-site education promoting person-centered care strategies and positive resident outcomes, as well as other assistance designed to improve the quality of nursing home services. ODA may offer any of the projects and is to make available a list of the projects that may be used by nursing homes to comply with licensure requirements (see "**Nursing home licensure requirements**," below).

In addition to the quality improvement projects that ODA offers, ODA may include on the list projects offered by any of the following: (1) other state agencies, (2) a

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<sup>10</sup> "PACE" stands for the Program of All-inclusive Care for the Elderly, a component of the Medicaid program.



quality improvement organization under contract with the U.S. Secretary of Health and Human Services to provide peer review of the utilization and quality of health care services, (3) the Ohio Person-Centered Care Coalition, or (4) any other academic, research, or health care entity identified by ODA.

## **Nursing home licensure requirements**

(R.C. 173.60 and 3721.072)

The act adds the following to requirements that a nursing home must meet to maintain its license:

(1) Beginning July 1, 2013, requires each nursing home to participate biennially in at least one project identified by ODA as a project that improves person-centered care that nursing homes provide (see "**ODA nursing home quality initiative**," above).

(2) Beginning July 1, 2015, requires each nursing home to participate in advance care planning (the opportunity to discuss the resident's care goals on admission and quarterly thereafter) with each resident or, if the resident is unable to participate, the resident's sponsor.

(3) Beginning July 1, 2015, requires each nursing home to prohibit the use of overhead paging (sending audible announcements through an electronic sound amplification and distribution system throughout part or all of a nursing home to staff, residents, resident's families, or others) except when a nursing home permits the use of overhead paging for matters of urgent public safety or urgent clinical operations.

## **Board of Executives of Long-Term Services and Supports**

(R.C. 4751.01 to 4751.08 and 4751.10 to 4751.14; conforming changes in R.C. 149.43 and 1347.08)

The act transfers the Board of Examiners of Nursing Home Administrators from the Ohio Department of Health (ODH) to ODA and changes its name to the Board of Executives of Long-Term Services and Supports. The act defines "long-term services and supports settings" as any institutional or community-based setting in which medical, health, psycho-social, habilitative, rehabilitative, or personal care services are provided to individuals on a post-acute care basis.

## Board membership changes

(R.C. 4751.03)

The act modifies the number (formerly nine) and qualifications of Board members. Under the act, the Board is to consist of the following 11 members, all appointed by the Governor:

- Four members who are nursing home administrators, owners of nursing homes, or officers of corporations owning nursing homes, and who have an understanding of person-centered care and experience with a range of long-term services and supports settings;
- Three members (1) who work in long-term services and supports settings that are not nursing homes, and who have an understanding of person-centered care and experience with a range of long-term services and supports settings, and (2) at least one of whom also must be a home health administrator, an owner of a home health agency, or an officer of a home health agency;
- One member who is a member of the academic community;
- One member who is a consumer of services offered in a long-term services and supports setting;
- One member who is a representative of ODH designated by the ODH Director, who is involved in the nursing home survey and certification process;
- One member who is a representative of the Office of the State Long-Term Care Ombudsman, designated by the State Long-Term Care Ombudsman.

The act prohibits the following Board members from having or acquiring any direct financial interest in a nursing home or long-term services and supports settings: the member representing the academic community, the consumer member, and the members representing ODH and the Ombudsman.

Board members are to serve three-year terms, as provided in continuing law.

### **Board member transition**

(Section 515.40)

The act requires that, notwithstanding the provision describing the Board's membership above, the individuals serving as members of the Board of Examiners of Nursing Home Administrators (prior Board) on June 30, 2013, are to continue to serve as members of the Board of Executives of Long-Term Services and Supports (new Board). The expiration date of these members' terms is to be the date on which their terms as members of the prior Board are set to expire. At the time such members' terms expire, members are to be appointed to the new Board in accordance with the requirements outlined above.

Not later than September 29, 2013, the Governor is required to appoint to the new Board the member representing the academic community, the consumer member, and the members representing ODH and the Ombudsman. The initial terms for these members will end on May 27, 2014. After this initial term, the terms are to be for the duration provided above.

### **Board member compensation**

(R.C. 4751.03(E))

The act updates a provision of continuing law by stating that each Board member must be reimbursed for actual and necessary expenses incurred in the discharge of Board duties. Further, all Board members, except for the member designated by the ODH Director and the member designated by the Ombudsman, are to be paid in accordance with the salaries or wages designated by the Department of Administrative Services.<sup>11</sup>

### **Board administration and assistance**

(R.C. 4751.03(H))

The act clarifies that the Board must appoint a secretary with no financial interest in a long-term services and supports setting, instead of a nursing home. Additionally, the act eliminates the obligation of ODH to provide administrative, technical, or other services to the Board.

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<sup>11</sup> R.C. 124.15(J), not in the act.



## **Deposit of license and registration fees; creation of fund**

(R.C. 3701.83, 4751.04(A)(7), 4751.05, and 4751.14)

The act provides that the Board must pay the license and registration fees it collects into the Board of Executives of Long-Term Services and Support Fund, created by the act. Money in the Fund is to be used by the Board to administer and enforce the laws governing the Board. Investment earnings of the Fund are to be credited to the Fund.

Under prior law, license and registration fees were deposited into the state's General Operations Fund.

## **Education, training, and credentialing opportunities**

(R.C. 4751.04(A)(10))

The act requires the Board to create opportunities for the education, training, and credentialing of nursing home administrators and others in leadership positions who practice in long-term services and supports settings or who direct the practices of others in those settings. When creating these opportunities, the Board must do the following:

- Identify core competencies and areas of knowledge that are appropriate for nursing home administrators and others working within the long-term services and supports settings system, with an emphasis on leadership, person-centered care, principles of management within both the business and regulatory environments, and an understanding of all post-acute settings, including transitions from acute settings and between post-acute settings;
- Assist in the development of a strong, competitive market in Ohio for training, continuing education, and degree programs in long-term services and supports settings administration.

## **ODA to serve as the Board's fiscal agent**

(R.C. 4751.04(A)(9) and 4751.042)

The act requires the Board to enter into a written agreement with ODA for ODA to serve as the Board's fiscal agent.

### **Requirements under the written agreement**

Under the act, ODA is responsible for all the Board's fiscal matters and financial transactions, as specified in the written agreement. The written agreement must specify



the fees that the Board is to pay to ODA for services performed under the agreement. The act provides that such fees must be in proportion to the services performed for the Board by ODA. The act specifies that ODA, in its role as fiscal agent for the Board, must serve as a contractor of the Board, and does not assume responsibility for the debts or fiscal obligations of the Board.

The act requires ODA to provide the following services under the written agreement:

- Preparation and processing of payroll and other personnel documents that the Board approves;
- Maintenance of ledgers of accounts and reports of account balances, and monitoring of budgets and allotment plans in consultation with the Board;
- Performance of other routine support services, specified in the agreement, that ODA considers appropriate to achieve efficiency.

#### **Permitted terms of the written agreement**

Under the act, the written agreement between the Board and ODA may include provisions for the following:

- Any shared services between the Board and ODA;
- Any other services agreed to by the Board and ODA, including administrative or technical services.

#### **Board responsibilities regarding fiscal and administrative matters**

The act provides that the Board, in conjunction and consultation with ODA and relative to fiscal matters, has the sole authority to expend funds from the Board's accounts for programs and any other necessary expenses the Board may incur. Additionally, the act provides that the Board has a responsibility to cooperate with and inform ODA fully of all financial transactions.

Further, the act requires the Board to follow all state procurement, fiscal, human resources, information technology, statutory, and administrative rule requirements.





## **Additional Board transition procedures**

(Section 515.40)

The act sets out terms providing for the transition from the prior Board of Examiners of Nursing Home Administrators to the new Board of Executives of Long-Term Services and Supports, including provisions governing the following:

- The transition of assets and liabilities;
- The assumption of obligations and authority by the new Board;
- The effect of the transition on the rights, privileges, and remedies, and duties, liabilities, and obligations accrued by the prior Board and their transfer to the new Board;
- The transition of unfinished business that was commenced but not completed by the prior Board or the prior Board's secretary to the new Board or the new Board's secretary;
- The continuation of the prior Board's rules, orders, and determinations under the new Board;
- Subject to laws governing layoffs of state employees, the transition of employees of the prior Board who provide administrative, technical, or other services to the prior Board on a full-time, permanent basis to serve under the new Board and provisions requiring that these employees are to retain their positions and benefits, except that those employees in the classified service must be reclassified into the unclassified service and are to serve at the pleasure of the new Board;
- The interpretation of references to the prior Board in any statute, contract, or other instrument and deeming the references as applying to the new Board;
- The effect of the transition on pending court or agency actions or proceedings and required substitution of the new Board in the prior Board's place for such actions or procedures.

## **Long-term care facility bed fee**

(R.C. 173.26)

The act changes the number of beds used to determine a long-term care facility's annual bed fee. The fee, \$6 per bed, is paid to ODA for operation of regional long-term care ombudsman programs.

Under the act, the fee is based on the number of beds the facility was licensed or otherwise authorized to maintain during any part of the previous year. Under prior law, the fee was based on the number of beds maintained by the facility for use by residents during any part of the previous year.

The act eliminates the requirement that homes for the aging pay the annual fee. A home for the aging is a home that provides services as a residential care facility and as a nursing home.

## **Report on long-term care consultations**

(R.C. 173.425 (repealed))

Under ODA's long-term consultation program, individuals receive information about options available to meet long-term care needs and factors to consider when making long-term care decisions. The act eliminates a requirement that ODA prepare an annual report on individuals who are the subjects of long-term care consultations and elect to receive home and community-based services covered by ODA-administered Medicaid components. The report eliminated by the act addressed the following: (1) the total savings realized by providing the home and community-based services, rather than nursing facility services, (2) the average number of days the services were received before and after receiving nursing facility services, and (3) a categorical analysis of the acuity levels of the recipients of the services.

## **Replacing references to "ombudsperson"**

(R.C. 109.57, 173.14, 173.17, 173.19, 173.20, 173.21, 173.23, 173.25, 173.26, 173.27, 173.28, 173.99, 3721.027, 3721.12, 3721.16, 4751.03, 5119.22, and 5165.69)

The act replaces the term "ombudsperson" with "ombudsman" throughout the Revised Code for programs governed by ODA, such as the State Long-term Care Ombudsman Program.



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## DEPARTMENT OF AGRICULTURE

### **Agricultural easements; Farmland Preservation Advisory Board**

- Authorizes an agricultural easement acquired by the Director of Agriculture or a political subdivision or charitable organization that has received a matching grant from the Director to include a provision to preserve a unique natural or physical feature on the land if the use of the land remains predominantly agricultural.
- Requires one representative on the continuing Farmland Preservation Advisory Board to be from a nonprofit organization dedicated to the preservation of farmland rather than from a national nonprofit organization that is so dedicated.

### **Concentrated animal feeding facilities**

- Establishes a general prohibition in the Concentrated Animal Feeding Facilities (CAFF) Law against violations or failures to perform duties related to national pollutant discharge elimination system (NPDES) permits and the NPDES provisions of permits to operate issued under that Law.
- Establishes an additional general prohibition against violations or failures to perform duties under the CAFF Law that are not related to NPDES permits and permit provisions.
- Requires the Attorney General, upon the written request of the Director of Agriculture, to prosecute any person who violates either of the above prohibitions.
- Replaces the criminal penalties established in former law for violations of specified provisions of the CAFF Law with criminal penalties that are based on the culpable mental state of the violator, and establishes a different standard for actions that constitute acting negligently for purposes of those penalties.

### **Dogs and other companion animals**

- Beginning December 1, 2013, requires an individual to register a dog for one year, three years, or permanently, rather than requiring annual registration.
- Revises the fee structure for dog registrations by establishing a fee of \$2 for each year of registration for a one-year or three-year registration and a \$20 fee for permanent registration, rather than a fee of \$2 per registration.
- Requires that any dog registration fee increase adopted by a board of county commissioners be in the ratio of \$2 for each year of registration and in the ratio of



\$20 for a permanent registration rather than in the ratio of \$2 for each dog registration.

- Revises the formula for the transfer of a portion of such a county fee increase to the OSU College of Veterinary Medicine.
- Requires the county auditor to designate the color of dog registration tags, and eliminates the requirement that such tags had to be a different color each year.
- Authorizes a board of county commissioners, in lieu of appointing and employing a county dog warden and deputies, to appoint the county sheriff to enforce the laws governing dogs and prohibiting cruelty to animals.
- Requires the board, if it chooses to appoint the sheriff, to enter into a two-year written agreement with the sheriff for that purpose, and specifies that an agreement may authorize both of the following:
  - The sheriff to appoint sheriff's deputies or persons other than peace officers as deputy dog wardens; and
  - The transfer of any benefits accrued by employees who are transferred as a result of the county sheriff's being appointed as the county dog warden.
- Requires any dog warden and deputy dog wardens appointed in accordance with the act to comply with any training requirements applicable to county dog wardens and deputy dog wardens appointed or employed under continuing law governing dog wardens and with the requirements established in that law.
- Revises the general prohibition against negligently committing specified types of cruel treatment against a companion animal that applies to anyone who confines or is the custodian or caretaker of a companion animal.
- Specifically prohibits an owner, manager, or employee of a registered animal rescue for dogs, a boarding kennel, or a training kennel (hereafter dog kennel) who confines or is the custodian or caretaker of a companion animal from negligently committing specified acts of cruel treatment against a companion animal, a violation of which is a first degree misdemeanor on each offense.
- Specifically prohibits an owner, manager, or employee of a dog kennel who confines or is the custodian or caretaker of a companion animal from knowingly committing specified acts of cruel treatment against a companion animal, a violation of which is a fifth degree felony on each offense.



## **Apiaries**

- Credits money that is collected from registration fees and fines under the Apiaries Law to the continuing Plant Pest Program Fund rather than the GRF.
- Requires money credited to the Plant Pest Program Fund to be used to administer the Apiaries Law in addition to the Nursery Stock and Plant Pest Law as in continuing law.

## **Auctioneers**

- Exempts from licensure an approved bid calling contest that is conducted for the purposes of the advancement or promotion of the auction profession in Ohio and an auction at which a national or international bid calling champion appears, provided that certain conditions are met for each exemption.
- Makes technical changes in the Auctioneers Law to clarify that it applies to limited liability companies.

## **Agricultural commodity marketing programs**

- Revises the procedures governing the approval by the Director of Agriculture of an amendment to an agricultural commodity marketing program that was established before April 10, 1985.
- Establishes specific eligibility requirements for producers voting in a referendum held on a proposed egg marketing program or a proposed amendment to such a program.

## **Other animal provisions (PARTIALLY VETOED)**

- Specifies that the care and housing standards adopted by the Zoological Association of America, with which persons who are issued restricted snake possession and propagation permits must comply as provided in continuing law, are those that were in effect on September 5, 2012.
- Exempts an applicant for a wildlife propagation permit from the requirement to sterilize each male dangerous wild animal.
- Would have removed spider monkeys from the permitting and standards of care and housing requirements, but required a person that possesses one of those monkeys to register it with the Director (VETOED).

- Revises the procedure in accordance with which money in the High Volume Breeder Kennel Control License Fund is transferred to counties.

## **Agricultural easements; Farmland Preservation Advisory Board**

(R.C. 901.21, 901.22, and 901.23; Section 803.20)

The act authorizes the Director of Agriculture to include, in an agricultural easement acquired by the Director, a provision to preserve a unique natural or physical feature on the land so long as the use of the land remains predominantly agricultural. Similarly, an agricultural easement acquired as a result of a matching grant awarded by the Director may include a provision to preserve a unique natural or physical feature on the land so long as the use of the land remains predominantly agricultural.

Under continuing law, the Director, municipal corporations, counties, townships, and soil and water conservation districts may purchase or acquire by gift, devise, or bequest agricultural easements to retain the use of land predominantly in agriculture. Charitable organizations that are exempt from federal income taxation and organized for certain land preservation or protection purposes also may acquire and hold agricultural easements. If such a local government or a charitable organization cannot fund the purchase of an easement on its own, it may apply for a matching grant from the Director.

The act also alters the membership of the continuing Farmland Preservation Advisory Board by requiring one member to be a representative of a nonprofit organization dedicated to the preservation of farmland rather than of a national nonprofit organization dedicated for that purpose. The member that is serving on the Board representing the national nonprofit organization on September 29, 2013, must continue to serve until the expiration of the term for which the member was appointed. At the end of that term, a member must be appointed in accordance with the act.

## **Concentrated animal feeding facilities**

(R.C. 903.30 and 903.99)

The act establishes a general prohibition in the Concentrated Animal Feeding Facilities (CAFF) Law against violations of or failures to perform duties required by specified provisions governing national pollutant discharge elimination system (NPDES) permits and the NPDES provisions of permits to operate issued under that Law, related rules adopted and orders issued by the Director of Agriculture, and terms or conditions of NPDES permits issued by the Director. It also establishes a second

general prohibition against violations of or failures to perform duties required by specified provisions of that Law, rules adopted by the Director under that Law, and orders and terms or conditions of permits issued by the Director under that Law or rules adopted under it that are not related to NPDES permits and permit provisions.

The act requires the Attorney General, upon the written request of the Director, to prosecute any person who violates either of the above prohibitions. It then replaces the former criminal penalties for violations of specified provisions of the CAFF Law with the following criminal penalties:

(1) For negligent violations of the prohibition discussed above regarding NPDES permits and the NPDES provisions of permits to operate, a fine of not more than \$10,000, imprisonment for not more than 90 days, or both;

(2) For reckless violations of either of the prohibitions discussed above, a fine of not more than \$10,000, imprisonment for not more than one year, or both; and

(3) For knowing violations of either of the prohibitions discussed above, a fine of not more than \$25,000, imprisonment for not more than three years, or both. Additionally, the violator is guilty of a felony.

For purposes of the penalties discussed above for negligent violations, the act lowers the threshold for what constitutes negligence. It specifies that a person acts negligently when, because of a lapse from due care, the person fails to perceive or avoid a risk that the person's conduct may cause a certain result or may be of a certain nature. A person is negligent with respect to circumstances when, because of a lapse from due care, the person fails to perceive or avoid a risk that such circumstances may exist. Under the Criminal Code, a person instead acts negligently when, because of a *substantial* lapse from due care, the person fails to perceive or avoid a risk that the person's conduct may cause a certain result or may be of a certain nature. A person is negligent with respect to circumstances when, because of a *substantial* lapse from due care, the person fails to perceive or avoid a risk that such circumstances may exist. The Criminal Code's provisions establishing what actions constitute acting recklessly and knowingly apply to items (2) and (3), above.

With regard to violations of either of the prohibitions discussed above, the act specifies that each day of violation constitutes a separate offense.

Former law instead established penalties for violations of specific prohibitions in the CAFF Law. It only established a specific culpable mental state of knowing with regard to two of the prohibitions.





## **Dog registration**

(R.C. 955.01, 955.05, 955.06, 955.07, 955.08, 955.09, and 955.14; Section 812.10)

The act requires an individual to register a dog for a period of one year or three years or register the dog permanently. Former law instead required an individual to register a dog annually. The act makes necessary conforming changes to reflect the revised registration periods.

The act then revises the fee structure for dog registrations. First, it establishes a fee of \$2 for each year of registration for a one-year or three-year registration and a \$20 fee for a permanent dog registration. Under former law, the fee was \$2 per registration.

Additionally, law retained in part by the act authorizes a board of county commissioners to increase the dog registration fee in the ratio of \$2 for each dog registration. The act retains that authority, but requires that any dog registration fee increase adopted by a board be in the ratio of \$2 for each year of registration and in the ratio of \$20 for a permanent registration.

The act also revises law under which money is transferred to the Ohio State University College of Veterinary Medicine. Under the act, 10¢ from each one-year dog registration, 30¢ from each three-year dog registration, and \$1 from each permanent dog registration fee that is increased by a board of county commissioners, after the first increase using the prescribed ratio, must be transferred to the College. Under former law, 10¢ from each dog registration fee that was increased by a board of county commissioners, after the first such increase, was to be so transferred.

The act requires the county auditor to designate the color of dog registration tags and eliminates the requirement that such tags had to be a different color each year.

Finally, the act's provisions revising dog registration take effect December 1, 2013.

## **Appointment of county dog wardens**

(R.C. 955.12 and 955.121)

The act authorizes a board of county commissioners, in lieu of appointing a county dog warden and deputies under continuing law, to appoint the county sheriff to enforce the laws governing dogs and prohibiting cruelty to animals. If the board chooses to appoint the county sheriff as the county dog warden, the board must enter into a two-year written agreement with the sheriff for that purpose at the first meeting



in a calendar year following a general election in which at least one of the members of the board was elected.

The act specifies that an agreement may authorize both of the following:

(1) The sheriff to appoint sheriff's deputies or persons other than peace officers as deputy dog wardens; and

(2) The transfer of any benefits accrued by employees who are transferred as a result of the county sheriff's being appointed as the county dog warden.

The act also requires any dog warden and deputy dog wardens appointed in accordance with the act to comply with any training requirements applicable to county dog wardens and deputy dog wardens appointed or employed under continuing law governing dog wardens and with the requirements established in that law. Those requirements include the posting of a performance bond. The act also makes necessary conforming changes.

## **Cruel treatment of companion animals**

(R.C. 959.131, 959.132, and 959.99)

### **Negligently committing acts of cruel treatment against a companion animal**

#### **General prohibition**

The act revises the general statutory prohibition against negligently committing specified types of cruel treatment against a companion animal by prohibiting any person who confines or is the custodian or caretaker of a companion animal from negligently doing any of the following:

(1) Committing any act by which unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue, when there is a reasonable remedy or relief, against the companion animal;

(2) Omitting any act of care by which unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue, when there is a reasonable remedy or relief, against the companion animal;

(3) Committing any act of neglect by which unnecessary or unjustifiable pain or suffering is caused, permitted, or allowed to continue, when there is a reasonable remedy or relief, against the companion animal; or

(4) Needlessly killing the companion animal.



Rather than prohibiting the acts specified in items (1) to (4), above, former law prohibited any person who confined or was the custodian or caretaker of a companion animal from negligently torturing, tormenting, needlessly mutilating or maiming, cruelly beating, poisoning, needlessly killing, or committing an act of cruelty against a companion animal.

The act retains the prohibition in continuing law against negligently depriving a companion animal of necessary sustenance, confining the companion animal without supplying it during the confinement with sufficient quantities of good, wholesome food and water, or impounding or confining the companion animal without affording it, during the impoundment or confinement, with access to shelter from heat, cold, wind, rain, snow, or excessive direct sunlight if it can reasonably be expected that the companion animal would become sick or suffer in any other way as a result of or due to the deprivation, confinement, or impoundment or confinement in any of those specified manners.

Under law retained by the act, violation of the general prohibition against negligent treatment of companion animals is a second degree misdemeanor on a first offense and a first degree misdemeanor on each subsequent offense.

Under continuing law, a companion animal is any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept. A companion animal does not include livestock or any wild animal. The act adds a definition of "livestock" for that purpose. Under the act, "livestock" means horses, mules, and other equidae; cattle, sheep, goats, and other bovidae; swine and other suidae; poultry; alpacas; llamas; captive white-tailed deer as defined in the Division of Wildlife Law; and any other animal that is raised or maintained domestically for food or fiber.

#### **Prohibition – owners, managers, and employees of certain kennels**

The act additionally prohibits an owner, manager, or employee of an animal rescue for dogs, boarding kennel, or training kennel (hereafter dog kennel) who confines or is the custodian or caretaker of a companion animal from negligently committing any of the acts specified in items (1) to (4), above, or negligently depriving or confining the companion animal as discussed above. Violation of that prohibition is a first degree misdemeanor on each offense.

For purposes of the act's provisions regarding such dog kennels, an animal rescue for dogs is a rescue that is registered with the Director of Agriculture under continuing law. A boarding kennel is an establishment operating for profit that keeps, houses, and maintains dogs solely for the purpose of providing shelter, care, and feeding of the dogs in return for a fee or other consideration. A training kennel is an



establishment operating for profit that keeps, houses, and maintains dogs for the purpose of training the dogs in return for a fee or other consideration.

### **Knowingly committing acts of cruel treatment against a companion animal**

#### **Prohibitions**

The act prohibits an owner, manager, or employee of a dog kennel who confines or is the custodian or caretaker of a companion animal from knowingly committing any of the following acts:

(1) Torturing, tormenting, needlessly mutilating or maiming, cruelly beating, poisoning, needlessly killing, or committing an act of cruelty against the companion animal;

(2) Depriving the companion animal of necessary sustenance, confining the companion animal without supplying it during the confinement with sufficient quantities of food and water, or impounding or confining the companion animal without affording it, during the impoundment or confinement, with access to shelter if it is substantially certain that the companion animal would die or experience unnecessary or unjustifiable pain or suffering due to the deprivation, confinement, or impoundment or confinement in any of those specified manners.

Violation of the prohibition is a fifth degree felony on each offense.

The act retains the provision in continuing law that prohibits any person from knowingly torturing, tormenting, needlessly mutilating or maiming, cruelly beating, poisoning, needlessly killing, or committing an act of cruelty against a companion animal, a violation of which is a first degree misdemeanor on a first offense and a fifth degree felony on each subsequent offense.

#### **Additional court actions**

Through the operation and application of continuing statutes governing the treatment of companion animals, a court may order a person who is convicted of or pleads guilty to the prohibitions established by the act to forfeit to an impounding agency any or all of the companion animals in that person's ownership or care. The court also may prohibit or place limitations on the person's ability to own or care for any companion animals for a specified or indefinite period of time and may order the person to reimburse an impounding agency for the reasonably necessary costs incurred by the agency for the care of a companion animal that the agency so impounded, provided that the costs were not otherwise paid under those statutes. Additionally, if a court has reason to believe that a person who is convicted of or pleads guilty to the

prohibitions suffers from a mental or emotional disorder that contributed to the violation, the court may impose as a community control sanction or as a condition of probation a requirement that the offender undergo psychological evaluation or counseling, and the court must order the offender to pay the costs of the evaluation or counseling.

### **Exceptions**

The act applies to the prohibitions established by it the following exceptions in ongoing law to the continuing prohibitions against cruel treatment of a companion animal:

(1) A companion animal used in scientific research conducted by an institution in accordance with the federal Animal Welfare Act and related regulations;

(2) The lawful practice of veterinary medicine by a person who has been issued a license, temporary permit, or registration certificate under the Veterinarians Law;

(3) Dogs being used or intended for use for hunting or field trial purposes, provided that the dogs are being treated in accordance with usual and commonly accepted practices for the care of hunting dogs;

(4) The use of common training devices if the companion animal is being treated in accordance with usual and commonly accepted practices for the training of animals; and

(5) The administering of medicine to a companion animal that was properly prescribed by a person who has been issued a license, temporary permit, or registration certificate under the Veterinarians Law.

### **Apiaries**

(R.C. 909.15 and 927.54)

The act credits money that is collected from registration fees and fines under the Apiaries Law to the continuing Plant Pest Program Fund rather than the GRF. It then also requires money credited to the Plant Pest Program Fund to be used to administer the Apiaries Law in addition to the Nursery Stock and Plant Pest Law as in continuing law.

## **Auctioneers**

(R.C. 4707.02, 4707.073, and 4707.10)

The act adds the following exemptions to the continuing exemptions from the requirement to be licensed by the Department of Agriculture in order to act as an auction firm, auctioneer, or apprentice auctioneer:

(1) A bid calling contest that is approved by the State Auctioneers Commission and that is conducted for the purposes of the advancement or promotion of the auction profession in Ohio, provided that no compensation is paid to the sponsor of or participants in the contest other than a prize or award for winning the contest; and

(2) An auction at which the champion of a national or international bid calling contest appears, provided that the champion is not paid a commission and the auction is conducted under the direct supervision of an auctioneer licensed under the Auctioneers Law in order to ensure that the champion complies with the Law and rules adopted under it.

The act also makes technical changes in the Auctioneers Law to clarify that it applies to limited liability companies.

## **Agricultural commodity marketing programs**

(R.C. 924.02 and 924.06)

The act revises the procedures governing the approval by the Director of Agriculture of an amendment to any agricultural commodity marketing program, regardless of when the program was established, by requiring a majority of the producers who vote in a referendum on the amendment to vote in favor of the amendment in order for the Director to approve it. It then eliminates former law specifying that if a marketing program was established before April 10, 1985, one of the following results of a referendum had to occur in order for the Director to approve an amendment to the program:

(1) At least 66 and 2/3% of the producers who voted in the referendum had to vote in favor of the amendment and represent a majority of the volume of the affected commodity that was produced in the preceding marketing year by all producers who voted in the referendum; or

(2) A majority of the producers who voted in the referendum had to vote in favor of the amendment and represent at least 66 and 2/3% of the volume of the affected commodity that was so produced.



In addition, the act specifies that, for the purposes of a referendum held on a proposed egg marketing program or a proposed amendment to such a program, an eligible producer, i.e. a producer who is eligible to vote in a referendum, is a person who is in the business of producing and marketing, or causing to be produced and marketed, eggs from a flock of more than 75,000 domesticated chickens and, if the referendum is held on a proposed amendment to a program, is subject to an assessment under the program. Consequently, the act excludes such an egg marketing program from the requirement in continuing law that the Director determine the eligibility of agriculture commodity producers to participate in referendums and other procedures that may be required to establish marketing programs for agricultural commodities.

### **Dangerous wild animals and restricted snakes (PARTIALLY VETOED)**

(R.C. 935.01, 935.03, 935.041, 935.07, and 935.12)

The act specifies that the care and housing standards adopted by the Zoological Association of America, with which persons who are issued restricted snake possession and propagation permits must comply as provided in continuing law, are those that were in effect on September 5, 2012. Prior law did not specify an effective date of those standards.

In addition, the act exempts an applicant for a wildlife propagation permit from the requirement to sterilize each male dangerous wild animal possessed by the applicant.

The Governor vetoed a provision that would have removed spider monkeys from permitting and standards of care and housing requirements, but required a person that possesses one of those monkeys to register it with the Director in accordance with that Law. The Governor also vetoed conforming changes.

### **High Volume Breeder Kennel Control License Fund**

(R.C. 956.07 and 956.18)

The act revises the procedure by which money in the High Volume Breeder Kennel Control License Fund is transferred to counties. Under the act, the Director of Agriculture must use \$50 of the application fee submitted by a high volume dog breeder, which is credited to the Fund, or an amount equal to the fee collected for the registration of a dog kennel that is charged by the county in which the high volume breeder is located or will be located, whichever is greater, to reimburse that county. Under former law, the Treasurer of State was required to transfer the applicable amount to a county.





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## JOINT COMMITTEE ON AGENCY RULE REVIEW

- Authorizes the Joint Committee on Agency Rule Review to direct the Director of the Legislative Service Commission to remove obsolete administrative rules from the Administrative Code.

### Removal of obsolete rules from Administrative Code

(R.C. 103.0521)

Under the act, an administrative rule currently in effect is obsolete if (1) the rule was adopted by an agency that is no longer in existence and (2) jurisdiction over the rule has not been transferred to another agency. If that status is verified by the Executive Director of the Joint Committee on Agency Rule Review (JCARR), the Executive Director must prepare, for consideration by JCARR, a motion directing the Director of the Legislative Service Commission (LSC Director) to remove the obsolete rule from the Administrative Code. The Executive Director must transmit a copy of the motion to the Common Sense Initiative Office before JCARR's next meeting.

The chairperson of JCARR, or another member of JCARR delegated by the chairperson, must offer the motion at the next JCARR meeting. If the motion is agreed to by JCARR, the Executive Director must transmit a copy of the motion to the LSC Director. The Executive Director must certify on the transmitted copy that the motion was agreed to by JCARR.

Upon receiving the certified motion, the LSC Director must remove the obsolete rule from the Administrative Code, as directed in the motion. The LSC Director thereafter must maintain the removed obsolete rule in a file of obsolete rules. The file of obsolete rules can be maintained in electronic form.

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## AIR QUALITY DEVELOPMENT AUTHORITY

- Expands the types of air quality facilities that may be acquired or financed by the Ohio Air Quality Development Authority to include any property, device, or equipment related to the recharging or refueling of vehicles that promotes the reduction of air contaminant emissions by using an alternative fuel or a renewable energy resource.

### **Air quality facilities**

(R.C. 3706.01)

The act expands the types of air quality facilities that may be acquired or financed by the Ohio Air Quality Development Authority. Under the act, those facilities include any property, device, or equipment related to the recharging or refueling of vehicles that promotes the reduction of emissions of air contaminants into the ambient air through the use of an alternative fuel or the use of a renewable energy resource.



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## ATTORNEY GENERAL

### Protection of state liens in action for judicial sale of real estate

- Generally requires that a party seeking a judicial sale of real estate include a state lienholder as a party defendant unless no state lien has been recorded against the owner of the real estate.
- Presumes the appearance of the state lienholder for jurisdictional purposes.
- Requires the court to take judicial notice that the state has a lien against the real estate subject to a judicial sale.
- Allows the state lienholder to file an answer to the complaint or any other pleading if the amount, validity, or priority of the state lien is not identified as disputed, and requires the state lienholder to file an answer if the amount, validity, or priority of the state lien is identified as disputed.
- Requires that, as part of any order confirming the sale of the real estate that is subject to any undisputed state lien or distributing the proceeds of any judicial sale of real estate, the undisputed state lien is protected as if the state had appeared in the action and filed an answer asserting the state lien.
- Requires that notice be given to the state lienholder and the Attorney General if any party asserts a dispute as to the amount, validity, or priority of the state lien or of any lien or other interest that has priority over the state lien.
- Requires that the interest of any undisputed state lien transfer to the proceeds of the sale of the real estate.

### Annual law enforcement agency report

- Eliminates requirements that a law enforcement agency that receives fine moneys for its role in arresting and prosecuting an offender for certain drug offenses prepare an annual report that cumulates the agency's records with regard to the receipt and expenditure of the fine moneys and send a copy of the report to the Attorney General.
- Eliminates the requirement that the Attorney General notify the President of the Senate and Speaker of the House that the Attorney General has received the required annual reports described above.

## **State Victims Assistance Advisory Council**

- Adds two members to the State Victims Assistance Advisory Council.

### **Rape crisis programs**

- Defines "rape crisis program" as any of the following: (1) the federally designated nonprofit state sexual assault coalition, (2) a victim witness assistance program operated by a prosecuting attorney, or (3) a governmental or nonprofit program that provides a full continuum of services to victims of sexual assault, that does not provide medical services, and that may refer victims to physicians for medical care but does not engage in or refer for services for which the use of genetic services funds is prohibited.
- Creates the Rape Crisis Program Trust Fund, consisting of specified fines and fees imposed by the act, appropriations, and donations, to help fund rape crisis programs, states the purposes for which the funds may be used, and requires the Attorney General to adopt rules concerning the Fund.
- Authorizes a court to impose a discretionary fine of \$50 to \$500 on a person convicted of a sexually oriented or child-victim oriented felony offense, with the fine money going to the Fund.
- Establishes a one-time additional \$100 sex offender registration fee, authorizes the Attorney General to recover unpaid fees, and authorizes a court that imposes a community control sanction on a person convicted of a sexually oriented or child-victim oriented offense to make payment of the fee a condition of community control.

### **Protection of state liens in actions for judicial sale of real estate**

(R.C. 2329.192)

The act requires that, in every action seeking the judicial sale of real estate that is subject to a state lien, all of the following apply:

(1) The party seeking a judicial sale must include the state lienholder as a party defendant and must serve that state lienholder with a copy of the preliminary judicial report or commitment for an owner's fee policy of title insurance filed in accordance with the law regarding preliminary judicial reports related to a judicial sale of real estate.



(2) A state lienholder cannot be made a party defendant if no state lien has been recorded against the owner of the real estate for which the judicial sale is sought.

(3) The appearance of the state lienholder is presumed for purposes of jurisdiction, and the court must take judicial notice that the state has a lien against the real estate.

(4) A state lienholder may, but is not required to, file an answer to the complaint or any other pleading in the action if the amount, validity, or priority of the state lien is not identified in the pleadings as disputed and must file an answer to the complaint or any other pleading in the action if the amount, validity, or priority of the state lien is identified in the pleadings as disputed. If a state lien is not identified as disputed, unless the state files an answer or other responsive pleading, the party seeking the judicial sale is not required to serve the state lienholder with any answer or subsequent pleadings in the action for judicial sale.

(5) As part of any order confirming the sale of the real estate that is subject to any undisputed state lien or distributing the proceeds of any judicial sale of real estate, the undisputed state lien must be protected as if the state had appeared in the action and filed an answer asserting the validity of the state lien as recorded in the office of the clerk of the county court or the office of the county recorder.

(6) Any party asserting a dispute as to the amount, validity, or priority of the state lien or of any lien or other interest that has priority over the state lien must serve the state lienholder and the Attorney General with notice of the dispute. The state lienholder is permitted to file a responsive pleading and participate in the proceedings as if the state lienholder had been served with a summons on the date the state lienholder received notice of the dispute.

Upon the judicial sale of the real estate that is the subject of an action described above, the interest of any undisputed state lien must transfer to the proceeds of the sale of the real estate. The state lienholder is entitled to payment from the proceeds of the sale of the real estate in accordance with the state lienholder's priority as set forth in the final judicial report or commitment for an owner's fee policy of title insurance filed in accordance with continuing law.

The act defines "state lien" as a lien upon real estate of persons indebted to the state in any manner recorded by a state agency in any office of the clerk of a county court or the county recorder. A "state lienholder" is the department, agency, or other division of the state in whose name a state lien has been filed or recorded.



## **Annual law enforcement agency report on receipt and use of fine moneys**

(R.C. 2925.03)

Law largely unchanged by the act requires a law enforcement agency to keep detailed financial records on the receipt of any fine moneys that it receives because of its role in arresting and prosecuting persons who violate drug trafficking offenses or commit certain felony violations of drug abuse offenses and to keep detailed records of the general types of expenditures made out of those fine moneys and the specific amount of each general type of expenditure, with the exception of expenditures made in an ongoing investigation. The financial records are public records.

The act eliminates a requirement that a law enforcement agency that receives these fine moneys prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by the agency that pertain to the receipt and expenditure of the fine moneys for that calendar year and send a copy of the report to the Attorney General by the first day of March of the next calendar year. The requirement provides that the reports are public records.

The act eliminates a related requirement that the Attorney General send a written notice by April 15 of the calendar year in which the Attorney General receives the law enforcement agencies' cumulative reports to the President of the Senate and the Speaker of the House that indicates that the Attorney General has received these reports, that the reports are public records open for inspection, and that the Attorney General will provide a copy of any of the reports to the President or the Speaker upon request.

## **State Victims Assistance Advisory Council**

(R.C. 109.91)

The act adds two members to the State Victims Assistance Advisory Council, which is affiliated with the Attorney General's Office. One new member must represent the interests of individuals with mental illness, and the other must be either a board member of any statewide or local organization that exists primarily to aid victims of sexual violence or an employee of or a counselor for an organization that exists primarily to aid victims of sexual violence.

## **Rape crisis programs**

(R.C. 109.921, 307.515, 311.172, 2929.18, and 2950.012)

The act creates a funding mechanism for rape crisis programs.

For purposes of the act, a "rape crisis program" is any of the following:



(1) The nonprofit state sexual assault coalition designated by the Center for Injury Prevention and Control of the federal Centers for Disease Control and Prevention;

(2) A victim witness assistance program operated by a prosecuting attorney;

(3) A program operated by a government-based or nonprofit entity that provides a full continuum of services to victims of sexual assault (see below), including hotlines, victim advocacy, and support services from the onset of the need for services through the completion of healing, that does not provide medical services, and that may refer victims to physicians for medical care but does not engage in or refer for services for which the use of genetic services funds is prohibited by R.C. 3701.511 (i.e., counseling or referring for abortion, except in the case of a medical emergency).

"Sexual assault" means any of the following:

(1) A violation of R.C. 2907.02 (rape), 2907.03 (sexual battery), 2907.04 (unlawful sexual conduct with a minor), 2907.05 (gross sexual imposition), or former 2907.12 (felonious sexual penetration);

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

### **Rape Crisis Program Trust Fund**

The act creates the Rape Crisis Program Trust Fund in the state treasury. The Fund, administered by the Attorney General, consists of specified discretionary fines created by the act and sex offender registration fees created by the act that are paid into the Fund (see "**Discretionary fine and Sex offender registration fee**," below) and any money appropriated to the Fund by the General Assembly or donated to the Fund. The Attorney General may use not more than 5% of the money in the Fund to pay Fund-related administrative costs and must use at least 95% of the money to provide funding to rape crisis programs. The act requires the Attorney General to adopt rules under R.C. Chapter 119. that establish procedures for rape crisis programs to apply for funding out of the Fund and for the Attorney General to distribute the money to programs. The Attorney General may decide upon an application for funding out of the Fund without a hearing. A decision to grant or deny funding is final and not appealable under the Administrative Procedure Act (R.C. Chapter 119.) or any other provision of the Revised Code.

A rape crisis program that receives money from the Fund must use it only for the following purposes:





(1) If the program is the nonprofit state sexual assault coalition, to provide training and technical assistance to service providers;

(2) If the program is a victim witness assistance program, to provide victims of sexual assault with hotlines, victim advocacy, or support services;

(3) If the program is a government-based or nonprofit entity that provides a full continuum of services to victims of sexual assault, to provide those services and education to prevent sexual assault.

### **Additional fine**

The act authorizes a court that imposes a sentence on a person convicted of a felony sexually oriented offense or felony child-victim oriented offense to impose a fine of \$50 to \$500 in addition to any other fine that is or may be imposed. Additional fine money collected by the court under this provision must be forwarded to the Treasurer of State not later than the 20th day of the month after the month in which the money is collected for deposit into the state treasury to the credit of the Rape Crisis Program Trust Fund.

### **Sex offender registration fee**

The act requires a sheriff to charge a one-time fee of \$100 when a person, who on or after September 29, 2013 (the act's 90-day effective date) is convicted of an offense for which registration is required by the Sex Offender Registration and Notification Law, first registers under the Law as a sex offender or child-victim oriented offender (i.e., following a conviction for committing a sexually oriented offense or child-victim oriented offense or an adjudication of delinquency for committing a sexually oriented offense or child-victim oriented offense if the juvenile court subjects the child to the Law). The fee is in addition to the optional fee that a sheriff may charge under R.C. 311.171. A sheriff may not refuse to register a person who does not pay the fee. At the end of each calendar year, the sheriff must report to the Attorney General all fees that have been due and unpaid for more than one year and that the sheriff has not previously reported. The act authorizes the Attorney General to recover those fees in a civil action.

The act requires the sheriff to transmit on or before the 20th day of the following month all the fee money collected during a month to the county treasurer. Within 60 days after receipt, the county treasurer must transit the money to the Treasurer of State to be credited to the Rape Crisis Program Trust Fund.

The act authorizes a court that sentences a person who commits a sexually oriented offense or a child-victim oriented offense to a community control sanction to make payment of the registration fee impose by the act a condition of the sanction.



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## AUDITOR OF STATE

- Eliminates the special exception that excused the Auditor of State from preparing a rule summary and fiscal analysis of proposed auditing rules.
- Authorizes the Auditor of State to send notices of the public hearing on proposed auditing rules and to transmit copies of proposed auditing rules by electronic mail.

### **Auditor of State rule-making**

(R.C. 111.15 and 117.20)

The act eliminates the special exception that excuses the Auditor of State from preparing a rule summary and fiscal analysis (RSFA) of proposed auditing rules, thereby bringing the procedure for adopting auditing rules into conformity with general rule-making procedures, which require an RSFA to be prepared. An RSFA is a form that is completed in the course of preparing a proposed rule. The RSFA is filed along with the proposed rule, and assists the public and the Joint Committee on Agency Rule Review in reviewing the proposed rule.

The act authorizes the Auditor of State to send notices of the public hearing on proposed auditing rules and to transmit copies of proposed auditing rules by electronic mail. Under prior law, the notices and proposed rules had to be sent by mail.



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## BARBER BOARD

- Extends, from three to six years, the time period in which the holder of an expired license to practice as a barber or to be a barber teacher or assistant barber teacher may apply to have the license restored without examination.

### Restoration of expired license

(R.C. 4709.11)

Under continuing law, every license issued by the Barber Board expires on August 1 of each even-numbered year. A holder of an expired license must restore the holder's license before continuing the practice for which the holder is licensed and pay a restoration fee. The act increases the time period in which the holder of an expired license to practice as a barber, or to be a barber teacher or assistant barber teacher, may apply to have the license restored without having to take an examination, from three years under former law to six years under the act.



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## BROADCAST EDUCATIONAL MEDIA COMMISSION

- Renames and reconstitutes the former eTech Ohio Commission (eTech) as the Broadcast Educational Media Commission (BEMC) and transfers all of eTech's educational broadcasting services to BEMC.
- Of eTech's duties not transferred to BEMC, transfers some to the Chancellor of the Board of Regents and to the Department of Education, and eliminates others.
- Allows for the continuation of some former eTech employees with BEMC and the transfer of other eTech employees to the Department or the Chancellor.
- Terminates all terms of members of the former eTech Ohio Commission on June 30, 2013, and modifies the membership of, and the initial terms of office for, the newly constituted BEMC, whose members begin their terms of office on July 1, 2013.
- Eliminates the law requiring eTech state technology plan, the Interactive Distance Learning Pilot Project, the Education Technology Trust Fund, and the Information Technology Service Fund.

### Reconstitution of eTech as the BEMC

(R.C. 3353.01 to 3353.04, 3353.06, and 3353.07; conforming changes in R.C. 125.05, 3313.603, 3314.074, 3317.06, 3317.50, 3317.51, 3319.22, 3319.235; Sections 263.470, 278.20, and 363.570; Section 4 of S.B. 171 of the 129th General Assembly, amended in Sections 610.20 and 610.21)

The act renames and reconstitutes the former eTech Ohio Commission as the Broadcast Educational Media Commission (BEMC), effective July 1, 2013. On that date, all duties and rules of eTech related to the state's educational broadcasting services, including educational television and radio and radio reading services, are transferred to the new BEMC. Duties not transferred to BEMC as a result of this reconstitution are either eliminated or transferred to the Chancellor of the Board of Regents or the Department of Education.

The act permits the Director of Budget and Management to implement budgetary changes made necessary by the reconstitution of the former eTech as BEMC and by the transfer of duties to the Chancellor or the Department.

## **Elimination of duties**

(R.C. 3353.02(G), 3353.04(A), and 3353.06(B); Section 278.20)

Five specific duties of the former eTech are eliminated by the act and, therefore, do not continue as duties of the newly constituted BEMC. The eliminated duties include (1) making grants for technical assistance and professional development to enable schools, educational institutions, and affiliates to utilize educational technology, (2) establishing a reporting system for entities that receive the grants, (3) ensuring that products of an entity that receives financial assistance from the Commission that are intended for use in elementary and secondary schools are aligned with statewide academic standards, (4) using money accredited to the Affiliates Services Fund for professional development programs and services, and (5) establishing advisory committees regarding educational technology issues and needs.

In addition to the duties described above, the act specifies that any duties that are not related to the state's educational broadcasting services or are not specifically transferred to the Chancellor or the Department are eliminated.

## **Transfer of duties**

(R.C. 125.05, 3314.074, 3317.50, 3317.51, and 3319.235; Sections 263.470 and 363.570)

The act transfers certain duties of the former eTech to either the Chancellor or to the Department of Education. The transferred duties relate mainly to professional development programs for educators on technology, the administration of funds used to make technology grants to schools, and hardware and software supplies for schools.

The act transfers specific duties to the Chancellor, including (1) in consultation with the Department, the establishment of professional development programs to assist educators in integrating technology in education and providing technical assistance to schools in order to establish such programs, (2) the administration of the Telecommunity Fund to finance technology grants to elementary and secondary schools, and (3) the administration of the Distance Learning Fund to finance technology grants to eligible school districts. (However, Section 363.570 of the act instructs the Director of Budget and Management to transfer the cash balance in the Telecommunity Fund to the Distance Learning Fund and abolishes the Telecommunity Fund.)

Additionally, duties specifically transferred to the Department include (1) the purchase of software supplies and services for specified school districts at a reduced price and (2) the redistribution of software and hardware supplies that were originally leased by the former Ohio SchoolNet Commission or the former eTech and are returned by a permanently closed community school.



## **Continuation and transfer of employees**

(Sections 263.470, 278.20, and 363.570)

The act permits the newly constituted BEMC to retain, at its discretion, any employee of the former eTech who was previously assigned to activities related to the state's educational broadcasting services (including educational television, radio, or radio reading services). Employees who are retained continue with the newly constituted BEMC and retain their positions and benefits. In addition, some of the former eTech employees may be transferred to either the Department or the Chancellor in order to administer those activities transferred to the Department or the Chancellor.

The act specifies that all of the employee transfers and continuations described above are subject to the normal layoff provisions of state law. Furthermore, under continuing law, the act specifies that any employee who was included in a bargaining unit with one of the former eTech's predecessor agencies retains all previous collective bargaining rights.

### **Membership of the Commission**

(R.C. 3353.02; Section 278.20)

The act terminates the terms of office of all members of the former eTech Ohio Commission on June 30, 2013, and specifies that members of the newly constituted BEMC begin their terms on July 1, 2013.

The act also modifies the membership structure of BEMC from that of the former eTech. First, it specifies that the Commission must consist of 15 (rather than 13) members, 11 (rather than nine) of whom are voting members. Of the 11 voting members, nine (rather than six) must be members of the public, who must be selected from among the leading citizens in the state who have an interest in educational broadcast media, demonstrated through service on boards or advisory councils of educational television stations, educational radio stations, educational technology agencies, or radio reading services. Additionally, of the nine public voting members, three (rather than four) must be appointed by the Governor with the advice and consent of the Senate, three (rather than one) must be appointed by the Speaker of the House, and three (rather than one) must be appointed by the President of the Senate. No more than two members appointed each by the Speaker and the President may be from the same political party.

As with prior law for the former eTech, the Superintendent of Public Instruction and the Chancellor, or other designees, are voting members of BEMC, and four legislative members remain as nonvoting members. But the act removes the State Chief





Information Officer as a member. Finally, the act requires that the Governor appoint a chairperson of the Commission from the Commission's *public* voting members, rather than from any of its voting members as in the case of prior law pertaining to eTech. (As a result, the Superintendent or Chancellor could not be appointed as chairperson.)

In order to provide for staggered terms of office, the act modifies the initial terms of office. One member each appointed by the Governor, the Speaker, and the President will initially serve one year. One member each appointed by the Governor, the Speaker, and the President will initially serve two years. Finally, one member each appointed by the Governor, the Speaker, and the President will initially serve three years. Thereafter, members serve four-year terms.

### **State technology plan**

(Repealed R.C. 3353.09)

The former eTech was charged with developing, implementing, and updating a state technology plan "to create an aligned educational technology system" from preschool through higher education. The Commission was required to consult with the State Board of Education in the plan's development and modification.

The act eliminates the requirement for this plan.

### **Interactive Distance Learning Pilot Project**

(Repealed R.C. 3353.20)

H.B. 1 of the 128th General Assembly, in 2009, required the former eTech, with assistance from the Department and the Chancellor, to establish an interactive distance learning pilot project to provide at least three courses free of charge to high schools.

The act eliminates this requirement.

### **Education Technology Trust Fund; Information Technology Service Fund**

(Repealed R.C. 183.28 and 3353.15)

The act eliminates the Education Technology Trust Fund, which formerly held tobacco settlement moneys dedicated to educational technology. It also eliminates the Information Technology Service Fund. The latter fund was created in 2011 by H.B. 153 to hold money received by eTech from educational entities for the provision of information technology services.

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## OFFICE OF BUDGET AND MANAGEMENT

### Office of Internal Audit changes

- Changes the name of the Office of Internal Auditing, within the Office of Budget and Management, to the Office of Internal Audit (OIA).
- Expands the number of state agencies for whom the OIA is required to conduct internal audit programs to include the Opportunities for Ohioans with Disabilities Agency, the Public Utilities Commission of Ohio, the Adjutant General, and the State Lottery Commission.
- Permits the OIA, on request, to direct internal audits of any other organized body, office, or agency established by the laws of the state.
- Clarifies that the OIA is required to direct the internal audits of state agencies, rather than conduct the internal audits.
- Modifies the scope of internal audits directed by the OIA.
- Clarifies the application of the Public Records Law to certain documents produced or used as part of an internal audit conducted by the OIA.
- Moves to August 1, from July 1, the date by which the Office of Budget and Management must publish the Chief Internal Auditor's annual report.

### State Audit Committee

- Modifies the membership qualifications and duties of the State Audit Committee.

### State Lottery Commission internal audit plan

- Requires the State Lottery Commission to establish an annual internal audit plan, instead of an internal audit program, and to submit the plan to the OIA instead of the Auditor of State.
- Requires the Commission to submit its annual report on its internal audit work to the OIA for review and approval, instead of the Auditor, and eliminates the authority of the Auditor to prescribe the form and manner of the annual report.



## State appropriation limitation

- Provides that the state appropriation limitation for a fiscal year is to be increased by the amount of a non-GRF appropriation made in the immediately preceding fiscal year if the nongeneral revenue fund appropriation:
  - (1) Was made on or after July 1, 2013;
  - (2) Is included in the aggregate GRF appropriations proposed for that fiscal year; *and*
  - (3) Is being made for the first time from the GRF.

## Payments from the state treasury

- Authorizes the Director of Budget and Management to use electronic funds transfers to make payments from the state treasury.
- Eliminates a requirement that the Director of Administrative Services reimburse the Director of Budget and Management for certain costs related to making payments via direct deposit rather than drawing a paper warrant.

## Other provisions

- Permits the Director of Budget and Management, under certain circumstances, to transfer interest earned by any state fund to the GRF.
- Authorizes the Director, in each fiscal year, to transfer up to \$60 million in cash to the GRF from non-GRF funds that are not constitutionally restricted to ensure that GRF receipts and balances are sufficient to support GRF appropriations.
- Permits the Director to issue guidelines to agencies applying for federal money made available to the state for fiscal stabilization and recovery purposes.
- Prohibits cash transfers to the Income Tax Reduction Fund prior to July 1, 2015.

## Office of Internal Audit changes

(R.C. 124.341, 126.45, 126.46, 126.47, 126.48, and 5703.21)

The act makes several changes to the Office of Internal Auditing within the Office of Budget and Management. In addition to changes outlined below, the act



changes the name of the Office of Internal Auditing to the Office of Internal Audit (OIA).

### **Expansion of agencies required or eligible for internal audits or audit plans**

(R.C. 126.45)

The act adds the following agencies to the list of state agencies for which the OIA must conduct internal auditing programs:

- Opportunities for Ohioans with Disabilities Agency;
- Public Utilities Commission of Ohio;
- Adjutant General;
- State Lottery Commission.

The act also permits the OIA to direct an internal audit of all or part of any other organized body, office, or agency established by the laws of the state, at the request of the body, office, or agency. The OIA must charge an amount sufficient to cover the costs it incurs in relation to the requested audit.

### **Clarification of OIA's auditing responsibility**

(R.C. 126.45, 126.46, 126.47, and 5703.21)

The act clarifies that the OIA is required to direct the internal audits of state agencies, rather than conduct the internal audits.

### **Scope of internal audits**

(R.C. 126.45(C))

The act provides that internal audit programs directed by the OIA must include periodic audits of systems and controls pertaining to information technology instead of electronic data processing. Continuing law unchanged by the act requires the OIA to include audits of systems and controls pertaining to accounting and administration.

### **Confidentiality of internal audit documents**

(R.C. 126.48)

The act clarifies that the following documents produced or used by the OIA are not public records under the Public Records Law:



- An internal audit report that is a security record under the Public Records Law;
- Any information derived from a state tax return or state tax return information that is permitted to be used by the OIA when directing an internal audit.

### **Publishing the Chief Internal Auditor report**

(R.C. 126.47)

The act requires the Office of Budget and Management to make the Chief Internal Auditor's annual report available on the Office's web site annually before the first of August, instead of the first of July as required under prior law.

### **State Audit Committee**

(R.C. 126.46 and 126.47)

The act modifies several requirements related to the State Audit Committee's membership and duties.

#### **Committee membership**

The act makes the following changes to the subject matter expertise requirements of the Committee's members:

<b>The act – 5 members</b>	<b>Prior law – 5 members</b>
At least one member who is a financial expert	One member who is a financial expert
At least one member who is an active, inactive, or retired certified public accountant	One member who is an active, inactive, or retired certified public accountant
At least one member who is familiar with governmental financial accounting	One member who is familiar with governmental financial accounting
At least one member who is a representative of the public	One member who is a representative of the public
At least one member who is familiar with information technology systems and services	No provision

## **Committee duties**

The act requires the Committee to evaluate whether internal audits directed by the OIA conform to the Institute of Internal Auditors' International Professional Practices Framework for Internal Auditing. Under prior law, the Committee was required to ensure that internal audits conducted by the OIA conformed to the Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing.

Additionally, the act eliminates the requirement that the Committee review and comment on the process used by the Office of Budget and Management to prepare its annual budgetary financial report. The act retains the review and comment requirement regarding the agency's preparation of the state comprehensive annual financial report.

## **State Lottery Commission internal audit plan**

(R.C. 3770.06)

The act requires the State Lottery Commission to establish an annual internal audit plan, instead of an internal audit program as required in prior law. Additionally, the act requires the plan to be approved by the OIA. Former law required the plan to be approved by the Auditor of State.

The act also requires the Commission to submit to the OIA for its review and approval, instead of the Auditor, an annual report at the end of each fiscal year, specifying the Commission's internal audit work completed for that fiscal year and reporting on the Commission's compliance with its annual internal audit plan. The act eliminates the authority of the Auditor to prescribe the form and content of the report.

## **State appropriation limitation**

(R.C. 107.033)

The act revises the manner in which the state appropriation limitation (SAL) is determined. Under the act, the SAL for a fiscal year is to be increased by the amount of a non-GRF appropriation made in the immediately preceding fiscal year, if the nongeneral revenue fund appropriation:

- (1) Was made on or after July 1, 2013;
  - (2) Is included in the aggregate GRF appropriations proposed for that fiscal year;
- and*
- (3) Is being made for the first time from the GRF.



## **Authority to use electronic funds transfers**

(R.C. 126.07 and 126.35)

The act permits the Director of Budget and Management to process electronic funds transfers (EFTs) for certain payments from the state treasury as an alternative to drawing warrants, as provided in continuing law.

Additionally, the act provides that the Director may review and audit a voucher, documentation accompanying a voucher, and any other documentation related to a transaction prior to processing an EFT. Under prior law, the Director could review and audit a voucher and related documentation regarding a request for payment from a state agency prior to drawing a warrant only.

## **Reimbursement for additional costs related to direct deposits**

(R.C. 126.35)

The act eliminates a provision that requires the Director of Administrative Services to reimburse the Office of Budget and Management for additional costs incurred making payments via direct deposit rather than drawing paper warrants. The act also eliminates the authority of the Director of Administrative Services to add the reimbursed amount to the processing charge paid by state agencies.

## **Transfers of interest to the GRF**

(Section 512.10)

The act permits the Director of Budget and Management, through June 30, 2015, to transfer interest earned by any state fund to the GRF as long as the source of revenue of the fund is not restricted or protected under the Ohio Constitution or federal law.

## **Transfers of non-GRF funds to the GRF**

(Section 512.20)

The act authorizes the Director of Budget and Management, in both fiscal year 2014 and 2015, to transfer up to \$60 million in cash to the GRF from non-GRF funds that are not constitutionally restricted. These transfers are to be made to ensure that available GRF receipts and balances are sufficient to support GRF appropriations in each fiscal year.





## **Federal money for fiscal stabilization and recovery**

(Section 521.60)

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

## **Prohibition on transfers to the Income Tax Reduction Fund**

(Section 512.70)

The act prohibits transfers to the Income Tax Reduction Fund prior to July 1, 2015. This prohibition applies notwithstanding continuing law requiring the Director of Budget and Management, by July 31 of each year, to transfer from the GRF certain amounts to (1) first, the Budget Stabilization Fund and (2) then, to the Income Tax Reduction Fund.<sup>12</sup>

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<sup>12</sup> R.C. 131.44, not in the act.



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## CASINO CONTROL COMMISSION

### Age in casino areas

- Requires that an individual under age 21 be personally escorted by licensed casino personnel in order to pass through an area of a casino facility where casino gaming is being conducted to another area where casino gaming is not being conducted.

### Gaming and wagering report

- Requires the Joint Committee on Gaming and Wagering to prepare a report that includes findings on criminal problems posed by gaming and wagering at casino facilities and video lottery terminal facilities and that recommends curative actions.

### Casino Control Commission Enforcement Fund

- Creates in the state treasury the Casino Control Commission Enforcement Fund, which must contain all moneys that are derived from any fines, mandatory fines, forfeited bail, or forfeitures to which the Ohio Casino Control Commission is entitled.
- With certain exceptions, states that the moneys in the Fund must be used solely to subsidize the Commission's Division of Enforcement.
- Specifies that moneys in the Fund that are derived from forfeitures of property under federal law must be used and accounted for in accordance with the applicable federal law.
- Amends the Forfeiture Law to include the Commission as a law enforcement agency under that Law.
- Requires the Executive Director of the Commission to file an annual report verifying moneys in the Fund were used in accordance with relevant law.

### Age in casino areas

(R.C. 3772.24)

The act specifies that an individual under age 21 may enter a designated area of a casino facility where casino gaming is being conducted, as established by the Ohio Casino Control Commission, to pass to another area where casino gaming is not being conducted, but only if the individual is personally escorted by licensed casino



personnel, as approved by the Commission, who at all times remain in close proximity to the individual.

Former law did not require the individual to be escorted by casino personnel.

## **Gaming and wagering report**

(Section 737.30)

Before December 31, 2013, the Joint Committee on Gaming and Wagering must prepare a report that includes findings on criminal problems posed by gaming and wagering at casino facilities and video lottery terminal facilities, as well as recommendations on policies and procedures that can be used to protect personal liberty while also reducing criminal activity. The Committee must submit the report to the President and Minority Leader of the Senate, the Speaker and Minority Leader of the House of Representatives, the Governor, the Attorney General, the State Lottery Commission, and the Ohio Casino Control Commission.

## **Casino Control Commission Enforcement Fund**

(R.C. 2981.01, 2981.13, and 3772.36)

The act creates in the state treasury the Casino Control Commission Enforcement Fund, and specifies that all moneys that are derived from any fines, mandatory fines, or forfeited bail to which the Commission is entitled under the Casino Law, and all moneys that are derived from forfeitures of property to which the Commission is entitled under Ohio law (including the Casino Law and the Forfeiture Law) or federal law, must be deposited into the Fund. The act amends the Forfeiture Law to include the Commission as a law enforcement agency under that Law, which brings the Commission under the Law's provisions related to seizure, care, disposal, and sale of property subject to forfeiture.

Generally, the moneys in the Fund must be used solely to subsidize the Commission's Division of Enforcement and its efforts to ensure the integrity of casino gaming. However, the act creates some exceptions to this general usage requirement as described below:

(1) Moneys that are derived from forfeitures of property under federal law and that are deposited into the Fund must be used and accounted for in accordance with the applicable federal law, and the Commission otherwise must comply with federal law in connection with that money.



(2) Moneys acquired from a sale of contraband or forfeited instrumentalities and any proceeds forfeited under the Forfeiture Law must be distributed in the order specified in that Law.

(3) Moneys remaining after other distributions under the Forfeiture Law must be used as provided in that Law, including for law enforcement purposes that the Commission determines to be appropriate, but not to meet the operating costs of the Commission.

Additionally, the Executive Director of the Commission must file a report with the Attorney General not later than January 31 of the next calendar year, verifying that cash and forfeited proceeds paid into the Fund were used only in accordance with the relevant law and specifying the amounts expended for each authorized purpose.



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## STATE CHIROPRACTIC BOARD

- Would have authorized chiropractors to assess, and clear for return to play, youth athletes removed from play for exhibiting concussion and head injury symptoms (VETOED).

### **Chiropractors and concussed athletes (VETOED)**

(R.C. 3313.539 and 3707.511)

The Governor vetoed a provision that would have authorized chiropractors to assess, and clear for return to play, student and other youth athletes removed from play for exhibiting concussion and head injury symptoms. Continuing law requires coaches, referees, and other officials involved in interscholastic or other youth athletics to (1) remove from practice or competition any athlete exhibiting signs, symptoms, or behaviors consistent with having sustained a concussion or head injury and (2) prohibit the athlete from returning on the same day. The athlete may not return to practice or competition until a physician or other licensed health care provider authorized by the school district or youth sports organization assesses the athlete and provides written clearance for the athlete's return to play.



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## CIVIL RIGHTS COMMISSION

- Exempts religious corporations, associations, educational institutions, and societies from the Ohio Civil Rights Law's prohibitions relating to the unlawful discriminatory practices in employment, with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by that religious corporation, association, educational institution, or society of its activities.
- Clarifies that it is not an unlawful discriminatory practice for a person or an appointing authority administering a civil service examination to obtain information about an applicant's military status for the purpose of determining whether the applicant is entitled to receive additional credit as a military veteran.

### Unlawful discriminatory practices

(R.C. 4112.02)

#### Religious exemption

The act adds a religious employer exemption to the unlawful discriminatory practices provisions of Ohio's Civil Rights Law. Under continuing law, the following are considered unlawful and discriminatory practices:

- For any employer, because of the race, color, *religion*, sex, military status, national origin, disability, age, or ancestry (protected status) of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.
- For an employment agency or personnel placement service, because of a protected status, to do either of the following:
  - Refuse or fail to accept, register, classify properly, or refer for employment, or otherwise discriminate against any person;
  - Comply with a request from an employer for referral of applicants for employment if the request directly or indirectly indicates that the employer fails to comply with the provisions of Ohio's Civil Rights Law.



- For any labor organization to do either of the following:
  - Limit or classify its membership on the basis of a protected status;
  - Discriminate against, limit the employment opportunities of, or otherwise adversely affect the employment status, wages, hours, or employment conditions of any person as an employee because of a protected status.
- For any employer, labor organization, or joint labor-management committee controlling apprentice training programs to discriminate against any person because of a protected status in admission to, or employment in, any program established to provide apprentice training.
- Except where based on a bona fide occupational qualification certified in advance by the Civil Rights Commission, for any employer, employment agency, personnel placement service, or labor organization, prior to employment or admission to membership, to elicit or attempt to elicit any information concerning the protected status of an applicant for employment or membership, as well as utilizing such information in other specified circumstances.

Under the act, the unlawful discriminatory practices outlined above do not apply to a religious corporation, association, educational institution, or society with respect to the employment of an individual of a particular religion to perform work connected with the carrying on by that religious corporation, association, educational institution, or society of its activities.

### **Civil service examinations**

The act clarifies that it is not an unlawful discriminatory practice for a person or an appointing authority administering a civil service examination to obtain information about an applicant's military status for the purpose of determining if the applicant is eligible for the additional credit that is available to military veterans under the Civil Service Law.

Under continuing civil rights law, it is an unlawful discriminatory practice for an employer, because of military status, to discriminate against a person with respect to any matter directly or indirectly related to employment. And it is an unlawful discriminatory practice for an employer to elicit or attempt to elicit any information concerning the military status of an applicant. However, certain military veterans, when applying for positions in the classified service, are entitled to have additional credit added to their civil service examination score.



The act resolves this potential discrepancy by expressly stating in the Civil Rights Law the policy described above.



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## DEPARTMENT OF COMMERCE

### Underground Storage Tank Revolving Loan Program

- Creates the Underground Storage Tank Revolving Loan Program, to be administered by the State Fire Marshal (or designee).
- Requires that interest-free loans be made under the Program to certain political subdivisions, as follows:
  - To a political subdivision that seeks to take action with regard to an underground storage tank, if the political subdivision is the owner but not the operator of the tank.
  - To a political subdivision that seeks to take action with regard to the site of a previously existing release, if the political subdivision is neither the tank's owner nor the operator, and if the owner or operator cannot be identified or cannot pay for the action.
- Requires that the loans under the Program be financed exclusively through penalties and repaid loan amounts.
- For actions taken with regard to the site of a previously existing release, permits a political subdivision to take legal action to recover costs incurred if the tank owner or operator is identified or is determined to have been or be able to pay the costs of action taken by the political subdivision.

### Video-service disconnections

- Permits video-service disconnection without notice if disconnection is necessary to prevent the use of video service through fraud.
- Shortens the grace period for video-service disconnection for nonpayment from 45 days to 14 days, and expressly permits disconnection if only part of a billed amount is past due.
- Requires video service providers to establish billing due dates of at least 14 days after bills are issued.

### Liquor control provisions

- Exempts from the Open Container Law a person on the property of an outdoor motorsports facility with a container of beer or intoxicating liquor that was not purchased from the owner of the facility if both of the following apply:



- The person is attending a racing event at the facility; and
- The owner of the facility grants permission for the possession and consumption of beer or intoxicating liquor on the property or facility.
- Exempts an application for a D liquor permit (on- or off-premises consumption of beer and intoxicating liquor) filed for a premises located within certain park districts from both of the following:
  - The population-based quota restrictions on the issuance of certain D liquor permits; and
  - Provisions of law that require a quota-exempted applicant to attempt to obtain the applicable liquor permit from an existing permit holder.
- Revises the definitions of "intoxicating liquor," "liquor," and "mixed beverages" for the purposes of the Liquor Control Laws.
- Revises one of the conditions under which the D-5j liquor permit may be issued in a community entertainment district by specifying that the municipal corporation in which the permitted premises will be located must have been incorporated as a village prior to 1860 rather than 1840 as provided in former law.

### **Unclaimed Funds Law – interest payments**

- Provides for the payment of interest to claimants of unclaimed funds in accordance with a formula devised in the 2009 Ohio Supreme Court case of *Sogg v. Zurz*, 121 Ohio St.3d 449 (2009), its progeny, and final settlement agreement.
- Removes the prohibition against the payment of interest on unclaimed funds in the possession of the state.
- Specifies time frames and amounts of interest allowed to claimants who otherwise are entitled to the unclaimed funds.

### **Other provisions**

- Reduces from two to one the number of reports that bedding and stuffed toy manufacturers and importers must submit annually to the Superintendent of Industrial Compliance.
- Requires the Director of Commerce to fill mid-term vacancies on the Historical Boilers Licensing Board, but does not require the advice and consent of the Senate for the Director's appointments.

- Changes the index used to calculate biennial changes to the threshold levels that are used to determine whether a horizontal public improvement project is subject to Ohio's Prevailing Wage Law.

## **Underground Storage Tank Revolving Loan Program**

(R.C. 3737.02, 3737.882, 3737.883; conforming changes in R.C. 3737.88 and 3737.883 (renumbered 3737.884))

### **Program overview and explanation of "corrective actions"**

The act creates the Underground Storage Tank Revolving Loan Program, to be administered by the State Fire Marshal or the Fire Marshal's designee. The Program is designed to assist certain political subdivisions seeking to take action with regard to underground storage tanks and sites of previously existing releases from such tanks. An underground storage tank is a stationary containment device (including the connected underground pipes) used to contain an accumulation of petroleum or any substance classified as hazardous by the Fire Marshal, the volume of which, including the volume of connecting pipes, is 10% or more beneath the surface of the ground.<sup>13</sup> Under the Program, the Fire Marshal is required to issue interest-free loans to certain political subdivisions that meet the act's application requirements and plan to spend from their own funds an amount equal to at least 5% of the requested loan amount.

The act expressly permits political subdivisions to take the actions for which the loans may be requested. Specifically, it permits a political subdivision that owns but does not operate an underground storage tank to do any of the following for the tank, provided the tank is within the subdivision's territorial boundaries:

- Initiate, continue, or properly complete the closure in place or removal of an underground storage tank system;
- Initiate, continue, or properly complete an assessment of the site of an underground storage tank or the site of an underground storage tank system;
- Initiate, continue, or properly complete a "corrective action."

"Corrective action" is extensively defined in continuing law. Therefore, by permitting a subdivision to take a corrective action, the act permits the subdivision to take any action necessary to protect human health and the environment in the event of a

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<sup>13</sup> R.C. 3737.87(L), (O), and (P), not in the act.

release of petroleum into the environment. This includes any action necessary to monitor, assess, and evaluate the release. For a suspected release, "corrective action" includes an investigation to confirm or disprove the occurrence of the release. For a confirmed release, "corrective action" includes any action taken consistent with a remedial action to clean up contaminated ground water, surface water, soils, and subsurface material and to address the residual effects of a release after the initial corrective action is taken.<sup>14</sup>

The act also permits a political subdivision that is not "the responsible person" (which person is defined as a tank's owner or operator<sup>15</sup>) to take any of the actions described in the bullet points above for the site of a previously existing release, provided that:

- The site is within the subdivision's territorial boundaries;
- The responsible person is not identifiable or the Fire Marshal determines that an identified responsible person is unable to pay the costs of the action to be taken; and
- The release has not received a no-further-action determination from the Fire Marshal.

### **Definition of "political subdivision"**

For purposes of the Program, the act 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. The term includes certain hospital commissions and boards, certain local planning commissions and councils, port authorities, certain regional councils, certain emergency and fire and ambulance districts, solid waste management districts, community schools, and certain community-based correctional facilities and programs and their facility governing boards.<sup>16</sup> The act also expressly states that the term includes a community improvement corporation, which is defined as an economic development corporation or a county land reutilization corporation.<sup>17</sup>

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<sup>14</sup> R.C. 3737.87(B), not in the act.

<sup>15</sup> R.C. 3737.87(N), not in the act.

<sup>16</sup> R.C. 2744.01(F), not in the act.

<sup>17</sup> R.C. 1724.01(A)(1), not in the act.

## **Loan applications**

In the loan application, the political subdivision must describe the action for which it is requesting the loan, state the requested loan amount, explain how it plans to spend at least 5% of the requested loan amount out of its own funds, and provide any other information requested by the Fire Marshal. The subdivision must also agree to written terms and conditions of the Fire Marshal. The act prohibits loans from having terms of more than ten years.

## **Loan repayment and funding**

The interest-free loans must be repaid to the Fire Marshal. The repaid amounts are to be credited to the Underground Storage Tank Administration Fund, which is created in continuing law. The Fire Marshall must make the loans exclusively from those repaid amounts and from penalties collected for violations of continuing law governing underground storage tanks, including rules and orders of the Fire Marshal. The act also permits repaid loan amounts to be used by the Fire Marshal for implementation and enforcement of underground-storage-tank, corrective-action, and installer-certification programs.

## **Recovery of costs from tank owners or operators**

The act allows that if the Fire Marshal or any law enforcement agency identifies the tank owner or operator or determines, for any reason, that a previously identified owner or operator was or is able to pay the costs of an action for the site of a previously existing release, the political subdivision may bring any appropriate proceedings against the owner or operator to recover its incurred costs. The identification or determination must be made after the political subdivision has spent loan funds. The proceedings may be brought in either the court of common pleas having jurisdiction where the tank is located or the Court of Common Pleas of Franklin County.

## **Program administration**

The act requires the Fire Marshal to adopt, and permits the Fire Marshal to amend or rescind, rules as necessary for the administration and operation of the Program. The rules may do any of the following:

- Further define the entities considered "political subdivisions" eligible to receive loans;
- Establish qualifying criteria for loan recipients;
- Establish criteria for awarding loans, loan amounts, loan payment terms, and permissible expenditures of loan funds, including methods that the Fire Marshal

may use to verify the proper use of loan funds or to obtain reimbursement for or the return of improperly used loan funds.

The act requires the Fire Marshal to consult with the Director of Development Services before issuing any loan under the Program.

The act also permits the Fire Marshal to adopt, amend, or rescind rules for the issuance of emergency underground storage tank revolving loans to qualifying entities during a natural disaster or another similar event, as defined in rules.

### **Facilities excluded from the Program**

The following are excluded from the definition of "underground storage tank," and therefore not subject to the Program:

- Pipeline facilities, including gathering lines, regulated under federal law;
- Farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
- Tanks used for storing heating fuel for consumptive use on the premises where stored;
- Surface impoundments, pits, ponds, or lagoons;
- Storm or waste water collection systems;
- Flow-through process tanks;
- Storage tanks located in underground areas, including basements, cellars, mine workings, drifts, shafts, or tunnels, when the tanks are located on or above the surface of the floor;
- Septic tanks;
- Liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.<sup>18</sup>

### **No limitation on the powers of the Fire Marshal or Attorney General**

The act states that nothing in the provisions governing the Underground Storage Tank Revolving Loan Program limits the powers of the Fire Marshal or the Attorney

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<sup>18</sup> R.C. 3737.87(P)(1) to (9), not in the act.



General under continuing law authorizing the imposition of civil penalties for violations of the Underground Storage Tank Law.

## **Video-service disconnections**

(R.C. 1332.26)

### **Terminology**

The act makes some changes to customer-service requirements for video-service disconnections. These requirements apply to providers who have video service authorizations issued by the Director of Commerce. "Video service" means the provision of video programming over wires or cables located at least in part in public rights-of-way, regardless of the technology used. "Video service" includes cable service, but excludes (1) wireless video programming, (2) Internet video programming, and (3) cable service in certain unincorporated areas of townships prior to October 1, 1979, unless a franchise was subsequently issued to the company.<sup>19</sup>

### **Changes to requirements**

The act permits video-service disconnection without notice if disconnection is necessary to prevent the use of video service through fraud. Normally, ten days' written notice of disconnection is required. The act also changes the timeline for when video service may be disconnected for nonpayment. Specifically, it changes the grace period – or the number of days past the due date during which the subscriber may not be disconnected for an unpaid bill – from 45 to 14 days. It also expressly allows disconnection for a partial nonpayment. Prior law permitted disconnection "for failure of the subscriber to pay its video service bill." Also, video service providers under the act are not permitted to establish billing due dates earlier than 14 days after bills are issued.

### **Enforcement**

The enforcement provisions that apply under continuing law to customer-service requirements also apply to the requirements made and changed by the act. The Director may investigate alleged violations of or failures to comply with the requirements, but "has no authority to regulate video service." However, if the Director finds that a violation or a failure to comply exists, the Director may, after written notice to the provider and a reasonable time for compliance, apply for a court order enjoining the activity or requiring compliance, enter into a written assurance of voluntary compliance

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<sup>19</sup> R.C. 1332.21(J) and (M) and 1332.24(A)(1), not in the act.



with the provider, or assess a civil penalty. Civil penalties are capped at \$1,000 per day of violation or noncompliance, not to exceed a total of \$10,000.<sup>20</sup>

## **Liquor control provisions**

### **Open container exemption for racetrack liquor permit holders**

(R.C. 4301.62)

Continuing law prohibits a person from having in the person's possession an opened container of beer or intoxicating liquor in a number of specified circumstances, including in a public place. It also establishes several exemptions to that prohibition.

The act exempts from the prohibition a person who is on the property of an outdoor motorsports facility with an opened or unopened container of beer or intoxicating liquor that was not purchased from the owner of the facility if both of the following apply:

- The person is attending a racing event at the facility; and
- The owner of the facility grants permission for the possession and consumption of beer or intoxicating liquor on the property of the facility.

The act defines "racing event" as a motor vehicle racing event sanctioned by one or more motor racing sanctioning organizations. "Outdoor motorsports facility" means an outdoor racetrack to which all of the following apply:

- It is two and four-tenths miles or more in length;
- It is located on 200 acres or more of land;
- The primary business of the owner of the facility is the hosting and promoting of racing events; and
- The holder of a D-1 (retail sale of beer for on- or off-premises consumption), D-2 (retail sale of wine and mixed beverages for on- or off-premises consumption), or D-3 (retail sale of spirituous liquor until 1 a.m. for on-premises consumption) liquor permit is located on the property of the facility.

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<sup>20</sup> R.C. 1332.24(B) and (C), not in the act.



## **Exemption from D liquor permit quota restrictions**

(R.C. 4303.29)

The act exempts an application for a D liquor permit filed for a premises located within an applicable park district from both of the following:

- The population-based quota restrictions on the issuance of certain D liquor permits; and
- Provisions of law that require a quota-exempted applicant to attempt to obtain the applicable liquor permit from an existing permit holder.

A D liquor permit issued to a premises located within an applicable park district cannot be transferred to another location. An "applicable park district" is a park district created under Park District Law that consists of not less than 22,000 acres of land, a portion of which is adjacent to Lake Erie.

Under continuing law, a D liquor permit generally allows the holder of the permit to sell beer or intoxicating liquor at retail. However, subject to some exemptions, D-1 (retail sale of beer for on- or off-premises consumption), D-2 (retail sale of wine and mixed beverages for on- or off-premises consumption), D-3 (retail sale of spirituous liquor until 1 a.m. for on-premises consumption), D-4 (retail sale of beer or intoxicating liquor by a club to club members for on-premises consumption), and D-5 (retail sale of beer or intoxicating liquor by a restaurant or night club for on- or off-premises consumption) liquor permits are subject to quota restrictions based upon the population of the municipal corporation or township in which the permit is located. Generally, applicants who are exempted from the quota restrictions are subject to provisions requiring that, in order to obtain a liquor permit within a municipal corporation or township where the number of liquor permits issued exceeds the number of liquor permits that may be issued under the quota restrictions, the applicant must certify that the applicant has attempted to obtain, but has not obtained, the permit the applicant seeks from a current permit holder within the municipal corporation or township.

## **Intoxicating liquor and mixed beverages under the Liquor Control Laws**

(R.C. 4301.01)

The act revises the definitions of "intoxicating liquor," "liquor," and "mixed beverages" as follows:



Defined term	Definition under prior law	Definition under the act
Intoxicating liquor and liquor	<p>Include all of the following:</p> <p>(1) All liquids and compounds, other than beer, containing one-half of 1% or more of alcohol by volume which are fit to use for beverage purposes, from whatever source and by whatever process produced, by whatever name called, and whether they are medicated, proprietary, or patented;</p> <p>(2) Wine even if it contains less than 4% of alcohol by volume;</p> <p>(3) Mixed beverages even if they contain less than 4% of alcohol by volume;</p> <p>(4) Cider;</p> <p>(5) Alcohol; and</p> <p>(6) All solids and confections which contain any alcohol.</p>	<p>Include all of the following:</p> <p>(1) All liquids and compounds, other than beer, containing one-half of 1% or more of alcohol by volume which are fit to use for beverage purposes, from whatever source and by whatever process produced, by whatever name called, and whether they are medicated, proprietary, or patented;</p> <p>(2) Cider;</p> <p>(3) Alcohol; and</p> <p>(4) All solids and confections which contain one-half of 1% or more of alcohol by volume.</p>
Mixed beverages	<p>Such as bottled and prepared cordials, cocktails, and highballs, are products obtained by mixing any type of whiskey, neutral spirits, brandy, gin, or other distilled spirits with, or over, carbonated or plain water, pure juices from flowers and plants, and other flavoring materials. The completed product must contain not less than one-half of 1% of alcohol by volume and not more than 21% of alcohol by volume.</p>	<p><i>Include</i> bottled and prepared cordials, cocktails, highballs, <i>and solids and confections</i> that are obtained by mixing any type of whiskey, neutral spirits, brandy, gin, or other distilled spirits with, or over, carbonated or plain water, pure juices from flowers and plants, and other flavoring materials. The completed product must contain not less than one-half of 1% of alcohol by volume and not more than 21% of alcohol by volume.</p>

### Issuance of D-5j liquor permit

(R.C. 4303.181)

The act revises one of the conditions under which the D-5j liquor permit may be issued in a community entertainment district by specifying that the municipal corporation in which the permitted premises will be located in the district must have been incorporated as a village prior to 1860 rather than prior to 1840 as provided in former law.



Under continuing law, the D-5j liquor permit authorizes the owner or operator of a retail food establishment or food service operation licensed under the Retail Food Establishments and Food Service Operations Law to sell beer and intoxicating liquor for on- or off-premises consumption. A D-5j permit can be issued only within a community entertainment district that is designated under continuing law and that is located in a municipal corporation or township that meets certain requirements. Community entertainment districts are created by statute for bounded areas located in municipal corporations or townships. The bounded areas may include a combination of entertainment, retail, educational, sporting, social, cultural, or arts establishments within close proximity to certain establishments such as restaurants, sports facilities, and convention facilities.<sup>21</sup>

### **Interest payments on unclaimed funds**

(R.C. 169.08, 122.58, 169.05, and 169.07)

In 2009, the Ohio Supreme Court determined that the prohibition in R.C. 169.08 against the payment of interest to claimants for unclaimed funds constituted an unlawful taking.<sup>22</sup> The act, therefore, removes the prohibition, and provides that interest earned by the state will be payable in accordance with final court orders derived from the line of cases and the final settlement agreement. The act states that for properties received by the state on or before July 26, 1991, interest must be paid at a rate of 6% per annum from the date the state received the property up to and including July 26, 1991. No interest will be payable on any properties for the period from July 27, 1991, up to and including August 2, 2000. For properties held by the state on August 3, 2000, or after, interest must be paid at the applicable required rate per annum for the period held from August 3, 2000, or the date of receipt, whichever is later, up to and including the date the claim is paid.

The final settlement agreement requires the Department of Commerce to make payments to future claimants (any persons whose unclaimed funds are returned to them on or after October 10, 2012) as well as to members of the *Sogg* class. Applicable required rates per annum are specified for years 2001 to 2011 in the final settlement agreement with direction for the Department to continue future calculations based on certain testimony in the case and other factors used in determining the chart provided for years 2000 to 2011.

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<sup>21</sup> R.C. 4301.80, not in the act.

<sup>22</sup> *Sogg v. Zurz*, 121 Ohio St.3d 449 (2009).



## **Bedding and stuffed toys – reporting requirements**

(R.C. 3713.06)

The act reduces the number of reports that a bedding and stuffed toy manufacturer or importer must submit annually to the Superintendent of Industrial Compliance. Former law required a registered toy manufacturer or importer who manufactures or imports bedding or stuffed toys for retail sale or use in Ohio to submit a report showing the total number of items of bedding or stuffed toys imported or manufactured in Ohio once every six months. The act requires a registered toy manufacturer or importer to submit the report once every year.

## **Historical Boilers Licensing Board vacancies**

(R.C. 4104.33)

The act requires the Director to fill mid-term vacancies on the Historical Boilers Licensing Board, but does not require the advice and consent of the Senate for the Director's appointments. Former law required mid-term vacancies to be filled in the manner provided for during initial appointments. Initial appointments were made by the Governor, the President of the Senate, and the Speaker of the House.

## **Prevailing wage threshold index**

(R.C. 4115.034)

Under continuing law and unless an exception applies, the construction of a public improvement in which the total overall project cost is fairly estimated to exceed a statutory price threshold is subject to Ohio's Prevailing Wage Law. The statutory threshold for horizontal projects (projects that involve roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction) is adjusted biennially by the Director. Former law required the Director to adjust the threshold level based on the Implicit Price Deflator for Construction established by the federal government. The federal government no longer establishes that index. The act instead requires the Director to use the Construction Cost Index published by the Engineering News-Record. If that index ceases being published, a similar recognized industry index chosen by the Director must be used. Continuing law limits any increase or decrease to 3% of the threshold level in existence at the time of the adjustment.<sup>23</sup>

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<sup>23</sup> R.C. 4115.03, not in the act.



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## COSMETOLOGY BOARD

- Establishes a complaint process that students and former students of a school of cosmetology may use to file a complaint with the State Board of Cosmetology, alleging a violation of a provision of the Cosmetology Law by the school.
- Requires a school of cosmetology, in order to be issued a license, or any school that holds a license as of September 29, 2013, to establish and maintain an internal procedure for processing complaints filed against the school by students of the school and to provide students with instructions on filing a complaint with the Board.
- Specifies that a licensed school of cosmetology is an educational institution and may offer educational programs beyond secondary education, advanced practice programs, or both in accordance with rules that must be adopted by the Board.

### Schools of cosmetology

(R.C. 4713.08, 4713.44, and 4713.641)

#### Complaints

Under the act, a student or former student of a licensed cosmetology school may file a complaint with the State Board of Cosmetology alleging that the school has violated a provision of the Cosmetology Law for which the Board may take disciplinary action under continuing law. Any complaint filed with the Board must be in writing and signed by the person bringing the complaint. Upon receiving the complaint, the Board must initiate a preliminary investigation to determine whether it is probable that a violation has been committed. If the Board finds that it is not probable that a violation was committed, the Board must notify the person who filed the complaint of the Board's findings and that the Board will not issue a formal complaint. If the Board finds that it is probable that a violation has occurred, the Board must proceed against the school pursuant to the Board's continuing law discipline authority and in accordance with the Administrative Procedure Act.

The act adds to the continuing law list of requirements that a school must satisfy in order to be issued a license to operate as a school of cosmetology: a requirement that the school must establish and maintain an internal procedure for processing complaints filed against the school and for providing students with instructions on how to file a complaint directly with the Board. A school of cosmetology that holds a license as of September 29, 2013, also must establish and maintain an internal procedure for



processing complaints filed against the school and must provide students with instructions on how to file a complaint directly with the Board.

### **Authorization to offer educational programs**

The act specifies that a school of cosmetology holding a license to operate issued by the Board is an educational institution and is authorized to offer educational programs beyond secondary education, advanced practice programs, or both, in accordance with rules adopted by the Board under the act.





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## STATE DENTAL BOARD

- Specifies that the requirement that a dentist perform an examination and diagnose a patient before the patient receives dental hygiene services through certain school-based or other programs does not apply when the only service to be provided is the placement of pit and fissure sealants.

### Sealant placement by dental hygienists

(R.C. 4715.22)

Under continuing law, a dental hygienist who provides dental hygiene services as part of a dental hygiene program<sup>24</sup> approved by the State Dental Board may provide dental hygiene services to a patient when the supervising dentist is not physically present. One condition, however, is that the services must be performed in accordance with a dentist's treatment plan after the dentist has examined and diagnosed the patient.

The act provides that the requirement regarding a dentist's treatment plan, examination, and diagnosis does not apply when the only service to be provided by the dental hygienist is the placement of pit and fissure sealants on the patient's teeth. Pit and fissure sealants are thin plastic coatings that are applied to the grooves on the chewing surfaces of the back teeth to protect them from tooth decay.<sup>25</sup>

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<sup>24</sup> The program must be operated through a school district board of education or the governing board of an educational service center; a local board of health; a national, state, district, or local dental association; or any other public or private entity recognized by the State Dental Board.

<sup>25</sup> U.S. Centers for Disease Control and Prevention, *Dental Sealants*, available at [www.cdc.gov/oralhealth/publications/factsheets/sealants\\_faq.htm](http://www.cdc.gov/oralhealth/publications/factsheets/sealants_faq.htm).



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## DEVELOPMENT SERVICES AGENCY

### Alternative Fuel Transportation Program

- Allows the Director of Development Services, under the Alternative Fuel Transportation Program, to make grants and loans to businesses, nonprofit organizations, public school systems, or local governments to pay fleet conversion costs in addition to the ongoing uses of the funds.
- Specifies that the Alternative Fuel Transportation Fund is also to consist of all money received from the repayment of loans made from the Fund or in the event of a default on any such loan.
- Provides that Program rules must require the recipient of a grant or loan to incur at least 20% of the total cost of the purchase and installation of an alternative fuel refueling or distribution facility or terminal.

### Technology development assistance

- Terminates the Industrial Technology and Enterprise Advisory Council, which was created to:
  - (1) Review applications for, and make final determinations regarding, the issuance of technology investment tax credits; and
  - (2) Make recommendations to the Director as to applications for other industrial technology and enterprise development assistance.
- Eliminates the Technology Investment Tax Credit Program, which was established to benefit Ohio taxpayers who invested in certain research and development or technology-oriented businesses.

### Community Services Division

- Changes the name of the Office of Community Services within the Development Services Agency to the Community Services Division.
- Prohibits a person or government entity from soliciting, releasing, disclosing, receiving, using, or knowingly permitting or participating in the use of any information regarding an individual receiving assistance from a Division program.
- Specifies the circumstances under which the Division, and any entity receiving funds from the Division, must provide information about individual assistance recipients to:



- A government entity;
  - A law enforcement agency; or
  - A government entity administering a children's protective services program.
- Permits the release of individual assistance recipient information upon written authorization voluntarily given by the recipient and requires the Division, or entity administering a Division program, to provide a copy of each written authorization to the individual who signed it.
  - Permits the release of individual assistance recipient information to a state, federal, or federally assisted program that directly provides cash or in-kind assistance or services to individuals based on need.
  - Requires the Division, and any entity administering a Division program, to provide access to individual assistance recipient information to:
    - The recipient;
    - The recipient's legal guardian;
    - The recipient's attorney; and
    - The authorized representative of the recipient (as may be defined by the Agency by rule).

### **Other provisions**

- Expands the bribery provision that applies to JobsOhio personnel to also prohibit a JobsOhio director, officer, or employee, either before or after being appointed, qualified, or employed in that capacity, from knowingly soliciting or accepting for self or another person any valuable thing or valuable benefit to corrupt or improperly influence the director, officer, or employee or another JobsOhio director, officer, or employee with respect to the discharge of the particular director's, officer's, or employee's duty.
- Changes the date by which a taxpayer that has entered into an agreement with the Tax Credit Authority on the basis of home-based employees must report the number of employees and home-based employees employed by the employer in Ohio.
- Extends the refundable job retention tax credit to an eligible business whose principal place of business is not located in the same political subdivision as the

capital investment so long as the business maintains a unit or division with at least 4,200 employees at the project site.

- Would have required the Director to utilize the Edison Center Network in issuing grants for research, development, or technology transfer efforts under the Thomas Alva Edison grant program (VETOED).
- Adds, to the purposes for which the Director may lend funds for minority business development, loans for contract financing.
- Changes the local government notification requirement when financial assistance under R.C. Chapter 166. is requested from the Agency for the purpose of relocating a facility currently being operated in another county, municipal corporation, or township.
- Eliminates the Ohio Research Commercialization Grant Program.
- Requires the Director to appoint specified members of the technical advisory committee of the Ohio Coal Development Office rather than the Director of the Office, and provides for transition to the new appointing authority.
- Abolishes the Rapid Outreach Loan Fund.
- Abolishes six dormant funds codified in the Revised Code that are related to Agency activities.

## **Alternative Fuel Transportation Program**

(R.C. 122.075)

The act allows the Director of Development Services, under the Alternative Fuel Transportation Program, to make grants and loans to businesses, nonprofit organizations, public school systems, or local governments to pay fleet conversion costs. This use of the funds is in addition to the ongoing use of the funds for (1) the purchase and installation of alternative fuel refueling or distribution facilities and terminals, (2) the purchase and use of alternative fuel, and (3) paying the costs of educational and promotional materials and activities intended for prospective alternative fuel consumers and fuel marketers.

The act also specifies that the Alternative Fuel Transportation Fund, which is used by the Director to make grants and loans under the Program, is to additionally



consist of all money received from the repayment of those loans or in the event of a default on any of the loans.

### **Costs incurred by grant or loan recipients**

The act provides that, under rules adopted by the Director, the recipient of a grant or loan under the Program must incur at least 20% of the total cost, instead of the prior law requirement of 20% of the total net cost, of the purchase and installation of an alternative fuel refueling or distribution facility or terminal.

### **Technology development assistance**

#### **Industrial Technology and Enterprise Advisory Council**

(R.C. 121.22(E), 122.28, 122.30, 122.31, 122.32, 122.33, 122.34, 122.35, and 122.36; R.C. 122.29, repealed)

The act terminates the Industrial Technology and Enterprise Advisory Council, which was created to (1) review applications for technology investment tax credits and issue final determinations as to their approval or disapproval and (2) review applications for, and make recommendations to the Director regarding, other industrial technology and enterprise development assistance.

#### **Technology Investment Tax Credit Program**

(R.C. 5733.01, 5733.06, 5733.98, and 5747.98(A)(29); R.C. 122.15, 122.151, 122.152, 122.153, 122.154, 5707.05, 5727.41, 5733.35, and 5747.33 (repealed); Section 803.10)

The act eliminates the Technology Investment Tax Credit Program. The Program was established to benefit Ohio taxpayers who invested in certain Ohio entities engaging in a trade or business that primarily involves research and development, technology transfer, bio-technology, information technology, or the application of new technology developed through research and development or acquired through technology transfer. The maximum that could be issued under the Program was \$45 million of tax credits. The act specifies that an investor who is issued a tax credit prior to the repeal of the Program on September 29, 2013, may continue to claim the credit as if the law had not changed.



## Community Services Division

### Office of Community Services name change

(R.C. 122.67; conforming changes in R.C. 122.66, 122.68, 122.69, 122.70, 122.701, and 3313.98)

The act renames the Office of Community Services within the Development Services Agency as the Community Services Division. All of the responsibilities of the Office, including administering federal funds appropriated to Ohio from the federal Community Services Block Grant Act and providing technical assistance to community action agencies, remain ongoing responsibilities of the renamed Division.

### Program assistance confidentiality

(R.C. 122.681 and 1347.08)

The act prohibits (except when required to do so by federal law) a person or government agency from soliciting, releasing, disclosing, receiving, or using any information regarding an individual receiving assistance under a Division program for any purpose that is not directly related to the administration of a program. The act also prohibits knowingly permitting or participating in the use of such information.

### Release of a recipient's information

Under the act, the Division, and any entity that receives Division funds to administer a Division assistance program, must release information regarding an individual assistance recipient to the extent that the release is allowed by federal law. The information must be released to the entities listed below for the following specified purposes:

<b>Entity to Which Individual Assistance Recipients' Information Must Be Released</b>	<b>Purpose for Receiving Information</b>
Government entity responsible for administering the assistance program	For purposes directly related to the program's administration
Law enforcement agency	For the purpose of any investigation, prosecution, or criminal or civil proceeding relating to the assistance program's administration
Government entity responsible for administering a children's protective services program	For the purpose of protecting children



The act permits the Division and any entity administering a Division program to release information about an individual assistance recipient under the following circumstances to the extent permitted by federal law:

- To a state, federal, or federally assisted program that provides cash or in-kind assistance or services directly to individuals based on need;
- If the recipient gives voluntary, written authorization for the release.

With regard to an individual assistance recipient's authorization to release information, the act does not limit such authorized releases or specify to whom they may be made. However, the act requires the Division, or entity administering a Division program, to provide, at no cost, a copy of each written authorization to the individual who signed it.

#### **Access to a recipient's information**

Access to information regarding an individual assistance recipient also must be provided to certain individuals to the extent permitted by federal law and Ohio personal information rights law. Under the act, the Division and any entity administering a Division program must provide access to an individual assistance recipient's information to the recipient and the recipient's authorized representative, legal guardian, and attorney. The term "authorized representative" is not defined in the act. However, the act permits the Agency to adopt rules that define who may serve in this capacity for an individual assistance recipient.

#### **JobsOhio officials – expansion of bribery provision**

(R.C. 187.10)

The act prohibits any person who is a director, officer, or employee of JobsOhio, either before or after being appointed, qualified, or employed in that capacity, from knowingly soliciting or accepting for self or another person any valuable thing or valuable benefit to corrupt or improperly influence the person or another director, officer, or employee of JobsOhio with respect to the discharge of the person's or the other director's, officer's, or employee's duty. The act specifies that a person who violates this prohibition is guilty of the offense of "bribery," as set forth in preexisting R.C. 2921.02.

Preexisting law, unchanged by the act, prohibits any person, with purpose to corrupt a director, officer, or employee of JobsOhio, from promising, offering, or giving any valuable thing or valuable benefit and specifies that a person who violates this prohibition is guilty of the offense of "bribery."



Preexisting R.C. 2921.02, which is not in the act, prohibits specified acts that constitute the offense of "bribery," a felony of the third degree, and a public servant or party official who is convicted of the offense is forever disqualified from holding any public office, employment, or position of trust in Ohio. "Public servant" does not include an employee, officer, or Governor-appointed member of the board of directors of JobsOhio.<sup>26</sup>

### **Job creation tax credit reporting date for home-based employees**

(R.C. 122.17)

Continuing law allows certain taxpayers, until 2019, to enter into an agreement with the Tax Credit Authority to receive a job creation tax credit for employing home-based employees. Under prior law, on or before January 1 of each year, beginning in 2013, a taxpayer that has entered into such an agreement was required to report to the Agency the number of home-based employees and other employees employed by the taxpayer in Ohio. For years after 2014, the act requires the employee report to be filed on or before March 1 instead of January 1.

### **Eligibility for the refundable job retention tax credit**

(R.C. 122.171; Section 815.10)

The act extends the refundable job retention tax credit to eligible businesses whose principal place of business is not located in the same political subdivision as the capital investment as long as the business maintains a unit or division with at least 4,200 employees at the project site.

Continuing law authorizes the Tax Credit Authority (TCA) to grant job retention tax credits (JRTCs) against the income tax, commercial activities tax, insurance company premiums tax, or financial institutions tax. Qualifying businesses may apply to the TCA and enter into an agreement describing a capital investment project and requiring the business to retain a specified number of full-time equivalent employees or maintain a certain threshold payroll. The agreement also must require that the business maintain operations at the project site for at least the greater of (1) the term of the credit plus three years or (2) seven years. In exchange, the business receives a credit equal to up to 75% of the state income taxes withheld from full-time employees working at the project site for up to 15 years.

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<sup>26</sup> R.C. 2921.01, not in the act.





Generally, JRTCs are nonrefundable, however, between July 1, 2011, and December 31, 2013, the TCA may grant refundable JRTCs to eligible businesses that meet certain additional criteria. Among the additional criteria, the eligible business must have an annual payroll of at least \$20 million and invest at least \$5 million at a project site located within the same political subdivision as that in which the business has its principal place of business. The act eliminates the requirement that the project site be located in the same political subdivision as the business's principal place of business if the business maintains a unit or division with at least 4,200 employees at the project site.

### **Edison grant program use of Edison Center Network (VETOED)**

(R.C. 122.33(C))

The Governor vetoed a provision that would have required the Director to utilize the Edison Center Network in carrying out the goals and objectives of the Thomas Alva Edison grant program. The vetoed provision defines the "Edison Center Network" as the six cooperative research and development facilities in Ohio that (1) receive funding to foster research, development, or technology transfer efforts, (2) are nonprofit organizations, (3) have been in existence for at least 18 years, and (4) have experience in delivering manufacturing extension partnership program services to companies in Ohio.

### **Minority development financing**

(R.C. 122.76)

The act adds, to the purposes for which the Director may lend funds for minority business development, loans for contract financing. Under continuing law, when certain criteria are met, the Director, with Controlling Board approval, may lend funds to the following entities, provided that the loans are for purposes authorized by the relevant statute: minority business enterprises, community improvement corporations, Ohio development corporations, minority contractors business assistance organizations, and minority business supplier development councils. The following purposes are authorized under continuing law: lending funds to minority business enterprises for the purpose of procuring or improving real or personal property, or both, for the establishment, location, or expansion of industrial, distribution, commercial, or research facilities in Ohio, and to community development corporations that predominantly benefit minority business enterprises or are located in a census tract that has a population that is 60% or more minority.



## **Economic development assistance for relocating facilities**

(R.C. 166.04)

The act changes the local government notification requirement that applies when certain financial assistance is requested from the Agency for the purpose of relocating a facility currently being operated in another county, municipal corporation, or township. Under prior law, if a person applied for a loan, loan guarantee, or other assistance under R.C. Chapter 166. to relocate such a facility, the Director was required to provide written notification to (1) the county, and the municipal corporation or township, in which the facility is to be relocated, (2) the county, and the municipal corporation or township, in which the facility to be replaced is located, (3) the state representative and state senator in whose districts the facility is to be relocated, and (4) the state representative and state senator in whose districts the facility to be replaced is located.

Under the act, the person requesting the financial assistance, rather than the Director, is to provide the written notification of the relocation. Notice only has to be given to the local governmental bodies described in (2), above. Prior to providing the financial assistance, the Director must verify that the notice has been so given.

## **Ohio Research Commercialization Grant Program**

(R.C. 184.04 (repealed))

The act eliminates the Ohio Research Commercialization Grant Program administered by the Third Frontier Commission. The Grant Program was created to improve the commercial viability of research projects by improving the ability of small technology companies to assess their commercial potential and the commercial potential of their research projects and by promoting the competitiveness of these companies through the augmentation of federal research and development funding.

## **Ohio Coal Development Office's technical advisory committee**

(R.C. 1551.33 and 1551.35; Section 803.30)

The act requires the Director of Development Services to appoint specified members of the technical advisory committee of the Ohio Coal Development Office instead of the Director of the Office as under former law. It then provides for transition to the new appointing authority by requiring any member of the technical advisory committee who was appointed by the Director of the Office and who is serving on the committee immediately prior to September 29, 2013, to continue in office until the expiration of the member's term. Thereafter, the appointment of a member for that position must be made by the Director of Development Services.



## Funds abolished

### Rapid Outreach Loan Fund

(R.C. 166.22 (repealed); Section 257.110)

The act requires the Director of Budget and Management to transfer the cash balance on July 1, 2013, or as soon as possible thereafter, in the Rapid Outreach Loan Fund to the Facilities Establishment Fund. After completion of the transfer and on September 29, 2013, the fund is abolished. Under prior law, the Rapid Outreach Loan Fund was used for certain eligible projects that resulted in job preservation or creation.

### Dormant funds

(R.C. 122.083, 122.657, 122.658, 122.861, 166.02, 166.08, 166.25; R.C. 122.076, 122.97, and 166.28 (repealed); Section 257.110)

The act abolishes the following funds that it declares are dormant:

- **Energy Projects Fund** – formerly used for energy projects and to pay the costs incurred in administering the energy projects;
- **Shovel Ready Sites Fund** – formerly used to provide grants for certain port authority or development entity projects;
- **Clean Ohio Revitalization Revolving Loan Fund** – formerly used to make loans for projects approved by the Clean Ohio Council;
- **Diesel Emissions Grant Fund** – formerly used to fund projects relating to certified engine configurations and verified technologies in a manner consistent with the federal Diesel Emissions Reduction Program;
- **Business Development and Assistance Fund** – formerly used for any Development Services Agency operating purposes or programs providing business support or business assistance, including grants, loans, or administrative expenses;
- **Logistics and Distribution Infrastructure Taxable Bond Fund** – formerly used for the allowable costs of eligible logistics and distribution projects.

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## DEPARTMENT OF DEVELOPMENTAL DISABILITIES

### Employment First

- Modifies the state's Employment First policy for individuals with developmental disabilities.
- Authorizes the Ohio Department of Developmental Disabilities (ODODD) Director to establish an employment first task force consisting of certain state departments and enter into interagency agreements with those departments.
- Requires each county board of developmental disabilities (county DD board) to implement an employment first policy that clearly identifies community employment as the desired outcome for every individual of working age who receives services from the board.
- Specifies that any prevocational services provided by a county DD board must be provided in accordance with an individual service plan and occur over a specified period of time with specific outcomes sought to be achieved.

### Regional council and county DD board cost report

- Requires each regional council and county DD board to file with ODODD a cost report on its expenditures and income and for each report to be audited.
- Permits ODODD to withhold subsidy payments if a cost report is not timely filed or determined not auditable.

### County DD board vacancy

- Creates an exception to the limitation of no more than three consecutive member terms, if a county DD board experiences extenuating circumstances, as determined by the ODODD Director, and the appointing authority requests a waiver.

### Intermediate care facilities for individuals with intellectual disabilities

- Replaces "intermediate care facility for the mentally retarded" (ICF/MR) in state law with "intermediate care facility for individuals with intellectual disabilities" (ICF/IID).
- Relocates and reorganizes the law governing Medicaid coverage of ICF/IID services as part of the process of ODODD assuming many duties of the Ohio Department of Medicaid (ODM) regarding those services.



- Provides that the contract between ODODD and ODM that provides for ODODD to assume the powers and duties of ODM with regard to the Medicaid program's coverage of ICF/IID services may provide for ODM to perform one or more of ODODD's duties regarding ICFs/IID that undergo a change of operator, close, or cease to participate in Medicaid.
- Modifies, effective July 1, 2014, Medicaid payments for capital costs of ICFs/IID by (1) halving, except under a certain circumstance, the efficiency incentive payments to ICFs/IID with more than eight beds, (2) eliminating, except under certain circumstances, nonextensive renovation payments to ICFs/IID with more than eight beds, and (3) eliminating return on equity payments to all ICFs/IID.
- Uses an ICF/IID's annual average case-mix score for the calendar year immediately preceding the fiscal year for which the rate will be paid to determine an ICF/IID's annual Medicaid payment rate for direct care costs rather than a quarterly case-mix score to determine an ICF/IID's quarterly rate.
- Reduces to 45 (from 80) the number of days that an ICF/IID has to submit corrected resident assessment data before ODODD may assign a case-mix score to the ICF/IID for failure to submit the corrected data.
- Requires that the average of specified case-mix scores be used for certain calculations for the purpose of determining an ICF/IID's fiscal year 2014 Medicaid payment rate for direct care costs.
- Uses, for the purpose of determining an ICF/IID's fiscal year 2015 rate, the ICF/IID's case-mix score for the first quarter of calendar year 2013 determined by using resident assessment data that ODODD, or any entity under contract with ODODD, compiled if the ICF/IID did not submit resident assessment data for that quarter.
- Reduces, beginning with fiscal year 2016, the efficiency incentive that is part of the Medicaid payment rate for the indirect care costs of ICFs/IID with more than eight beds that do not obtain ODODD's approval to become downsized ICFs/IID.
- Updates, in the law governing Medicaid payments for ICF/IID services, terminology related to the Consumer Price Index and Employment Cost Index published by the U.S. Bureau of Labor Statistics.
- Permits ODODD, subject to ODM's approval, to pay a qualifying ICF/IID a Medicaid rate add-on for outlier ICF/IID services provided to a resident who is a Medicaid recipient, is under 22 years of age, is dependent on a ventilator, and meets other requirements established in rules.

- For fiscal year 2014, requires ODODD to determine modified Medicaid payment rates for existing and new ICFs/IID and provides for an existing or new ICF/IID to be paid its modified rate, unless the mean of such rates for all existing and new ICFs/IID is other than \$282.84, in which case the ICF/IID's rate is to be adjusted by a percentage that equals the percentage by which the mean rate is greater or less than \$282.84.
- For fiscal year 2015, requires ODODD to determine modified Medicaid payment rates for existing and new ICFs/IID and provides for an existing or new ICF/IID to be paid its modified rate, unless the mean of such rates for all existing and new ICFs/IID is other than \$282.77, in which case the ICF/IID's rate is to be adjusted by a percentage that equals the percentage by which the mean rate is greater or less than \$282.77.
- Requires the ODODD Director, in consultation with certain organizations, to study (1) establishing a new grouper methodology to be used when determining ICFs/IID's case-mix scores for fiscal year 2015, (2) whether the amounts set as the maximum costs per case-mix units that may be used in determining fiscal year 2015 direct care rates will avoid or minimize rate reductions, and (3) specifying additional diagnoses and special care needs that individuals must have to meet criteria for special rates for outlier services and sources of funding for, or mechanisms to ensure the budget neutrality of, the additional diagnoses and special care needs.
- Requires ODODD to strive to achieve, not later than July 1, 2018, statewide reductions in the number of ICF/IID beds.
- Requires ODODD, in its efforts to achieve the ICF/IID bed reductions, to collaborate with the Ohio Association of County Boards Serving People with Developmental Disabilities, the Ohio Provider Resource Association, the Ohio Centers for Intellectual Disabilities formed by the Ohio Health Care Association, and the Values and Faith Alliance.
- Increases to 600 (from 500) the number of (1) Medicaid waiver slots for which the ODM Director may seek federal approval as part of continuing law regarding ICFs/IID that convert to providing Medicaid waiver services and (2) ICF/IID beds that may be so converted.
- Permits an ICF/IID that downsizes or partially converts to providing home and community-based services on or after July 1, 2013, to file a Medicaid cost report if the ICF/IID has, on the day it downsizes or partially converts, a Medicaid-certified capacity that is at least 10% lower than its Medicaid-certified capacity on the day before or at least five fewer ICF/IID beds than it has on the day before.



- Permits a new ICF/IID also to file a Medicaid cost report if its beds are from a downsized ICF/IID and the downsized ICF/IID either has reduced its Medicaid-certified capacity by at least 10% or reduced the number of its ICF/IID-certified beds by at least five.
- Provides for the cost report for a downsized or partially converted ICF/IID to cover the period that begins with the day the ICF/IID downsizes or partially converts and ends on the last day of the last month of the first three full months of operation as a downsized ICF/IID or partially converted ICF/IID.
- Provides for the cost report for a new ICF/IID to cover the period that begins with the day that the ICF/IID's provider agreement takes effect and ends on the last day of the last month of the first full three months that the provider agreement is in effect.
- Provides for the cost report for a downsized or partially converted ICF/IID to be used to determine the ICF/IID's Medicaid payment rate for the period:
  - (1) Beginning on the day it downsizes or partially converts if that day is the first day of a month or, if not, beginning on the first day of the month immediately following the month the ICF/IID downsizes or partially converts; and
  - (2) Ending on the last day of the fiscal year immediately preceding the fiscal year for which it begins to be paid a rate determined using a cost report filed in accordance with regular filing procedures.
- Provides for the cost report for a new ICF/IID to be used to determine the ICF/IID's Medicaid payment rate for the period beginning on the day that the ICF/IID's provider agreement takes effect and ending on the last day of the fiscal year immediately preceding the fiscal year for which it begins to be paid a rate determined using a cost report filed in accordance with regular filing procedures.
- Revises the law governing adjustments to new ICFs/IID's initial total Medicaid payment rates.
- Provides that ODODD is permitted, rather than required, to increase an existing ICF/IID's Medicaid payment rate for capital costs when Medicaid-certified beds are added to, or replaced at, the ICF/IID.
- Requires ODODD and a workgroup to evaluate revisions to the formula used to determine Medicaid payment rates for ICF/IID services.



- Requires the ODODD Director to pay the nonfederal share of a claim for ICF/IID services using subsidies otherwise allocated to county DD boards if:
  - (1) Medicaid covers the services;
  - (2) The services are provided to a Medicaid recipient who is eligible for the services and does not occupy a bed in the ICF/IID that was included in the Medicaid-certified capacity of another ICF/IID certified before June 1, 2003;
  - (3) The services are provided by an ICF/IID whose Medicaid certification was initiated or supported by a county DD board; and
  - (4) The provider has a valid Medicaid provider agreement for the time the services are provided.
- Sets the rate for the franchise permit fee charged ICFs/IID at \$18.24 for fiscal year 2014 and \$18.17 for fiscal year 2015 and thereafter.
- Provides that the authority of an individual with mental retardation or other developmental disability, other than such an individual for whom a guardian has been appointed, to make decisions regarding the receipt of services or participation in programs applies to decisions regarding ICF/IID services.

### **Home and community-based services**

- Provides for an Individual Options waiver provider to continue to receive for fiscal years 2014 and 2015 at least the higher Medicaid payment rate for routine homemaker/personal care services that the provider received for up to a year during fiscal years 2012 and 2013.
- Provides for ODODD to retain all of the fees that county DD boards pay regarding Medicaid-paid claims for home and community-based services provided to individuals eligible for services from the county DD boards.
- Requires the ODODD Director to establish a methodology to be used in fiscal years 2014 and 2015 to estimate the quarterly amount each county DD board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible.
- Permits a developmental center to provide services to persons with mental retardation and developmental disabilities living in the community or to providers of services to these persons.



## **Innovative pilot projects**

- Permits the ODODD Director to authorize, in fiscal years 2014 and 2015, innovative pilot projects that are likely to assist in promoting the objectives of state law governing ODODD and county DD boards.

## **"Employment First" for individuals with developmental disabilities**

(R.C. 5123.022, 5123.023, 5126.01, 5126.05, and 5126.051; Sections 259.90 and 259.100)

### **Employment First policy**

The act adds to preexisting law expressing the state's policy concerning individuals with developmental disabilities the statement that every individual with a developmental disability is presumed capable of community employment. It defines "community employment" for this purpose as competitive employment that takes place in an integrated setting. "Competitive employment" is defined as full-time or part-time work in the competitive labor market in which payment is at or above the minimum wage but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by persons who are not disabled. An "integrated setting" is a setting typically found in the community where individuals with developmental disabilities interact with individuals who do not have disabilities to the same extent that individuals in comparable positions who are not disabled interact with other individuals, including in employment settings in which employees interact with the community through technology.

### **Task force**

The act authorizes the Ohio Department of Developmental Disabilities (ODODD) Director to establish an employment first task force consisting of ODODD, Ohio Department of Education, Ohio Department of Medicaid, Ohio Department of Job and Family Services, Ohio Department of Mental Health and Addiction Services, and Opportunities for Ohioans with Disabilities Agency. If established, the purpose of the task force would be to improve the coordination of the state's efforts to address the needs of individuals with developmental disabilities who seek community employment.

ODODD would have authority to enter into interagency agreements with any of the government entities on the task force. The interagency agreements could specify either or both of the following:



- (1) The roles and responsibilities of the government entities that are members of the task force, including any money to be contributed by those entities;
- (2) The projects and activities of the task force.

The act creates in the state treasury the Employment First Task Force Fund. Any money received by the task force from its members is to be credited to the fund and used by ODODD to support the work of the task force.

A task force created under the act would cease to exist on January 1, 2020. Any money, assets, or employees of ODODD that on that date were dedicated to the work of the task force would have to be reallocated by ODODD for employment services for individuals with developmental disabilities.

### **County boards of developmental disabilities**

Each county board of developmental disabilities (county DD board) is required by the act to do both of the following:

- (1) Implement an employment first policy that clearly identifies community employment as the desired outcome for every individual of working age who receives services from the board;
- (2) Set benchmarks for improving community employment outcomes.

The act modifies continuing law on services for adults with developmental disabilities by requiring each county DD board, to the extent that resources are available, to provide or arrange for the provision of adult services, including job training, vocational evaluation, and community employment services. Prior law provided that those services are optional and are in addition to sheltered employment and work activities.

Regarding prevocational services, the act provides that these services must be provided in accordance with an individual service plan and occur over a specified period of time with specific outcomes sought to be achieved. It defines "prevocational services" as services, including services as a volunteer, that provide learning and work experiences from which an individual can develop general strengths and skills that are not specific to a particular task or job but contribute to employability in community employment, supported work at community-based sites, or self-employment.

## Regional council and county DD board annual cost report

(R.C. 5126.131)

Each regional council established for the purpose of performing the duties of a county DD board and each county DD board is required by the act to file with ODODD an annual cost report detailing the council's or board's income and expenditures.<sup>27</sup> ODODD is authorized to withhold subsidy payments from a regional council or board if the report is not filed timely or is not auditable. ODODD must provide annual cost report training to regional council and board employees.

Unless ODODD establishes a later date, regional council reports must be filed with ODODD no later than the last day of April and board reports must be filed no later than the last day of May. At the written request of a regional council or board, ODODD is permitted to grant a 14-day filing extension.

Each report filed by a regional council or board must be audited by ODODD or an entity designated by ODODD. A regional council or board is permitted to submit changes to the cost report until the date the audit begins. ODODD or the designated entity is required to notify the regional council or board of the date the audit begins.

If ODODD or the entity determines that the cost report is not auditable, it must provide written notification to the regional council or board and grant the council or board 60 days to submit additional documentation. After 60 days, ODODD or the entity must determine whether the cost report is auditable with the additional documentation and notify the regional council or board of its determination. The determination of ODODD or the entity is final.

A completed cost report audit must be certified by ODODD or the entity and filed in the office of the clerk of the governing body, executive officer of the governing body, and chief fiscal officer of the audited regional council or board. No changes are permitted to a certified cost report audit that is filed by ODODD or the entity. A cost report is not a public record until copies of the cost report are filed by ODODD or the entity. Cost reports must be retained by regional councils and boards for seven years.

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<sup>27</sup> The report is in addition to the cost and operating report the regional council or board is required to provide ODODD under R.C. 5126.12 or 5126.13, not in the act.



## County DD board vacancy

(R.C. 5126.026)

Under the act, if a county DD board experiences extenuating circumstances that would severely restrict it from being able to fill a pending vacancy of a board member who will become ineligible for service on the board after serving three consecutive four-year terms, the appointing authority can request a waiver from the ODODD Director to allow that member to serve an additional four-year term. The act requires the ODODD Director to determine if the extenuating circumstances warrant the granting of such a waiver.<sup>28</sup>

## Intermediate care facilities for individuals with intellectual disabilities

(R.C. 5124.01 (primary), 1337.11, 2133.01, 2317.02, 3317.02, 3701.74, 3702.62, 3721.10, 3795.01, 4723.17, 5103.02, 5123.171, 5123.19, 5123.192, 5123.198, 5123.38, 5126.054, 5126.055, 5162.01, 5162.21, 5163.01, 5163.31, 5163.33, 5164.01, 5164.35, 5164.37, 5164.38, 5164.46, 5164.70, 5166.01, 5166.02, 5166.04, 5166.20, 5168.60, 5168.61, 5168.62, 5168.63, 5168.64, 5168.65, 5168.66, 5168.67, 5168.68, and 5168.70; Chapter 5124.)

Federal law permits a state's Medicaid program to cover services provided by intermediate care facilities for the mentally retarded (ICFs/MR). Ohio's Medicaid program covers these services. Prior to the act, state law included many provisions regarding Medicaid's coverage of ICF/MR services but did not expressly include ICF/MR services as part of Medicaid. The act expressly requires Medicaid to cover ICF/MR services when all of the following apply:

- (1) The services are provided to a Medicaid recipient eligible for the services.
- (2) The services are provided by a facility for which the provider has a valid Medicaid provider agreement.
- (3) Federal financial participation is available for the services.

Although federal Medicaid statutes use the term "intermediate care facility for the mentally retarded," federal Medicaid regulations instead use "intermediate care facility for individuals with intellectual disabilities" (ICF/IID).<sup>29</sup> Federal Medicaid regulations refer to services of intermediate care facilities for the mentally retarded as ICF/IID services. An ICF/IID is the same type of facility as an ICF/MR.

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<sup>28</sup> See R.C. 5126.021, not in the act, for provisions of continuing law governing county DD board membership and conditions for reappointment.

<sup>29</sup> 42 U.S.C. 1396d(d) and 42 C.F.R. 440.150.



The act replaces references in state law to ICFs/MR and ICF/MR services with references to ICFs/IID and ICF/IID services. The act defines "ICF/IID" as an ICF/MR, as defined in a federal Medicaid statute, and provides that "ICF/IID services" has the same meaning as in a federal Medicaid regulation. The federal definitions are as follows:

--"ICF/MR" – as an institution (or distinct part thereof) for persons with mental retardation or related conditions that (1) has the primary purpose of providing health or rehabilitative services for such persons, (2) meets such standards as may be prescribed by the U.S. Secretary of Health and Human Services, and (3) provides active treatment covered by Medicaid to the persons with respect to whom the institution requests Medicaid payments.<sup>30</sup>

--"ICF/IID services" – those items and services furnished in an ICF/IID if (1) the ICF/IID fully meets the requirements for a state license to provide services that are above the level of room and board, (2) the primary purpose of the ICF/IID is to furnish health or rehabilitative services to persons with intellectual disability or persons with related conditions, (3) the ICF/IID meets the standards specified in federal regulations, (4) the beneficiary of the services receives active treatment, and (5) the ICF/IID has been certified to meet federal requirements, as evidenced by a valid agreement between the state Medicaid agency and the ICF/IID furnishing the services.<sup>31</sup>

### **Administration of Medicaid coverage of ICF/IID services**

(R.C. 5124.02 (primary), 5111.211 (repealed), and 5123.198; Chapters 5124. and 5165.; Sections 259.260 and 259.270)

H.B. 153 of the 129th General Assembly required that the Ohio Department of Medicaid (ODM)<sup>32</sup> enter into an interagency agreement with ODODD that provides for ODODD to assume powers and duties of ODM regarding the Medicaid program's coverage of ICF/IID services. The act relocates and reorganizes the law governing Medicaid coverage of ICF/IID services as part of the process of ODODD assuming many of ODM's duties regarding ICF/IID services. It provides that the ODODD Director is not required to amend any rule for the sole purpose of updating the citation in the Ohio Administrative Code to the Revised Code section that authorizes the rule to reflect that the act renumbers or otherwise relocates the authorizing statute. The citations are to be updated as the Director amends the rules for other purposes.

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<sup>30</sup> 42 U.S.C. 1396d(d).

<sup>31</sup> 42 C.F.R. 440.150.

<sup>32</sup> At the time H.B. 153 was enacted, the state's Medicaid agency was the Ohio Department of Job and Family Services.



Not all of ODM's responsibilities regarding Medicaid's coverage of ICF/IID services are transferred to ODODD. Federal law does not permit ODM to transfer all of its responsibilities. For example, ODM continues to be responsible for entering into Medicaid provider agreements with ICFs/IID.<sup>33</sup> The act specifies that the ODODD Director is to adopt rules governing Medicaid's coverage to the extent authorized by rules adopted by the ODM Director.<sup>34</sup>

The act permits the contract between ODODD and ODM to provide for ODM to perform one or more of ODODD's duties regarding ICFs/IID that undergo a change of operator, close, or cease to participate in Medicaid. These were duties that ODM had before ODODD assumed responsibilities regarding the Medicaid program's coverage of ICF/IID services.

### **Obsolete provisions**

As part of the process of ODODD assuming responsibilities regarding Medicaid coverage of ICF/IID services, the act eliminates the following laws that cease to be applicable:

--A law that made ODODD responsible for the nonfederal share of only certain ICF/IID Medicaid claims. Under that law, ODODD was responsible for the nonfederal share of Medicaid claims submitted for ICF/IID services if (1) the services were provided on or after July 1, 2003, (2) the ICF/IID received initial certification by the Director of Health as an ICF/IID on or after June 1, 2003, (3) the ICF/IID, or a portion of the ICF/IID, was licensed by the ODODD Director as a residential facility, and (4) there was a valid Medicaid provider agreement for the ICF/IID. ODODD was not responsible for Medicaid claims submitted for an ICF/IID if a residential facility license was obtained or modified for the ICF/IID without obtaining approval of a plan for the proposed residential facility. That law provided, however, that the provisions discussed above applied only to the extent, if any, provided in the contract regarding the transfer of the powers and duties regarding ICF/IID services.

--A law that permitted ODODD to notify ODM of a reduction in the licensed capacity of a residential facility that was an ICF/IID. The reduction occurs under continuing law that requires, with certain exceptions, ODODD to reduce a residential facility's licensed capacity when a resident of the facility is involuntarily committed to a state-operated ICF/IID. On receiving the notice about the reduction, ODM was permitted by the law that is eliminated to transfer to ODODD the savings in the

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<sup>33</sup> 42 C.F.R. 431.107(b).

<sup>34</sup> 42 C.F.R. 431.10(e)(1)(ii).



nonfederal share of Medicaid expenditures for each fiscal year after the year of the commitment to be used for costs of the resident's care in the state-operated ICF/IID.

### **ICFs/IID's Medicaid rates for capital costs**

(R.C. 5124.17, 5124.01, 5124.21, and 5124.28)

Capital costs are part of an ICF/IID's costs that are used in determining the ICF/IID's total Medicaid payment rate. Under prior law, there were four components to an ICF/IID's Medicaid payment rate for capital costs: (1) its cost of ownership, (2) an efficiency incentive, (3) amounts for nonextensive renovations, and (4) amounts for return on equity. The act modifies, effective July 1, 2014, the Medicaid payments for the capital costs of ICFs/IID by (1) halving, except under a certain circumstance, the efficiency incentive payments to ICFs/IID with more than eight beds, (2) eliminating, except under certain circumstances, nonextensive renovation payments to ICFs/IID with more than eight beds, and (3) eliminating return on equity payments to all ICFs/IID.

#### **Efficiency incentive**

Under prior law, the efficiency incentive for an ICF/IID with more than eight beds was to equal 50% of the difference between its costs of ownership and a limit on costs of ownership payments. The act provides that, beginning July 1, 2014, the efficiency incentive for an ICF/IID with more than eight beds is not to exceed 25% of the difference between its costs of ownership and the limit on costs of ownership payments. However, the reduction does not apply to an ICF/IID with more than eight beds that obtains ODODD's approval to become a downsized ICF/IID and the approval is conditioned on the downsizing being completed not later than July 1, 2018. An ICF/IID becomes a downsized ICF/IID by permanently reducing its Medicaid-certified capacity pursuant to a plan approved by ODODD.

#### **Nonextensive renovations**

Prior law used inconsistent terminology regarding the part of an ICF/IID's Medicaid payment for renovations. Continuing law defines "capital costs" as costs of ownership and costs of nonextensive renovation. However, the provision of prior law that governed the amount of an ICF/IID's Medicaid payment for nonextensive renovations used the terms "renovation" and "nonextensive renovations." The act uses only the term "nonextensive renovation."

Prior law established only two conditions for an ICF/IID to qualify for a Medicaid payment for nonextensive renovations. First, at least five years must have elapsed since the ICF/IID's date of licensure or date of an extensive renovation of the portion of the ICF/IID that is proposed to be nonextensively renovated, unless the





nonextensive renovation is necessary to meet the requirements of federal, state, or local statutes, ordinances, rules, or policies. Second, the ICF/IID must obtain ODODD's prior approval by submitting a plan that describes in detail the changes in capital assets to be accomplished by means of the nonextensive renovation and the timetable for completing the project, which cannot be more than 18 months after the nonextensive renovation begins. The act adds a third condition for an ICF/IID with more than eight beds to qualify for a Medicaid payment for nonextensive renovations: either ODODD approved the nonextensive renovation before July 1, 2013, or the nonextensive renovation is part of a project that results in the ICF/IID becoming a downsized ICF/IID or partially converted ICF/IID. An ICF/IID becomes a partially converted ICF/IID by converting some, but not all, of its beds to providing home and community-based services under the Individual Options (IO) Medicaid waiver, including such a conversion that occurs after the ICF/IID is acquired through a request for proposals that the ODODD Director issues after the previous provider's license for the ICF/IID was revoked or surrendered. The act does not add an additional condition for an ICF/IID with eight or fewer beds.

### **ICFs/IID's Medicaid rates for direct care costs**

(R.C. 5124.19 and 5124.192; Sections 259.200, 529.210, 605.30, 605.31, and 812.20)

Direct care costs are part of an ICF/IID's costs that are used in determining the ICF/IID's total Medicaid payment rate. Prior law required ODODD to establish each ICF/IID's rate for direct care costs quarterly. The act requires ODODD to determine each ICF/IID's rate for direct care costs for each fiscal year. As part of the change from quarterly to annual rate determinations, the act revises the first step in determining the rate. Under prior law, the first step in determining the rate for a quarter was to multiply the lesser of the ICF/IID's cost per case-mix unit or the maximum cost per case-mix unit for the ICF/IID's peer group by the ICF/IID's average case-mix score determined for the calendar quarter that preceded the immediately preceding calendar quarter. Under the act, the first step in determining the rate for a fiscal year is to multiply the lesser of the ICF/IID's cost per case-mix unit or the maximum cost per case-mix unit for the ICF/IID's peer group by the ICF/IID's annual average case-mix score for the calendar year immediately preceding the fiscal year.

Continuing law requires ODODD to determine an ICF/IID's case-mix score quarterly as part of the process of determining the ICF/IID's Medicaid payment rate for direct care costs. Generally, an ICF/IID's case-mix score is determined by using resident assessment data the ICF/IID submits to ODODD. Under certain circumstances, ODODD may assign a case-mix score that is 5% less than the ICF/IID's case-mix score for the immediately preceding quarter. The circumstances include when the ICF/IID fails to timely submit complete and accurate resident assessment data necessary to determine





the ICF/IID's case-mix score for a quarter. ODODD must permit an ICF/IID to correct the data before assigning a case-mix score due to the submission of incorrect resident assessment data. Under prior law, ODODD could assign the case-mix score if the ICF/IID failed to submit the corrected resident assessment data not later than 80 days after the end of the quarter to which the data pertained or a later due date specified in rules. The act reduces to 45 the number of days that an ICF/IID has to submit corrected resident assessment data before ODODD may assign a case-mix score to the ICF/IID for failure to submit the corrected data.

H.B. 303 of the 129th General Assembly permitted ODODD to conduct or contract with another entity to conduct, for the first quarter of calendar year 2013, resident assessments for all ICFs/IID. Continuing law permitted an ICF/IID to conduct its own resident assessment for that quarter as well. H.B. 303 required ODODD to use the data obtained from the resident assessments it or its contract entity conducts for the first quarter of calendar year 2013 in determining each ICF/IID's case-mix score for that quarter. The case-mix scores so determined for that quarter were to be used in calculating ICFs/IID's fiscal year 2014 Medicaid rates for direct care costs. The act requires instead that ODODD use the average of the following in calculating each ICF/IID's fiscal year 2014 Medicaid rate for direct care costs:

(1) The ICF/IID's case-mix score determined or assigned for the last quarter of calendar year 2012;

(2) The ICF/IID's case-mix score determined for the first quarter of calendar year 2013 determined using the resident assessment data obtained by ODODD or its contract entity;

(3) Unless the ICF/IID did not submit resident assessment data for the first quarter of calendar year 2013, the ICF/IID's case-mix score for the first quarter of calendar year 2013 determined using the resident assessment data submitted by the ICF/IID.

H.B. 303 required ODODD to use, for the purpose of determining an ICF/IID's fiscal year 2015 Medicaid rate for direct care costs, the case-mix score determined for the first quarter of calendar year 2013 using the resident assessment data obtained by ODODD or its contract entity. The act provides that ODODD is to use that resident assessment data in determining an ICF/IID's fiscal year 2015 Medicaid rate only if the ICF/IID does not submit resident assessment data for the first quarter of calendar year 2013.

## **Return on equity payments**

The act eliminates, effective July 1, 2014, the requirement that ODODD pay ICFs/IID a return on their net equity. A return on net equity was a part of their Medicaid payments for capital costs. Under prior law, a return on net equity payment was to be computed at the rate of 1.5 times the average of interest rates on special issues of public debt obligations issued to the federal Hospital Insurance Trust Fund for the cost reporting period. No ICF/IID's return on net equity could exceed one dollar per patient day. In calculating an ICF/IID's rate for return on net equity, ODODD had to use the greater of the ICF/IID's inpatient days during the applicable cost reporting period or the number of inpatient days it would have had during that period if its occupancy rate had been 95%.

## **ICFs/IID's efficiency incentives for indirect care costs**

(R.C. 5124.21)

Indirect care costs are part of an ICF/IID's costs that are used in determining the ICF/IID's total Medicaid payment rate. A Medicaid payment rate for indirect care costs is determined for each ICF/IID individually and a maximum payment rate for indirect care costs is determined for each peer group of ICFs/IID. An ICF/IID's Medicaid rate for its indirect care costs is the lesser of the rate determined for it individually and the maximum rate determined for its peer group. The act reduces, beginning with fiscal year 2016, the efficiency incentive that is included in determining the individual Medicaid payment rate for the indirect care costs of an ICF/IID with more than eight beds other than such an ICF/IID that obtains ODODD's approval to become a downsized ICF/IID and the approval is conditioned on the downsizing being completed not later than July 1, 2018.

Under prior law, the efficiency incentive for an ICF/IID with more than eight beds was, for a fiscal year ending in an even-numbered calendar year, 7.1% of the maximum rate established for the ICF/IID's peer group. Its efficiency incentive for a fiscal year ending in an odd-numbered calendar year was the amount calculated for the preceding fiscal year. The act does not change the efficiency incentive for an ICF/IID with more than eight beds if the ICF/IID obtains ODODD's approval to become a downsized ICF/IID and the approval is conditioned on the downsizing being completed not later than July 1, 2018. The efficiency incentive for an ICF/IID with more than eight beds that does not obtain such approval is to be the following beginning in fiscal year 2015:

- (1) For fiscal year 2015, one-half of its efficiency incentive for fiscal year 2014;



(2) For fiscal year 2016 and each even-numbered fiscal year thereafter, 3.55% of the maximum rate established for the ICF/IID's peer group;

(3) For fiscal year 2017 and each odd-numbered fiscal year thereafter, the amount calculated for the ICF/IID for the immediately preceding fiscal year.

### **Terminology related to federal inflation data**

(R.C. 5124.106, 5124.17, 5124.19, and 5124.21)

Inflation adjustments are made in determining ICFs/IID's Medicaid payment rates. The Consumer Price Index (CPI) and Employment Cost Index (ECI) published by the U.S. Bureau of Labor Statistics are used for this purpose. The act updates certain terminology used in connection with these indexes as follows:

(1) In making an inflation adjustment to determine ICFs/IID's rates for capital costs, the CPI for shelter costs for all urban consumers for the Midwest Region, rather than the North Central Region, is to be used.

(2) In making an inflation adjustment to determine ICFs/IID's rates for indirect care costs and in determining a reduction to an ICF/IID's total rate due to a late, incomplete, or inadequate Medicaid cost report, the CPI for all items for all urban consumers for the Midwest Region, rather than the North Central Region, is to be used.

(3) In making an inflation adjustment to determine ICFs/IID's rates for direct care costs, the health care and social assistance component, rather than the health services component of the ECI for Total Compensation, is to be used.

### **Medicaid rate add-on for outlier ICF/IID services**

(R.C. 5124.25 (primary) and 5124.15)

The act permits ODODD, subject to ODM's approval, to pay a Medicaid rate add-on to an ICF/IID for outlier ICF/IID services the ICF/IID provides to qualifying ventilator-dependent residents on or after September 29, 2013 (the act's 90-day effective date) if the ICF/IID applies to ODODD to receive the rate add-on and ODODD approves the application. ODODD may approve an ICF/IID's application if both of the following apply:

(1) The ICF/IID submits to ODODD a best practices protocol for providing outlier ICF/IID services and ODODD determines that the protocol is acceptable;

(2) The ICF/IID meets all other eligibility requirements for the rate add-on established in rules the ODODD Director is to adopt.



An ICF/IID that is approved to provide outlier ICF/IID services must provide the services in accordance with (1) the best practices protocol ODODD determines is acceptable and (2) requirements regarding the services established in rules the ODODD Director is to adopt.

To qualify to receive outlier ICF/IID services from an ICF/IID, a resident of the ICF/IID must be a Medicaid recipient, be under 22 years of age, be dependent on a ventilator, and meet all other eligibility requirements established in rules the ODODD Director is to adopt.

ODODD is to negotiate with ODM the amount of the Medicaid payment rate add-on, if any, to be paid or the method by which that amount is to be determined. ODODD is prohibited from paying the rate add-on unless ODM approves the amount of the rate add-on or method by which the amount is to be determined.

### **Fiscal year 2014 Medicaid rates for ICF/IID services**

(Section 259.200)

The act provides for an existing or new ICF/IID's Medicaid payment rate for fiscal year 2014 to be its modified rate unless the mean of such rates for all existing and new ICFs/IID is other than \$282.84, in which case the ICF/IID's rate is to be adjusted by a percentage that equals the percentage by which the mean rate is greater or less than \$282.84. An ICF/IID is considered to be an existing ICF/IID if (1) the provider of the ICF/IID has a valid Medicaid provider agreement for the ICF/IID on June 30, 2013, and a valid Medicaid provider agreement for the ICF/IID during fiscal year 2014 or (2) the ICF/IID undergoes a change of operator that takes effect during fiscal year 2014, the exiting operator has a valid Medicaid provider agreement for the ICF/IID on the day immediately preceding the effective date of the change of operator, and the entering operator has a valid Medicaid provider agreement for the ICF/IID during fiscal year 2014. A new ICF/IID is an ICF/IID for which an initial provider agreement is obtained during fiscal year 2014.

An existing ICF/IID's modified rate is its rate as determined in accordance with Revised Code provisions governing the Medicaid payment rates for ICFs/IID with the following modifications:

(1) In place of the inflation adjustment otherwise made in determining the ICF/IID's rate for other protected costs, its other protected costs (excluding the franchise permit fee component of those costs) from calendar year 2012 are to be multiplied by 1.014.

(2) In place of the maximum cost per case-mix unit otherwise established for the ICF/IID's peer group, its maximum costs per case-mix unit is to be \$123.05 if it has more than eight beds or \$117.22 if it has eight or fewer beds.

(3) In place of the inflation adjustment otherwise calculated in determining the ICF/IID's rate for direct care costs, an inflation adjustment of 1.014 is to be used.

(4) In place of the maximum rate for the indirect care costs of the ICF/IID's peer group, the maximum rate for the indirect care costs for its peer group is to be \$68.98 if it has more than eight beds or \$59.60 if it has eight or fewer beds.

(5) In place of the inflation adjustment otherwise calculated in determining the ICF/IID's rate for indirect care costs, an inflation adjustment of 1.014 is to be used.

(6) In place of the efficiency incentive otherwise calculated in determining its rate for indirect care costs, its efficiency incentive for indirect care costs is to be \$3.69 if it has more than eight beds or \$3.19 if it has eight or fewer beds.

(7) The ICF/IID's efficiency incentive for capital costs is to be reduced by 50%.

A new ICF/IID's initial total modified rate is its initial rate as determined in accordance with a Revised Code provision governing the initial Medicaid payment rates for new ICFs/IID with the following modifications:

(1) In place of the initial rate for direct care costs otherwise determined for the ICF/IID when there is no cost or resident assessment data for the ICF/IID, its initial rate for direct care costs is to be determined as follows:

(a) Using the costs per case-mix units determined for ICFs/IID pursuant to the act's provision governing ICFs/IID's fiscal year 2014 rates for direct care costs, determine the median of the costs per case-mix units of each peer group (see "**ICFs/IID's Medicaid rates for direct care costs**," above);

(b) Multiply the median determined above by the median of the averages determined for the ICFs/IID in the ICF/IID's peer group pursuant to the act's provision governing ICFs/IID's fiscal year 2014 rates for direct care costs;

(c) Multiply the product determined above by 1.014.

(2) In place of the initial rate for indirect care costs otherwise determined for the ICF/IID, its initial rate for indirect care costs is to be \$69.98 if it has more than eight beds or \$59.60 if it has eight or fewer beds.

(3) In place of the initial rate for other protected costs otherwise determined for the ICF/IID, its initial rate for other protected costs is to be 115% of the median fiscal year 2014 rate determined for existing ICFs/IID.

A new ICF/IID's initial total modified rate is to be adjusted at the time new ICFs/IID's rates are ordinarily adjusted (see "**Adjustment of new ICFs/IID's initial Medicaid rates**," below). If the adjustment affects the ICF/IID's rate for services provided during fiscal year 2014, the modifications that are to be applied under the act to existing ICFs/IID apply to the adjustment.

ODODD is required by the act to reduce the amount it pays ICFs/IID for fiscal year 2014 if the U.S. Centers for Medicare and Medicaid Services requires that the ICF/IID franchise permit fee be reduced or eliminated. The amount of the reduction is to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

### **Fiscal year 2015 Medicaid rates for ICF/IID services**

(Section 259.210)

The act provides for an existing or new ICF/IID's Medicaid payment rate for fiscal year 2015 to be its modified rate unless the mean of such rates for all existing and new ICFs/IID is other than \$282.77, in which case the ICF/IID's rate is to be adjusted by a percentage that equals the percentage by which the mean rate is greater or less than \$282.77. An ICF/IID is considered to be an existing ICF/IID if (1) the provider of the ICF/IID has a valid Medicaid provider agreement for the ICF/IID on June 30, 2014, and a valid Medicaid provider agreement for the ICF/IID during fiscal year 2015 or (2) the ICF/IID undergoes a change of operator that takes effect during fiscal year 2015, the exiting operator has a valid Medicaid provider agreement for the ICF/IID on the day immediately preceding the effective date of the change of operator, and the entering operator has a valid Medicaid provider agreement for the ICF/IID during fiscal year 2015. A new ICF/IID is an ICF/IID for which an initial provider agreement is obtained during fiscal year 2015.

An existing ICF/IID's modified rate is its rate as determined in accordance with Revised Code provisions governing the Medicaid payment rates for ICFs/IID with the following modifications:

(1) In place of the inflation adjustment otherwise made in determining the ICF/IID's rate for other protected costs, its other protected costs (excluding the franchise permit fee component of those costs) from calendar year 2013 are to be multiplied by 1.014.





(2) In place of the maximum cost per case-mix unit otherwise established for the ICF/IID's peer group, its maximum costs per case-mix unit is to be \$114.37 if it has more than eight beds, \$109.09 if it has eight or fewer beds, or the different amount, if any, specified in a future amendment made by the General Assembly.

(3) In place of the inflation adjustment otherwise calculated in determining the ICF/IID's rate for direct care costs, an inflation adjustment of 1.014 is to be used.

(4) In place of the grouper methodology established in rules adopted prior to the act, a new grouper methodology to be established in rules is to be used in determining its case-mix score.

(5) In place of the maximum rate for the indirect care costs of the ICF/IID's peer group, the maximum rate for the indirect care costs for its peer group is to be \$68.98 if it has more than eight beds or \$59.60 if it has eight or fewer beds.

(6) In place of the inflation adjustment otherwise calculated in determining the ICF/IID's rate for indirect care costs, an inflation adjustment of 1.014 is to be used.

(7) In place of the efficiency incentive otherwise calculated in determining its rate for indirect care costs, its efficiency incentive for indirect care costs is to be \$3.69 if it has more than eight beds or \$3.19 if it has eight or fewer beds.

(8) The ICF/IID's efficiency incentive for capital costs is to be reduced by 50%.

A new ICF/IID's initial total modified rate is its initial rate as determined in accordance with a Revised Code provision governing the initial Medicaid payment rates for new ICFs/IID with the following modifications:

(1) In place of the initial rate for direct care costs otherwise determined for the ICF/IID when there is no cost or resident assessment data for the ICF/IID, its initial rate for direct care costs is to be determined as follows:

(a) Using the costs per case-mix units determined for ICFs/IID pursuant to the act's provision governing ICFs/IID's fiscal year 2014 rates for direct care costs, determine the median of the costs per case-mix units of each peer group (see "**ICFs/IID's Medicaid rates for direct care costs**," above);

(b) Multiply the median determined above by the median annual average case-mix score for its peer group for calendar year 2013;

(c) Multiply the product determined above by 1.014.



(2) In place of the initial rate for indirect care costs otherwise determined for the ICF/IID, its initial rate for indirect care costs is to be \$69.98 if it has more than eight beds or \$59.60 if it has eight or fewer beds.

(3) In place of the initial rate for other protected costs otherwise determined for the ICF/IID, its initial rate for other protected costs is to be 115% of the median fiscal year 2015 rate determined for existing ICFs/IID.

A new ICF/IID's initial total modified rate is to be adjusted at the time new ICFs/IID's rates are ordinarily adjusted (see "**Adjustment of new ICFs/IID's initial Medicaid rates,**" below). If the adjustment affects the ICF/IID's rate for services provided during fiscal year 2015, the modifications that are to be applied under the act to existing ICFs/IID apply to the adjustment.

ODODD is required by the act to reduce the amount it pays ICFs/IID for fiscal year 2015 if the U.S. Centers for Medicare and Medicaid Services requires that the ICF/IID franchise permit fee be reduced or eliminated. The amount of the reduction is to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

The act requires the ODODD Director to study certain issues related to ICFs/IID's fiscal year 2015 rates. The Director is to study the issues in consultation with the Ohio Provider Resource Association, Values and Faith Alliance, Ohio Association of County Boards of Developmental Disabilities, and Ohio Health Care Association/Ohio Centers for Intellectual Disabilities. All of the following are to be studied:

(1) Establishing a new grouper methodology to be used when determining ICFs/IID's case-mix scores for fiscal year 2015;

(2) Whether the maximum costs per case-mix units established by the act (\$114.37 for ICFs/IID with more than eight beds and \$109.09 for ICFs/IID with eight or fewer beds) are set at levels that will avoid or minimize rate reductions for fiscal year 2015;

(3) Specifying additional diagnoses and special care needs that individuals must have to meet the criteria for admission to designated outlier ICFs/IID or units and sources of funding for, or mechanisms to ensure the budget neutrality of, the additional diagnoses and special care needs.

The Director is required to adopt rules not later than March 31, 2014, to do the following:

(1) If the Director and organizations with which the Director consults for the studies discussed above agree, not later than December 31, 2013, to the terms of a new





grouper methodology, prescribe a new methodology that is consistent with the agreed upon terms;

(2) If the Director and organizations do not agree on such terms by that date, prescribe a new grouper methodology that provides for at least six classes based on data available to the Director on September 28, 2013 (the day before the provision's effective date);

(3) Specify additional diagnoses and special care needs that individuals must have to meet the criteria for admission to designated outlier ICFs/IID or units.

The act requires the Director and organizations, if they agree that the maximum costs per case-mix units established by the act are not set at levels that will avoid or minimize rate reductions for fiscal year 2015, to recommend that the General Assembly revise the maximums. The recommendations are to be made not later than March 31, 2014. The act states that it is the General Assembly's intent to revise the maximums if the Director and organizations recommend the revisions.

### **Reduction in number of ICF/IID beds**

(R.C. 5124.67 (primary), 5124.01, 5124.63, and 5124.64; Section 125.11.03)

The act requires ODODD to strive to achieve, not later than July 1, 2018, the following statewide reductions in ICF/IID beds:

(1) At least 500 and not more than 600 beds in ICFs/IID that, before becoming downsized ICFs/IID, have 16 or more beds;

(2) At least 500 and not more than 600 beds in ICFs/IID with any number of beds that convert some or all of their beds from providing ICF/IID services to providing home and community-based services under ODODD-administered Medicaid waiver programs.

In its efforts to achieve these reductions, ODODD must collaborate with the Ohio Association of County Boards Serving People with Developmental Disabilities, the Ohio Provider Resource Association, the Ohio Centers for Intellectual Disabilities formed by the Ohio Health Care Association, and the Values and Faith Alliance. The collaboration efforts may include the following:

(1) Identifying ICFs/IID that may reduce the number of their beds to help achieve the reductions;

(2) Encouraging ICFs/IID to reduce the number of their beds;



(3) Establishing interim time frames for making progress in achieving the reductions;

(4) Creating incentives for, and removing impediments to, the reductions;

(5) In the case of ICF/IID beds that are converted to providing home and community-based services, developing a mechanism to compensate ICFs/IID for beds that permanently cease to provide ICF/IID services.

ODODD must meet not less than twice each year with the organizations specified above to review the progress being made in achieving the reductions, prepare written reports on the progress, and identify additional measures needed to achieve the reductions.

The act increases to 600 (from 500) the number of (1) Medicaid waiver slots for which the ODM Director may seek federal approval as part of continuing law regarding ICFs/IID that convert to providing home and community-based services under ODODD-administered Medicaid waiver programs and (2) ICF/IID beds that may be so converted.

## **Medicaid cost reports**

(R.C. 5124.10 (primary), 5124.01, 5124.101, 5124.102, 5124.107, 5124.108, 5124.109, and 5124.522)

### **Cost report deadline extension**

Generally, ICFs/IID are required by continuing law to file annual cost reports with ODODD. Cost reports are a factor in determining the Medicaid payment rates for ICFs/IID.

An annual cost report is to cover the calendar year or portion of the calendar year during which an ICF/IID participated in the Medicaid program. It is due not later than 90 days after the end of the calendar year, or portion of the calendar year, that the cost report covers. However, ODODD, for good cause, may grant a 14-day extension of the time for filing a cost report on written request from an ICF/IID.

There are exceptions to the requirement discussed above. A new ICF/IID is to submit a cost report not later than 90 days after the end of its first three full calendar months of operation. An ICF/IID that undergoes a change of provider that is an arm's length transaction is to submit a cost report not later than 90 days after the end of its first three full calendar months of operation under the new provider. A new ICF/IID that opens, and an ICF/IID that undergoes a change of provider that is an arm's length



transaction, after the first day of October in a calendar year is not required to file a cost report for that calendar year.

Under prior law, ODODD's authority to grant a 14-day extension to file an annual cost report was not expressly applied to a cost report for a new ICF/IID or an ICF/IID that undergoes a change of provider that is an arm's length transaction. The act expressly applies the 14-day extension authority to such cost reports.

### **Cost reports for downsized, partially converted, and new ICFs/IID**

The act permits an ICF/IID that becomes a downsized ICF/IID or partially converted ICF/IID on or after July 1, 2013, to file with ODODD a cost report sooner than it otherwise would if it meets certain conditions. To be able to file a cost report sooner than it otherwise would, a downsized or partially converted ICF/IID must have either of the following on the day it becomes a downsized ICF/IID or partially converted ICF/IID:

(1) A Medicaid-certified capacity that is at least 10% less than its Medicaid-certified capacity on the day immediately preceding the day it becomes a downsized ICF/IID or partially converted ICF/IID;

(2) At least five fewer beds certified as ICF/IID beds than it has on the day immediately preceding the day it becomes a downsized ICF/IID or partially converted ICF/IID.

The act also permits a new ICF/IID to file a cost report if its beds are from a downsized ICF/IID and the downsized ICF/IID has either of the following on the day it becomes a downsized ICF/IID:

(1) A Medicaid-certified capacity that is at least 10% less than its Medicaid-certified capacity on the day immediately preceding the day it becomes a downsized ICF/IID;

(2) At least five fewer ICF/IID-certified beds than it had on the day immediately preceding the day it becomes a downsized ICF/IID.

The cost report of a downsized ICF/IID or partially converted ICF/IID is to cover the period that begins with the day that it becomes a downsized ICF/IID or partially converted ICF/IID and ends on the last day of the last month of the first three full months of operation as a downsized ICF/IID or partially converted ICF/IID. The cost report of a new ICF/IID is to cover the period that begins with the day that the ICF/IID's provider agreement takes effect and ends on the last day of the last month of the first



full three months that the provider agreement is in effect. ODODD must refuse to accept a cost report if either of the following apply:

(1) Unless ODODD grants a 14-day extension for good cause, the ICF/IID fails to file the cost report not later than 90 days after the last day of the period the cost report covers;

(2) The cost report is incomplete or inadequate.

If ODODD accepts a cost report, it must use the cost report to determine the ICF/IID's Medicaid payment rate for ICF/IID services the ICF/IID provides during a certain period. In the case of an ICF/IID that becomes a downsized or partially converted ICF/IID, the period is to begin on the day that the ICF/IID becomes a downsized or partially converted ICF/IID if that day is the first day of a month or, if that is not the case, the first day of the month immediately following the month that the ICF/IID becomes a downsized or partially converted ICF/IID. In the case of a new ICF/IID, the period is to begin on the day that the ICF/IID's provider agreement takes effect. The period is to end for downsized, partially converted, and new ICFs/IID on the last day of the fiscal year that immediately precedes the fiscal year for which the ICF/IID begins to be paid a rate determined using its next, or, in the case of a new ICF/IID, first, annual cost report.

An ICF/IID is to file its next or first annual cost report at the regular time for filing the annual cost report if the ICF/IID becomes a downsized or partially converted ICF/IID on or before the first day of October or, in the case of a new ICF/IID, the ICF/IID's provider agreement takes effect on or before that date. The annual cost report is to cover the portion of the first calendar year that the ICF/IID operated as a downsized or partially converted ICF/IID or, in the case of a new ICF/IID, the portion of the first calendar year during which its provider agreement was in effect. If an ICF/IID becomes a downsized or partially converted ICF/IID after the first day of October or if a new ICF/IID's provider agreement takes effect after that date, the ICF/IID is not required to file an annual cost report for that calendar year but must file an annual cost report for the immediately following calendar year.

### **Adjustment of new ICFs/IID's initial Medicaid rates**

(R.C. 5124.151)

The act revises the law governing when ODODD is to adjust a new ICF/IID's initial total Medicaid payment rate. Under prior law, ODODD was to adjust a new ICF/IID's initial total rate at both of the following times:

(1) On the first day of July to reflect new rate determinations for all ICFs/IID;



(2) Following the ICF/IID's submission of its first cost report, which is due not later than 90 days after the end of the ICF/IID's first three full months of operation.

The act eliminates the requirement for ODODD to adjust a new ICF/IID's initial total rate following the ICF/IID's submission of its first cost report. In addition, the act requires ODODD to adjust a new ICF/IID's initial total rate in accordance with the act's provisions regarding cost reports for new ICFs/IID that obtain their beds from downsized ICFs/IID rather than on the first day of July if ODODD accepts a cost report from the ICF/IID under those provisions. (See "**Cost reports for downsized, partially converted, and new ICFs/IID**," above.)

### **ICF/IID Medicaid rate reconsideration**

(R.C. 5124.38)

Under the act, ODODD is permitted, rather than required as under prior law, to increase an existing ICF/IID's Medicaid payment rate for capital costs through a rate reconsideration process when Medicaid-certified beds are added to the ICF/IID or replaced at the same site.

### **Evaluation of Medicaid payment rate formula for ICFs/IID**

(Section 259.230)

H.B. 153 of the 129th General Assembly required ODM<sup>35</sup> and ODODD to study issues regarding Medicaid payment rates for ICF/IID services. A workgroup was created to assist with the study. The act requires that ODODD retain the workgroup for the purpose of assisting ODODD during fiscal years 2014 and 2015 with an evaluation of revisions to the formula used to determine Medicaid payment rates for ICF/IID services. In conducting the evaluation, ODODD and the workgroup must (1) focus primarily on the service needs of individuals with complex challenges that ICFs/IID are able to meet, (2) pursue the goal of reducing the Medicaid-certified capacity of individual ICFs/IID and the total number of ICF/IID beds in Ohio for the purpose of increasing the service choices and community integration of individuals eligible for ICF/IID services, and (3) consider the impact that exception reviews have on ICFs/IID's case-mix scores.

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<sup>35</sup> At the time H.B. 153 was enacted, the state's Medicaid agency was the Ohio Department of Job and Family Services.



## **Use of county subsidies to pay nonfederal share of ICF/IID services**

(Section 259.240)

The act requires the ODODD Director to pay the nonfederal share of a claim for ICF/IID services using funds otherwise appropriated for subsidies to county DD boards if (1) Medicaid covers the ICF/IID services, (2) the ICF/IID services are provided to a Medicaid recipient who is eligible for the ICF/IID services and the recipient does not occupy a bed in the ICF/IID that used to be included in the Medicaid-certified capacity of another ICF/IID certified by the Director of Health before June 1, 2003, (3) the ICF/IID services are provided by an ICF/IID whose Medicaid certification by the Director of Health was initiated or supported by a county DD board, and (4) the provider of the ICF/IID services has a valid Medicaid provider agreement for the services for the time that the services are provided.

## **ICF/IID franchise permit fee**

(R.C. 5168.60)

Continuing law imposes an annual assessment on ICFs/IID. The assessment is termed a "franchise permit fee." Revenue raised by the franchise permit fee is to be used for the expenses of the programs ODODD administers and ODODD's administrative expenses.

The act revises the rate at which the ICF/IID franchise permit fee is assessed. Under prior law, the rate was \$18.32 per bed per day. Under the act, the rate is \$18.24 for fiscal year 2014 and \$18.17 for fiscal year 2015 and thereafter.

## **Decision-making by individuals with MR/DD**

(R.C. 5126.043)

Continuing law provides that an individual with mental retardation or a developmental disability is allowed to make decisions regarding receipt of a service or participation in a program provided for, or funded under, state law governing ODODD or county DD boards unless a guardian has been appointed for the individual. The act provides that such an individual also may make decisions regarding ICF/IID services.



## Home and community-based services

### Medicaid rates for certain Individual Options services

(Section 259.250)

H.B. 153 of the 129th General Assembly required ODODD to increase the rate paid to a provider under the Individual Options (IO) Medicaid waiver by 52¢ for each 15 minutes of routine homemaker/personal care provided to an individual for up to a year if all of the following applied:

(1) The individual was a resident of a developmental center immediately prior to enrollment in the waiver;

(2) The provider began serving the individual on or after July 1, 2011;

(3) The ODODD Director determined that the increased rate was warranted by the individual's special circumstances, including the individual's diagnosis, service needs, or length of stay at the developmental center, and that serving the individual through the IO waiver was fiscally prudent for the Medicaid program.

The act continues the rate increase for fiscal years 2014 and 2015 and provides for the higher rate to be provided under more circumstances. The higher rate is to be paid for routine homemaker/personal care services to which both of the following apply:

(1) The services are provided to an IO waiver enrollee (a) who began to receive the services from the provider on or after July 1, 2011, (b) who resided in a developmental center, converted facility,<sup>36</sup> or public hospital immediately before enrolling in the IO waiver, and (c) for whom the ODODD Director has determined that paying the higher rate is warranted because of the enrollee's special circumstances, including the enrollee's diagnosis, service needs, or length of stay at the developmental center, converted facility, or public hospital.

(2) The provider of the services has a valid Medicaid provider agreement for the services for the period during which the enrollee receives the services from the provider.

A provider is to receive the regular Medicaid payment rate rather than the rate discussed above if ODODD sets the regular rate at an amount higher than the rate discussed above.

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<sup>36</sup> A converted facility is an ICF/IID, or former ICF/IID, that converted some or all of its beds to providing home and community-based services under the IO waiver.



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

(R.C. 5123.0412; Section 323.390)

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 during the year to an individual eligible for services from the county DD board. No fee is to be charged, however, for home and community-based services provided under the Transitions Developmental Disabilities waiver program.

Under prior law, the fees were deposited into two funds: the ODODD Administration and Oversight Fund and the ODJFS Administration and Oversight Fund. ODODD and the Ohio Department of Job and Family Services were required to enter into an interagency agreement to specify which portion of the fees was to be deposited into each fund respectively.

The act abolishes the ODJFS Administration and Oversight Fund and provides for all of the fees to be deposited into the ODODD Administration and Oversight Fund.

## **County DD board share of nonfederal Medicaid expenditures**

(Section 259.60)

The act requires the ODODD Director to establish a methodology to be used in fiscal years 2014 and 2015 to estimate the quarterly amount each county DD board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible. With certain exceptions, continuing law requires the board to pay this share for home and community-based services provided to an individual who the board determines is eligible for board services.<sup>37</sup> ODODD was similarly required to establish the methodology for fiscal years 2012 and 2013 under H.B. 153 of the 129th General Assembly.

Each quarter, the Director must submit to the board written notice of the amount for which the board is responsible. The notice must specify when the payment is due.

## **Developmental center services**

(Section 259.150)

The act permits an ODODD-operated residential center for persons with mental retardation and developmental disabilities (i.e., a developmental center) to provide services to persons with mental retardation and developmental disabilities living in the

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<sup>37</sup> R.C. 5126.0510, not in the act.



community or to providers of services to these persons. ODODD is permitted to develop a method for recovery of all costs associated with the provision of the services. Similar provisions were included in H.B. 153 of the 129th General Assembly.

### **Innovative pilot projects**

(Section 259.180)

For fiscal years 2014 and 2015, the act permits the ODODD Director to authorize innovative pilot projects that are likely to assist in promoting the objectives of state law governing ODODD and county DD boards. Under the act, a pilot project may be implemented in a manner inconsistent with the laws or rules governing ODODD and county DD boards; however, the Director cannot authorize a pilot project to be implemented in a manner that would cause Ohio to be out of compliance with any requirements for a program funded in whole or in part with federal funds. Before authorizing a pilot project, the Director must consult with entities interested in the issue of developmental disabilities, including the Ohio Provider Resource Association, Ohio Association of County Boards of Developmental Disabilities, the Values and Faith Alliance, and ARC of Ohio. Similar provisions were included in H.B. 153 of the 129th General Assembly.



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## DEPARTMENT OF EDUCATION

### I. School Financing

#### School funding in general

- Creates a new system of state financing for school districts and community schools and science, technology, engineering, and mathematics (STEM) schools.
- Specifies a formula amount of \$5,745, for fiscal year 2014, and \$5,800, for fiscal year 2015.
- Beginning July 1, 2014, requires the superintendent of each school district to report (rather than certify) the enrollment (rather than the average daily membership) of students receiving services from schools under the superintendent's supervision as of the last day of October, March, and June of each year (rather than during the first full week of October as under prior law).
- Requires the Department of Education to create reports of the enrollment reported by each district, requires the superintendent of each district to certify those reports, and requires the Department to calculate a district's average daily membership for the specific purposes or categories required for the act's school funding system.
- Requires counting kindergarten students on the basis of the full-time equivalency for which they are enrolled, rather than counting each as one full-time student regardless of whether the student attends an all-day or part-day program as under prior law.
- Prohibits a school district, community school, or STEM school from categorically excluding a student from its reported number (or, beginning in fiscal year 2015 for school districts, its certified enrollment) of economically disadvantaged students based on anything other than family income.
- Creates the Straight A Program for fiscal years 2014 and 2015 to provide grants to school districts; educational service centers; community schools; STEM schools; college-preparatory boarding schools; individual school buildings; education consortia; institutions of higher education; and private entities partnering with one or more educational entities for projects that aim to achieve significant advancement in student achievement, spending reduction in the five year fiscal forecast, or utilization of a greater share of resources in the classroom.

## **Special education funding**

- Specifies dollar amounts, rather than multiples as under prior law, for each category of special education services.
- Adds "preschool child who is developmentally delayed" to the disabilities included in category two of special education services.
- Specifies a formula for additional state aid for preschool special education children for city, local, and exempted village school districts and certain state institutions.

## **Funding for limited English proficient students**

- Specifies dollar amounts for each of three categories of limited English proficient students.

## **Gifted unit funding**

- Prescribes a formula for allocating gifted coordinator and gifted intervention specialist funding units to each city, local, and exempted village school district and make payments based on the units allocated.
- Would have required a district to use the funds it receives for gifted coordinator units only for gifted coordinator services and the funds it receives for gifted intervention specialist units only for gifted intervention specialist services (VETOED).
- Would have required a district to employ qualified personnel to provide gifted services on a full-time equivalency basis that corresponded to either the gifted coordinator or gifted intervention specialist units allocated for the district (VETOED).
- Permits a school district to assign its gifted unit funding to another school district, an educational service center, a community school, or a STEM school (PARTIALLY VETOED).

## **Career-technical education funding**

- Revises the career-technical education program categories and creates three additional categories.
- Specifies dollar amounts, rather than multiples as under prior law, for each category of career-technical education.



- Specifies a timeline for the approval of career-technical education programs and criteria that must be considered by the lead district of a career-technical planning district and the Department when deciding whether to approve or disapprove a program.
- Requires the Department to review all category three career-technical education programs during fiscal year 2015 using the new quality program standards that the Department must adopt under the act to decide whether to approve or disapprove funding for those programs in fiscal years 2016 through 2020.
- Specifies that a city, local, exempted village, or joint vocational school district, community school, or STEM school must spend at least 75% of its state career-technical education funding on costs directly associated with career-technical education programs and no more than 25% on personnel expenditures.
- Specifies that a community school or STEM school that receives state career-technical education funding must spend that funding only for the purposes that the Department designates as approved for career-technical education expenses, and specifies that the Department must require the school to report data annually in order to monitor the school's compliance with the requirements for spending state career-technical education funding (similar to the requirement applicable to school districts in law retained by the act).
- Authorizes community schools to provide career-technical education and to contract with any public agency, board, or bureau or with any private individual or firm for the purchase of any career-technical education or vocational rehabilitation service for any enrolled student.
- Permits a student enrolled in a community school to simultaneously enroll in the career-technical program operated by the career-technical planning district to which the student's resident district belongs.
- Maintains unit funding for career-technical education at state institutions.
- Requires the Department to assign community schools and STEM schools serving students in any of grades seven through twelve to a career-technical planning district.
- Requires the Department to adopt new quality program standards for category three career-technical education programs not later than December 31, 2013, and for category one, two, four, and five career-technical education programs not later than June 30, 2015.

## **Spending economically disadvantaged funds**

- Requires a city, local, exempted village, or joint vocational school district, community school, or STEM school to spend the economically disadvantaged funds it receives on specified initiatives.
- Requires each district and school to submit a report to the Department at the end of each fiscal year describing the initiatives on which the district's or school's economically disadvantaged funds were spent during that fiscal year, and requires the Department to submit a report of this information to the General Assembly not later than December 1 of each odd-numbered year, starting in 2015.

## **Transportation funding**

- Eliminates certain adjustments of transportation payments but maintains the transportation base payment for each city, local, and exempted village school district.
- Requires the Department, for fiscal years 2014 and 2015, to pay each district a pro rata portion of the calculated transportation funding.
- Requires the Department to pay specified low-wealth, low-rider density districts an additional payment on top of the pro rata payment.

## **Accountability for subgroups**

- Specifies that the certification of state operating funds to school districts must include the amounts payable to each school building for each subgroup of students that receives certain state-funded services (students with disabilities, economically disadvantaged students, limited English proficient students, and gifted students).
- Requires that, if the Department determines that a district or school has not reached satisfactory achievement and progress for a subgroup, based on measures established by the State Board, a district or school must submit an improvement plan to the Department which may include partnering with another entity for services to that subgroup.
- Requires the State Board of Education to establish measures of satisfactory achievement and progress not later than December 31, 2014, and requires the Department to use these measures to determine if a district or school has made satisfactory achievement and progress for certain subgroups beginning September 1, 2015.

## **Educational service center funding**

- Repeals a provision of prior law that set forth a permanent system for state payments for educational service center (ESC) supervisory services and, instead, temporarily prescribes per pupil payments for fiscal years 2014 and 2015.
- Retains a continuing requirement that the Department deduct from each client school district of an ESC and pay to the ESC, \$6.50 times the school district's total student count.
- Authorizes school districts, community schools, and STEM schools to enter into ESC shared services agreements.
- Expressly permits joint vocational school districts to enter into fee-for-service agreements.
- Permits a school district, community school, STEM school, or municipal or other political subdivision to elect, at the end of a fiscal year, to have unexpended and unobligated funds that were paid to an ESC during that fiscal year applied toward any payment owed to the ESC in the next fiscal year.

## **Payments for students in county detention facilities**

- Requires the county or joint county juvenile detention facility that cares for a child to coordinate the education of that child and provides that the facility, or the chartered nonpublic school that the facility operates, under certain circumstances, may provide education services to the child.
- Permits a county or joint county juvenile detention facility to contract with an educational service center, the school district in which the facility is located or, in some cases, an Internet- or computer-based community school (e-school) to provide education services to a child under the facility's care.
- Permits any entity that provides education services to a child under a county or joint county juvenile detention facility's care (except an e-school) to directly bill the school district responsible for paying the costs of educating the child.
- Provides that an e-school receive payment under the community school law for a child in a county or joint county facility.

## **Other funding provisions**

- Regarding the expenditure of Auxiliary Services funds for nonpublic school students, replaces the term "electronic textbook" with the term "digital text," as a



consumable book accessed through electronic means and specifies that certain low-cost mobile instructional applications are "consumable," with no expectation of applications being returned.

- Increases to \$360 (from \$325 under prior law) the maximum per pupil amount for reimbursement of chartered nonpublic school administrative costs.
- Provides that a school district (and apparently a community school too) may charge tuition for a student enrolled in all-day kindergarten, as long as it is offering all-day kindergarten for the first time or it charged for all-day kindergarten in the 2012-2013 school year.
- Establishes a temporary task force to review and make recommendations on open enrollment by December 31, 2013.
- Creates the Electronic Textbook Pilot Project to provide competitive grants to public and chartered nonpublic schools to purchase electronic textbooks through the Distance Learning Clearinghouse.
- Repeals some obsolete funding provisions.

## **II. Community Schools**

- Removes the requirement that a community school must have filed its contract by May 15, 2008, but not opened prior to July 1, 2008, to operate in multiple facilities if it meets certain other conditions regarding its operator.
- Specifies that the initial term under an agreement between the Department and a community school sponsor runs for up to seven years, and establishes eligibility qualifications for extensions of that term.
- Permits the Department to place sponsors of community schools in probationary status if they are found to be noncompliant with applicable laws and administrative rules, and permits the Department to limit a sponsor's ability to sponsor additional schools.
- Specifies that the Department's authority to approve, disapprove, revoke, or limit the approval of an entity's sponsorship applies to both start-up community schools and conversion community schools.
- Authorizes the Department to deny an application submitted under the Ohio School Sponsorship Program by an existing community school, if the school's contract with its sponsor was terminated.





- Permits a community school to enroll students who are not Ohio residents and charge tuition for the enrollment of such students.
- Modifies language regarding grandfathered community school sponsors whose authority to sponsor is not subject to approval by the Department.
- Specifies that a community school that offers any of grades 4 to 8 and does not offer a grade higher than grade 9, in at least two of the three most recent school years, must have been *both*, (1) in a state of academic emergency *and* (2) showed less than one standard year of academic growth in either reading or mathematics, as determined by the Department, to trigger permanent closure of that school.
- Beginning in the 2014-2015 school year, limits the percentage by which an Internet- or computer-based community school (e-school) may increase its enrollment by a prescribed rate of growth above its enrollment limit for the previous school year.
- Limits the first-year enrollment of a new e-school that opens after September 29, 2013, to 1,000 students.
- Includes the rating of "exceeds standards," in addition to "meets standards" under continuing law, as a rating a community school that primarily serves students enrolled in a dropout prevention and recovery program can attain if the program improves by 10% both its graduation rates and percentage of twelfth-grade students and other students passing the graduation assessments.
- Requires the State Board, not later than December 31, 2014, to review the performance levels and benchmarks for report cards issued for dropout recovery community schools.
- Specifies that a suspended community school's contract is void, if the school's governing authority fails to provide a proposal to remedy issues for which it was suspended by September 30 of the following school year.
- Removes a provision that required any classroom teacher initially hired by a community school on or after July 1, 2013, to provide instruction in physical education at that school to hold a valid educator license for teaching physical education.

### **III. Minimum School Year**

Effective July 1, 2014, makes all of the following changes:

- Changes the minimum school year for school districts, STEM schools, and chartered nonpublic schools from 182 days to (1) 455 hours for half-day kindergarten, (2) 910



hours for full-day kindergarten and grades 1 to 6, and (3) 1,001 hours for grades 7 to 12, beginning in the 2014-2015 school year.

- Eliminates excused calamity days for schools generally, as well as the requirement for a contingency plan to make up calamity days, but retains (1) calamity days for community schools and (2) the option for districts and schools to make up some calamity days via online lessons or paper "Blizzard Bags."
- Retains the law defining a school week as five days for school districts, but specifies that a chartered nonpublic school may be open for instruction on any day of the week, including Saturday and Sunday.
- Exempts school districts from transporting students to and from chartered nonpublic and community schools on Saturday or Sunday, unless an agreement to do so is in place prior to July 1, 2014.
- Provides that the restructuring of the minimum school year does not apply to any collective bargaining agreement executed prior to July 1, 2014, but that any collective bargaining agreement or renewal executed after that date must comply with those provisions.

#### **IV. Scholarship Programs**

##### **Ed Choice scholarships**

- Beginning with the 2016-2017 school year, qualifies for Educational Choice (Ed Choice) scholarships students in kindergarten through third grade enrolled in a district-operated school that has received a "D" or "F" in "making progress in improving K-3 literacy" in two of the three most recent state report cards and has not received an "A" in that measure in the most recent state report card.
- Beginning with the 2013-2014 school year, expands the Ed Choice scholarship to qualify students whose family incomes are at or below 200% of the federal poverty guidelines and phases in the expansion by grade level over 13 years.
- Funds the new income-based Ed Choice scholarships from an appropriation made for that purpose by the General Assembly, rather than a deduct and transfer method as used for all other Ed Choice scholarships.
- Prescribes a tiered system of reducing income-based scholarships if a student's family income rises above 200%, 300%, or 400% of the federal poverty guidelines by limiting the student's scholarship to 75% of the full amount, 50% of the full amount, and 0% of the full amount, respectively.



- Makes a change regarding Ed Choice eligibility based on performance index score ratings in order to comport with the recently enacted performance rating system.
- Specifies that if a student is eligible for the Ed Choice scholarship based on both the student's public school performance and the act's new Ed Choice scholarship expansion based on family income, the student applying for the scholarship for the first time must receive the scholarship based on public school performance and not family income.
- Specifies that once a student receives an Ed Choice scholarship, the student will continue to receive the scholarship under the provision for which the student received the scholarship for the previous year.
- Qualifies a student for an Ed Choice scholarship if the student will be enrolling in any of grades kindergarten through twelve in Ohio for the first time (instead of "eligible to enroll in kindergarten," as under prior law) in the school year for which the scholarship is sought and the district or building the student would otherwise attend qualifies for scholarships.
- Specifies that a student who will be enrolling in any of grades kindergarten through twelve in Ohio for the first time and would otherwise be assigned to a school building that would qualify for the Ed Choice scholarship must be at least five years of age by January 1st of the school year for which the scholarship is sought.

### **Cleveland scholarships**

- Beginning in fiscal year 2014, increases to \$5,700 (from \$5,000) maximum amount of a scholarship awarded under the Cleveland Scholarship Program.

### **Jon Peterson Special Needs scholarships**

- Requires the Department to reimburse school districts in fiscal year 2014 for the full amount deducted from their state education payments under the Jon Peterson Special Needs Scholarship Program for scholarships for students who did not attend a public school in their resident district in the previous school year, and appropriates \$5 million from the General Revenue Fund for this purpose.
- Specifies that beginning in the 2014-2015 school year, a scholarship received by an eligible applicant under the Jon Peterson Special Needs Scholarship Program for a child whose primary or only identified disability is a speech and language disability may only be used to pay for "related services" that are included in the child's individualized education program.

- Requires the Department to conduct a formative evaluation of the Jon Peterson Special Needs Scholarship Program and to report the findings to the General Assembly by December 31, 2015.

### **Autism scholarships**

- Specifies that individuals that provide services to a child under the Autism Scholarship Program are not required to obtain a one-year, renewable instructional assistant permit until December 20, 2014 (instead of December 20, 2013, as under prior law).

### **Administration of state assessments to scholarship students**

- Requires each chartered nonpublic school to administer the state achievement assessments to all of its students if at least 65% of its total enrollment is made up of students who are participating in the Educational Choice Scholarship Program, Autism Scholarship Program, Jon Peterson Special Needs Scholarship Program, or the Pilot Project (Cleveland) Scholarship Program, but provides for a parental opt-out of the elementary assessments for students not participating in a scholarship program.

## **V. State Board of Education Standards and Reporting**

- Makes changes to the requirements for minimum operating standards for all elementary and secondary schools.
- Revises the specifications for State Board's financial reporting standards to require reporting at both the school district and the school building level and requires community schools, STEM schools, and college-preparatory boarding schools to report financial information in the same manner as school districts.
- Requires the Department (1) to post financial reports of each school district and school building in a prominent location on its web site, (2) to notify each school when the reports are made available, and (3) to make all reports available in such a way that allows for comparison between financial information included in these reports and in reports produced prior to July 1, 2013.
- Requires the Department to create a performance management section on its web site that includes academic and performance metrics for each school district based on performance index score and the expenditure per equivalent pupils, and graphs with comparisons of the performance of like districts and permits the Department to contract with an independent organization to develop and host the performance management section.

- Requires the Department to compute and to post, for each school district and public school, both (1) the total operating expenditures per pupil, and (2) the total operating expenditure per equivalent pupils, but only requires that the total operating "expenditure per equivalent pupils" measure be used by the Department in the ranking of school districts and schools.

## **VI. Student Transportation**

- Effective July 1, 2014, changes the minimum amount for payment in lieu of transportation from an amount determined by the Department to an amount determined by the General Assembly.
- Specifies that the minimum amount for a payment in lieu of transportation is \$250 for fiscal years 2014 and 2015.
- Permits the governing authority of a chartered nonpublic school to charge a student's parent or guardian a fee for transportation to and from school, regardless of whether the student is eligible for transportation by a school district, if the governing authority purchased the vehicle transporting the student without state or federal funds.
- Beginning July 1, 2014, allows a newly opening community school to accept responsibility for providing or arranging for the transportation of a district's resident students who will attend the school.
- Requires school districts to report transportation funding data to the Education Management Information System.

## **VII. Other Education Provisions**

### **Educational service center supervision**

- Makes a number of changes to the relationship between educational service centers and school districts, specifically regarding administrative oversight and duties customarily performed by service centers.

### **Post-Secondary Enrollment Options Program**

- Qualifies homeschooled students for in the Post-Secondary Enrollment Options Program (PSEO).
- Requires that payments made to a participating college in which students are enrolled under PSEO be made in the same manner as payments made for participating students from nonpublic secondary schools.



- Prohibits a district or school from entering into an alternative funding agreement that provides for charging a participating student any tuition or fees for college courses under PSEO.
- Prohibits state reimbursement to participating colleges under PSEO for remedial college courses.
- Requires that students be qualified to participate in PSEO based solely on the participating college's established placement standards for credit-bearing, college-level courses.
- Requires the Department annually to compile a list of all institutions of higher education that currently participate in PSEO or in other dual enrollment programs and, not later than December 31 of each school year, to distribute that list to all school districts, community schools, STEM schools, and chartered nonpublic schools in the state.
- Requires each district or school to provide the list of participating higher education institutions, as part of the counseling services required of the district or school prior to a student's participation in PSEO, to interested students and their parents or guardians.

### **Dual enrollment programs**

- Specifically includes Early College High Schools in the list of programs that qualify as "dual enrollment."
- Prohibits school districts and public schools from charging an enrolled student any additional fee or tuition for participation in a dual enrollment program offered by that district or school; however, the act specifies that a student may be required to pay for costs related to an Advanced Placement or International Baccalaureate examination.

### **College Credit Plus program recommendations**

- Requires the Chancellor of the Board of Regents, by December 31, 2013, to make recommendations for the establishment of the "College Credit Plus" program to the Governor, the President of the Senate, and the Speaker of the House.

### **Articulation agreements for technical coursework**

- States that the act's changes regarding the PSEO program do not require the alteration of (1) any existing or future articulation agreement for technical



coursework or (2) any corresponding payment structure between a state institution of higher education and a career-technical planning district.

- Requires the Department of Education and the Board of Regents to submit to the Governor's Office of 21st Century Education and the General Assembly, not later than July 1, 2014, recommendations regarding the inclusion of career-technical programs in the PSEO program.

### **Participation in district extracurricular activities**

- Affords students enrolled in chartered or nonchartered nonpublic schools and homeschooled students the opportunity to participate, under specified conditions, in an extracurricular activity at the school of the student's resident school district.
- Permits the superintendent of any school district to afford to any student, who is enrolled in a nonpublic school and is *not* entitled to attend school in that district, the opportunity to participate in a school's extracurricular activities if (1) the nonpublic school in which the student is enrolled does not offer the extracurricular activity, and (2) the extracurricular activity is not interscholastic athletics or interscholastic contests or competition in music, drama, or forensics.
- Authorizes, but does not require, the superintendent of any school district to afford any homeschooled student who is *not* entitled to attend school in that district the opportunity to participate in a school's extracurricular activities, if the activity is not offered by the student's resident district.
- Removes a provision from prior law that specified that a student enrolled in a STEM school must "be afforded the opportunity to participate" in an extracurricular activity at the school operated by the student's resident district and, instead, specifies that a student enrolled in a STEM school must "not be prohibited from participating" in an extracurricular activity.
- Prohibits a school district board of education from taking any action contrary to the provisions of law that generally authorize students enrolled in a community or STEM school the opportunity to participate in an extracurricular activity at the school operated by the student's resident district.

### **Chartered nonpublic school end-of-course examination exemption**

- Exempts students who attend chartered nonpublic schools accredited through the Independent School Association of the Central States from passing the end-of-course examinations as a prerequisite for high school graduation.





## **Kindergarten diagnostics**

- Modifies the timeline for administering kindergarten readiness assessments, beginning July 1, 2014, to not earlier than the first day of the school year and not later than November 1.
- Specifies that when administering the kindergarten readiness assessments after July 1, 2014, the language and reading skills portion of the assessment must be administered by September 30.

## **Kindergarten early enrollment**

- For the 2012-2013 school year, prohibits any entity from requiring a student who was admitted to and successfully completed kindergarten in that school year to repeat kindergarten based solely on the student's age.
- Specifies that a child who will be five or six years old prior to January 1 of the year in which admission is requested be evaluated for early admittance and admitted, based on the district's decision, in accordance with the school district's policy.

## **Joint vocational school district board membership**

- Requires members of a joint vocational school district (JVSD) board of education to meet specified qualifications.
- Limits JVSD board members to two consecutive three-year terms of office.

## **Extended programming**

- Requires extended programming offered by school districts for career-technical education students to be used for activities that involve direct contact with students or are directly related to student programs and activities.
- Prohibits a licensed educator from providing more than eight hours of extended programming in a 24-hour day.
- Permits a school district to employ certificated instructional personnel for "hours" outside of the normal school day for the purpose of providing extended programming.
- Requires the Department to issue a report, not later than December 31, 2013, with recommendations for quality agricultural programs, and permits the Department to periodically review and update the report as it considers necessary.





- Requires all agricultural education instructors to (1) utilize a three-part model of agricultural education instruction focusing on classroom instruction, FFA activities, and extended programming projects and (2) submit a monthly time log to the principal of the school at which the extended programming is offered, or the principal's designee, for review.

### **School employees**

- Specifies that a student who has 45 or more excused or unexcused absences in a "full academic year" must not be included in calculating student academic growth for a teacher evaluation.
- Replaces the term "proficient" with the term "skilled" for the second highest level of performance for teacher and evaluation ratings.
- Would have exempted from the teacher content knowledge retesting requirement a community school comprised of students with disabilities (VETOED).
- Authorizes the board of education of a school district that elects not to appoint a licensed business manager to assign the statutory duties of a business manager to other employees or officers, including the district treasurer, and to give those employees any title that reflects the assignment of those duties.
- Permits a school district or educational service center board to designate an individual other than the superintendent to perform the task of nominating for employment any teacher who is related to the superintendent.
- Requires that human trafficking content be included in a school's in-service staff training program for school safety and violence prevention.

### **Other provisions**

- Makes changes in the administration of the Governor's Effective and Efficient Schools Recognition Program, including qualifying public college-preparatory boarding schools for the program.
- Expressly permits a STEM school to contract for any services necessary for the operation of the school.
- Revises the provisions of the voluntary physical activity pilot program.
- Specifies that the State Board, beginning with the 2015-2016 school year and at least once every three years thereafter, must review and may adjust the benchmarks for

assigning letter grades under the academic performance rating system for school districts and schools.

- Repeals an apparently obsolete provision that permitted the Ohio Department of Education to implement a No Child Left Behind waiver application once approved by the U.S. Department of Education.
- Modifies the Ohio statutory definition of the "No Child Left Behind Act" to include any waiver approved by the U.S. Department of Education.
- Requires the Superintendent to appoint three individuals to create a nonprofit corporation named "New Leaders for Ohio Schools" to create and implement a pilot program that provides an alternative path for individuals to receive training and development in the administration of primary and secondary education.
- Requires the State Board to adopt rules for the issuance of an alternative principal or administrator license to an individual who successfully completes the New Leaders for Ohio Schools pilot program.
- Authorizes the board of education of a school district to pay money received from the sale of real property into the school district's capital and maintenance fund and used only to pay for nonoperating capital expenses related to technology infrastructure and equipment to be used for instruction and assessment.
- Clarifies that the board of directors of a municipal school district (Cleveland) transformation alliance, and its committees and subcommittees, may hold executive sessions, as if they were a public body with public employees, for any of the reasons for which an executive session may be held under the Open Meetings Law.
- Creates the State School for the Blind Employees Food Service Fund and the State School for the Deaf Employees Food Service Fund, each of which consists of payments received from each school's employees who make purchases from the school's food service program.

## **I. School Financing**

### **New funding system for primary and secondary education**

(R.C. 3302.20, 3310.08, 3310.41, 3310.56, 3311.52, 3313.646, 3313.841, 3313.88, 3313.98, 3313.981, 3314.029, 3314.03, 3314.08, 3314.082, 3314.083, 3314.084, 3314.086, 3314.087, 3314.091, 3314.11, 3314.26, 3317.01, 3317.013, 3317.014, 3317.016, 3317.017, 3317.02,



3317.022, 3317.023, 3317.024, 3317.0212, 3317.0213, 3317.0214, 3317.0217, 3317.03, 3317.032, 3317.033, 3317.034, 3317.05, 3317.051, 3317.08, 3317.081, 3317.10, 3317.16, 3317.161, 3317.19, 3317.20, 3317.201, 3317.25, 3317.30, 3318.011, 3318.18, 3318.363, 3318.42, 3319.17, 3319.57, 3321.01, 3323.08, 3323.09, 3323.091, 3323.13, 3323.14, 3323.141, 3323.142, 3326.31, 3326.32, 3326.33, 3326.34, 3326.38, 3326.39, 3326.40, 3327.05, 3328.32, 3328.33, 3365.01, 5126.05, 5727.84, 5727.85, and 5751.20; Sections 120.10, 120.11, 120.12, 263.230, 263.240, 263.250, 263.251, 263.320, 263.325, and 263.500; repealed R.C. 3314.088, 3314.13, 3317.012, 3317.018, 3317.029, 3317.052, 3317.053, and 3323.16)

The act creates a new system of financing for school districts and other public entities that provide primary and secondary education. For a more detailed description of the act's school funding system, see the LSC Greenbook for the Department of Education and the LSC Comparison Document of the act. Both documents are published on the LSC web site at [www.lsc.state.oh.us/](http://www.lsc.state.oh.us/). Click on "Budget Bills and Related Documents," then on "Main Operating," and then on "Greenbooks" or "Comparison Document."

Note, as used below, "ADM" means average daily membership. Under law retained by the act for fiscal year 2014, average daily membership is the full-time equivalent number of students counted and certified annually by a school district that is used by the Department of Education to compute the district's funding for a particular purpose or category. Beginning in fiscal year 2015, the act requires a district to report its enrollment three times during a school year rather than counting and certifying its full-time equivalent number of students annually. The Department must use the reported enrollment to calculate a district's average daily membership for the specific purposes or categories required for the act's school funding system, including a district's "formula ADM" and "total ADM" (see "**Student counts: New system for reporting student counts**" below).

## Formula amount

(R.C. 3317.02)

The act specifies a formula amount of \$5,745 for fiscal year 2014, and \$5,800, for fiscal year 2015. That amount is incorporated in the school funding system as described below. It is also used in computing transfer payments under interdistrict open enrollment<sup>38</sup> and in computing a district's required annual deposit into its capital and maintenance fund.<sup>39</sup>

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<sup>38</sup> R.C. 3313.98.

<sup>39</sup> R.C. 3315.18, not in the act.



## Core foundation funding

### City, local, and exempted village school districts

(R.C. 3317.017, 3317.022, and 3317.0217)

The act specifies that core foundation funding for each city, local, and exempted village school district is the sum of the following:

(1) An opportunity grant that is equal to the formula amount times the sum of the district's formula ADM and the district's preschool scholarship ADM<sup>40</sup> times the district's state share index.

A city, local, or exempted village school district's "**state share index**" is an index that depends on valuation and, for districts with relatively low median income, on median income. This index is adjusted for school districts where 30% or more of the potential taxable valuation is exempted from taxation, which reduces the qualifying districts' three-year property valuation in the formula and, thereby, increases their calculated core funding. In addition to applying this index to the opportunity grant, the act applies the index to the calculation of special education funds, kindergarten through third grade literacy funds, limited English proficiency funds, and career-technical education funds.

(2) Targeted assistance funding based on a district's property value and income;

(3) Targeted assistance supplemental funding based on a district's percentage of agricultural property;

(4) A specific amount for each of six categories of disabilities for special education and related services;

(5) Kindergarten through third grade literacy funds;

(6) Economically disadvantaged funds;

(7) A specific amount for each of three limited English proficiency categories;

(8) Gifted identification funds in an amount of \$5, in fiscal year 2014, or \$5.05, in fiscal year 2015, per student in the district's formula ADM;

(9) Gifted unit funding (see below);

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<sup>40</sup> A district's "preschool scholarship ADM" is the number of preschool children receiving a scholarship to attend an alternative provider under the Autism Scholarship Program.



(10) A specific amount for each of five career-technical education categories. Payment of these funds is subject to receiving approval through a process outlined in the act (see "**Approval of career–technical education programs**" below).

(11) Career-technical education "associated services" funds equal to a district's total career-technical ADM times the district's state share index times \$225, in fiscal year 2014, or \$227, in fiscal year 2015.

### **Joint vocational school districts**

(R.C. 3317.16)

The act specifies that core foundation funding for each joint vocational school district is the sum of the following:

(1) An opportunity grant based on a district's valuation calculated under the following formula:

(The formula amount X the district's formula ADM) – (0.0005 X the district's three-year average valuation)

A joint vocational school district's "**state share percentage**" is equal to the opportunity grant divided by the product of the formula amount and the district's formula ADM. The act applies this factor in calculating special education funds, limited English proficiency funds, and career-technical education funds.

(2) A specific amount for each of six categories of disabilities for special education and related services;

(3) Economically disadvantaged funds;

(4) A specific amount for each of three limited English proficiency categories;

(5) A specific amount for each of five career-technical education categories;

(6) Career-technical education associated services funds calculated in a manner similar to other districts.

### **Community schools and STEM schools**

(R.C. 3314.08 and 3326.33)

For community schools and science, technology, engineering, and mathematics (STEM) schools, the act specifies per-pupil payments for each enrolled student and



corresponding deductions from the state education aid account of the student's resident district as follows:

- (1) An opportunity grant that is equal to the formula amount;
- (2) The per-pupil amount of targeted assistance funding (but not targeted assistance supplemental funding) for each student's resident school district times 0.25 (except in the case of Internet- or computer-based community schools (e-schools));
- (3) A specific amount for a student's disability category for special education services;
- (4) A specific amount if the student is in kindergarten through third grade (except in the case of e-schools);
- (5) Economically disadvantaged funds based on the resident district's economically disadvantaged index (except in the case of e-schools);
- (6) A specific amount for a student's limited English proficiency category (except in the case of e-schools);
- (7) A specific amount for a student's career-technical education category. Payment of these funds is subject to receiving approval through a process outlined in the act (see "**Approval of career–technical education programs**" below).

## **Student counts**

### **New system for reporting student counts**

(Sections 120.10, 120.11, 120.12, and 263.251)

Law retained by the act for fiscal year 2014<sup>41</sup> requires the superintendent of each city, local, exempted village, and joint vocational school district to certify the average daily membership of students receiving services from schools under the superintendent's supervision during the first full week of October.

Beginning in fiscal year 2015, the act requires a superintendent of a district to report (rather than certify) the enrollment (rather than the average daily membership) of students receiving services from schools under the superintendent's supervision as of the last day of October, March, and June of each year. The Department of Education must create reports of the enrollment reported by each district, and the superintendent of each district must certify the Department's report for the district. Using the

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<sup>41</sup> R.C. 3317.03, as amended in Section 101.01 of the act.



enrollment reported by a district, the Department must calculate a district's average daily membership for the specific purposes or categories required for the act's school funding system, including a district's "formula ADM" and "total ADM."

The act also requires the Department to convene, during the 2013-2014 school year, a group of representatives of school districts from throughout the state to assist and advise in the development of the guidelines, policies, and reports that will be necessary to implement the reporting of an annualized full-time equivalent student enrollment. The Department must develop the guidelines and policies required to implement the changes described above in a manner that will ensure students are accurately accounted for in the enrollment data of each district.

### **Counting kindergarten students**

(R.C. 3317.03(C)(1))

The act provides for the counting of kindergarten students on the basis of the full-time equivalency for which they are enrolled. Under prior law, all kindergarten students were counted as one full-time equivalent student regardless of whether they attended kindergarten for a full day or part of a day.

(See also "**Fees for all-day kindergarten**" below.)

### **Reporting of economically disadvantaged students**

(R.C. 3314.08(B), 3317.03(B)(21) and (D)(2), and 3326.32)

The act prohibits a city, local, exempted village, or joint vocational school district, community school, or STEM school from categorically excluding a student from its reported number (or, beginning in fiscal year 2015 for school districts, its certified enrollment) of economically disadvantaged students based on anything other than family income.

### **Payments prior to 90-day effective date**

(Section 263.230)

Most of the act's school funding provisions take effect on September 29, 2013. The act requires the Superintendent of Public Instruction, prior to that date, to make operating payments in amounts "substantially equal" to those made in the prior year, "or otherwise," at the Superintendent's discretion. Additionally, if a new school district, community school, or STEM school opens prior to that date, the act requires the Department to pay the new district or school an amount of \$5,000 per pupil based on the estimated number of students that the district or school is expected to serve and to





credit any amounts paid toward the annual funds calculated for the district or school following that date.

## **Payment caps and guarantees**

(Sections 263.240 and 263.250)

The act adjusts a city, exempted village, or local school district's aggregate amount of core foundation funding, pupil transportation funding, and transportation supplement funding by imposing a cap that restricts the increase in the aggregate amount of funding over the previous year's state aid to no more than 6.25% of the previous year's state aid in fiscal year 2014 and 10.5% of the previous year's state aid in fiscal year 2015. This capped funding is further adjusted by guaranteeing that all districts receive at least the amount of state aid received in fiscal year 2013.

Similarly, joint vocational schools districts are guaranteed to receive at least the amount of state aid received in fiscal year 2013 but are also subject to a cap that limits the increase in state aid to no more than 6.25% of the previous year's state aid in fiscal year 2014 and 10.5% of the previous year's state aid in fiscal year 2015.

The act also requires the Department to adjust, as necessary, the transitional aid guarantee base of school districts that participate in the establishment of a joint vocational school district that first begins receiving core foundation funding in fiscal year 2014 and to establish, as necessary, the guarantee base of the new joint vocational school district as an amount equal to the absolute value of the sum of the associated adjustments for the participant school districts.

## **Straight A Program**

(Sections 263.10, 263.320, and 263.325)

The act creates, for fiscal years 2014 and 2015, the Straight A Program to provide grants to school districts, educational service centers, community schools, STEM schools, college-preparatory boarding schools, individual school buildings, education consortia (which may represent a partnership among school districts, school buildings, community schools, or STEM schools), institutions of higher education, and private entities partnering with one or more of those educational entities for projects that aim to achieve significant advancement in one or more of the following goals: (1) student achievement, (2) spending reduction in the five year fiscal forecast, and (3) utilization of a greater share of resources in the classroom.



The act appropriates \$88.7 million, for fiscal year 2014, and \$144.7 million, for fiscal year 2015, from the Lottery Profits Education Fund to finance grants under the program.

## **Grant application process**

### **Grant proposal**

The act requires each grant applicant to submit a proposal that includes all of the following:

(1) A description of the project for which the applicant is seeking a grant, including a description of how the project will have substantial value and lasting impact;

(2) An explanation of how the project will be self-sustaining. If the project will result in increased ongoing spending, the applicant must show how the spending will be offset by "verifiable, credible, permanent spending reductions."

(3) A description of quantifiable results of the project that can be benchmarked.

If an education consortium applies for a grant, the lead applicant must be the school district, school building, community school, or STEM school that is a member of the consortium. The lead applicant must indicate on the application which entity is the lead applicant.

### **Grant evaluation system**

The act requires the Department to establish, with the approval of the governing board (see "**Grant decision**" below), an evaluation and scoring system for awarding grant applications.

### **Grant decision**

The act requires grant decisions to be made by a "governing board" consisting of nine members: the Superintendent, or the Superintendent's designee, four members appointed by the Governor, two members appointed by the Speaker of the House, and two members appointed by the President of the Senate. The board must create a grant application and publish on the Department's web site the application and a timeline for the submission, review, notification, and awarding of grant proposals.

Within 75 days after receiving a grant application, the governing board must issue a decision on the application of "yes," "no," "hold," or "edit." In making its decision, the board must consider whether the project has the capability of being replicated in other school districts and schools or creates something that can be used in other districts



or schools. If the board issues a "hold" or "edit" decision for an application, it must, upon returning the application to the applicant, specify the process for reconsideration of the application. An applicant may work with the grant advisors and staff to modify or improve a grant application (see "**Grant advisors**" below).

### **Grant amount**

The act specifies a maximum grant amount that may be awarded in each fiscal year as follows:

(1) \$5 million for a grant awarded to a school district, educational service center, community school, STEM school, college-preparatory boarding school, individual school building, institution of higher education, or private entity partnering with one or more of the educational entities identified in the act; and

(2) \$15 million for a grant awarded to an education consortia.

The Superintendent may make recommendations to the Controlling Board that these maximum amounts be exceeded. Upon Controlling Board approval, grants may be awarded in excess of these amounts.

### **Grant agreement**

Upon deciding to award a grant to an applicant, the board must enter into a grant agreement with the applicant that includes all of the following:

(1) The content of the applicant's proposal;

(2) The project's deliverables and a timetable for their completion;

(3) Conditions for receiving grant funding;

(4) Conditions for receiving funding in future years if the contract is a multi-year contract;

(5) A provision specifying that funding will be returned to the governing board if the applicant fails to implement the agreement, as determined by the Auditor of State; and

(6) A provision specifying that the agreement may be amended by mutual agreement between the board and the applicant.

Each grant awarded to an applicant must be subject to approval by the Controlling Board prior to execution of this agreement.



## **Annual report regarding the grant program**

The act requires the board to issue an annual report to the Governor, the Speaker of the House, the Senate President, and the chairpersons of the House and Senate Education committees regarding the types of grants awarded, the grant recipients, and the effectiveness of the grant program.

## **Administration of the grant program**

### **Grant advisors**

The act requires the governing board to select grant advisors with fiscal expertise and education expertise. These advisors must evaluate proposals from grant applicants and advise the staff administering the program.<sup>42</sup>

### **Administrative support**

The act requires the Department to provide administrative support to the governing board.

### **Advisory committee**

The act establishes an advisory committee that consists of not more than 11 members appointed by the Governor that represent all areas of Ohio and different interests. The committee must annually review the grant program and provide strategic advice to the governing board and the Director of the Governor's Office of 21st Century Education.

## **Special education funding**

### **Special education categories and multiples**

(R.C. 3310.56 and 3317.013)

The act specifies the following dollar amounts for the six categories of special education services, rather than multiples (or weights) that were multiplied by the formula amount under prior law, and adds one type of disability to category two, as described in the table below:

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<sup>42</sup> As in the case of the governing board, grant advisors may not be compensated for their services.

Category	Disability under prior law	Disability under the act	Multiple under prior law <sup>43</sup>	Dollar amount for fiscal year 2014 under the act	Dollar amount for fiscal year 2015 under the act
1	Speech and language disability	Unchanged from prior law	0.2906	\$1,503	\$1,517
2	Specific learning disabled; developmentally disabled; other health impaired-minor	Adds "preschool child who is developmentally delayed" to the disabilities listed in prior law; otherwise unchanged from prior law	0.7374	\$3,813	\$3,849
3	Hearing disabled; severe behavior disabled	Unchanged from prior law	1.7716	\$9,160	\$9,248
4	Vision impaired; other health impairment-major	Unchanged from prior law	2.3643	\$12,225	\$12,342
5	Orthopedically disabled; multiple disabilities	Unchanged from prior law	3.2022	\$16,557	\$16,715
6	Autistic; traumatic brain injuries; both visually and hearing impaired	Unchanged from prior law	4.7205	\$24,407	\$24,641

With respect to the Jon Peterson Special Needs Scholarship Program, the act changes the formula used to calculate scholarships under that program to align with the special education categories and amounts described above.

### **Catastrophic cost for special education students**

(R.C. 3314.08, 3317.0214, 3317.16, and 3326.34)

Law largely retained by the act requires the Department to pay to a city, local, exempted village, or joint vocational school district, community school, or STEM school a certain amount of the costs incurred by the district or school for a student in categories two through six special education ADM that are in excess of the specified

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<sup>43</sup> Under prior law, the prescribed multiples were adjusted by further multiplying them by .90 (90%).



threshold catastrophic cost for serving the student.<sup>44</sup> The act changes the formula for calculating the amount of a city, local, or exempted village school district's payment to align with the act's school funding formula by replacing a district's state share percentage with a district's state share index, but it does not change the formula for calculating the amount of a joint vocational school district's, community school's, or STEM school's payment.

### **Preschool special education funding**

(R.C. 3317.0213)

The act specifies a formula for additional state aid for preschool special education children for city, local, and exempted village school districts and for institutions<sup>45</sup> and eliminates all references to unit funding for preschool children with disabilities. The act's formula pays \$4,000 plus one-half of the categorical special education amount times the district's state share index for each preschool special education student.

If an educational service center is providing services to preschool special education students under agreement with the district in which the students are entitled to attend school, the act permits that district to authorize the Department to transfer its preschool special education funds to the service center providing those services.

However, if a county DD board<sup>46</sup> is providing services to preschool special education students under agreement with the district in which the students are entitled to attend school, the act requires the Department to deduct from the district's preschool special education payment the total amount of those funds that are attributable to those students and pay that amount to the DD board.

### **Funding for limited English proficient students**

(R.C. 3317.016)

The act establishes the following dollar amounts for categories of limited English proficient students:

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<sup>44</sup> Under law retained by the act, the threshold amount is \$27,375, for a student in categories two through five, and \$32,850, for a student in category six.

<sup>45</sup> Institutions eligible for this additional state aid are the departments of Mental Health and Addiction Services, Developmental Disabilities, Youth Services, and Rehabilitation and Correction (see R.C. 3323.091).

<sup>46</sup> A county DD board is a county board of developmental disabilities.

Category	Type of student	Dollar amount for fiscal year 2014	Dollar amount for fiscal year 2015
1	A student who has been enrolled in schools in the United States for 180 school days or less and was not previously exempted from taking the spring administration of either of the state's English language arts assessments (reading or writing)	\$1,500	\$1,515
2	A student who has been enrolled in schools in the United States for more than 180 school days or was previously exempted from taking the spring administration of either of the state's English language arts assessments (reading or writing)	\$1,125	\$1,136
3	A student who does not qualify for inclusion in categories 1 or 2 and is in a trial-mainstream period, as defined by the Department	\$750	\$758

## Gifted unit funding

(R.C. 3317.051)

### Allocation and payment of gifted units

The act requires the Department to allocate funding units to a city, exempted village, or local school district for services to identified gifted students, as follows:

(1) One gifted coordinator unit for every 3,300 students in a district's gifted unit ADM (which is the district's formula ADM minus the number of its resident students enrolled in community schools and STEM schools), with a minimum of 0.5 units and a maximum of 8 units for any district.

(2) One gifted intervention specialist unit for every 1,100 students in a district's gifted unit ADM, with a minimum of 0.3 units allocated for any district.

For fiscal year 2014, the Department must pay gifted unit funding to a district in an amount equal to \$37,000 times the number of units allocated to the district. For fiscal year 2015, the Department must pay gifted unit funding to a district in an amount equal to \$37,370 times the number of units allocated to the district.





## **Use of unit funds (VETOED)**

The Governor vetoed a provision that would have required a district to use the funds it receives for gifted coordinator units only for gifted coordinator services and the funds it receives for gifted intervention specialist units only for gifted intervention specialist services. Additionally, the Governor vetoed a provision that would have required a district to employ qualified personnel to provide gifted services on a full-time equivalency basis that corresponds to either the gifted coordinator or gifted intervention specialist units allocated to the district.

## **Assignment of unit funding (PARTIALLY VETOED)**

The act also permits a school district to assign its gifted unit funding to another school district, an educational service center, a community school, or a STEM school as part of an arrangement to provide gifted student services for the district. The Governor vetoed a provision that would have required a district choosing to assign its gifted unit funding to assign the funds it received for gifted coordinator units to a district, service center, or school that employs qualified gifted coordinators and the funds it received for gifted intervention specialist units to a district, service center, or school that employs qualified gifted intervention specialists.

## **Career-technical education funding**

### **Career-technical education categories and multiples**

(R.C. 3317.014)

The act revises the career-technical education program categories that existed in prior law by changing the types of programs that are considered category one and two programs and by creating three additional categories of career-technical education programs. It also specifies dollar amounts for all five categories of career-technical education programs (rather than the multiples of the formula amount that applied to categories one and two under prior law).

The following table explains these changes in greater detail:

Category	Career-technical education programs under prior law	Career-technical education programs under the act	Multiple under prior law	Dollar amount for fiscal year 2014 under the act	Dollar amount for fiscal year 2015 under the act
1	Job-training and workforce development programs approved by the Department	Workforce development programs in agricultural and environmental systems, construction technologies, engineering and science technologies, finance, health science, information technology, and manufacturing technologies	0.57	\$4,750	\$4,800
2	Classes other than job training and workforce development programs	Workforce development programs in business and administration, hospitality and tourism, human services, law and public safety, transportation systems, and arts and communications	0.28	\$4,500	\$4,550
3	None	Career-based intervention programs	None	\$1,650	\$1,660
4	None	Workforce development programs in education and training, marketing, workforce development academics, public administration, and career development	None	\$1,400	\$1,410
5	None	Family and consumer science programs	None	\$1,200	\$1,210

The act specifies that each career-technical education program identified in the act shall be defined by the Department in consultation with the Governor's Office of Workforce Transformation.

### **Approval of career-technical education programs**

(R.C. 3317.161; Section 263.500)

The act requires each city, local, or exempted village school district's, community school's, or STEM school's career-technical education programs to be approved in order for the district or school to receive state funding for the students enrolled in the



program.<sup>47</sup> Approval is obtained through a two-step process, which is outlined in greater detail below, that involves an initial decision by the lead district of the district's or school's career-technical planning district (CTPD) and a review of that decision by the Department. Approval is valid for the five fiscal years following the fiscal year in which the program is approved. However, if a district or school becomes a new member of a CTPD, its programs must be approved or disapproved by the lead district of the CTPD during the fiscal year in which the district or school becomes a member of the CTPD even if the five-year approval period has not yet expired.<sup>48</sup> A program's approval is subject to annual review (see "**Annual review of approved programs**" below) and may be renewed at the end of the five-year approval period.

The act specifies that any program that was approved by the Department prior to September 29, 2013, other than programs of a district or school that is becoming a new member of a CTPD, remains valid for the unexpired remainder of the approval period specified by the Department and may then be renewed in accordance with the act's provisions on a date prior to the expiration of the renewal period.

#### **Program approval or disapproval by the lead district of a CTPD**

The act requires the lead district of a CTPD to approve or disapprove for a five-year period each new or existing career-technical education program of the city, local, and exempted village school districts, community schools, and STEM schools that are assigned by the Department to the CTPD. The lead district's decision to approve or disapprove a program must be based on requirements for career-technical education programs that are specified in rules adopted by the Department,<sup>49</sup> which must include all of the following:

- (1) Demand for the career-technical education program by industries in Ohio;
- (2) Quality of the program;
- (3) Potential for a student enrolled in the program to receive the training that will qualify the student for industry credentials or post-secondary education;

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<sup>47</sup> R.C. 3317.16 as re-enacted by the act specifies that a joint vocational school district's career-technical program is subject to approval, but the provision of law that sets forth the approval process (R.C. 3317.161) does not include them.

<sup>48</sup> If any of the district's or school's programs were approved by the Department for an approval period that includes the fiscal year in which the district or school becomes a member of the CTPD, those programs retain their approval status during that fiscal year.

<sup>49</sup> The act specifies that the "Department" adopt these rules. Usually, the Department's rules are adopted by resolution of the State Board.



- (4) Admission requirements of the lead district;
- (5) Past performance of the district or school that is offering the program;
- (6) Traveling distance;
- (7) Sustainability;
- (8) Capacity;
- (9) Availability of the program within the CTPD;
- (10) In the case of a new program, the cost to begin the program.

The lead district must approve or disapprove a program not later than March 1 prior to the first fiscal year for which the district or school is seeking funding for the program. If a program is approved, the lead district must notify the Department of its decision. If a program is disapproved, the lead district must notify the district or school of its decision.

If the lead district disapproves the program or does not take any action to approve or disapprove the program by March 1, the district or school may appeal the lead district's decision or failure to take action to the Department by March 15.

#### **Program approval or disapproval by the Department**

Upon receiving notification of a lead district's approval of a district's or school's career-technical education program or an appeal from a district or school of a lead district's disapproval of a program or failure to take action to approve or disapprove a program, the Department must review the lead district's approval, disapproval, or failure to take action. In conducting its review, the Department must consider the criteria described above. The Department must determine whether to approve or disapprove the program not later than May 15 prior to the first fiscal year for which the district or school is seeking funding for the program. The Department must notify the district or school and the lead district of the district's or school's CTPD of its determination. The act specifies that the Department's decisions are final and not appealable.

If the Department approves a program, it must authorize the payment to the district, or the deduction from the state education aid of a district and payment to a community school or STEM school, of the funds attributed to the career-technical students enrolled in that program in the next fiscal year according to a payment schedule prescribed by the Department.



## **Annual review of approved programs**

The Department and the lead district of each CTPD must conduct an annual review of each career-technical education program in the lead district's CTPD that receives approval. Continued funding of the program during the five-year approval period is subject to the school's compliance with any directives for performance improvement that are issued by the Department or the lead district as a result of any review conducted.

## **Approval of category three career-technical education programs**

Center-based intervention programs (category three) are subject to the approval process described above for funding in fiscal years 2014 and 2015. However, the act requires the Department to conduct a review of all category three career-technical education programs during fiscal year 2015 using the new quality program standards for those programs that the Department must adopt under the act's provisions (see "**New quality program standards for career-technical education programs**" below). Based on this review, the Department must decide whether to approve or disapprove the programs for funding for fiscal years 2016 through 2020 and notify each city, local, exempted village, and joint vocational school district, community school, or STEM school that provides one or more of these programs of its decision not later than May 15, 2015.

## **Expenditures of career-technical education funding**

(R.C. 3314.08(C)(4) and (5), 3317.022(E), 3317.16(D), and 3326.39)

The act specifies that a city, local, exempted village, or joint vocational school district, community school, or STEM school must spend at least 75% of the state career-technical education funding it receives on costs directly associated with career-technical education programs including development of new programs (such as curriculum development, purchase, and implementation; instructional resources and supplies; industry-based program certification; student assessment, credentialing, and placement; curriculum specific equipment purchases and leases; career-technical student organization fees and expenses; home and agency linkages; work-based learning experiences; professional development). No more than 25% of the district's or school's state career-technical education funding may be spent on personnel expenditures. (These requirements are currently prescribed for all career-technical providers by a State Board of Education rule.<sup>50</sup>)

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<sup>50</sup> Ohio Administrative Code 3301-61-16.



The act also specifies that a community school or STEM school receiving state career-technical education funding must spend that funding only for the purposes that the Department designates as approved for career-technical education expenses (which are only the expenses connected to the delivery of career-technical programming to career-technical students). The Department must require the school to report data annually so that the Department may monitor the school's compliance with the requirements for spending state career-technical education funding. This provision already applies to city, local, exempted village, and joint vocational school districts under law retained by the act.

### **Career-technical education provided by community schools**

(R.C. 3314.086 and 3314.087)

The act specifically authorizes community schools to provide career-technical education. Furthermore, it permits a community school to contract with any public agency, board, or bureau or with any private individual or firm for the purchase of any career-technical education or vocational rehabilitation service for any enrolled student and to use career-technical education funding to pay for such services. Under prior law, community schools were not prohibited from providing career-technical education, and additional weighted funds for this education were provided for all community schools except e-schools. The act, however, provides for the payment of career-technical funding for e-schools.

The act also permits a student enrolled in a community school to simultaneously enroll in the career-technical program operated by the career-technical planning district to which the student's resident district belongs, rather than the career-technical program operated by the student's resident district as provided in prior law.

### **Career-technical education associated services funding**

(R.C. 3317.014 and 3317.023)

Law retained by the act requires that a city, local, exempted village, or joint vocational school district's career-technical education associated services funds be deducted from the district's state education aid and credited to the lead district of the city, local, exempted village, or joint vocational school district's CTPD.

The act also specifies that career-technical education associated services must be defined by the Department.



## **Career-technical education at state institutions**

(R.C. 3317.05)

Law retained by the act provides unit funding for career-technical education at state institutions operated by the departments of Mental Health and Addiction Services, Developmental Disabilities, Youth Services, and Rehabilitation and Correction.

## **Assignment to career-technical planning districts**

(R.C. 3317.023)

The act specifies that community schools and STEM schools serving students in any of grades seven through twelve must be assigned to a career-technical planning district by the Department.

## **New quality program standards for career-technical education programs**

(Section 263.500)

The act requires the Department to adopt new quality program standards for category three career-technical education programs not later than December 31, 2013, and for category one, two, four, and five career-technical education programs not later than June 30, 2015.

## **Spending of economically disadvantaged funds**

(R.C. 3314.08(C)(6), 3317.022(F), 3317.16(F), 3317.25, and 3326.40)

The act requires a city, local, exempted village, or joint vocational school district, community school, or STEM school to spend the economically disadvantaged funds it receives for any of the following initiatives or a combination of the following initiatives:

- (1) Extended school day and school year;
- (2) Reading improvement and intervention;
- (3) Instructional technology or blended learning;
- (4) Professional development in kindergarten through third grade;
- (5) Dropout prevention;
- (6) School safety and security measures;
- (7) Community learning centers that address barriers to learning; or





(8) Academic interventions for students in any of grades six through twelve.

Each school district, community school, and STEM school must submit a report to the Department at the end of each fiscal year describing the initiative or initiatives on which the district's or school's economically disadvantaged funds were spent during that fiscal year. Starting in 2015, the Department must submit a report of this information to the General Assembly not later than December 1 of each odd-numbered year.

### **Transportation funding**

(R.C. 3317.0212)

The act removes certain adjustments from the pupil transportation formula for school districts specified in prior law, so that funding is based only on the greater of per rider or per mile costs for each district. The eliminated adjustments are those for (1) nontraditional ridership, (2) high school ridership, (3) distance adjustment to school districts that transport K-8 students who live between one and two miles from school, and (4) efficiency. The payment for transportation is calculated in the same manner as the base payment was calculated in prior law, except that a district's state share percentage is replaced in the calculation with a district's state share index.

The act also requires the Department, in fiscal years 2014 and 2015, to pay each city, local, and exempted village a pro rata portion of the transportation funding described above. Additionally, the act provides a transportation supplement for low-wealth and low-rider density school districts that is equal to the difference between the district's unrestricted pupil transportation formula amount and the prorated amount.

### **Accountability for subgroups**

(R.C. 3317.01 and 3317.40)

The act states that, when state operating funds are provided to school districts for services for a subgroup of students, the General Assembly has determined that these students experience unique challenges requiring additional resources and intends that the funds be used for services that will allow students in those subgroups to master the knowledge base required for high school graduation.<sup>51</sup> For this purpose, a subgroup of

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<sup>51</sup> In making this statement, the act specifies that it is the intent of the General Assembly that state operating funds provided to school districts be used "for the provision of a system of common schools and the advancement of the knowledge of all students." It provides that school districts and schools must be held accountable for those funds to ensure that all students are provided an opportunity to graduate from high school prepared for a career or for post-secondary education.



students is one of the following subsets of the entire student population of a school district or a school building: (1) students with disabilities, (2) economically disadvantaged students, (3) limited English proficient students, or (4) students identified as gifted in superior cognitive ability and specific academic ability fields. Therefore, the act requires the Department, in its certification of state operating funds to school districts, to include the amounts payable to each school building, "at a frequency determined by the Superintendent of Public Instruction," for each subgroup of students receiving services from the district or school.

The act also requires that if a district or school fails to show satisfactory achievement and progress, based on measures determined by the State Board, for any subgroup of students based on the annual state report card performance measures for that subgroup, the district or school must submit an improvement plan to the Department for approval. The plan may be included in any other improvement plan required of the district or school under state or federal law. Additionally, the Department may require that the plan include an agreement to partner with another organization that has demonstrated the ability to improve the educational outcome for that subgroup of students to provide services to those students. The partner organization may be another district, school, or other educational provider.

To facilitate these provisions, not later than December 31, 2014, the State Board must establish measures of satisfactory achievement and progress, which must include annual state report card performance measures. The Department must make the initial determination of satisfactory achievement and progress using those measures not later than September 1, 2015, and then make determinations annually thereafter.

The Department must publish a list of schools, school districts, and other educational providers that have demonstrated an ability to serve each subgroup of students.

### **Educational service center funding**

(R.C. 3313.843; 3313.849; repealed R.C. 3317.11; conforming changes in R.C. 3311.0510, 3312.08, 3313.376, 3313.845, 3315.40, 3317.023, and 3326.45; Section 263.360)

The act repeals a provision of prior law that set forth a permanent statutory structure for state payments to educational service centers (ESC) for services to school districts. However, the act, on a temporary basis, appropriates funds for state payments to ESCs, in the amount of \$43.5 million in fiscal year 2014 and \$40 million in fiscal year 2015 and specifies that the funds be distributed on a per-pupil basis. The amount paid to an ESC, for fiscal year 2014, is \$37 multiplied by the ESC's total student count and, for fiscal year 2015, is \$35 multiplied by its total student count. However, as in past years,



the act specifies that if the appropriation is not sufficient, the act requires that the payments be prorated accordingly.

The act also retains and relocates a provision requiring the Department to annually deduct from each client school district of an ESC and pay to that ESC an amount equal to \$6.50 times the school district's total student count. The act expressly permits the board of education of any client school district to pay an amount in excess of \$6.50 per student and specifies that, if a majority of a service center's districts approve the higher amount, the Department must deduct the approved excess from all of the service center's client school districts.

The act further specifies that any additional funds owed by a district to an ESC must be paid in accordance with the agreements entered into by the ESC and its client school districts. In addition, the act requires each ESC, not later than January 1, 2014, to post on its web site a list of all of the services that it provides and the corresponding cost for each of those services. The act also expressly permits an ESC to apply for federal, state, and private grants.

### **Total student count**

(R.C. 3313.843)

Under the act, "total student count" for purposes of calculating any state subsidy to be paid to an ESC means the sum of the average daily student enrollments reported on the most recent report cards issued by the Department for all of the school districts with primary agreements with the ESC. (Prior law based that count on the average number of students enrolled during the first full school week of October in a school district in grades kindergarten through twelve, including students with a dual enrollment in a joint vocational or cooperative education district that week, and the total number of preschool students with disabilities enrolled on the first day of September.)

### **Shared services agreements**

(R.C. 3313.849)

The act authorizes school districts, community schools, and STEM schools to agree to share any services offered by an ESC and to pool funding resources with any other school districts, community schools, or STEM schools provided that each participant in those shared services specifies in its service agreement: (1) the amount of funds it will contribute toward the total cost of the shared services, (2) the services that will be shared, and (3) the other participating districts or schools. The act requires the Department to pay the ESC for its services under a shared services agreement in the

same manner as is required under a primary ESC agreement. Likewise, under the act, payment for additional services under a shared services agreement is governed by the terms of the fee-for-service agreement.

The act specifies that the authority to enter into a shared services agreement is in addition to the authority to share the services of supervisory teachers, special instruction teachers, special education teachers, and other licensed personnel granted to school district boards of education under law unchanged by the act.<sup>52</sup>

### **Fee-for-service agreements**

(R.C. 3313.844 and 3313.845)

The act expressly permits a joint vocational school district to enter into a fee-for-service agreement with an ESC in the same manner as a school district.

The act also requires the Department, at the request of a school district or community school, to pay the service center the amount due to it under a fee-for-service agreement and to deduct that amount from the payments made to the community school or school district.

Finally, the act specifies that an agreement entered into by a community school and an ESC is valid only if a copy of that agreement is filed with the Department.

### **Process to ensure correct ESC is paid state subsidy**

(R.C. 3313.843)

Under continuing law, a school district may terminate its agreement with its primary ESC by notifying the ESC by the first day of January of any odd-numbered year of the district's intent to terminate the agreement in that year, and that termination is effective on the 30th day of June of that year. When a district terminates such an agreement, it must enter into a new agreement with a primary ESC so that the new agreement is effective on the first day of July of that same year.

The act establishes a process to ensure that when a school district terminates one primary agreement and enters into another primary agreement, the state subsidy for services provided to the district is paid to the new ESC rather than to the prior one.

To that end, the act requires the governing board of any ESC which has received all moneys owed to it by a school district, and within 15 days after the effective date of

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<sup>52</sup> R.C. 3313.841.

the termination of the district's agreement for services, to submit an affidavit to the Department certifying that the district has paid to the ESC what it owes in full. Additionally, the act prohibits the Department from making any payments to any other ESC with which that school district enters into an agreement for services until the Department has received the prior ESC's affidavit.

### **Unexpended and unobligated funds**

(R.C. 3313.848)

The act permits the governing body of the "client" of an ESC to elect, at the end of a fiscal year, to have unexpended and unobligated funds that were paid to the ESC under a service agreement during that fiscal year retained by the ESC for the purpose of applying them toward any payment the client will owe to the ESC for the next fiscal year. For this purpose, the act defines a "client" as a city, local, or exempted village school district, community school, STEM school, or other political subdivision. The act requires the client's treasurer or fiscal officer to indicate this decision and the amount of funds retained by the ESC on the client's end-of-year financial report.

Under the act, a client must expend its retained funds only for services specifically set forth under a service agreement. The act requires the treasurer of the ESC to keep a record of the client's expenditure and the service or services for which the expenditure was made. On at least an annual basis, or upon request, the ESC's treasurer must notify the client's treasurer or fiscal officer of these recorded expenditures. Upon receiving this notification, the client's treasurer or fiscal officer must include the information in the treasurer or fiscal officer's financial report at the next meeting of the client's governing body.

### **Education services for students in county juvenile detention facilities**

(R.C. 2151.362, 3313.64, and 3313.847 (renumbered as 3317.30))

Under continuing law, a child who is between ages five (three, if disabled) and 22 is entitled to attend school in the school district in which the child's parent resides. However, in some cases a child may be entitled to attend school in a different district. One such case is the situation in which a child has been placed in the custody of an agency or a person other than a parent, such as a county or joint county juvenile detention facility. Law unchanged by the act already permits an ESC that provides education services to a child under the care of such a juvenile detention facility to directly bill the school district responsible for paying the cost of educating the child. The act extends this option to other entities.



## **Coordination of education**

Under continuing law, a child placed in the custody of a county or district juvenile detention facility may receive educational services from the school district in which the facility is located. The act places the responsibility of coordinating that education on the facility itself. Under the act, that facility may take several measures to coordinate the education of the child. First, the facility may use the chartered nonpublic school that the facility operates, if it has one, to educate the child. Second, the facility may arrange with the student's resident district or other responsible district for the facility to educate the child on its own. Third, the facility may, by contract, have an ESC or the school district where the facility is located educate the child. Finally, the facility may permit a student who is already enrolled in an Internet- or computer-based community school (e-school) to continue to receive that instruction, provided that the facility possesses the necessary hardware, software, and Internet-connectivity.

## **Direct billing for services**

The act permits the entity that educates the child (the facility, chartered nonpublic school the facility operates, or a school district) to submit an invoice for payment directly to the school district responsible for paying the cost of educating each child (as determined by the court that issued the child's custody order), instead of first billing the district in which the facility is located. Moreover, it instructs the school district responsible for paying the cost of educating the child to pay the entity that educates the child for those services.

The act also directs the district responsible for paying the cost of educating the child to include that child in the district's "average daily membership" (student count for state operating funding) and prohibits any other district from including the child in that count.

If a facility coordinates education services in accordance with one of the first four methods described in "**Coordination of education**" above, the child's resident school district must pay the cost of education based on the per capita cost of the facility. However, under the act, if a facility coordinates education services to a child who is already enrolled in an e-school, as described in "**Coordination of education**" above, payment to that school is to be provided under the regular funding system for e-schools under the Community School Law.<sup>53</sup>

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<sup>53</sup> R.C. 3314.08.

## **Auxiliary Services funds**

(R.C. 3317.06)

Auxiliary Services funds are paid to school districts to be spent on behalf of students enrolled in chartered nonpublic schools. The act replaces the term "electronic textbook," as used under prior law regarding these funds, with the term "digital text." The act, however, generally leaves the definition of the term unaltered except to specify that such texts are "consumable." Thus, under the act, "digital text" means a consumable book or book substitute that a student accesses through the use of a computer or other electronic medium or that is available through an Internet-based provider of course content, or any other material that contributes to the learning process through electronic means.

The act also specifies that mobile instructional applications that are purchased for less than \$10 and distributed to students are to be considered "consumable," without the expectation of the return of those applications.

## **Nonpublic school administrative cost reimbursement**

(R.C. 3317.063)

Each chartered nonpublic school may be reimbursed for administrative and clerical costs incurred as a result of complying with state and federal recordkeeping and reporting requirements. The act increases to \$360 (from \$325 under prior law) the maximum amount per pupil that may be reimbursed to a school each year.

## **Fees for all-day kindergarten**

(R.C. 3321.01(G))

The act permits a school district to charge tuition in any school year following the 2012-2013 school year for a student enrolled in all-day kindergarten, as long as the district is offering all-day kindergarten for the first time or the district charged for all-day kindergarten in the 2012-2013 school year as permitted under prior law. The act requires the Department to adjust a district's average daily membership certification by one-half of the full-time equivalency for each student charged fees or tuition for all-day kindergarten. This provision, by a cross-reference not affected by the act, also appears to apply to community schools.<sup>54</sup> The act retains a stipulation that the fees or tuition

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<sup>54</sup> R.C. 3321.01 is applicable to community schools by reference in R.C. 3314.03(A)(11)(d). However, a separate provision limits a community school's authority to charge tuition (R.C. 3314.08(F) and 3314.26).



charged for all-day kindergarten services must be structured on a sliding scale according to family income.

Under prior law, school districts and apparently community schools were permitted to charge fees or tuition for all-day kindergarten services only if they did not receive a poverty-based assistance payment for all-day kindergarten for fiscal year 2009.

### **Study of open enrollment**

(Section 263.450)

The act establishes a temporary task force to review and make recommendations on open enrollment by December 31, 2013. Under the act, the Superintendent, in consultation with the Governor's Office of 21st Century Education must convene the Task Force consisting of representatives from school districts reflecting all sectors of the state's educational community. The Superintendent must designate the chairperson of the Task Force. All meetings of the Task Force are to be held at the call of the chairperson. The act requires the Task Force to review and make recommendations regarding the process by which students may enroll in other school districts under open enrollment and the funding mechanisms associated with open enrollment deductions and credits. The Task Force must issue a report of its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House.

### **Electronic Textbook Pilot Project**

(Sections 263.230, 363.180 and 363.580)

The act creates the Electronic Textbook Pilot Project to provide competitive grants to public and chartered nonpublic schools to be used for the purchase of electronic textbooks through the Distance Learning Clearinghouse. The Chancellor of the Board of Regents, who currently administers the Clearinghouse (see "**Distance Learning Clearinghouse**" under "**OHIO BOARD OF REGENTS**," below), also must administer the pilot project and perform all of the following duties related to it:

- (1) Set grant criteria and select grant recipients;
- (2) Review and assess the alignment of courses offered through the electronic distance learning clearinghouse using the statewide academic content standards;<sup>55</sup>
- (3) Issue a request for proposals for grants by January 31, 2014;

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<sup>55</sup> R.C. 3301.079, not in the act.





(4) Award grants by May 31, 2014, for use during the 2014-2015 school year;

(5) Notify schools of, and promote participation in, the pilot project (jointly with the Superintendent); and

(6) Submit a formative evaluation of the implementation and results of the pilot project, along with legislative recommendations for changes to the pilot project, to the Governor and the General Assembly by December 31, 2015.

The act also specifies that the number of grants awarded by the Chancellor may not exceed the number that can be funded with appropriations made for that purpose. The act appropriates \$3 million for each of fiscal year 2014 and 2015 for the pilot project but, as noted above, the grants will only be awarded for the 2014-2015 school year. Thus, the act also specifies that unexpended, unencumbered funds appropriated for fiscal year 2014 carry over to fiscal year 2015.

## **Repeal of obsolete funding provisions**

### **Loans to school districts**

(Repealed R.C. 3313.4811, 3317.62, 3317.63, and 3317.64; conforming changes in R.C. 133.06, 3311.22, 3311.231, 3311.38, 3313.483, 3313.484, 3313.488, 3313.4810, 3315.42, 3316.041, and 3316.06)

The act repeals provisions that authorize the Superintendent to issue loans from the Lottery Profits Education Fund to qualifying school districts (subject to Controlling Board approval) and to administer those loans. These provisions apply to pre-1997 loans, which appear not to have been issued for the past several years.

### **School district debt service deductions**

(R.C. 3317.18)

The act removes a reference to R.C. 133.301, which was repealed in 2002, from a provision authorizing the deduction of a school district's debt service from its state operating funds. The repealed section pertained to the authorization of the issuance of certain securities by a district board.

## **II. Community Schools**

### **Background**

Community schools (often called "charter schools") are public schools that operate independently from any school district under a contract with a sponsoring entity. A conversion community school, created by converting an existing school district





school, may be located in and sponsored by any school district in the state. On the other hand, a new "start-up" community school may be located only in a "challenged school district." A challenged school district is any of the following: (1) a "Big-Eight" school district, (2) a poorly performing school district as determined by the school's performance index, value-added progress dimension, or overall score ratings on the state report card, or (3) a school district in the original community school pilot project area (Lucas County).<sup>56</sup>

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

- (1) The school district in which the school is located;
- (2) A school district located in the same county as the district in which the school is located has a major portion of its territory;
- (3) A joint vocational school district serving the same county as the district in which the school is located has a major portion of its territory;
- (4) An educational service center;
- (5) The board of trustees of a state university (or the board's designee) under certain specified conditions; or
- (6) A federally tax-exempt entity under certain specified conditions.<sup>57</sup>

Many, but not all, community schools are run by "operators," which are for-profit or nonprofit entities that handle all of the day-to-day operations of the schools.

## **Community schools in multiple facilities**

(R.C. 3314.05)

The act revises the law allowing a community school, under certain conditions, to be located in multiple facilities under the same sponsorship contract and to assign students in the same grade to different facilities, both of which are otherwise generally prohibited. The act removes two prior conditions. First, the act removes a requirement that the community school's contract with its sponsor had to be filed with the Superintendent of Public Instruction on or before May 15, 2008. Second, it eliminates the condition that the school could not have been open for operation prior to July 1, 2008.

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<sup>56</sup> R.C. 3314.02, not in the act. The "Big-Eight" districts are Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown.

<sup>57</sup> R.C. 3314.02(C)(1)(a) through (f).



The act retains the following other conditions:

(1) The school's governing authority entered into and maintains a contract with an operator that is a nonprofit organization that provides programmatic oversight and support to the school and that retains the right to terminate its affiliation with the school for failure to meet the organization's quality standards;

(2) The operator with whom the governing authority entered into a contract manages other schools in the United States that perform at a level higher than academic watch, or presumably its equivalent, as determined by the Department of Education and that at least one of the schools managed by the operator in Ohio must perform higher than academic watch, or its equivalent; and

(3) The school's performance rating does not fall below a combination of prescribed levels for specified periods of time.

By removing the timing restrictions, the act presumably allows additional start-up community schools that meet the retained requirements to locate in multiple facilities in one district under the same contract, and to assign students in the same grade to different facilities.

## **Community school sponsor oversight**

(R.C. 3314.015)

The act revises the law with regard to oversight and approval of sponsors of community schools. Most sponsors must be approved by and enter into an agreement with the Department of Education before they may contract with any schools.

### **Sponsor agreement terms**

The act specifies that the initial term of a community school sponsor's agreement with the Department lasts for up to seven years.<sup>58</sup> Moreover, the act adds that, if a sponsor satisfies certain conditions, the Department must add one year to the agreement's term, unless the sponsor does not wish to have the term extended. In addition, either of the following conditions (as applicable) must be satisfied for a sponsor to qualify for a yearly extension:

(1) Prior to January 1, 2015, the sponsor is not ranked in the lowest 20% of sponsors statewide, according to the composite performance index score, under the

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<sup>58</sup> Prior law was silent as to the length of a term of a sponsor's agreement with the Department.



annual sponsor rankings required by separate law,<sup>59</sup> and the sponsor continues to meet all the prescribed community school sponsor requirements; or

(2) On or after January 1, 2015, the sponsor is rated as either "exemplary" or "effective" under the community school sponsor evaluation system that will replace annual rankings effective on that date,<sup>60</sup> and the sponsor continues to meet all the prescribed community school sponsor requirements.<sup>61</sup>

### **Sponsor probation and compliance plans**

Under continuing law, if at any time the State Board finds that a sponsor is no longer willing or able to comply with its duties, the State Board or its designee must conduct an administrative hearing on the matter. If the finding is confirmed, then the Department may revoke the entity's approval to be a school sponsor and may assume sponsorship of the sponsor's schools until the earlier of the expiration of two school years or until the school secures a new sponsor.

The act extends to the Department the option to place a sponsor on probationary status and the option to limit the sponsor's ability to sponsor additional schools, pending satisfactory remedies, rather than outright revoke that authority.<sup>62</sup> To facilitate this option, the act prescribes specific procedures for placing a sponsor on probation. Under the act, if the Department finds that a sponsor is noncompliant with applicable laws and administrative rules, the Department must declare to the sponsor the specific laws and rules for which the sponsor is noncompliant. Upon notification of its noncompliance, a sponsor has 14 days to respond to the Department with a proposed plan to remedy the conditions for which it is noncompliant. The Department must either approve or disapprove the plan within 14 days after receiving the proposed plan. If the plan is disapproved, the sponsor may submit a revised plan to the Department within 14 days after receiving the Department's notification of disapproval or within 60 days after receiving the Department's notification of noncompliance, whichever is earlier.

Similarly, the Department must either approve or disapprove the revised plan within 14 days after receiving the plan or within 60 days after notifying the sponsor of its noncompliance, whichever is earlier. A sponsor may continue to make revisions to a revised plan that was disapproved by the Department until the 60th day after receiving

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<sup>59</sup> R.C. 3314.017, effective until January 1, 2015.

<sup>60</sup> R.C. 3314.017, as amended by H.B. 555 of the 129th General Assembly, effective January 1, 2015.

<sup>61</sup> R.C. 3314.015(B)(1).

<sup>62</sup> R.C. 3314.015(F).

its notification of noncompliance. If a plan or a revised plan is approved by the Department, the sponsor must implement the plan within 30 days after the plan's approval or 60 days after receiving the noncompliance notification, whichever is later.

If the sponsor does not respond to the Department or implement an approved compliance plan by the deadlines described above, or if a sponsor does not receive approval of a compliance plan within 60 days after receiving its noncompliance notification, the Department (1) must declare to the sponsor that it is in probationary status, and (2) may limit the sponsor's ability to sponsor additional schools.

If a sponsor is placed on probationary status, it may apply to the Department for that status to be lifted by submitting to the Department an application including evidence of the sponsor's compliance with applicable laws and rules. Within 14 days of receiving an application, the Department must decide whether or not to lift a sponsor's probationary status.

### **Application to conversion schools**

The act adds a provision stating that Department's authority to approve, disapprove, revoke, or limit the approval of an entity's sponsorship of community schools applies to *both* start-up community schools *and* conversion community schools.<sup>63</sup>

### **Direct authorization applications**

(R.C. 3314.029)

Under the "Ohio School Sponsorship Program," the Department of Education may directly authorize the establishment and operation of a limited number of community schools, instead of those schools being under the oversight of other public or private sponsors. Any individual, group, or entity may apply directly to the Department for authorization to establish a new community school. In addition, the governing authority of an existing community school may apply to the Department, upon the expiration or termination of the current contract with its sponsor, for direct authorization to continue operating the school.

Continuing law allows the Department to deny an application submitted by an existing community school if a previous sponsor of that school chose not to renew its contract with the school. The act also authorizes the Department to deny an application if the school's sponsor *terminated* that contract.

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<sup>63</sup> R.C. 3314.015(H).



## **Tuition for out-of-state students**

(R.C. 3314.06 and 3314.08)

The act allows community schools to admit students who are at least five, but less than twenty-two years old and who are *not* residents of the state, and to charge those students tuition. The act specifies that a community school may not receive funds from the state to pay for these students.

## **Grandfathered community school sponsors**

(R.C. 3314.027)

The act revises the law regarding grandfathered community school sponsors not subject to approval by the Department. (These are entities that were sponsoring schools as of April 8, 2003, when the approval requirement became law.) Specifically, it removes the language of prior law that stated that a sponsor (1) may continue sponsoring a school "as long as the entity complies with all other sponsorship provisions of this chapter" (meaning R.C. Chapter 3314.), and (2) "need not be approved by the Department for such sponsorship, as otherwise required under divisions (A)(2) and (B)(1) of section 3314.015 of the Revised Code." The act leaves intact language permitting an entity to enter into new sponsor contracts and to continue existing ones as long as both the contracts and the sponsoring entity comply "with all other provisions" of Chapter 3314.

## **Community school closure criteria – grade 4-8 schools**

(R.C. 3314.35)

Under prior law, partially changed by the act, beginning with the 2013-2014 school year, a community school that offers any of grades 4 to 8 and does not offer a grade higher than 9 was required to permanently close if it met any of the following conditions for two of the three most recent school years: (1) the school received a rating of "academic emergency" (under the former school district and school rating system), (2) the school received an "F" for the performance index score and for the overall value-added progress dimension, or (3) the school received an overall grade of "F" and an "F" for the overall value-added progress dimension.<sup>64</sup> (The latter two conditions refer to the new rating system enacted in 2012.<sup>65</sup>)

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<sup>64</sup> R.C. 3314.35(A)(3)(b).

<sup>65</sup> H.B. 555 of the 129th General Assembly, effective March 22, 2013.



The act revises only the first condition for closure by specifying that, to trigger permanent closure after July 1, 2013, the school must have been both, (1) in a state of academic emergency and (2) showed less than one standard year of academic growth in either reading or mathematics, as determined by the Department. The act leaves intact the other two conditions.

## **E-school enrollment caps**

(R.C. 3314.20)

Beginning with the 2014-2015 school year, the act limits the percentage by which an Internet- or computer-based community school (e-school) may increase its enrollment. An e-school may increase its enrollment by a prescribed annual rate of growth above its enrollment limit for the previous school year. The prescribed annual rate of growth for an e-school with an enrollment limit equal to or greater than 3,000 students is 15%. The prescribed annual rate of growth for an e-school with an enrollment limit less than 3,000 students is 25%.

Accordingly, an e-school's prescribed rate of growth is based on the enrollment limit of the e-school, not on the actual enrollment of the e-school. The Department of Education must calculate the enrollment limit for each e-school. For an e-school that existed prior to September 29, 2013 (the act's 90-day effective date), the enrollment limit for the 2014-2015 school year is the prescribed annual rate of growth above the school's actual 2012-2013 enrollment. For the 2015-2016 school year and each school year thereafter, the enrollment limit for an existing e-school is the previous year's enrollment limit increased by the prescribed annual rate of growth (15% or 25%), as calculated by the Department.

The act also limits the first-year enrollment of a new e-school that opens after September 29, 2013, to 1,000 students. Thus, in its second year of operation, an e-school that opens after that date would have an enrollment limit of 1,250 students (1,000 students increased by 25%). The e-school's enrollment limit would increase by 25% annually until that enrollment limit equaled or exceeded 3,000 students. Thereafter, the enrollment limit would increase by 15% annually.

If an e-school enrolls more students than permitted under the enrollment limit for a school year, the Department must determine and deduct the amount of state funds credited to the school attributable to each student enrolled in excess of the enrollment limit. The Department must distribute that amount to the school districts to which the students enrolled in the e-school are entitled to attend school on a pro rata basis according to each district's share of the total enrollment in the e-school.



## **Dropout prevention and recovery program report cards**

### **Ratings**

(R.C. 3314.017(D)(3))

Under law enacted in 2012, beginning with the 2012-2013 school year, community schools that primarily serve students enrolled in dropout prevention and recovery programs are graded under a separate academic performance rating system. That new system is different from the other new rating system applied to other types of public schools. But like the larger system for other schools, it is phased in over three years so that schools will not receive an overall grade until the report card issued for the 2014-2015 school year. Beginning with that school year, each dropout program will receive a grade based on the following four performance indicators: (1) adjusted cohort graduation rates, (2) percentage of twelfth-grade students and other students passing the graduation assessments, (3) annual measurable objectives, and (4) growth in student achievement in reading or mathematics, or both. The overall ratings will be "exceeds standards," "meets standards," and "does not meet standards," instead of letter grades as assigned to other public schools.

The act includes the rating of "exceeds standards," in addition to "meets standards" under continuing law, as a rating a dropout program can attain if the program improves by 10% both in its graduation rates and percentage of twelfth-grade students and other students passing the graduation assessments.

### **Review of performance indicators**

(R.C. 3314.017(G))

The act also requires the State Board, not later than December 31, 2014, to review the performance levels and benchmarks for the performance indicators used in the report card issued for community schools that primarily serve students enrolled in dropout prevention and recovery programs. The State Board may revise the performance levels and benchmarks based on data collected in developing the rating and report card system.

### **Community school contract suspension**

(R.C. 3314.072)

Continuing law requires the sponsor of a community school to suspend immediately the operation of the school for health and safety violations, and permits a sponsor to suspend the school's operation for (1) failure to meet student performance requirements and fiscal management standards, (2) violation of the contract or





applicable state or federal law, and (3) "other good cause."<sup>66</sup> The act specifies that, beginning with the 2013-2014 school year, a suspended community school's contract is void, if the school's governing authority fails to provide the sponsor with a satisfactory proposal to remedy issues for which it was suspended by September 30 of the following school year. In other words, the school has until the following September 30 to remedy the issues or it will be permanently closed. Additionally, for a community school that has been suspended by its sponsor prior to September 29, 2013, the school's governing authority must provide, by September 30, 2014, a proposal to remedy the issues for which the school's contract was suspended. If the governing authority fails to do so, the school's contract is void, and the school must permanently close.

### **Licensing of physical education instructors at community schools**

(R.C. 3314.03(A)(10))

Under prior law, any classroom teacher who is initially hired by a community school on or after July 1, 2013, to provide instruction in physical education at that school had to hold a valid license, issued by the State Board of Education, for teaching physical education. The act eliminates this specific requirement for physical education instructors at community schools. Nevertheless, under continuing law, a community school's classroom teachers are required to hold a valid educator license or permit for teaching in public schools issued by the State Board. Therefore, a classroom teacher that is hired to provide physical education instruction at a community school must be so licensed, but there is no longer a requirement that the license be issued specifically for the teaching of physical education.

The act does not affect a separate requirement of continuing law regarding physical education instructors employed by school districts, who are still required, if hired on or after July 1, 2013, to be licensed by the State Board for the teaching of physical education.<sup>67</sup>

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<sup>66</sup> R.C. 3314.07, not in the act, and 3314.072.

<sup>67</sup> R.C. 3319.076, not in the act.



### III. Minimum School Year

#### School year based on hours rather than days

(R.C. 2151.011, 3313.48, 3313.481, 3313.482, 3313.533, 3313.62, 3313.88, 3314.092, 3317.01, 3317.03, 3321.05, 3326.11, and 3327.01; Sections 110.10 to 110.12, 120.10 to 120.12, 733.10, 803.50, 812.10, and 812.20)

Beginning in the 2014-2015 school year, the act changes the minimum school year for school districts, STEM schools, and chartered nonpublic schools from 182 days to 455 hours for students in half-day kindergarten, 910 hours for students in grades 1 through 6 or in all-day kindergarten, and 1,001 hours for students in grades 7 through 12.<sup>68</sup> The act does not revise the minimum school year for community schools, which is 920 hours.

In addition, the act retains law specifying that the school week generally be five days, but adds an explicit statement that chartered nonpublic schools may be open for instruction with pupils in attendance on any day of the week, including Saturday and Sunday. The act eliminates any requirement for a minimum school month, which is four school weeks under current law,<sup>69</sup> and it eliminates the requirement that a school day be at least five hours long.<sup>70</sup>

Moreover, the act specifies that when the term "school day" is used throughout the Education Code (R.C. Title 33), unless otherwise specified, it is construed to mean the time during a calendar day that a school is open for instruction under the schedule adopted by each particular school district board.<sup>71</sup>

#### Exceptions

Beginning on July 1, 2014, in order to satisfy the act's minimum hourly requirements:

(1) A school may count up to the equivalent of two school days per year when classes are dismissed for individualized parent-teacher conferences and reporting periods.

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<sup>68</sup> R.C. 3313.48(A); Sections 120.10 to 120.12 and 812.10 (all effective July 1, 2014).

<sup>69</sup> Current R.C. 3313.62 (effective until July 1, 2014).

<sup>70</sup> Current R.C. 3313.48 (effective until July 1, 2014).

<sup>71</sup> R.C. 3313.481 as reenacted by the act, effective July 1, 2014.



(2) A school may count up to the equivalent of two school days per year when the schools are closed for teacher professional meetings.

(3) For students in grades K through 6, a school may count morning and afternoon recess periods of not more than 15 minutes each.

(4) Kindergarten students may be further excused for up to the equivalent of three school days, in order to acclimate to school.

(5) Seniors in high school may be excused for up to the equivalent of three school days.<sup>72</sup>

However, unlike law effective until July 1, 2014, a school will no longer be permitted to count any "calamity" days or hours (including two-hour delays or early dismissals) toward its minimum hourly requirement (see "**Calamity days eliminated**" below).

### **Public hearing on school calendar**

(R.C. 3313.48(B), effective July 1, 2014)

Beginning on July 1, 2014, the act requires that, 30 days prior to adopting a school calendar, a district board of education must hold a public hearing on the school calendar. The hearing must address topics that include, but are not limited to, the total number of hours in a school year, length of school day, and beginning and end dates of instruction.

### **Prohibition on the reduction of hours except by resolution**

(R.C. 3313.48(C), effective July 1, 2014)

Beginning on July 1, 2014, the act prohibits a school district from reducing the number of hours that the school is scheduled to be open for instruction from one school year to the next, unless the district board of education approves the reduction by resolution. However, the resolution cannot be used to reduce the number of hours that the school is scheduled to be open for instruction below the minimum number required by law.

This provision does not apply to chartered nonpublic schools (see "**Prohibition on applying requirements to chartered nonpublic schools,**" below).

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<sup>72</sup> R.C. 3313.48(A)(1) to (3) and 3317.01(B) (both effective July 1, 2014).

## **Consideration of scheduling needs of other schools**

### **Joint vocational school districts**

(R.C. 3313.48(D), effective July 1, 2014)

Beginning on July 1, 2014, the act requires the board of each city, exempted village, and local school district, prior to making any change in the hours or days in which a high school is open for instruction, to consider the compatibility of the proposed change with the scheduling needs of any joint vocational school district (JVSD) in which any of the high school's students are also enrolled. The board must consider the impact of the proposed change on student access to the instructional programs offered by the JVSD, incentives for students to participate in vocational education, transportation provisions, and the timing of graduation. The board also must provide the JVSD board with advance notice of the proposed change, and both boards must enter into a written agreement prescribing reasonable accommodations to meet the scheduling needs of the JVSD prior to implementing the change.

### **Community schools**

(R.C. 3313.48(E) and 3314.092, both effective July 1, 2014)

The act further requires the board of each city, exempted village, and local school district, prior to making any change in the hours or days in which a school is open for instruction, to consider the compatibility of the proposed change with the scheduling needs of any community school to which the district is required to transport students. The board must consider the impact of the proposed change on student access to the instructional programs offered by the community school, transportation provisions, and the timing of graduation. The board also must provide the sponsor, governing authority, and operator of an affected community school with advanced notice of the proposed change, and the district board and the governing authority, or operator if so authorized, must enter into a written agreement prescribing reasonable accommodations to meet the scheduling needs of the community school prior to implementing the change.

Conversely, the act also requires the governing authority or operator of a community school to consult with each district that transports students to the community school prior to making any change in the community school schedule.

## **Chartered nonpublic schools**

(R.C. 3313.48(F), effective July 1, 2014)

Finally, the act requires the board of education of each city, exempted village, and local school district, before making a change in the hours or days in which its schools are open for instruction, to consult with the chartered nonpublic schools to which the district is required to transport students and to consider the effect of the proposed change on the schedule for transportation of those students. Conversely, the governing authority of a chartered nonpublic school must also consult with each school district board that transports students to the chartered nonpublic school prior to making any change in its schedule.

## **Prohibition on applying requirements to chartered nonpublic schools**

(R.C. 3313.48(G), effective July 1, 2014)

The act prohibits the State Board from adopting or enforcing any rule or standard that would require chartered nonpublic schools to comply with the act's provisions that, beginning on July 1, 2014, require school districts to do the following:

- (1) Hold a public hearing prior to adopting the school calendar;
- (2) Adopt a resolution before reducing the number of hours the school is scheduled to be open; and
- (3) Consult with any joint vocational school district or community school when amending its school schedule.

## **Transportation to nonpublic and community schools**

(R.C. 3327.01(D)(2), effective July 1, 2014)

As discussed above, the act makes explicit that, beginning on July 1, 2014, chartered nonpublic schools may be open for instruction with pupils in attendance on any day of the week, including Saturday or Sunday. However, unless an agreement to do so is in place prior to July 1, 2014, the act exempts school districts from transporting students to and from nonpublic and community schools on Saturday and Sunday.

For a discussion of a district's transportation responsibilities see "**Background**" under "**VI. Student Transportation**," below.



## **Calamity days eliminated**

(R.C. 3317.01(B), effective July 1, 2014)

A school is permitted under law effective until July 1, 2014, to excuse students for up to five days a year for calamity days, which are regularly scheduled hours a school is closed due to hazardous weather or comparable circumstances. Beginning on July 1, 2014, the act generally eliminates excused calamity days, and eliminates another provision that permits a school to count up to two hours a day if a school opens late or closes early because of hazardous weather conditions. Thus, under the act, if a school is required to cancel classes, open late, or close early because of inclement weather, and the closure would cause the school to fall below the state minimum hours for the year, it is the responsibility of the school to make up those hours as it chooses.

## **Community school calamity hours retained**

(R.C. 3314.08(H)(4))

However, the act does not affect a provision which excuses calamity days for community schools. Currently, and continuing under the act, the Department is required to waive the number of hours a community school is closed for a public calamity, as long as the school provides the required minimum of 920 hours of learning opportunities to students during the school year.

## **Online lessons and Blizzard Bags**

(R.C. 3313.482, as renumbered by Section 110.10 of the act, effective July 1, 2014)

The act retains a provision that was enacted in 2011 by H.B. 153 of the 129th General Assembly, which allows school districts, chartered nonpublic schools, and community schools to make up no more than three calamity days via online lesson plans or paper "Blizzard Bags." However, the act clarifies that, following the implementation of the hours-based minimum school year on July 1, 2014, districts and schools may make up the *equivalent* of three days using these methods.

## **Other changes related to the minimum school year**

(Repealed R.C. 3313.481 and 3313.482)

Beginning on July 1, 2014, the act makes other changes as a result of shifting the minimum school year requirement from days to hours. First, it eliminates the provisions of law that currently permit a school, under certain conditions, to operate on an alternative 910-hour schedule upon the approval of the Department. Also, since calamity days will be eliminated on this date, the act also eliminates the requirement



that schools adopt contingency plans to make up calamity days beyond the five they are permitted under law effective until July 1, 2014.

## **Collective bargaining agreements**

(Section 803.50)

The act specifically provides that the restructuring of the minimum school year on July 1, 2014, does not apply to any collective bargaining agreement executed prior to that date. However, the act does stipulate that any collective bargaining agreement or renewal executed after that date must comply with those changes.

## **IV. Scholarship Programs**

### **Educational Choice Scholarship Program**

#### **Qualification based on K-3 literacy performance**

(R.C. 3310.02 and 3310.03)

Beginning with the 2016-2017 school year, the act qualifies for the Educational Choice Scholarship Program (Ed Choice) students in kindergarten through third grade who are enrolled in a district-operated school that (1) has received a grade of "D" or "F" in "making progress in improving K-3 literacy" in two of the three most recent state report cards issued prior to the first day of July of the school year for which the scholarship is sought and (2) has *not* received a grade of "A" on that same measure on the most recent rating published prior to the first day of July of the school year for which a scholarship is sought.<sup>73</sup> A student who receives a scholarship under the act continues to be eligible for the scholarship so long as the student remains in a qualifying district, takes state achievement assessments that applied to the student's grade level, and does not have had more than 20 unexcused absences, all in the previous school year.

Scholarships based solely on a school's K-3 literacy performance are to be counted toward the total 60,000 scholarship cap that applies to the rest of the Ed Choice program except the act's new income-based eligibility. (See "**Priority for Ed Choice scholarships**," below.)

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<sup>73</sup> This is one of the measures used on the new report card system enacted by H.B. 555 of the 129th General Assembly.





## **Priority for Ed Choice scholarships**

(R.C. 3310.02)

Students eligible under the new K-3 literacy performance category are included in the overall priority list in the event that the number of applicants exceeds the overall cap. Thus, in years when applications exceed the total number of available scholarships, priority for awarding scholarships is as follows:

First, to eligible students who received them in the previous school year (continuing law);

Second, to students eligible because of the performance rating or grade of their district building *and* whose family incomes are at or below 200% of the federal poverty guidelines (continuing law);

Third, to all other students eligible because of the performance rating or grade of their district building (continuing law);

Fourth, to students in kindergarten through third grade who are eligible because of the K-3 literacy grade of their district building *and* whose family incomes are at or below 200% of the federal poverty guidelines (added by the act);

Fifth, to all other students in kindergarten through third grade who are eligible because of the K-3 literacy grade of their district building (added by the act);

Sixth, to students who are eligible because of the performance index score ranking of their district building *and* whose family incomes are at or below 200% of the federal poverty guidelines; and

Finally, to all other students who are eligible because of the performance index score ranking of their district building.

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

## **Income-based eligibility**

(R.C. 3310.032; Sections 263.10 and 263.320; conforming changes in R.C. 3310.01, 3310.02, 3310.05, 3310.06, 3310.08, and 3317.03)

Beginning with the 2013-2014 school year, the act expands the Ed Choice Scholarship Program to qualify certain students based entirely on their family incomes.



Under the act, students whose family incomes are at or below 200% of the federal poverty guidelines, regardless of the academic rating of the district school they otherwise would attend, may qualify for Ed Choice. However, the act phases in scholarships for students from low-income families by qualifying only kindergartners for the scholarship in the 2013-2014 school year, with the next grade higher than the preceding year added in each subsequent year. A student receiving a first-time scholarship under the new income-based criteria may continue to receive a scholarship in subsequent school years through grade 12, even if the student's family income rises above 200%, but does not exceed 400%, of the federal poverty guidelines provided the student remains enrolled in a chartered nonpublic school. For a student whose family income rises above 200% of the federal poverty guidelines after initially qualifying under the expansion, the act prescribes a three-tiered system under which the student's scholarship will be reduced. However, if the student's family income rises above 400% of the federal poverty guidelines after initially qualifying, the student will no longer be eligible for a scholarship (see "**Scholarship reductions if family income rises**" below).

All students who are newly qualified under the act must have taken all state achievement assessments that applied to the student's grade level, and cannot have had more than 20 unexcused absences, in the previous school year.

Scholarships awarded to students under this provision are to be funded directly through an appropriation made by the General Assembly, rather than through deductions from their resident school districts' state education aid as in the case of all other Ed Choice scholarships under continuing law. For fiscal years 2014 and 2015, the act finances the new income-based scholarships from the Lottery Profits Education Fund. For fiscal year 2014, the amount appropriated is \$8.5 million and, for fiscal year 2015, it is \$17 million.

### **Priorities**

(R.C. 3310.032(D))

If applications for the new income-based scholarships exceed the number of scholarships that can be funded by the appropriation, the act prioritizes the awarding of scholarships as follows:

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

Second, to students with family incomes at or below 100% of the federal poverty guidelines; and

Third, to students with family incomes between 100% and 200% of the federal poverty guidelines.



If the number of applications for students assigned lower priority exceeds the number of scholarships remaining available, the Department must award the remaining scholarships by lot.

Scholarships based solely on income eligibility are *not* to be counted toward the total 60,000 scholarship cap that applies to the rest of the Ed Choice program under continuing law.

#### **Scholarship reductions if family income rises**

(R.C. 3310.032(E))

The act prescribes a tiered system for reducing scholarship amounts if an eligible student's family income rises above 200% of the federal poverty guidelines, as follows:

(1) If the student's family income is above 200% but at or below 300% of the federal poverty guidelines, the student's scholarship is 75% of the full scholarship amount;

(2) If the student's family income is above 300% but at or below 400% of the federal poverty guidelines, the student's scholarship is 50% of the full scholarship amount; and

(3) If the student's family income is above 400% of the federal poverty guidelines, the student is no longer eligible to receive a scholarship.

#### **Eligibility based on performance index score ranking**

(R.C. 3310.03(B))

As noted under "**Background**" below, continuing law qualifies students for Ed Choice scholarships if their district schools have been ranked in the lowest 10% of school buildings based on performance index score for at least two out of three years and have not been rated "excellent" or "effective" in the most recent report card ratings. The act specifies that such a qualifying student's building not be rated, in that most recent report card, as excellent or effective "or the equivalent of such ratings as determined by the Department of Education." This change appears to accommodate the new report card and rating system based on letter grades. Also that new system does not provide for any overall score until the report card issued for the 2014-2015 school year. Thus, a determination of an "equivalent" rating may be necessary to administer that component of the program.

## **Students who qualify under more than one category**

(R.C. 3310.032 and 3310.035)

The act specifies that if a student is eligible for the Ed Choice scholarship based on both the student's public school performance and the act's new income-based expansion, the student, applying for the scholarship for the first time, must receive the scholarship based on public school performance and not family income.

Once a student receives an Ed Choice scholarship, the student will continue to receive the scholarship under the provision for which the student received the scholarship in the previous year so long as that student continues to meet the requirements for the scholarship. Thus, if a student qualified for the first time for the Ed Choice scholarship under the expansion based on family income, received a scholarship under that provision, and then subsequently became eligible to receive a scholarship based on where the student attends, the student will continue to receive the scholarship under the family income expansion, and that scholarship will be funded accordingly, assuming the student's family income does not rise above prescribed levels (see "**Scholarship reductions if family income rises**" above).

## **Eligibility for homeschooled students and students transferring to Ohio**

(R.C. 3310.03)

The act expands the eligibility provisions for the Ed Choice scholarship to qualify a student who "will be enrolling in any of grades kindergarten through twelve in this state for the first time" in the school year for which the scholarship is sought and whose school district or school building that the student would otherwise attend qualifies for scholarships. This includes the act's new qualification beginning in the 2016-2017 school year for students in buildings with a grade of "D" or "F" on the K-3 literacy performance measure. Prior law specified that the student had to be "eligible to enroll in kindergarten" to qualify under the relevant eligibility provision. Therefore, under the act, students moving to Ohio from another state and students who were previously homeschooled, regardless of their grade level, will be eligible for scholarships, in addition to the incoming kindergarteners who are eligible under continuing law.

The act also revises the minimum eligibility age for students that would qualify for Ed Choice. In addition to the enrollment revisions described above, the act specifies that a student must be at least five years of age by January 1 of the school year for which the scholarship is sought. Prior law specified the student had to be "eligible to enroll in kindergarten" to qualify under the relevant eligibility provision.

## Background

The Educational Choice Scholarship Program operates statewide in every school district except Cleveland to provide scholarships for students who are assigned or would be assigned to district schools that have persistently low academic achievement or, as under the act, are from low-income families. Under the program, students may use their scholarships to enroll in participating chartered nonpublic schools.

In addition to the act's K-3 literacy qualification or the act's income-based qualification, under continuing law, a student is eligible for a first-time Ed Choice scholarship if the student was attending, or otherwise would have been assigned to, a school building operated by the student's resident district that, on two of the three most recent report cards, either:

(1) Received a combination of any of the following ratings:

(a) Academic watch or emergency, under the former rating system;

(b) A "D" or "F" for *both* the performance index score *and* the overall value-added progress dimension or if the building serves only grades 10 through 12, the building received a grade of "D" or "F" for the performance index score and had a four-year adjusted cohort-graduation rate of less than 75%. (Applies only for report cards issued for the 2012-2013 and 2013-2014 school year.)

(c) A "D" or "F" for the overall grade *or* "F" for the overall value-added progress dimension. (Applies for report cards issued for the 2014-2015 school year and thereafter.); or<sup>74</sup>

(2) Was ranked in the lowest 10% of all public school buildings according to performance index score.

In the case of eligibility based on school performance ratings, the school cannot have been rated any of the following on the most recent report card:

(1) Excellent or effective, under the former rating system;

(2) Received an "A" or "B" for the performance index score *and* the value-added progress dimension or, if a building serves only grades 10 through 12, the building received a grade of "A" or "B" for the performance index score and had a four-year

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<sup>74</sup> H.B. 555 of the 129th General Assembly, effective March 22, 2013, created a new school district and school rating system using A through F letter grades and 15 separate performance measures.

adjusted cohort graduation rate of 75% or higher. (Applies only for report cards issued for the 2012- 2013 and 2013-2014 school years.);

(3) An "A" or "B" for the overall grade *or* "A" for the value-added progress dimension *or*, if a building serves only grades 10 through 12, the building received a grade of "A" or "B" for the performance index score and had a four-year adjusted cohort graduation rate of 75% or higher. (Applies for report cards issued for the 2014-2015 school year and thereafter.)

In the case of students who qualify because their school was in the bottom 10% of performance index ratings, the school cannot have been rated excellent or effective (or the equivalent as under the act) on the most recent report card.

The amount of each annual Ed Choice scholarship is the lesser of (1) the tuition charged by the chartered nonpublic school in which the student is enrolled or (2) a "maximum" amount, which is:

(a) \$4,250 for grades K through 8; and

(b) \$5,000 for grades 9 through 12.

### **Pilot Project (Cleveland) Scholarship Program**

(R.C. 3313.978)

The act increases the maximum amount allowed for any student in grades 9 through 12 under the Pilot Project (Cleveland) Scholarship Program from \$5,000 to \$5,700 beginning in fiscal year 2014. The act does not increase the maximum amount for students in grades K-8 (\$4,250), nor does it appropriate or earmark additional funds to finance the increased maximum high school scholarship amount.<sup>75</sup>

### **Background**

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

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<sup>75</sup> The act does not affect the maximum amount of a tutorial assistance grant under the program, which is \$400.



## **Jon Peterson Special Needs Scholarship Program**

### **Payments for certain students**

(Sections 263.10 and 263.250)

The act requires the Department to reimburse school districts in fiscal year 2014 for the full amount deducted from their state education payments under the Jon Peterson Special Needs Scholarship Program for scholarships for students who did not attend a public school in their resident district in the previous school year. The act appropriates \$5 million from the General Revenue Fund for this purpose. If this amount is not sufficient, the Department must prorate the payment amounts.

### **Restriction on use of scholarship money**

(R.C. 3310.52)

Beginning with the 2014-2015 school year, the act requires that a scholarship received by an eligible applicant for the Jon Peterson Special Needs Scholarship Program for a child who is a "category one" special education student may only be used to pay for "related services" that are included in the child's IEP. Under the act, a category one special education student is a child who is receiving special education services and whose primary or only identified disability is a speech and language disability.<sup>76</sup> Under Ohio law, unchanged by the act, and federal law, "related services" include transportation and support services, such as speech-language pathology and audiology services, psychological services, physical and occupational therapy, counseling services, and diagnostic medical services.<sup>77</sup>

### **Formative evaluation**

(Sections 125.11.10 and 263.440)

The act requires the Department of Education to conduct for the 2014-2015 school year a formative evaluation of the Jon Peterson Special Needs Scholarship Program and to report its findings to the General Assembly by December 31, 2015. In conducting the evaluation, to the extent possible, the Department must gather comments from parents who have been awarded scholarships under the program, school district officials, representatives of registered private providers, educators, and representatives of educational organizations for inclusion in the report. The act also specifies that the Department may contract with one or more qualified researchers who have previous

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<sup>76</sup> R.C. 3310.56(B)(1) and 3317.013(A).

<sup>77</sup> R.C. 3323.01(K) (not in the act) and 20 U.S.C. 1401(26).





experience evaluating school choice programs to conduct the study. In addition, it specifies that the Department may accept grants to assist in funding the study.<sup>78</sup>

## **Background**

The Jon Peterson Special Needs Scholarship Program provides scholarships for children with disabilities to attend special education programs other than those offered by their school districts. The program applies to any identified disabled child in grades kindergarten through 12. It began operating in the 2012-2013 school year. A scholarship may be used to pay the expenses of a public or private provider of special education programs for implementation of the child's individualized education program (IEP) and other services associated with educating the child.<sup>79</sup>

## **Autism Scholarship Program; instructional assistant permit**

(Sections 605.23 and 605.24)

The act revises a temporary provision of law enacted in 2012<sup>80</sup> to specify that individuals who provide services to a child under the Autism Scholarship Program are not required to obtain a one-year, renewable instructional assistant permit until December 20, 2014 (rather than December 20, 2013 under prior law). Continuing law permits the State Board to issue an instructional assistant permit to an individual, upon the request of a registered private provider,<sup>81</sup> qualifying that individual to provide services to a child under the program.<sup>82</sup>

## **Background**

The Autism Scholarship Program pays scholarships to the parents of identified autistic children in grades pre-kindergarten to 12. The scholarship is to be used solely to pay all or part of the cost of sending the child to a public or an approved nonpublic special education program instead of the one provided by the child's resident school

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<sup>78</sup> The act's provision is similar, but not identical, to one enacted in 2011 at the time the scholarship program was authorized. That prior provision, which had required the Department's report by December 31, 2014, is repealed by the act.

<sup>79</sup> R.C. 3310.52.

<sup>80</sup> Section 4 of Am. Sub. H.B. 279 of the 129th General Assembly.

<sup>81</sup> Continuing law defines a registered private provider as a nonpublic school or other nonpublic entity that has been approved by the Department to participate in the program (R.C. 3310.41(A), not in the act).

<sup>82</sup> R.C. 3310.43, not in the act.



district. The scholarship amount is the lesser of the amount charged by the special education program or \$20,000.

### **State assessments in nonpublic schools**

(R.C. 3301.0711(K), 3301.16, 3310.14, 3310.522, and 3313.976)

Continuing law requires a nonpublic school to administer the state assessments to each student attending the school with a scholarship under a state scholarship program.<sup>83</sup> All chartered nonpublic high schools, regardless of whether they accept state scholarships, must administer the Ohio Graduation Test (OGT) and all their students, generally, must pass all five areas of the test to be eligible for their diplomas.<sup>84</sup> (The OGT is scheduled to be replaced by a college and work ready assessment system consisting of a national standardized test and prescribed end-of-course examinations.)<sup>85</sup>

The act requires a chartered nonpublic school to administer the applicable state achievement assessments to *all* of its students if at least 65% of its total enrollment is made up of students who are participating in any of the state scholarship programs. However, the parent or guardian of a student enrolled in the chartered nonpublic school who is not participating in a state scholarship program may submit notice to opt the student out of the elementary assessments. The parent or guardian must submit notice of such to the chief administrative officer of the school in accordance with procedures and deadlines set by the Department of Education. If a parent or guardian does so, the school may not administer the assessment to that student. The opt-out does not apply to any assessment required for a high school diploma under continuing law.

The act also maintains continuing law by specifying that each chartered nonpublic school that (1) has a total enrollment in which *less than* 65% of students participate in the scholarship programs, and (2) educates students in ninth through twelfth grades, *must* continue to administer the OGT and the replacement assessments and *may* elect to administer the elementary state assessments.

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<sup>83</sup> R.C. 3310.14, 3310.522, and 3313.976. These statutes apply that requirement to scholarship students under the Ed Choice Scholarship Program, Jon Peterson Special Needs Scholarship Program, and Cleveland Scholarship Program. The requirement applies to students participating in the Autism Scholarship Program by rule of the State Board (O.A.C. 3301-103-04(C)).

<sup>84</sup> R.C. 3313.612. Under specified conditions, a student may be awarded a diploma even if the student passes only four of the five areas of the OGT (R.C. 3313.615).

<sup>85</sup> Elsewhere, the act exempts students enrolled in certain chartered nonpublic schools from the end-of-course examination provision but not from the requirement to pass the national standardized test (R.C. 3313.612(B)).

## V. State Board Standards and Reporting

### School district and school minimum operating standards

(R.C. 3301.07(D))

Continuing law requires the State Board to formulate and prescribe minimum standards to be applied to all elementary and secondary schools. The act revises the statutory specifications for those minimum standards. First, it states that the minimum standards are intended for the purpose of *providing children access to* a general education of high quality, rather than *requiring* that education as stated in prior law. It also specifies that, in providing children access to "a general education of high quality," the standards must be prescribed according to the learning needs of each individual, including students with disabilities, economically disadvantaged students, limited English proficient students, and gifted students.

The act also makes all of the following changes regarding the content of the minimum operating standards:

(1) Adds a requirement that any standards governing the assignment of staff must be based on ensuring each school has a sufficient number of teachers to ensure a student has an appropriate level of interaction to meet each student's personal learning goals;

(2) Removes a prior law requirement that the standards for instructional materials and equipment, including library facilities, be aligned with and promote skills expected under the statewide academic standards;

(3) Adds a specification that the standards must provide for *the provision of safe* buildings, grounds, health and sanitary facilities and services;

(4) Revises continuing statutory language regarding school organizational standards (permitted but not required of the State Board) to express a "commitment to high expectations for every student" based on the learning needs of each individual, including students with disabilities, economically disadvantaged students, limited English proficient students, and gifted students, and that the "commitment to closing the achievement gap" must be done without suppressing the achievement levels of higher achieving students;

(5) Adds standards for promotion and graduation based on the ability of students, at any grade level, to earn credits or advance upon demonstration of mastery of knowledge and skills through competency-based learning models and specifies that



credits of grade level advancement must not require a minimum number of days or hours in a classroom; and

(6) Removes descriptive language of a prior law provision regarding permissive school standards for the effective and efficient organization, administration, and supervision of each school district and school district building.

### **Financial reporting requirements for schools**

(R.C. 3301.07(B), 3314.042, 3317.01, 3326.112, and 3328.27)

Under prior law, the statutory specifications for the State Board financial reporting standards required that certain categories of financial information be shown at *either* the school district *or* the school building level. The specific categories that the format was required to show included (1) revenue by source, (2) expenditures for salaries, wages, and benefits of employees, showing such amounts separately for specified employees, (3) expenditures other than for personnel, by category, and (4) per pupil expenditures.

The act revises the statutory specifications for these financial reporting standards. First, the act requires that such financial information must be shown at *both* the district and school building level. Second, the format must show all of the categories listed above, in addition to (1) total revenue and expenditures, (2) per pupil revenue, and (3) expenditures for both (a) classroom and nonclassroom purposes and (b) the aggregate and each subgroup of students that receives services provided for by state or federal funding. (See also "**Accountability for subgroups**" under "**I. School Financing**" above.)

In addition, the act requires each governing authority of a community school, governing body of a STEM school, or board of trustees of a college-preparatory boarding school, or its respective designee, to report annually to the Department financial information in accordance with the State Board's standards in the same manner as in required for school districts and their boards under continuing law.

Finally, the act specifies that the Department must post district and school financial information in a prominent location on its web site and notify each school when the reports are made available. The act also specifies that the Department must make these reports available in such a way that allows for comparison between financial information included in these reports and financial information included in reports that were produced prior to July 1, 2013.

## **Performance management information**

(R.C. 3302.26)

The act requires the Department to create a performance management section on its web site. This section must include all of the following:

(1) Information on academic and financial performance metrics for each school district to assist schools and districts in providing an effective and efficient delivery of educational services;

(2) A graph that illustrates the relationship between a district's academic performance, as measured by performance index score, and its "expenditure per equivalent pupils" as compared to similar districts. The act defines a district's expenditure per equivalent pupils as the total operating expenditures of a school district divided by the measure of "equivalent pupils" (which is the total number of students in a school district adjusted for the relative differences in costs associated with the unique characteristics and needs of each pupil category).

(3) Each district's total operating expenditures per pupil; and

(4) Statistics of academic and financial performance measures for each school district to allow for a comparison and benchmarking between districts.

The act permits the Department to contract with an independent organization to develop and host the performance management section of its web site.

## **Reporting and ranking of school operating expenditures**

(R.C. 3302.20 and 3302.21)

### **Reporting of operating expenditures**

Under continuing law, the Department of Education is required to compute and to post on the Department's web site the following information regarding school districts, joint vocational school districts, community schools, and STEM schools: (1) the percentage of each district's or school's total operating budget spent for classroom instructional purposes, (2) the statewide average percentage for all districts and schools combined spent for classroom instructional purposes, (3) the average percentage for each category of districts and schools spent for classroom instructional purposes, and (4) the ranking of each district or school within its respective category for both the percentage spent for classroom instructional purposes and the percentage spent for noninstructional purposes.



The act maintains this requirement, but it also adds two additional measures for the Department to compute and post: (1) the total operating expenditures per pupil for each district or school, and (2) the total operating expenditure per equivalent pupils for each district or school. (For the act's definition of "expenditure per equivalent pupils," see "**Performance management information**" above).

The Department is also required to include both of these measures in the Department's new performance management section on its web site (also see "**Performance management information**" above).

### **Ranking of operating expenditures**

Continuing law requires the Department to develop a system to rank order each type of school district and public school based on both operating expenditures and report card scores, and to post these rankings on the Department's web site. The types of public schools to be ranked are divided into the following categories: (1) city, exempted village, and local school districts, (2) joint vocational school districts, (3) community schools that are not Internet- or computer-based, (4) community schools that are Internet- or computer-based, and (5) STEM schools.

The act requires the Department to continue to rank order each type of district or school by report card scores, but it modifies the measure to be used for the ranking of operating expenditures from "expenditures per pupils" to "expenditure per equivalent pupils." By modifying this measure, the act requires the "operating expenditures per pupil" measure only to be *reported*, rather than reported and ranked, while the "operating expenditure per equivalent pupil" measure is *reported and ranked*.

## **VI. Student Transportation**

### **Background on student transportation responsibilities**

State law generally requires each city, exempted village, and local school district to transport to and from school any student in grades K to 8 who resides in the district and is enrolled in a school that is more than two miles from the student's home. A district is required to transport resident students attending the district's own schools, as well as those attending nonpublic schools and community schools. A district may choose to transport students it is not required to transport, including high school students. If a district opts to transport high school students, it appears that the district must offer that service to nonpublic and community school students as well as those attending its own schools. Still, a district need not transport any private or community school student for whom the direct travel time is more than 30 minutes.<sup>86</sup> A district also

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<sup>86</sup> R.C. 3327.01.

must transport STEM school students, unless the school's proposal as approved by the STEM committee provides for transportation.<sup>87</sup> A district may offer a payment in lieu of providing transportation to the parent of a student it is required to transport, upon a finding that it is impractical to transport that student.<sup>88</sup>

## **Payment in lieu**

(R.C. 3327.02; Section 263.170)

The act maintains the provisions for a payment in lieu of transportation to a student's parent, but changes the minimum amount for such a payment. Under prior law, the minimum amount for such a payment was an "amount determined by the Department of Education." Under the act, effective July 1, 2014, the minimum amount for such a payment is an "amount to be determined by the General Assembly." For fiscal years 2014 and 2015, the act specifies that the minimum amount for a payment in lieu of transportation is \$250.

The act maintains continuing law regarding the maximum amount for a payment in lieu of transportation, which is the average cost of pupil transportation for the previous school year, as determined by the Department.

## **Fee for transportation charged by chartered nonpublic schools**

(R.C. 3327.07)

Effective July 1, 2014, the act expressly permits a chartered nonpublic school to charge a fee for transportation, regardless of whether the student is eligible for transportation by a school district, if the chartered nonpublic school's governing authority purchased the vehicle transporting the student using without state or federal funds. This includes permission to charge a fee for transportation to a parent or guardian who chooses to decline transportation services from their child's resident school district and use transportation provided by the chartered nonpublic school instead.

Under the act, a chartered nonpublic school may not charge the parent or guardian of a student a fee that exceeds the per student cost of the transportation, as determined by the governing authority of the chartered nonpublic school.

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<sup>87</sup> R.C. 3326.20, not in the act.

<sup>88</sup> R.C. 3327.01 and 3327.02.





The act states that nothing in its nonpublic school fee-charging provisions relieves school districts from any statutory duty to provide transportation to students enrolled in chartered nonpublic schools under continuing law.

### **Community school responsibility to transport**

(R.C. 3314.091)

Continuing law permits a community school and a school district to enter into a bilateral agreement under which the community school will transport the district's resident students in return for a payment specified in the agreement. It also permits an existing community school to unilaterally assume responsibility for transporting a school district's resident students to and from the school. If it does so, the community school will receive the district's state subsidy amount attributable to those students, which will be deducted from the district's state aid account. To unilaterally assume responsibility, the governing authority of the community school must submit written notification to the school district board of education by January 31 of the preceding school year.

Beginning July 1, 2014, the act allows the governing authority of a community school that is not yet open for operation to assume responsibility for providing or arranging for the transportation of its students (when it opens), if it submits written notification to do so by April 15th of the preceding school year. Once the community school opens for operation, it must comply with the requirements and deadlines under continuing law to renew or relinquish that responsibility.

Under continuing law, a community school's acceptance of the transportation responsibility must cover an entire school year. It remains in effect for subsequent school years unless the community school submits written notification to the school district board of education relinquishing the responsibility. However, the community school cannot relinquish responsibility before the end of a school year and must submit notice of its relinquishment by January 31 of the preceding school year to allow the district reasonable time to prepare transportation for its resident students enrolled in the school. If the community school relinquishes its transportation responsibility, it cannot resume it in a future school year without the consent of the district board of education.

### **Transportation funding data**

(R.C. 3317.0212(H))

The act requires each city, local, and exempted village school district to report all data the district uses to calculate transportation funding to the Education Management



Information System, which is an electronic database of district and school operational, financial, and student data maintained by the Department.

## **VII. Other Education Provisions**

### **Supervisory services by educational service centers**

The act makes the following changes with respect to an educational service center's (ESC) supervisory relationship with school districts:

- Requires each "local" district board to prescribe a curriculum for all schools under its control, and removes this prior requirement for ESCs with respect to "local" districts (R.C. 3313.60).
- Removes a prior requirement that each ESC annually certify the average daily membership (ADM) of students receiving services from schools under the ESC superintendent's supervision (i.e., "local" school districts) (R.C. 3317.03).
- Permits a "local" district superintendent to excuse a child that resides in the district from attendance for any part of the "remainder of the current school year" upon satisfying conditions specified in law and in accordance with district board and State Board rules, and removes this authority for an ESC superintendent acting on behalf of a "local" district (R.C. 3321.04).
- Requires the superintendent of a "local" district in which a child withdraws from school to immediately receive notice of the withdrawal from the child's teacher, and removes this requirement as it applied to ESC superintendents acting on behalf of "local" districts (R.C. 3321.13).
- Permits a city or exempted village district board to obtain services from an ESC attendance officer instead of employing its own attendance officer (R.C. 3321.14).
- Permits, rather than requires as under prior law, every ESC governing board to employ an ESC attendance officer, and requires an ESC to make the decision regarding employment of an attendance officer based on consultation with the districts that have agreements with the ESC (R.C. 3321.15).
- With respect to the salary schedule that any district board participating in the school foundation program must adopt, removes a prior requirement that each "local" district board file a copy of its salary schedule with the



ESC superintendent for certification of the correct salary to be paid to each teacher (R.C. 3317.14).

- Permits a "local" district to provide an instructional program for the employees of the district, in the same manner as authorized for "city" and "exempted village" districts (R.C. 3315.07(A)).
- Specifies that any school district board that has an agreement with an ESC to receive services may authorize the ESC to purchase or accept upon donation supplies and equipment for the district. Prior law specified that a "city" or "exempted village" district could make this authorization, subject to approval by the ESC, and a "local" district could make this authorization without any approval from the ESC (R.C. 3315.07(D)).
- Permits the superintendent of a "local" district to certify the qualifications of the school bus drivers employed or contracted by the district (R.C. 3327.10).
- Requires a "local" district board to appoint a business advisory council, unless the district and an ESC have an agreement providing that the ESC's business advisory council will represent the district (R.C. 3313.82).
- Applies the ESC exception to the requirement to appoint a business advisory council to city and exempted village districts, which are already required to appoint a council under continuing law (R.C. 3313.82).
- For purposes of each ESC appointing the committee for selecting and recommending high school graduates for the Ohio Scholarship Fund for Teacher Trainees, removes the requirement that the high school principal and classroom teacher appointed to the committee be from only a "city" or "exempted village" district, thus permitting the principal or teacher to be from a "local" district as well (R.C. 3315.33).

## **Post-Secondary Enrollment Options Program**

(R.C. 3365.01, 3365.02, 3365.021, 3365.022, 3365.07, and 3365.12; Section 263.190)

### **Background**

The Post-Secondary Enrollment Options Program (PSEO) allows high school students to enroll in nonsectarian college courses on a full- or part-time basis and to receive high school and college credit. Under continuing law, students in public high schools (school districts, community schools, and STEM schools) and nonpublic high



schools (both chartered and nonchartered) are eligible to participate in the program. Additionally, a new provision enacted by the act qualifies homeschooled students for participation in the program (see below). College courses under the program may be taken at any participating state institution of higher education, private nonprofit college or university, or private for-profit educational institution.

PSEO consists of two "options," which the student elects at the time of enrolling in the college course. Under Option A, the student is responsible for payment of all tuition and other costs charged by the higher education institution. Under this option, the student may further elect to receive only college credit for a completed course or to receive both college and high school credit. Under Option B, the student receives both college credit and high school credit for successfully completing a college course, and the state makes a payment to the institution of higher education on the student's behalf.

The state payment to an institution of higher education on behalf of a student under PSEO is made in the fiscal year after the student completes the college course. State payments for students enrolled in public high schools are deducted from the state aid accounts of the students' school districts, community schools, or STEM schools. State payments for students enrolled in nonpublic high schools are paid out of a separate state amount set aside for that purpose, since those schools do not receive operations funding from the state. The amount of the payment for each public or nonpublic secondary student is the lesser of the actual cost of tuition, textbooks, materials, and fees associated with the college course or the full-time equivalent percentage of time the student attends the course multiplied by the "tuition base," which, in a manner similar to prior law, the act defines as the "formula amount" under its school funding formula. Under the act, that amount is \$5,745, for fiscal year 2014, and \$5,800, for fiscal year 2015.

### **Qualification of homeschooled students for participation in PSEO**

(R.C. 3365.01 and 3365.022)

The act qualifies any student who has been excused from Ohio's compulsory school attendance law for the purpose of home instruction, and is considered the academic equivalent of a student in grades 9-12, to participate in the PSEO program.

Additionally, the act specifies that if a homeschooled student wishes to participate in the PSEO program, the student's parent or guardian must notify the Department by April 1 of the prior school year, which is the same deadline applied to nonpublic school students under continuing law. However, for the 2013-2014 school year, the act allows the Department to accept late applications from homeschooled

students who wish to participate during the 2013-2014 school year. For subsequent school years, April 1 will remain the notification deadline.

The act also specifies that if a homeschooled student enrolls at a participating college under the PSEO program (and chooses to take courses under Option B to have the college reimbursed), payments to that participating college must be made in the same manner as those payments made for students who attend a nonpublic school. As noted above, such payments come from a separate state amount set aside.

### **Alternative funding agreements**

(R.C. 3365.12)

Under continuing law, a participating college may receive reimbursement for PSEO through an alternative funding agreement with a high school, so long as (1) both the high school and the institution mutually agree on the alternative formula and (2) the alternative formula meets the rules adopted by the Superintendent of Public Instruction and the Chancellor of the Board of Regents.

The act stipulates that the rules adopted by the Superintendent and the Chancellor must prohibit charging a student participating in PSEO any tuition or fees.

### **Funding for participating nonpublic students**

(Section 263.190)

In recent years, due to the limited amount of funds allocated for participating nonpublic students and the growing demand for PSEO courses by these students, temporary law has authorized the Department to apportion those funds according to rule of the State Board. Under that rule, the Department has allocated funding to private school students according to units of study (that is, one course at a time for each student) and by giving priority to students based on their grade levels. Thus, twelfth-grade students had the highest priority for funding.

The act includes a similar temporary provision authorizing the Department to apportion these funds; however, the act specifies that funds must be apportioned according to rules adopted by the Department, rather than by the State Board.

### **Course content and reimbursement**

(R.C. 3365.07(C))

The act prohibits the Department from reimbursing a participating college for any remedial college course. Under continuing law, the Department is also prohibited



from reimbursing a participating college for any course that is taken under "Option A" of PSEO (see "**Background**" above).

### **College admission requirements**

(R.C. 3365.02(F))

Prior law prohibited a student from enrolling in a college course through the program if that student (1) had already taken high school courses in the same subject area as that college course and (2) had failed to attain a cumulative GPA of at least 3.0 on a 4.0 scale in such completed high school courses.

Instead, the act replaces this prohibition with a requirement that a student's participation in PSEO be based solely on the participating college's established "placement" standards for credit-bearing, college-level courses. Therefore, because certain college courses require prerequisites to be completed before enrolling in the class, this provision would likely allow colleges to require PSEO students to complete particular high school courses as prerequisites before participating in the program and enrolling in certain courses at the college level.

### **List of participating institutions**

(R.C. 3365.02 and 3365.021)

The act requires the Department to compile an annual list of all institutions of higher education that currently participate in PSEO or in other dual enrollment programs. This list must then be distributed, not later than December 31 of each school year, to all school districts, community schools, STEM schools, and chartered nonpublic schools in the state. Also, as part of the counseling services required of each district or school prior to a student's participation in PSEO, the act requires each district or school to provide the list of participating institutions to interested students and interested students' parents or guardians.

### **Dual enrollment programs**

(R.C. 3313.6013)

The act adds Early College High Schools to the list of programs or options that qualify as dual enrollment. Early College High Schools allow students to simultaneously take high school- and college-level courses, with the goal of earning both a high school diploma and an associate degree at the time of graduation.



Additionally, the act specifically prohibits school districts and public schools<sup>89</sup> from charging an enrolled student any additional fee or tuition for participation in a dual enrollment program that is offered by that district or school. The act does, however, specify that a participating student may be required to pay for costs related to an Advanced Placement (AP) or International Baccalaureate (IB) examination. An AP examination is required in order for a student to earn college credit in a subject area, while a certain number of IB examinations are required for conferral of an IB diploma. (For more information on these programs, see "**Background**" below.)

## **Background**

Under continuing law, a "dual enrollment program" is a program in which a high school student may choose to participate to earn credit toward a college degree while also completing the high school curriculum requirements. All public high schools in the state, as well as chartered nonpublic high schools, are required to offer at least one dual enrollment program.

Several programs or options qualify as dual enrollment, including the PSEO Program, Advanced Placement (AP) courses, and any program that is similar to PSEO and AP and is agreed upon by both the high school and the institution of higher education. Under the AP Program, students complete advanced coursework in specified subject areas (i.e. American History, English) with the possibility of earning college credit toward a degree. Students earn college credit based upon attainment of a specified score, prescribed by each institution of higher education, on the AP examination in the respective subject area. Additionally, the International Baccalaureate (IB) Program, which is often classified as a program similar to PSEO or AP, is an interdisciplinary education program, for which a diploma is awarded, that is recognized at various institutions of higher education both nationally and internationally. The program includes examinations in specified traditional and nontraditional courses, community service requirements, and an extended essay.

## **College Credit Plus program recommendations**

(Section 363.590)

The act requires the Chancellor of the Board of Regents to make recommendations to establish the "College Credit Plus" program. The program would allow high school students to earn credits through institutions of higher education in the state. Presumably, the program would replace the PSEO program.

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<sup>89</sup> This requirement applies to community schools through a cross-reference in R.C. 3314.03 and to STEM schools through a cross-reference in R.C. 3326.11.





In developing the recommendations, the Chancellor must consult with the Inter-University Council of Ohio, the Association of Independent Colleges and Universities of Ohio, the Ohio Association of Community Colleges, and the Superintendent of Public Instruction. By December 31, 2013, the Chancellor must provide a report of these recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives, "for implementation [of the program] in the 2014-2015 academic year."

## **Articulation agreements for technical coursework**

(Section 803.60)

The act explicitly states that any changes made to the PSEO program under the act do not require the alteration of (1) any existing or future articulation agreement for technical coursework offered through state-approved career-technical programs of study or (2) any corresponding payment structure between a state institution of higher education and a career-technical planning district. An articulation agreement is an agreement between two or more state institutions of higher education to facilitate the transfer of students and credits between such institutions.

In addition, the act requires the Department of Education and the Board of Regents to study the implications, resulting from the act's changes on these articulation agreements for technical coursework, specifically for technical coursework offered through state-approved career-technical programs, and make recommendations regarding the inclusion of career-technical programs in the program. These recommendations must be submitted to the Governor's Office of 21st Century Education and the General Assembly not later than July 1, 2014.

These provisions were associated with separate provisions of a previous version that would have replaced the PSEO program with the College Credit Plus program outright. Those provisions were removed prior to enactment but the articulation agreement provisions were left intact.

## **Participation in district extracurricular activities**

### **Chartered and nonchartered nonpublic school students**

(R.C. 3313.5311)

The act requires each school district superintendent to afford any of the district's resident students who are enrolled in a chartered or nonchartered nonpublic school the opportunity to participate in extracurricular activities offered by the district school the student would attend, if the student's nonpublic school does not offer that



extracurricular activity. The act also permits, but does not require, a school district superintendent to afford any student who (1) is enrolled in a nonpublic school and (2) is *not* entitled to attend school in that district, the opportunity to participate in an extracurricular activity offered by a school of the district, if (1) the student's nonpublic school does not offer the activity, and (2) the activity is not interscholastic athletics, interscholastic contests, or competition in music, drama, or forensics.

To participate, the student must (1) meet age and grade level requirements for the school offering the activity, as determined by the district superintendent, and (2) fulfill the same academic, nonacademic, and financial requirements as any other participant in the extracurricular activity.

### **Homeschooled students**

(R.C. 3313.5312)

Similarly, the act requires each district superintendent to afford any of the district's resident students who are receiving home instruction the opportunity to participate in extracurricular activities offered by the student's resident district school. If the student is eligible to attend more than one school in the district, the student must participate at the school to which the student otherwise would be assigned.

If the activity in which the student is interested is offered by the student's resident district school, a student may *not* participate in that activity in another district or school to which the student is not entitled to attend. However, if a homeschooled student's resident district does *not* offer a particular activity in which the student is interested, the superintendent of any school district is *authorized* to afford the student the opportunity to participate in that activity.

To participate, the student must (1) meet age and grade level requirements for the school offering the activity, as determined by the superintendent, (2) fulfill the same academic, nonacademic, and financial requirements as any other participant in the extracurricular activity, and (3) fulfill either of the following requirements: (a) meet academic requirements established by the State Board for the continuation of home instruction (if homeschooled in the preceding grading period), or (b) based on the student's academic record for the preceding grading period, meet the district's academic eligibility standards for participating in extracurricular activities (if *not* homeschooled in the preceding grading period).

The act also specifies the eligibility requirements for students who are homeschooled for less than one full school year. For a student who leaves a district school to be homeschooled in the middle of the school year, eligibility is determined from an interim academic assessment issued by the student's resident district that is



based on the student's work while enrolled in the district. Moreover, a student who begins homeschooling after the school year commences, and who fails to meet the academic requirements of the student's resident district at the commencement of homeschooling, is, ineligible to participate in extracurricular activities. Such a student is ineligible at least for the remainder of the semester in which the student was determined ineligible and also until the student meets the State Board's academic requirements for homeschooling.

The act does not specify the eligibility requirements for a student who terminates homeschooling to attend school in the student's resident district.

### **Fee, rule, and eligibility restrictions**

(R.C. 3313.5311(E) and (F) and 3313.5312(F) and (G))

In a manner similar to continuing law regarding participation in district extracurricular activities by community and STEM school students, the act prohibits a school or district from imposing fees for a nonpublic school student or homeschooled student to participate in extracurricular activities that exceed any fees charged to other students for the same activities. It also prohibits the imposition of additional rules that do not apply to other students participating in the same activity. Finally, the act prohibits a school district, interscholastic conference, or organization that regulates interscholastic conferences or events from imposing eligibility requirements that conflict with the any of the applicable provisions.

### **Community and STEM school students**

(R.C. 3313.537)

Continuing law states that a school district must afford any of its resident students enrolled in a community school sponsored by the district the opportunity to participate in extracurricular activities offered by the "traditional public school" to which the student otherwise would be assigned. Prior law also had stated that a student enrolled in a STEM school must "be afforded the opportunity to participate" in an extracurricular activity at the school operated by the student's resident district. The act removes that provision and, instead, specifies that a student enrolled in a STEM school must "not be prohibited from participating" in an extracurricular activity.

The act also expressly prohibits a school district board from taking any action contrary to the provisions of law that generally authorize students enrolled in a community or STEM school the opportunity to participate in an extracurricular activity at the school operated by the student's resident district.



## **Chartered nonpublic school end-of-course examination exemption**

(R.C. 3313.612; conforming changes in R.C. 3301.0712 and 3313.615)

The act exempts students who attend a chartered nonpublic school accredited through the Independent School Association of the Central States from taking end-of-course examinations as a prerequisite from graduating from high school. Under continuing law, all students enrolled in a school district, community school, and STEM school, and, under prior law, all students enrolled in a chartered nonpublic school, with some exceptions, must pass the required state assessments to receive their high school diploma. Currently, that assessment is the Ohio Graduation Test (OGT); however, the OGT eventually is to be replaced with the college and work ready assessment system. The college and work ready assessment system consists of two parts – a nationally standardized assessment that measures college and career readiness and a series of end-of-course exams in the areas of science, mathematics, English language arts, American history, and American government.<sup>90</sup> Although the act exempts students who attend the specified accredited chartered nonpublic schools from the end-of-course exams, the act does not exempt those students from taking the nationally standardized assessment. Nor does the act exempt those students from taking the OGT.

## **Administration of kindergarten diagnostic assessments**

(R.C. 3301.0715)

The act specifies that, beginning July 1, 2014, each kindergarten student must take the prescribed diagnostic assessments between the first day of school and the first day of November, "except that the language and reading skills portion of the assessment must be administered by the thirtieth day of September." Law, maintained until July 1, 2014, specifies that each kindergarten student must take the diagnostic assessments not earlier than four weeks prior to the first day of school and not later than the first day of October.

Under continuing law, each school district, community school, and STEM school is required to administer certain diagnostic assessments at the appropriate grade level to specified students. For grades kindergarten through two, the prescribed diagnostic assessments are in reading, writing, and mathematics, and for grade three, the prescribed diagnostic assessments are in reading and writing. These assessments are

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<sup>90</sup> R.C. 3301.0712.

used to determine which students need to receive additional services in order to attain grade level performance.<sup>91</sup>

### **Kindergarten early enrollment**

(R.C. 3314.06 and 3321.01; Section 263.473)

The act prohibits any entity from requiring a student who was admitted to and successfully completed kindergarten in the 2012-2013 school year to repeat kindergarten based solely on the age of the student. Thus a student who successfully completed kindergarten in the 2012-2013 school year, but was younger than five years of age may not be held back from first grade because the student is younger than schoolage. The act defines "successfully completed kindergarten" to mean that the student attended kindergarten for not less than three-fourths of a year.<sup>92</sup> Further, the act specifies that a community school enrolling such a student must receive state funds for the student in the same manner as any other eligible students under the Community School Law.<sup>93</sup>

Finally, the act specifies that a child who will be five or six years old prior to the first day of January of the school year in which admission is requested must be evaluated for early admittance in accordance with district or community school policy upon referral.<sup>94</sup> Under continuing law, a child's parent or guardian, an educator employed by the district or community school, a preschool educator who knows the child, or a pediatrician or psychologist who knows the child may refer the child for such evaluation. Upon evaluation, the district or community school must decide whether to admit the child. If a student will not be five or six years old prior to the date described above, the child may only be admitted in accordance with the district's acceleration policy.<sup>95</sup>

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<sup>91</sup> R.C. 3301.079, not in the act.

<sup>92</sup> Section 263.473.

<sup>93</sup> R.C. 3314.06.

<sup>94</sup> R.C. 3321.01.

<sup>95</sup> R.C. 3324.10, not in the act. Community schools are not subject to this section. Thus, it may not be clear whether a community school now must have a grade acceleration policy (which otherwise it does not) if it intends to admit a student early.

## **Joint vocational school district board membership**

(R.C. 3311.19; conforming changes in R.C. 3313.911)

The act makes several changes to the method of appointing members to the boards of education of joint vocational school districts (JVSD). First, the act no longer provides that those boards be made up of representative members of the boards of the city, exempted village, or local school districts belonging to each respective JVSD or, in some cases, the educational services centers (ESC) serving the same county or counties. Rather, under the act, JVSD membership may be composed of members who are not themselves members of the represented district boards. On the other hand, district and ESC board members may still be members of a JVSD board, but only as long as they meet the act's other requirements.

Second, the act requires JVSD board members meet specific professional qualifications and be selected based on the diversity of the employers from the geographical region of the state in which the JVSD is located. Unlike prior law, not all of a JVSD's board members under the act must be residents of one of its member districts or ESC. But the act does prescribe that not less than three-fifths of the total number of a JVSD's board members must either reside in or be employed within the JVSD territory. Moreover, members of JVSD boards must have experience as chief financial officers, chief executive officers, human resources managers, or other business and industry professionals who are qualified to discuss the labor needs of the region with respect to the regional economy. The act also specifies that appointing district and ESC boards must appoint members who represent employers in the JVSD region who are qualified to consider a region's workforce needs with an understanding of the skills, training, and education needed for current and future employment needs in the region. In choosing members to appoint, district and ESC boards may give preference to a qualified individual who has served on a joint vocational school business advisory committee.

Third, under prior law, a JVSD's plan for appointment of its board, as filed with the Department of Education, had to include the number and terms of members of the JVSD board of education and the allocation of a given number of members to each member district and to the ESC. It also specified that each JVSD board consist of an odd number of members. While the act removes these particular specifications of the plan, it continues to require that the manner of appointment and the total number of a JVSD's board members be in accordance with the district's plan.

Fourth, the act specifies that the term of office for members of a JVSD board appointed on or after September 29, 2013, is three years. In addition, the act limits members to two consecutive terms, but a member may serve again after three or more years have passed since the member's last term expired.



Finally, the act specifies that the new appointments provided for under the act be made only as the terms of the current members of a JVSD's board expire or as those offices are otherwise vacated prior to the expiration date.

## **Extended programming**

(R.C. 3301.0725 and 3313.6018)

### **Requirements for extended programming**

The act provides that extended programming<sup>96</sup> for career-technical education students that is offered by school districts must be used for activities that involve direct contact with students or are directly related to student programs and activities. However, the act also provides that extended programming funds may be used for teacher professional development activities that are associated with agricultural education (see "**Agricultural education programs**," "**Professional development**" below). Moreover, the act prohibits a licensed educator from providing more than eight hours of extended programming in a 24-hour day.

### **Provision of extended programming by certificated instructional personnel**

The act permits a school district to employ certificated instructional personnel for the purpose of providing extended programming for "hours" outside of the normal school day. Under prior law, a school district was permitted to employ certificated instructional personnel for more "days" during a school year than the district normally employed its regular classroom teachers.

## **Agricultural education programs**

(R.C. 3313.6019)

### **Report with recommendations for quality agricultural education programs**

The act requires the Department of Education to issue a report with recommendations for quality agricultural education programs by December 31, 2013. These recommendations must be developed using both of the following:

(1) The standards for exemplary agricultural education that are described in the National Quality Program Standards for Secondary (Grades 9-12) Agricultural

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<sup>96</sup> "Extended programming" is defined in rules adopted by the State Board as "instruction beyond the regular school year, that is based on locally approved courses of study and provides graduation credit to enrolled career-technical students" (O.A.C. 3301-61-16).





Education<sup>97</sup> developed by the National Council for Agricultural Education (or a successor document developed by the National Council for Agricultural Education or its successor);

(2) The Quality Program Standards for Ohio's Agricultural and Environmental Systems Career Field Programs<sup>98</sup> (or a successor document) developed by the Department, the Ohio Association of Agricultural Educators, the Ohio State University, and Wilmington College of Ohio.

The report must include the appropriate use of extended programming in agricultural education programs and the recommended number of hours outside the normal school day that licensed educators may be permitted to provide extended programming instruction.

Following the initial issuance of the report, the Department may periodically review and update the report as it considers necessary.

### **Agricultural education instructors**

The act specifies that all agricultural education instructors must utilize a three-part model of agricultural education instruction of classroom instruction, FFA activities, and extended programming projects.

Agricultural education instructors must submit a monthly time log to the principal of the school at which the extended programming is offered (or the principal's designee) for review.

### **Professional development**

The act provides that professional development associated with agricultural education is to be considered an acceptable use of extended student programming funds.

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<sup>97</sup> To access this document, go to [www.ffa.org](http://www.ffa.org), then click on "Resources," then on "FFA Learn," then on "National Quality Program Standards Online Assessment," and then on the link for this document that is labeled "PDF."

<sup>98</sup> To access this document, go to [www.ohioffa.org](http://www.ohioffa.org), then click on "For Educators," then on "Resources Page," and then on the link under the "Quality Program Standards" heading.



## Teacher evaluations

(R.C. 3319.112)

Under continuing law, all school districts and educational service centers, and all community schools and STEM schools that receive federal Race to the Top grant funds, must adopt a standards-based teacher evaluation system that conforms to a framework developed by the State Board. The evaluation system must provide for multiple evaluation factors. Under continuing law, one of those factors must be student academic growth, and it must make up 50% of each evaluation.

The act specifies that in calculating student academic growth for an evaluation, a student must be excluded if the student has 45 or more *excused or unexcused* absences during the "full academic year," instead of 60 or more *unexcused* absences for the "school year" as under prior law.

The act also replaces the term "proficient" with the term "skilled" for the second highest level of performance for teachers and principals for the purpose of assigning evaluation ratings. Thus, under the act, a teacher may be rated as either "accomplished," "skilled," "developing," or "ineffective."

## Testing teachers (VETOED)

(R.C. 3319.58)

The Governor vetoed a provision that would have exempted a community school primarily comprised of students with disabilities from the continuing law requirement that a teacher retake all written examinations of content knowledge, if the school is ranked in the lowest 10% of all public school buildings according to performance index score.

## Assignment of business manager functions

(R.C. 3319.031; Section 733.20)

The act authorizes a school district board of education that chooses not to employ a business manager to assign the statutorily prescribed powers and duties of a business manager to one or more other district employees or officers, and to give them any title that reflects the assignment of those duties. The act also specifies that one of the district officers that may be given the powers and duties of a business manager is the district treasurer. Moreover, the act provides that the prohibition against a business manager having possession of district moneys does not prevent the district board from assigning the business manager's powers and duties to the treasurer and does not



prevent the treasurer who is assigned those powers and duties from exercising the powers and duties of a treasurer. If a board assigns the duties of a business manager to the district treasurer, the act specifies that the district superintendent – not the treasurer – is responsible for making recommendations for the appointment or discharge of most "noneducational employees." The district treasurer may retain, appoint, or discharge responsibility over noneducational staff assigned to the district's fiscal affairs, as under current law.

The act contains an uncodified provision expressing the General Assembly's intent to supersede the effect of a recent appellate district court decision, to the extent it conflicts with the act's provisions permitting a district board, in its "sole discretion," to assign the roles and functions of a business manager to one or more other employees or officers of the board, including the treasurer.<sup>99</sup>

## **Background**

Each school district board may (but is not required to) employ a district "business manager." If a board does employ a business manager, it may specify that the person either is responsible directly to the board or to the district superintendent. No one may be employed as a business manager without a business manager's license issued by the State Board. A business manager's statutory duties include:

- (1) Care and custody of all district property except moneys;
- (2) Supervision of the construction, maintenance, operation, and repairs of buildings;
- (3) Advertisement for bids for, purchase of, and custody of all district supplies and equipment; and
- (4) Assistance in the preparation of the district's annual appropriation resolution.

The business manager also may be given the authority to employ and terminate (with board confirmation) "noneducational employees," except those employees directly engaged in day-to-day fiscal operations and who are, instead, under the supervision of the district treasurer.<sup>100</sup>

On the other hand, a district board must employ a district treasurer, who the statute specifies is the chief fiscal officer of the school district. Accordingly, the treasurer

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<sup>99</sup> *OAPSE/AFSCME Local 4 v. Berdine*, 174 Ohio App.3d 46 (8th Dist. 2007).

<sup>100</sup> R.C. 3313.03 and 3313.04, neither in the act.



has custody of the district funds and is responsible for its financial affairs. The treasurer reports to and is subject to the direction of only the district board.

### **Nomination of teachers for employment**

(R.C. 3319.07)

Law unchanged by the act requires each school district board of education to employ the teachers of the schools of its district. Additionally, the governing board of each educational service center (ESC) employs certain teachers to provide services to the school districts with service agreements with the ESC. However, continuing law prohibits employment of a teacher who was not nominated by the superintendent of either the school district or ESC. Also, continuing law prohibits any public official from knowingly authorizing, or from employing the authority or influence of the public official's office to secure authorization of, any public contract in which, a member of the public official's family has an interest.<sup>101</sup> Collectively, these laws prohibit a district superintendent from nominating for employment a family member.

This created a conflict for a district superintendent where a family member was qualified to teach in the same district. To address this situation, the act permits a different individual, who is selected by the district or ESC board, to nominate an individual who is related to the superintendent for employment within that district or ESC.

### **In-service training for human trafficking prevention**

(R.C. 3319.073)

The act requires that human trafficking content be added to every public school's in-service training program in school safety and violence prevention, which most school employees are required to complete. Under continuing law, school districts, community schools, and STEM schools are required to offer an in-service training program to all employees who work as a nurse, teacher, counselor, psychologist, or administrator at the district or school. The program must include training in school safety and violence prevention, which includes bullying, harassment, intimidation, dating violence, and youth suicide. School employees are required to complete four hours of training every five years.

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<sup>101</sup> R.C. 2921.42, not in the act.



## **Governor's schools recognition program**

(R.C. 3302.22)

Law enacted in 2011 created the Governor's Effective and Efficient Schools Recognition Program. Under that program, the Governor annually is to recognize the top 10% of all public schools in Ohio from among city, exempted village, local, or joint vocational school districts; community schools; and STEM schools. These top schools are determined by the Department of Education according to standards established by the Department, which must include: (1) student performance, including, at a minimum, performance indicators, report cards, performance index scores, and statewide and national assessments, and (2) fiscal performance, including cost-effective measures taken by schools.

The act revises this program in several ways. First, it requires the Department to consult with the Governor's Office of 21st Century Education in establishing standards for the program.

Second, while it continues to require the standards to include indicators for both student performance and fiscal performance, the act now makes the application of these indicators contingent upon the availability of data. Also, the standards for student performance and fiscal performance are no longer required to include any specific factors for determining performance but may vary based upon type of public school. Moreover, the performance standards may be applied either at the school building or district level.

Finally, the act adds public college-preparatory boarding schools to the list of schools eligible for recognition.

## **STEM school contracting authority**

(R.C. 3326.07 and 3326.08)

The act expressly permits a STEM school to contract for any services necessary for the operation of the school. The act also specifies, that a STEM school must "engage the services" of, rather than "employ and fix the compensation for" officers, teachers, and other employees and "engage the services" of, rather than "employ" a chief administrative officer.



## **Physical activity pilot program**

(R.C. 3313.6016)

Law retained in part by the act authorizes school districts, community schools, STEM schools, and chartered nonpublic schools to participate in a physical activity pilot program in which participating districts and schools must require most students to engage in at least 30 minutes of moderate to rigorous physical activity each school day, exclusive of recess.

The act requires a participating school district to select one or more school buildings to participate in the program, rather than requiring all schools operated by the district. Moreover, the act adjusts the program's 30-minute daily requirement for a participating school's students by allowing the students, alternatively, to satisfy the requirement with at least 150 minutes of physical activity in a week.

## **Report card rating system benchmarks**

(R.C. 3302.03(L))

Effective March 22, 2013, H.B. 555 of the 129th General Assembly established a new academic performance rating and report card system for school districts and individual schools, using letter grades and numerous reported and graded performance measures. This act specifies that the State Board, beginning with the 2015-2016 school year and at least once every three years thereafter, must review and may adjust the benchmarks for assigning letter grades to the 18 academic performance measures and six components under that system.<sup>102</sup>

This act's provisions add to continuing law, enacted in H.B. 555, which already requires the State Board to adopt rules to prescribe the grading methods and benchmarks for assigning an overall grade and for assigning a letter grade to each of the components and performance measures at various times. Specifically, by April 30, 2013, the State Board was required to adopt a resolution describing the performance measures, benchmarks, and grading systems to be used for only the 2012-2013 school year. By June 30, 2013, the State Board was required to prescribe the benchmarks for (1) annual measurable objectives, (2) performance index score, (3) number of performance indicators met, (4) graduation rates, (5) overall value-added progress dimension, and (6) disaggregated value-added progress dimension. By December 30, 2013, the State Board must prescribe, for the 2013-2014 school year only, the benchmarks for the

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<sup>102</sup> This system does not apply to community schools operating dropout prevention and recovery programs, which are rated under a separate system.



disaggregated value-added progress dimension and kindergarten through third-grade literacy progress measure. Finally, prior to the beginning of the 2014-2015 school year, the State Board must prescribe the methods for calculating the components to determine an overall grade for school districts and schools.<sup>103</sup>

### **No Child Left Behind waiver**

(R.C. 3302.01(C) and repealed R.C. 3302.043)

The act repeals a provision that permitted the Ohio Department of Education to implement changes described in the federal "No Child Left Behind Act" (NCLB) waiver application once the application was approved by the U.S. Department of Education. While the repealed provision authorized the Ohio Department of Education to implement the waiver's changes, it also prohibited the Department from implementing a new report card system.

In May 2012, the U.S. Department of Education approved Ohio's flexibility waiver application, thus granting the Ohio Department of Education the authorization to implement the changes prescribed in the waiver. Reportedly, the Department has plans to apply for a new waiver based on the recently enacted report card rating system. The provision repealed by the act apparently is obsolete.

The act also adds to Ohio's statutory definition of the NCLB any waiver approved by the U.S. Department of Education. Under continuing law, that definition includes the NCLB statutes, amendments, rules and regulations, guidance documents, and policy directives from the U.S. Department of Education.

### **New Leaders for Ohio Schools**

(Section 733.40)

The act requires the formation of a nonprofit corporation to create the New Leaders for Ohio Schools pilot program that provides an alternative path whereby individuals become administrators of primary and secondary schools. To this end, the act requires the Superintendent of Public Instruction to appoint three individuals who are knowledgeable about the administration of public schools and about the operation of nonprofit corporations in Ohio to function as incorporators. The incorporators are to do whatever is necessary and proper to create the nonprofit corporation under the General Nonprofit Corporation Law. The articles of incorporation, in addition to

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<sup>103</sup> R.C. 3302.03(A)(2), (B)(3), and (C)(3).





meeting the requirements of that law, must include all of the provisions described below.

The purpose of the nonprofit corporation is to create and implement a pilot program that (1) provides an alternative path for individuals to receive training and development in the administration of primary and secondary education and leadership, (2) that will enable these individuals to earn a degree in public school administration, (3) that will enable these individuals to obtain licenses in public school administration, and (4) that promotes the placement of these individuals as administrators in public schools that have a poverty percentage greater than 50%.

The name of the nonprofit corporation is to be "New Leaders for Ohio Schools."

The board of directors of the nonprofit corporation is to consist of the following nine directors: the Governor or the Governor's designee; the Superintendent or the Superintendent's designee; the Chancellor of the Board of Regents or the Chancellor's designee; two individuals to represent major business enterprises in Ohio; two individuals appointed by the Speaker of the House, one of whom must be an active duty or retired military officer; and two individuals appointed by the President of the Senate, one of whom must be a current or retired teacher or principal.

The Dean of the Ohio State University Fisher College of Business and the Dean of the OSU College of Education and Human Ecology are to serve as ex-officio nonvoting members of the board.

The individuals on the board who represent major business enterprises in Ohio are to be appointed by a statewide organization selected by the Governor. The organization is to be nonpartisan and consist of chief executive officers of major corporations organized in Ohio.

The board is to elect a chairperson from among its members, and is to appoint a president of the corporation. The president, subject to the approval of the Board, is to enter into a contract with the OSU Fisher College of Business. Under the contract, the College is to provide oversight to the corporation, serve as fiscal agent for the corporation, and provide the corporation with office space, and with office furniture and equipment, as is necessary for the corporation successfully to fulfill its duties.

The board must establish criteria for program costs, participant selection, and continued participation, and metrics to document and measure pilot program activities.

The overhead expenses of the nonprofit corporation are not to exceed 15% of the annual budget of the corporation.



The president must apply for, and is to receive and accept, grants, gifts, bequests, and contributions from private sources to support the nonprofit corporation.

The nonprofit corporation must submit an annual report to the General Assembly and Governor beginning December 31, 2013.

Finally, state financial support for the nonprofit corporation is to cease on September 29, 2018.

### **Alternative license**

(Section 733.50)

The act requires the State Board of Education to issue an alternative principal or alternative administrator license to an individual who successfully completes the New Leaders for Ohio Schools pilot program. The State Board must adopt rules that prescribe the requirements for such licenses and use existing rules for alternative principal and administrator licenses, required under continuing law, as a guideline for the new rules. The act does not specify a date by which the State Board must adopt the new rules.

### **School district revenue from sale of real property**

(R.C. 5705.10)

The act requires the board of education of a school district to apply proceeds received from the sale of real property to retire any debt that was incurred by the district with respect to that real property. The act also authorizes proceeds in excess of the funds necessary to retire that debt to be paid into the school district's capital and maintenance fund and used only to pay for the costs of nonoperating capital expenses related to technology infrastructure and equipment to be used for instruction and assessment.

Continuing law, except as provided by the act, generally requires such money to be paid into the sinking fund, the bond retirement fund, or a special fund for the construction or acquisition of permanent improvements. Continuing law also provides municipal school districts, under certain circumstances, with authority to pay such money into the district's general fund.

## **Executive sessions of municipal school district transformation alliance**

(R.C. 3311.86)

Under continuing law, meetings of the board of directors of a municipal school district transformation alliance are public meetings open to the public at all times, except that the board may hold an executive session. The act clarifies that the board and its committees and subcommittees may hold executive sessions, as if they were a public body with public employees, for any of the purposes for which an executive session may be held under the Open Meetings Law,<sup>104</sup> notwithstanding that the alliance is not a public body as defined in that Law, and that its employees are not public employees.

Under continuing law, a municipal school district is "a school district that is or has ever been under a federal court order requiring supervision and operational, fiscal, and personnel management of the district by the state Superintendent of Public Instruction."<sup>105</sup> Cleveland currently is the only municipal school district. Unlike other school districts, the board of education of a municipal school district is appointed by the mayor of the city containing the largest portion of the district's territory (City of Cleveland). H.B. 525 of the 129th General Assembly, enacted in 2012, prescribes a number of revisions in the administration of a municipal school district. One of those provisions authorizes the mayor to establish and appoint the board of directors of a municipal school district transformation alliance to advise the district and Department of Education regarding district initiatives.

## **State schools' Employees Food Service funds**

(R.C. 3325.13 and 3325.14; Sections 375.10 and 377.10)

The act creates two separate funds: (1) the State School for the Blind Employees Food Service Fund, and (2) the State School for the Deaf Employees Food Service Fund. Each fund consists of payments received from the respective school's employees who make purchases from the school's food service program. The money generated from those payments must be used to pay costs associated with the school's food service program. The act also specifies that the approval of the State Board of Education is not required to designate money for deposit into either of the funds.

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<sup>104</sup> R.C. 121.22.

<sup>105</sup> R.C. 3311.71(A), not in the act.



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## ENVIRONMENTAL PROTECTION AGENCY

### Fees

- Requires application fees for state isolated wetlands permits to be credited to the Surface Water Protection Fund, which is used for the administration of surface water protection programs, rather than the Dredge and Fill Fund.
- Abolishes the Dredge and Fill Fund, which was used for the administration of the isolated wetlands permit program.
- Extends from June 30, 2014, to June 30, 2016, the expiration of a \$1 per-ton fee on the transfer or disposal of solid wastes, and revises the distribution of the proceeds to allocate 30% to the Hazardous Waste Facility Management Fund and 70% to the Hazardous Waste Clean-Up Fund rather than 50% to each Fund.
- Extends to June 30, 2016, the expiration of the following fees on the transfer or disposal of solid wastes:
  - \$1 per ton the proceeds of which are credited to the Solid Waste Fund, which is used for the solid and infectious waste and construction and demolition debris management programs;
  - \$2.50 per ton the proceeds of which are credited to the Environmental Protection Fund, which is used for administering and enforcing environmental protection programs; and
  - 25¢ per ton the proceeds of which are credited to the Soil and Water Conservation District Assistance Fund.
- Extends for three years the sunset of the 50¢ per-tire fee on the sale of tires the proceeds of which are used to fund the scrap tire management program.
- Extends for three years the sunset of an additional 50¢ per-tire fee on the sale of tires the proceeds of which are credited to the Soil and Water Conservation District Assistance Fund.
- Extends all of the following for two years:
  - The sunset of the annual emissions fees for synthetic minor facilities;
  - The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for plan approvals for wastewater treatment works under the Water Pollution Control Law;



--The sunset of the annual discharge fees for holders of national pollutant discharge elimination system permits issued under the Water Pollution Control Law;

--The sunset of license fees for public water system licenses issued under the Safe Drinking Water Law;

--A higher cap on the total fee due for plan approval for a public water supply system under the Safe Drinking Water Law and the decrease of that cap at the end of the two years;

--The levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law;

--The levying of higher fees, and the decrease of those fees at the end of the two years, for applications to take examinations for certification as operators of water supply systems or wastewater systems under the Safe Drinking Water Law or the Water Pollution Control Law; and

--The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for permits, variances, and plan approvals under the Water Pollution Control Law and the Safe Drinking Water Law.

### **Title V air emissions fees**

- Defines "organic compound," for purposes of assessing air emissions fees under the Title V permit program, as any chemical compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

### **Beneficial use of scrap tires**

- Expands the definition of "beneficially use" with regard to scrap tires by stating that the term includes, rather than means, to use a scrap tire in a manner that results in a commodity for sale or exchange or in any other manner authorized as a beneficial use in rules adopted by the Director of Environmental Protection.

### **Hazardous waste**

- Authorizes the continuing Hazardous Waste Clean-up Fund to be used for administrative expenses of any hazardous waste closure or corrective action program.

## **Environmental audits**

- Removes the sunset on immunity from administrative and civil penalties that is provided to an owner or operator of a facility or property who conducts an environmental audit of the facility or property and voluntarily discloses information regarding an alleged violation of an environmental law.

## **Construction and demolition debris**

- Allows a board of health to use money in its construction and demolition debris fund to abate abandoned accumulations of construction and demolition debris if it is the end of the board's fiscal year and the money is not needed for administration and enforcement for the following fiscal year.
- Authorizes a board to use such excess money for that purpose only at a location for which a license has not been issued under the Construction and Demolition Debris Law if the board believes that there is a substantial threat to public health or safety or the environment and certain conditions are met.

## **Nonpoint source pollution management**

- Requires federal grant money for nonpoint source water pollution management received by the Director to be credited to the continuing Water Quality Protection Fund rather than the Nonpoint Source Pollution Management Fund, and eliminates the Nonpoint Source Pollution Management Fund.
- Requires the grant money to be used to provide financial assistance, in part, to implement ground and surface water quality protection activities and water quality assessments rather than only ground water quality protection activities and assessments.

## **Funding for converting school buses to alternative fuels**

- Requires money that is credited to the continuing Clean Diesel School Bus Fund to be used for grants to school districts and to county boards of developmental disabilities for the purpose of converting diesel-powered school buses to alternative fuels by specified means.
- Eliminates the authority of the Director to use money from the Fund to pay the additional costs incurred by such districts or boards for using ultra-low sulfur diesel fuel instead of diesel fuel for the operation of diesel-powered school buses.



## **Crediting of application fees for state isolated wetlands permits**

(R.C. 1509.02 and 3745.113; R.C. 6111.029 (repealed))

The act requires application fees for state isolated wetlands permits to be credited to the Surface Water Protection Fund, which is used for the administration of surface water protection programs, rather than the Dredge and Fill Fund as in former law. It then abolishes the Dredge and Fill Fund, which was used for the administration of the isolated wetlands permit program.

## **Extension of solid waste transfer and disposal fees**

(R.C. 3734.57)

The act extends, from June 30, 2014, to June 30, 2016, the expiration date of three fees levied on the transfer or disposal of solid wastes that are used to fund programs administered by the Environmental Protection Agency (EPA). The first fee is a \$1 per-ton fee. Under former law, one-half of the proceeds of that fee was credited to the Hazardous Waste Facility Management Fund and one-half to the Hazardous Waste Clean-up Fund. The act revises the distribution of the proceeds by allocating 30% to the Hazardous Waste Facility Management Fund and 70% to the Hazardous Waste Clean-Up Fund. Those funds are used for purposes of the hazardous waste management program. The second fee is another \$1 per-ton fee that is credited to the Solid Waste Fund and used to fund the EPA's solid and infectious waste and construction and demolition debris management programs. The third fee is an additional \$2.50 per-ton fee the proceeds of which must be credited to the Environmental Protection Fund, which is used to pay the EPA's costs associated with administering and enforcing environmental protection programs. The solid waste transfer and disposal fees are collected by the owners and operators of solid waste disposal and transfer facilities as trustees for the state.

The act also extends from June 30, 2014, to June 30, 2016, the expiration date of a fourth 25¢ per-ton fee on the transfer or disposal of solid wastes the proceeds of which must be credited to the Soil and Water Conservation District Assistance Fund, which is used to assist soil and water conservation districts.

## **Sale of tire fees**

(R.C. 3734.901)

The act extends from June 30, 2013, to June 30, 2016, the sunset of the 50¢ per-tire fee on the sale of tires the proceeds of which are used to fund the scrap tire management program. The act also extends from June 30, 2013, to June 30, 2016, the





sunset of an additional 50¢ per-tire fee on the sale of tires the proceeds of which are credited to the Soil and Water Conservation District Assistance Fund.

## **Extension of various air and water fees**

### **Synthetic minor facility emissions fees**

(R.C. 3745.11(D))

Under continuing law, each person who owns or operates a synthetic minor facility must pay an annual fee based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic compounds, and lead in accordance with a fee schedule. A synthetic minor facility is a facility for which one or more permits to install or permits to operate have been issued for the air contaminant sources at the facility that include terms and conditions that lower the facility's potential to emit air contaminants below the major source thresholds established in rules adopted under continuing law. Former law required the fee to be paid through June 30, 2014. The act extends the fee through June 30, 2016.

### **Water pollution control fees and safe drinking water fees**

(R.C. 3745.11(L), (M), and (N) and 6109.21)

Under law revised in part by the act, a person applying for a plan approval for a wastewater treatment works is required to pay a fee of \$100 plus 0.65 of 1% of the estimated project cost, up to a maximum of \$15,000, when submitting an application through June 30, 2014, and a fee of \$100 plus 0.2 of 1% of the estimated project cost, up to a maximum of \$5,000, on and after July 1, 2014. Under the act, the first tier fee is extended through June 30, 2016, and the second tier applies to applications submitted on or after July 1, 2016.

Continuing law establishes two schedules for annual discharge fees to be paid by holders of national pollutant discharge elimination system (NPDES) permits with an average daily discharge flow of 5,000 or more gallons per day. Under each of the schedules, one of which is for public dischargers and one of which is for industrial dischargers, the fees are based on the average daily discharge flow and increase as the flow increases. Under former law, the fees were due by January 30, 2012, and January 30, 2013. The act extends payment of the fees and the fee schedules to January 30, 2014, and January 30, 2015.

In addition to the fee schedules described above, continuing law imposes a \$7,500 surcharge to the annual discharge fee applicable to major industrial dischargers. Under prior law, the surcharge was required to be paid by January 30, 2012, and



January 30, 2013. The act requires it to be paid annually by January 30, 2014, and January 30, 2015.

Under continuing law, one category of public discharger and eight categories of industrial dischargers that are NPDES permit holders are exempt from the annual discharge fees that are based on average daily discharge flow. Instead, they are required to pay an annual discharge fee of \$180. Under former law, the fee was due annually not later than January 30, 2012, and January 30, 2013. The act requires it to be paid annually by January 30, 2014, and January 30, 2015.

The Safe Drinking Water Law prohibits anyone from operating or maintaining a public water system without an annual license from the Director of Environmental Protection. Applications for initial licenses or license renewals must be accompanied by a fee, which is calculated using schedules for the three basic categories of public water systems established in continuing law. Under prior law, the fee for initial licenses and license renewals was required in statute through June 30, 2014, and had to be paid annually prior to January 31, 2014. The act extends the initial license and license renewal fee through June 30, 2016, and requires the fee to be paid annually prior to January 31, 2016.

The Safe Drinking Water Law also requires anyone who intends to construct, install, or modify a public water supply system to obtain approval of the plans from the Director. Ongoing law establishes a fee for such plan approval of \$150 plus 0.35 of 1% of the estimated project cost. Under law retained in part by the act, the fee cannot exceed \$20,000 through June 30, 2014, and \$15,000 on and after July 1, 2014. The act specifies that the \$20,000 limit applies to persons applying for plan approval through June 30, 2016, and the \$15,000 limit applies to persons applying for plan approval on and after July 1, 2016.

Continuing law establishes two schedules of fees that the EPA charges for evaluating laboratories and laboratory personnel for compliance with accepted analytical techniques and procedures established under the Safe Drinking Water Law. Under law retained in part by the act, a schedule with higher fees applies through June 30, 2014, and a schedule with lower fees applies on and after July 1, 2014. The act continues the higher fee schedule through June 30, 2016, and applies the lower fee schedule to evaluations conducted on or after July 1, 2016. The act also continues through June 30, 2016, a requirement that an individual laboratory cannot be assessed a fee more than once in a three-year period unless the person requests the addition of analytical methods or analysts, in which case the person must pay \$1,800 for each additional survey requested.



## **Fees for certification of water supply or wastewater systems operators**

(R.C. 3745.11(O))

Continuing law requires a person applying to the Director to take an examination for certification as an operator of a water supply system or a wastewater system to pay a fee, at the time an application is submitted, in accordance with a statutory schedule. Under law retained in part by the act, a higher schedule is established through November 30, 2014, and a lower schedule applies on and after December 1, 2014. The act extends the higher fee schedule through November 30, 2016, and applies the lower fee schedule beginning December 1, 2016.

## **Application fees – water pollution control and safe drinking water**

(R.C. 3745.11(S))

Law retained in part by the act requires any person applying for a permit other than an NPDES permit, a variance, or plan approval under the Safe Drinking Water Law or the Water Pollution Control Law to pay a nonrefundable fee of \$100 at the time the application is submitted through June 30, 2014, and a nonrefundable fee of \$15 if the application is submitted on or after July 1, 2014. The act extends the \$100 fee through June 30, 2016, and applies the \$15 fee on and after July 1, 2016.

Similarly, under law retained in part by the act, a person applying for an NPDES permit through June 30, 2014, must pay a nonrefundable fee of \$200 at the time of application. On and after July 1, 2014, the nonrefundable application fee is \$15. The act extends the \$200 fee through June 30, 2016, and applies the \$15 fee on and after July 1, 2016.

## **Definition of "organic compound" for purposes of Title V air emissions fees**

(R.C. 3745.11(X))

The act defines "organic compound," for purposes of assessing emissions fees under the Title V permit program administered under state and federal air pollution control laws, as any chemical compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

## **Beneficial use of scrap tires**

(R.C. 3734.01)

The act expands the definition of "beneficially use" in the Solid, Hazardous, and Infectious Wastes Law, with regard to scrap tires, by stating that "beneficially use"



includes, rather than means, to use a scrap tire in a manner that results in a commodity for sale or exchange or in any other manner authorized as a beneficial use in rules adopted by the Director.

### **Use of Hazardous Waste Clean-Up Fund**

(R.C. 3734.28)

The act adds administrative expenses of any hazardous waste closure or corrective action program to the purposes for which the continuing Hazardous Waste Clean-up Fund is used. Under continuing law, the Fund must be used for all of the following, including enforcement expenses:

(1) Specified activities under the hazardous waste provisions of the Solid, Hazardous, and Infectious Wastes Law, including investigations and cleanup of sites contaminated by polychlorinated biphenyls or other hazardous waste;

(2) Costs incurred by the EPA for emergency and remedial actions in response to unauthorized spills, releases, and discharges;

(3) Purposes specified in the Voluntary Action Program Law; and

(4) Payment of the state's long-term operation and maintenance costs or matching share for actions taken under the federal Superfund law.

### **Environmental audits**

(R.C. 3745.72)

The act removes the sunset on immunity from administrative and civil penalties that is provided to an owner or operator of a facility or property who conducts an environmental audit of the facility or property and voluntarily discloses information regarding an alleged violation of an environmental law to the director of the state agency with jurisdiction over the violation. Under prior law, the immunity applied only with regard to audits completed before January 1, 2014.

### **Use of money by boards of health – construction and demolition debris**

(R.C. 3714.07 and 3714.074)

The act allows a board of health to use money in its construction and demolition debris fund, which under continuing law is used for administration and enforcement, to abate abandoned accumulations of construction and demolition debris. A board may do so only if it is the end of the board's fiscal year and the money is not needed for



administration and enforcement for the following fiscal year. Furthermore, a board may use such excess money to abate abandoned accumulations only at a location for which a license has not been issued under the Construction and Demolition Debris Law if the board has reason to believe that there is a substantial threat to public health or safety or the environment and all of the following apply to the property on which the accumulations are located:

(1) The construction and demolition debris was placed on the property either after the owner of the property acquired title to it or before the owner of the property acquired title to it if the owner acquired title by bequest or devise;

(2) The property owner did not have knowledge that the construction and demolition debris was being placed on the property, or the owner posted on the property signs prohibiting dumping or took other action to prevent the placing of construction and demolition debris on the property;

(3) The property owner did not participate in or consent to the placement of the construction and demolition debris on the property;

(4) The property owner did not receive any financial benefit from the placement of the construction and demolition debris on the property or from having that debris on the property;

(5) Title to the property was not transferred to the owner of that property for the purpose of avoiding liability for violations of the Construction and Demolition Debris Law or rules adopted under it; and

(6) The person responsible for the placement of the construction and demolition debris on the property, in placing it there, was not acting as an agent for the property owner.

### **Federal grants for nonpoint source pollution management**

(R.C. 6111.037)

The act requires federal grant money for nonpoint source water pollution management received by the Director to be credited to the continuing Water Quality Protection Fund rather than the Nonpoint Source Pollution Management Fund as in prior law. It also eliminates the Nonpoint Source Pollution Management Fund.

The act requires the grant money to be used to provide financial assistance, in part, to implement ground and surface water quality protection activities that include in pertinent part water quality assessments rather than only ground water quality



protection activities that include in pertinent part ground water assessments. Under law unchanged by the act, the Director must periodically prepare and establish a priority system for identifying activities that are eligible for assistance from the grant money. The priority system must ensure that the financial assistance is first provided to assist in certain activities. One of the activities is to implement the water quality protection activities discussed above that the Director determines are part of a comprehensive nonpoint source pollution control program.

## **Funding for converting school buses to alternative fuels**

(R.C. 3704.144)

The act requires money that is credited to the continuing Clean Diesel School Bus Fund to be used to make grants to school districts and to county boards of developmental disabilities for the purpose of converting diesel-powered school buses to alternative fuels by means of certified engine configurations and verified technologies that are consistent with the requirements of the federal Energy Policy Act and any regulations adopted under them in addition to grants for other purposes specified in law retained in part by the act. It eliminates the authority of the Director to use money from the Fund to pay the additional costs incurred by such districts or boards for using ultra-low sulfur diesel fuel instead of diesel fuel for the operation of diesel-powered school buses.

Under the act, "alternative fuel" means, by reference to the State Fleet Management Program Law, any of the following fuels used in a motor vehicle: (1) E85 blend fuel, (2) blended biodiesel, (3) natural gas, (4) liquefied petroleum gas, (5) hydrogen, (6) compressed air, (7) any power source, including electricity, and (8) any fuel not described above that the U.S. Department of Energy determines, by final rule, to be substantially not petroleum and that would yield substantial energy security and environmental benefits. In addition, it defines "certified engine configuration," by reference to the Minority Development Financing Advisory Board Law, as a new, rebuilt, or remanufactured engine configuration that satisfies the criteria specified below, as applicable:

(1) It has been certified by the Administrator of the U.S. Environmental Protection Agency (U.S. EPA) or the California Air Resources Board;

(2) It meets or is rebuilt or remanufactured to a more stringent set of engine emission standards than when originally manufactured as determined pursuant to the federal Energy Policy Act; and

(3) In the case of a certified engine configuration involving the replacement of an existing engine, an engine configuration that replaced an engine that was removed from



the vehicle and returned to the supplier for remanufacturing to a more stringent set of engine emissions standards or for scrappage.

The act also defines "verified technology" as a pollution control technology, including retrofit technology and auxiliary power unit, that has been verified by the Administrator of the U.S. EPA or the California Air Resources Board.





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## OHIO ETHICS COMMISSION

- Allows a public official who is required to file financial disclosure statements with the appropriate ethics commission to file those statements electronically.

### **Electronic filing of financial disclosure statements**

(R.C. 102.02)

The act allows a public official who is required to file financial disclosure statements to file those statements electronically. Under continuing law, depending on the office, a public official must file those statements with the Ohio Ethics Commission, with the Joint Legislative Ethics Committee, or with the Supreme Court Board of Commissioners on Grievances and Discipline.



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## EXPOSITIONS COMMISSION

- Requires the Ohio Expositions Commission to accept gifts, devises, and bequests of money, lands, and other property, and requires the Commission to apply the money, lands, or other property according to the terms of the gift, devise, or bequest.
- Authorizes a political subdivision, insofar as authorized by law, to make gifts and devises to the Commission, and requires the Commission to apply such a gift or devise according to the terms of the gift or devise.
- Establishes the Ohio Expositions Support Fund in the state treasury and requires all gifts and bequests of money accepted by the Commission to be deposited in the state treasury to the credit of the fund.

### Gifts to Ohio Expositions Commission

(R.C. 991.03, 991.04, 991.041, and 991.06)

The act requires the Ohio Expositions Commission to accept gifts, devises, and bequests of money, lands, and other property, and requires the Commission to apply the money, lands, or other property according to the terms of the gift, devise, or bequest.

The act also authorizes a political subdivision, insofar as authorized by law, to make gifts and devises to the Commission, and requires the Commission to apply such a gift or devise according to the terms of the gift or devise.

The act establishes the Ohio Expositions Support Fund in the state treasury and requires all gifts and bequests of money accepted by the Commission to be deposited into the state treasury to the credit of the fund. Investment earnings of the fund must be deposited into the fund. The act authorizes the Commission to use the fund, consistent with the terms of the gift or bequest, to defray the cost of administration and of carrying out the purposes of the Expositions Law.

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## OHIO FACILITIES CONSTRUCTION COMMISSION

### Elimination of Ohio Cultural Facilities Commission; transfer of authority

- Eliminates the Ohio Cultural Facilities Commission (CFC) as of July 1, 2013.
- Transfers CFC's functions to the Ohio Facilities Construction Commission (FCC).
- Revises the requirements for a cooperative agreement between FCC and a governmental agency or cultural organization to provide construction services for a state-funded cultural project.
- Revises the conditions under which state funds may be spent on a sports facility.
- Makes changes to the permitted content and use of cultural facility-related funds.
- Specifies procedures for the transfer of CFC's responsibilities, financial obligations, employees, equipment, assets, and records to FCC and allows FCC to enter into an agreement to transfer some of those responsibilities to the Department of Administrative Services (DAS).

### Transfer of construction authority from Department of Natural Resources

- Transfers from the Department of Natural Resources (DNR) to FCC, with certain exceptions, the authority to administer DNR's capital facilities projects.
- Authorizes DNR to administer improvements under an agreement with the supervisors of a soil and water conservation district.
- Authorizes DNR to administer certain dam, waterway, wildlife, and roadway activities and projects, and requires FCC and DNR to review this provision in two years.
- Allows DNR, in the case of a public exigency, to let contracts for those dam, waterway, wildlife, and roadway activities and projects without competitive bidding or selection.
- Permits the Executive Director of FCC to allow DNR to administer any other project of which the estimated cost is not more than \$1,500,000.

### School Facilities Commission

- Requires that the Executive Director of FCC also serve as the Executive Director of the School Facilities Commission (SFC).



- Permits SFC to delegate contracting authority to FCC.
- Requires SFC to consider the extent to which its classroom facilities project design standards support the trends in educational delivery methods, including digital access and blended learning.
- Eliminates the requirement that, at the time SFC conditionally approves projects for which it intends to provide assistance for a fiscal year, it must identify and give priority to the next ten school districts in future fiscal years.
- Would have revised the method of determining a school district's priority for assistance, and local share, under the Classroom Facilities Assistance Program, if the district is participating in the Expedited Local Partnership Program and its tangible personal property valuation (not including public utility personal property) made up 18% or more of its total taxable value for tax year 2005 (VETOED).
- Requires that school facilities project agreements contain stipulations ensuring compliance by the school district with the provision of continuing law requiring a district to offer to sell or lease unused real property.
- Conditions approval of a district board's request to incur debt for energy conservation measures on SFC determining that the request for approval is complete and that the modifications are consistent with a specific state-assisted school facilities project.
- Provides specific conditions for a district in fiscal watch or fiscal emergency or that has an academic distress commission to receive approval to incur debt for energy conservation measures.
- Requires that energy savings installment contracts contain a provision requiring that payment be stated as a percentage of savings and avoided costs attributable to one or more measures to be taken over a defined period of time and prescribes that payments will be made only to the extent that the projected savings and avoided costs actually occur.

### **Other provisions**

- Requires a public authority that plans to contract for design-build services and that uses an in-house criteria architect or engineer to notify FCC, instead of DAS, before the architect or engineer performs the work.



- Transfers from DAS to the Executive Director of FCC the authority to contract for the design and implementation of energy and water conservation programs for state institutions and the authority to adopt and enforce rules regarding those contracts.

### **Elimination of Ohio Cultural Facilities Commission; transfer of authority**

(R.C. 123.19, 123.201, 123.21, 123.27, 154.01, 154.23, 307.674, 3383.01 (123.28), and 3383.07 (123.281); Section 282.90; R.C. 3383.02, 3383.03, 3383.04, 3383.05, 3383.06, 3383.08, and 3383.09 (repealed))

Effective July 1, 2013, the act eliminates the Ohio Cultural Facilities Commission (CFC), and transfers its functions to the Ohio Facilities Construction Commission (FCC).

### **Cooperative agreements to administer cultural projects**

Beginning July 1, 2013, the act requires FCC to administer the construction of state-funded cultural projects, unless FCC has entered into a cooperative agreement with a governmental agency or cultural organization in order for that agency or organization to administer the project. Under prior law, FCC could enter into an agreement with CFC or with a governmental agency or cultural organization to administer a project.

The act removes state agencies and state institutions of higher education from the definition of "governmental agency," and adds the Ohio Historical Society to the definition of "cultural organization." Under continuing law, a political subdivision, a combination of political subdivisions, the U.S. government, and entities established pursuant to an interstate compact are considered governmental agencies. The continuing definition of "cultural organization" includes a governmental agency or Ohio nonprofit corporation that provides cultural programs or activities and a regional arts and cultural district.

Under the act, a cooperative agreement between FCC and a governmental agency or cultural organization must include provisions that do all of the following:

- Specify how the project will support culture;
- Specify that the funds must be used only for construction;
- Identify the facility to be constructed, renovated, remodeled, or improved;



- Specify that the project scope meets the intent and purpose of the project appropriation and that the project can be completed and ready for full occupancy without exceeding appropriated funds;
- Specify that the governmental agency or cultural organization must hold FCC harmless from all liability for the operation and maintenance costs of the facility; and
- Provide that amendments to the agreement require FCC's approval.

Continuing law requires such an agreement to specify the following:

- That the governmental agency or cultural organization has local contributions amounting to not less than 50% of the total state funding for the project;
- That the agreement and any actions taken under it are not subject to Chapters 123. (public works) or 153. (public improvements) of the Revised Code, except for the requirements regarding the use of domestic steel products; and
- That the agreement and those actions are subject to the wage and hour requirements for public works projects.

However, under continuing law, a cooperative agreement with a cultural organization regarding a state historical facility is not required to include 50% local contributions, and the agreement and any actions taken under it are not subject to the domestic steel and wage and hour requirements.

The act also eliminates provisions of law that specified under what circumstances CFC, a cultural organization, or the Ohio Building Authority were responsible to provide general building services for an Ohio cultural facility.

### **Requirements for Ohio sports facilities**

Effective July 1, 2013, the act makes several changes to the requirements for the construction of Ohio sports facilities. First, the act eliminates provisions of law that required the governmental agency or nonprofit corporation that will own an Ohio sports facility that is financed in part by state bonds to administer the construction of the facility and to provide general building services for the facility.

The act also eliminates the requirements that the agreement for such a facility and for the provision of general building services for the facility specify (1) that the



agreement and any actions taken under it are not subject to Chapters 123. (public works) or 153. (public improvements) of the Revised Code, except for the requirements regarding the use of domestic steel products, and (2) that the agreement and those actions are subject to the wage and hour requirements for public works projects.

Finally, the act eliminates a provision of law that prohibited state funds from being spent on an Ohio sports facility unless CFC had determined that a need for the facility existed in that region of the state.

Under continuing law, state funds may not be spent on an Ohio sports facility unless the owner of the facility has presented a satisfactory financial and development plan and has provided for a contribution of not less than 85% of the total construction cost, excluding any site acquisition cost, from sources other than the state.

### **Changes to funds**

As of July 1, 2013, the act transfers responsibility for three CFC funds to FCC: the Ohio Cultural Facilities Administration Fund, the Cultural and Sports Facilities Building Fund, and the Capital Donations Fund. Under the act, the Director of Budget and Management must transfer any existing encumbrances against the CFC Administration Fund to FCC's new Ohio Cultural Facilities Administration Fund.

Subject to applicable tax law limitations, the act allows the Executive Director of FCC to ask the Director of Budget and Management to transfer to FCC's Ohio Cultural Facilities Administration Fund moneys credited to the Cultural and Sports Facilities Building Fund, instead of only interest earnings and bond premiums, to pay the cost of administering projects funded through the Cultural and Sports Facilities Building Fund.

The act also creates the Theater Equipment Maintenance Fund to receive all theater-related revenues of the Department of Administrative Services (DAS) and to pay DAS's theater-related expenses. The fund's investment earnings are to be credited to the fund. Under the act, the Director of Budget and Management must transfer from the former CFC Administration Fund to the new Theater Equipment Maintenance Fund any funds that were collected under a management contract for the Riffe Theatres.

### **Transfer provisions**

The act includes several provisions of law to facilitate the transfer of CFC's responsibilities, financial obligations, equipment, assets, records, and any employees to FCC. FCC also may enter into an interagency agreement with the Department of Administrative Services (DAS) to require DAS to perform any of the functions transferred from CFC to FCC.





The act allows FCC to designate the CFC positions, if any, to be transferred to FCC, along with any equipment assigned to those positions. Under the act, any transferred employee retains the employee's respective classification, but FCC may reassign and reclassify the employee's position and compensation if FCC determines the change to be in the best interest of office administration.

The act specifies that FCC must complete any construction activities begun but not finished by CFC, and that CFC's rules, orders, and determinations related to CFC's construction functions continue in effect as rules, orders, and determinations of FCC. The act also provides that any reference to CFC in any statute, rule, contract, grant, or other document is deemed to refer to FCC, and that FCC replaces CFC as a party to any pending judicial or administrative action or proceeding.

### **Transfer of construction authority from Department of Natural Resources**

(R.C. 1501.011; Section 715.10)

With certain exceptions, the act transfers from the Department of Natural Resources (DNR) to FCC the authority to administer DNR's construction projects. FCC administers construction and improvement projects on behalf of most state agencies.

Under the act, DNR, like other state agencies, still may administer construction projects whose estimated cost is less than \$200,000. Beginning on September 29, 2016, that amount will be adjusted periodically to reflect inflation. Additionally, the act requires DNR to administer the following types of construction and improvement projects that FCC otherwise would administer:

- (1) The construction of improvements under an agreement with the supervisors of a soil and water conservation district;
- (2) Dam repairs administered by the Division of Engineering;
- (3) Projects or improvements administered by the Division of Watercraft and funded through the Waterways Safety Fund;
- (4) Projects or improvements administered by the Division of Wildlife; and
- (5) Activities conducted by DNR in cooperation with the Department of Transportation to maintain DNR's roadway inventory.

For dam, waterway, wildlife, and roadway projects, the act allows DNR to award a contract without competitive bidding or selection if the contract involves a public exigency. The act also allows the Executive Director of FCC to authorize DNR to



administer any other project or improvement whose estimated cost, including design fees, construction, equipment, and contingency amounts, is not more than \$1,500,000.

Regarding the projects that DNR administers, the act eliminates the prior requirements under which DNR advertised for bids, awarded contracts using competitive bidding and selection, altered existing contracts under certain circumstances, and used a modified bidding process for contracts that involve a public exigency. Instead, under the act, the Public Improvements Law governs DNR-administered projects. That Law establishes the administrative, bidding, and other requirements for most public improvement projects.

Finally, two years after this portion of the act takes effect (September 29, 2015), FCC and DNR must review the provisions that give DNR construction authority for dam, waterway, wildlife, and roadway projects.

## **School Facilities Commission**

### **Executive director; contracting authority**

(R.C. 3318.31)

In 2012, H.B. 487 of the 129th General Assembly retained the School Facilities Commission (SFC) as an independent agency within FCC, an agency created by that act. This act removes the provision for appointment of a separate executive director for both commissions and instead requires that the Executive Director of FCC also serve as the Executive Director of SFC. The act also permits SFC to authorize FCC to make and enter into contracts and to execute all corresponding instruments on behalf of SFC. Under preexisting law, SFC already shares employees and facilities with FCC.

### **Next ten list**

(R.C. 3318.023 (repealed))

Under continuing law, SFC annually conditionally approves for assistance, under the Classroom Facilities Assistance Program (CFAP), a select number of districts from the list of those with the lowest valuations and which have not already received CFAP assistance, based on the districts' estimated project costs and the amount of funding available for the fiscal year. Under former law, SFC, each fiscal year when it determined the districts it planned to serve during that year, was required to fix the priority of the next ten school districts according to their adjusted valuations per pupil. Such districts were generally given priority for funding in future fiscal years.

The act eliminates the requirement to create the next ten list and to give those districts priority.



## **Project design standards**

(R.C. 3318.031)

The act eliminates the requirement that SFC consider the extent to which its design standards support and facilitate smaller classes and smaller schools and replaces it with a requirement to consider the extent to which the design standards support the trends in educational delivery methods, including digital access and blended learning. Under law unchanged by the act, SFC must also consider the extent to which the design standards support sufficient space for: training new teachers and promotion of collaboration among teaching professionals, teacher planning and collaboration, parent involvement activities, and innovative partnerships between schools and health and social service agencies.

## **CFAP shares for Expedited Local Partner districts (VETOED)**

(R.C. 3318.36)

The Governor vetoed a provision that would have made an exception to the general requirement that school districts participating in the Expedited Local Partnership Program "lock in" their priority and local share percentage for their eventual projects under the Classroom Facilities Assistance Program (CFAP). Under the act, if a district's tangible personal property valuation, not including public utility personal property, made up 18% or more of its total taxable value for tax year 2005 (the year the tax on that property began to phase out), the district's priority for CFAP funding would have been based on the *smaller* of its percentile when it entered into the Expedited Local Partnership agreement or its current percentile. In addition, the district's share of its CFAP project cost would have been the *lesser* of (1) the percentage locked in under the Expedited Local Partnership agreement or (2) the percentage computed using its current wealth percentile. Due to the phase-out of tangible personal property from districts' total taxable valuations, a district's total taxable value may be significantly lower now than it was when it entered into its Expedited Local Partnership agreement. That lower valuation could result in a higher priority for state funds and a lower share of the total cost of its state-assisted project. The act would have permitted an affected Expedited Local Partnership district to take advantage of that lower current valuation.

## **Disposal of school district property**

(R.C. 3318.08)

The act requires that the agreement between a school district and SFC for the construction of a state-assisted classroom facilities project contain stipulations ensuring



that SFC will not release project funds or approve demolition of a facility unless and until the district complies, and remains in compliance, with the provision of continuing law requiring districts to offer unused property for sale or lease to community schools and college-preparatory schools.<sup>106</sup> Continuing law already required the agreement to contain a similar stipulation regarding the right of first refusal for community schools and college preparatory boarding schools located within the district when it decides voluntarily to sell a parcel of real property.<sup>107</sup>

### **Energy conservation measures**

(R.C. 133.06 and 3313.372)

#### **Report of cost savings**

A school district may issue bonds, subject to approval by SFC but not voter approval, to purchase energy conservation improvements in an amount up to  $\frac{1}{10}$  of 1% of the district's tax valuation. In applying for approval, a district must submit to SFC a report that includes estimates of all costs of design, engineering, installation, maintenance, repairs, debt service, and amounts by which energy consumption and resultant operational and maintenance costs may be reduced. Under continuing law, the report must also include estimates of both (1) forgone residual value of materials or equipment replaced by the new energy conservation measures, and (2) a baseline analysis of actual energy consumption data for the preceding three years. However, under the act, the utility baseline analysis must be based only on the actual energy consumption data for the preceding 12 months. Districts also may enter into a series of installment contracts for energy conservation improvements with the approval of SFC.

#### **Requests for approval**

Under the act, SFC may approve a district board's request for approval to incur indebtedness only after SFC determines (1) that the request for approval is complete, and (2) that the installations, modifications, or remodeling are consistent with any project to construct or acquire classroom facilities, or to reconstruct or make additions to existing classroom facilities under a state-assisted school facilities project. Continuing law also requires that prior to approval, SFC must determine that the district board's findings are reasonable.

The act also permits SFC, in consultation with the Auditor of State, to deny a request if the district has been declared to be in a state of fiscal watch and SFC finds that

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<sup>106</sup> R.C. 3313.411, not in the act.

<sup>107</sup> R.C. 3314.41, not in the act.



the expenditure of funds is not in the best interest of that district. Moreover, under the act, a district that has been declared to be under fiscal emergency must submit evidence that the installations, modifications, or remodeling have been approved by the district's financial planning and supervision commission. Likewise, a district for which the Superintendent of Public Instruction is required to establish an academic distress commission must receive prior approval of its request by its academic distress commission.<sup>108</sup>

### **Debt service**

Formerly, debt service on energy conservation bonds was to be paid with estimated savings on energy costs. The act requires that the terms of any installment contract for energy savings measures include a provision requiring that all payments, except payments for repairs and obligations upon premature contract termination, be stated as a percentage of savings and avoided costs attributable to one or more measures to be taken over a defined period of time. Under the act, debt service on energy conservation contracts must be paid only to the extent that the projected savings outlined in the contract *actually* occur. The act also requires the contractor to: (1) warrant and guarantee that the energy conservation measures will realize guaranteed savings, and (2) pay the amount of any shortfall in the projected savings.

### **Notification of use of criteria architect or engineer**

(R.C. 153.692)

The act requires a public authority that plans to contract for design-build services and that uses an in-house criteria architect or engineer to notify FCC, instead of DAS, before the architect or engineer performs the work.

### **Energy and water conservation programs**

(R.C. 156.02, 156.03, 156.04, and 156.05)

The act transfers from DAS to the Executive Director of FCC the authority to contract for the design and implementation of energy and water conservation programs for state institutions and to adopt and enforce rules regarding those contracts.

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<sup>108</sup> The Superintendent of Public Instruction must establish an academic distress commission for each school district that receives extremely low academic performance ratings for three or more consecutive years (see R.C. 3302.10, not in the act).

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## BOARD OF EMBALMERS AND FUNERAL DIRECTORS

- Allows a funeral director to supervise more than one funeral home.
- Increases certain fees for licenses issued by the Board of Embalmers and Funeral Directors.
- Caps the fee for reinstatement of a lapsed embalmer's or funeral director's license at \$1,000.
- Transfers the authority to hire inspectors and staff from the Board to the Executive Director of the Board.
- Expands the Executive Director's authority to employ staff to allow the Executive Director to employ staff to provide any assistance to the Board that the Board considers necessary.
- Revises the duties of inspectors.
- Allows the Executive Director to enter a funeral home, embalming facility, or crematory facility for purposes of inspection if the Director is accompanied by an inspector or if there is danger of immediate and serious harm to the public.

### Supervision of funeral homes

(R.C. 4717.06)

Under continuing law, every funeral home must be directly supervised by a funeral director. A funeral home that does not comply with this requirement may be fined between \$100 and \$5,000 on a first offense (and between \$100 and \$10,000 on a subsequent offense) and imprisoned for up to one year. The Board of Embalmers and Funeral Directors also may suspend or refuse to renew the funeral home's license.<sup>109</sup> The act eliminates the restriction that a funeral director may supervise only one funeral home and expressly allows a funeral director to supervise more than one funeral home.

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<sup>109</sup> R.C. 4717.99, not in the act, and R.C. 4717.14.



## **Fees**

(R.C. 4717.07)

The act increases the following fees for licenses issued by the Board:

- The fee for initial issuance or biennial renewal of an embalmer's or funeral director's license, from \$140 to \$150;
- The fee for the initial issuance or biennial renewal of a license to operate a funeral home, from \$250 to \$350;
- The fee for the initial issuance or biennial renewal of a license to operate an embalming facility, from \$200 to \$350;
- The fee for initial issuance or biennial renewal of a license to operate a crematory facility, from \$200 to \$350;
- The fee for the issuance of a duplicate license, from \$4 to \$10.

The act also caps the fee for the reinstatement of a lapsed embalmer's or funeral director's license at \$1,000. Continuing law requires that the fee for reinstatement of a lapsed embalmer's or funeral director's license be the fee for issuance of that license (\$150 under the act) plus \$50 for each month or portion of a month that the license is lapsed.

## **Inspectors and Board staff**

(R.C. 4717.03, with conforming changes in R.C. 4717.14 and 4717.15)

The act eliminates the authority of the Board to employ clerical or technical staff who are not Board members and who serve at the pleasure of the Board to provide any clerical and technical assistance the Board considers necessary. The act instead requires the Executive Director to employ staff who are not Board members and who serve at the pleasure of the Executive Director to provide any assistance that the Board considers necessary. The act also transfers authority for the employment of inspectors from the Board to the Executive Director.

The act also removes duties of inspectors to serve and execute any process issued by any court under the Embalmers and Funeral Directors Law and execute any papers or process issued by the Board or a Board member. Instead, the act requires the inspector to perform any duties delegated to the inspector by the Board (as under continuing law) or assigned to the inspector by the Executive Director.





## **Inspection by the Executive Director**

(R.C. 4717.03)

The act authorizes the Executive Director to enter the facility or premises of a funeral home, embalming facility, or crematory for the purpose of an inspection if (1) the Executive Director is accompanied by an inspector or (2) if an inspector is unavailable and a situation presents a danger of immediate and serious harm to the public.

## **Biennial renewal**

(R.C. 4717.10)

The act clarifies that a funeral director's or embalmer's license issued through the reciprocity provisions of the Embalmers and Funeral Directors Law is renewed biennially. Formerly, the law stated that these licenses were renewed annually in accordance with the Law's renewal procedures, which under continuing law requires licenses to be renewed biennially.<sup>110</sup>

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<sup>110</sup> R.C. 4717.08, not in the act, and R.C. 4717.07.



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## DEPARTMENT OF HEALTH

### General and city health districts

- Authorizes the Ohio Department of Health (ODH) to require general or city health districts to enter into shared services agreements, and authorizes ODH to offer financial and technical assistance to boards of health to encourage the sharing of services.
- Authorizes ODH to reassign substantive authority for mandatory programs from a general or city health district to another general or city health district under certain circumstances.
- Authorizes the ODH Director to require general or city health districts to apply for accreditation by July 1, 2018, and to be accredited by July 1, 2020, as a condition of receiving funding from ODH.
- Requires the ODH Director, by July 1, 2016 to conduct an evaluation of health districts' preparation for accreditation.
- Eliminates a requirement that two or more city health districts be contiguous to form a single city health district.
- Eliminates the requirements (1) that two or more general health districts be contiguous to form a combined general health district and (2) that not more than five contiguous general health districts may combine to form a general health district.
- Requires the ODH Director to adopt rules to assure annual completion of two hours of continuing education by each member of a board of health and specifies the topics of education.
- Eliminates the Public Health Standards Task Force that assists and advises the ODH Director in the adoption of standards for boards of health.
- Requires the ODH Director, not later than July 1, 2014, to establish by rule a standardized process by which all general and city health districts must collect and report to the Director information about public health quality indicators, and a policy and procedures for sharing the reported health data with other specified persons.

### Patient Centered Medical Home Program

- Establishes in ODH the Patient Centered Medical Home Program.



- Requires ODH to establish a patient centered medical home certificate, specifies the requirements and goals to be achieved through voluntary certification, and permits ODH to establish an application and annual renewal fee for certification.
- Requires each certified patient centered medical home to report health care quality and performance information to ODH.
- Requires ODH to submit a report to the Governor and General Assembly three and five years after ODH adopts rules for certifying patient centered medical homes.

### **Abortion informed consent and fetal ultrasound requirements**

- Requires a physician who is to perform or induce an abortion when there is a detectable fetal heartbeat to comply with specific informed consent requirements.
- Modifies the definition of "medical emergency" for purposes of the informed consent requirements.
- Requires a person who intends to perform or induce an abortion on a pregnant woman to determine the presence of a detectable fetal heartbeat of the unborn human individual the pregnant woman is carrying.
- Requires that the method of determining the presence of a detectable fetal heartbeat be consistent with the person's good faith understanding of standard medical practice or consistent with rules adopted by the ODH Director.
- Allows the ODH Director to promulgate rules specifying the appropriate methods of performing an examination for the presence of a fetal heartbeat and specifies that the rules must require only that an examination for a fetal heartbeat be performed externally.
- Prohibits a person from knowingly and purposefully performing or inducing an abortion on a pregnant woman before determining the presence of a detectable fetal heartbeat unless there is a medical emergency.
- Provides that the failure to determine the presence of a detectable fetal heartbeat prior to the performance or inducement of an abortion on a pregnant woman may be the basis for a civil action for compensatory and exemplary damages or disciplinary action.
- Allows a woman on whom an abortion is performed in violation of the informed consent requirements to file a civil action for wrongful death of the woman's unborn child.

- Requires a person who is to perform or induce an abortion on a pregnant woman to inform the pregnant woman in writing that the unborn human individual the pregnant woman is carrying has a fetal heartbeat and the statistical probability of bringing the unborn human individual possessing a detectable fetal heartbeat to term.
- Provides that if a person who is to perform or induce an abortion fails to provide the pregnant woman with the heartbeat and probability information, that person is guilty of performing or inducing an abortion without informed consent when there is a detectable fetal heartbeat.
- Makes the offense of performing or inducing an abortion without informed consent when there is a detectable fetal heartbeat a misdemeanor of the first degree on a first offense and a felony of the fourth degree on each subsequent offense.
- Allows the ODH Director to adopt rules that specify information regarding the statistical probability of bringing an unborn human individual possessing a detectable fetal heartbeat to term based on the gestational age of the unborn human individual.
- Provides that a pregnant woman on whom an abortion is performed or induced prior to a determination of a detectable fetal heartbeat or without receiving the required information:
  - Is not guilty of violating those provisions;
  - Is not guilty of attempting to commit, conspiring to commit, or complicity to commit a violation; and
  - Is not subject to a civil penalty.

### **Ambulatory surgical facilities**

- Specifies in statute provisions similar to preexisting ODH rules requiring each ambulatory surgical facility (ASF) to maintain an infection control program and generally have a written transfer agreement with a local hospital.
- Requires the ODH Director to conduct inspections of ASFs that are not certified by the federal Centers for Medicare and Medicaid Services, deny license renewals unless certain conditions are met, and specify ASF inspection forms in rules.
- Requires an ASF to notify the ODH Director within certain time frames when it modifies its most recent written transfer agreement or operating procedures or

protocols or becomes aware of an event that adversely affects a consulting physician's ability to practice or admit patients to a local hospital.

### **Public hospitals and written transfer agreements**

- Prohibits a public hospital from entering into a written transfer agreement with an ASF in which nontherapeutic abortions are performed or induced.
- Prohibits a public hospital from authorizing a physician to use staff membership or professional privileges to meet the criteria for a variance from the requirement that an ASF in which nontherapeutic abortions are performed or induced have a written transfer agreement with a local hospital.

### **Prioritized distribution of funds for family planning**

- Establishes levels of priority regarding the distribution of public funds used for family planning services, including funds received from the federal government.

### **Management of long-term care facility residents' financial affairs**

- Increases the maximum amount that a nursing home, residential care facility, or veterans' home that manages a resident's financial affairs may keep in a noninterest bearing account.

### **Nursing facilities' plans of correction**

- Requires a nursing facility's plan of correction regarding a deficiency to include additional information, including a detailed description of an ongoing monitoring and improvement process to be used at the facility.
- Permits ODH to consult with the Ohio Departments of Medicaid and Aging and the Office of the State Long-Term Care Ombudsman Program in certain circumstances when determining whether a nursing facility's plan of correction or modification of an existing plan meets ODH's requirements for approval.

### **Nursing facility technical assistance**

- Eliminates a requirement that ODH provide advice and technical assistance and conduct on-site visits to nursing facilities for the purpose of improving resident outcomes.

### **Distribution of household sewage treatment permit fees**

- Reallocates the distribution of money collected from state household sewage treatment system permit fees by:



--Decreasing the percentage of money allocated to fund installation and evaluation of sewage treatment system new technology pilot projects; and

--Increasing the percentage of money allocated for use by the ODH Director to administer and enforce the Household and Small Flow On-Site Sewage Treatment Systems Law and rules adopted under it.

## **Water systems**

- Exempts a water system that will be used in agriculture and that does not provide water for human consumption from obtaining a permit or license, paying fees, or complying with any rule adopted under the continuing statutes governing private water systems, which are systems that provide water for human consumption.

## **Ohio Cancer Incidence Surveillance System**

- Authorizes ODH to designate, by contract, a state university as an agent to implement the Ohio Cancer Incidence Surveillance System.
- Repeals provisions expressly governing the confidentiality of cancer information provided to or acquired by an Ohio cancer registry or ODH, but continues general provisions governing the confidentiality of protected health information.

## **Zoonotic disease program**

- Authorizes the ODH Director, if ODH administers a program on zoonotic diseases (which are contagious diseases spread between animals and humans), to charge a local board of health a fee for each service the program provides to the board.

## **Hope for a Smile Program (VETOED)**

- Would have established the Hope for a Smile Program with a specified objective of improving the oral health of school-age children, particularly those who are indigent and uninsured (VETOED).
- Would have created a state income tax deduction, to be used by a dentist or dental hygienist, equal to the fair market value of the services provided for free under the Program (VETOED).

## **Other provisions**

- Requires the ODH Director to adopt rules governing the distribution of funds in fiscal years 2014 and 2015 to assist families in purchasing hearing aids for children.



- Eliminates the January 1 deadline for the ODH Director to determine the annual adjustments in charges that may be imposed for copies of medical records.
- Eliminates a requirement that trauma centers report to the ODH Director information on preparedness and capacity to respond to disasters, mass casualties, and bioterrorism.
- Abolishes the Council on Stroke Prevention and Education.
- Requires ODH to process an application for a Women, Infants, and Children (WIC) vendor contract within 45 days if the applicant already has a WIC vendor contract.
- Creates in the state treasury the Department of Health Medicaid Fund and requires that all funds ODH receives for the purpose of paying the expenses ODH incurs under the Medicaid program be deposited into the Fund.

## **General and city health districts**

### **Expansion of ODH's authority over health districts**

(R.C. 3701.13)

The act authorizes the Ohio Department of Health (ODH) to require general or city health districts to enter into shared services agreements under a continuing law<sup>111</sup> that permits a political subdivision to enter into an agreement with another political subdivision whereby a contracting political subdivision agrees to exercise any power, perform any function, or render any service for another recipient political subdivision that the recipient political subdivision is otherwise legally authorized to exercise, perform, or render. ODH must prepare and offer to boards of health a model contract and memorandum of understanding that are easily adaptable for use by the boards when entering into shared services agreements. ODH also may offer financial and other technical assistance to boards of health to encourage the sharing of services.

The act authorizes ODH to reassign substantive authority for mandatory programs from a general or city health district to another general or city health district when an emergency exists, or when the board of health of the general or city health district has neglected or refused to act with sufficient promptness or efficiency or has not been lawfully established.

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<sup>111</sup> R.C. 9.482, not in the act.





## **Accreditation of general and city health districts**

(R.C. 3701.13)

As a condition precedent to receiving funding from ODH, the act authorizes the ODH Director to require general or city health districts to apply for accreditation by July 1, 2018, and to be accredited by July 1, 2020, by an accreditation body approved by the ODH Director. By July 1, 2016, the ODH Director must conduct an evaluation of general and city health district preparation for accreditation, including an evaluation of each district's reported public health quality indicators (see "**Standardized reporting of public health data**," below).

## **Formation of combined general or city health districts**

(R.C. 3709.01, 3709.051, and 3709.10)

The act eliminates the requirement that city health districts be contiguous to form a single city health district. The result is that two or more city health districts may be united to form a single city health district by a majority affirmative vote of the legislative authority of each city affected by the union, or by petition of at least 3% of the qualified electors residing within each of the two or more contiguous city health districts.

The act also eliminates the requirement that general health districts be contiguous to form a single general health district, and eliminates the limitation that not more than five general health districts may combine to form a single general health district. The act's revisions result in authorization for an unlimited number of noncontiguous general health districts to form a single general health district, if approved by an affirmative majority vote of the district advisory councils of the districts being combined.

## **Continuing education for board of health members**

(R.C. 3701.342)

Under continuing law, the ODH Director must adopt rules establishing minimum standards for board of health. The act adds a provision requiring that the minimum standards assure annual completion of two hours of continuing education by each member of a board of health. The minimum standards must provide that the continuing education credits pertain to ethics, public health principles, and a member's responsibilities. Credits may be earned in these topics at pertinent presentations that may occur during regularly scheduled board meetings throughout the calendar year or at other programs available for continuing education credit. The ODH Director may



assist boards of health in coordinating approved continuing education programs sponsored by health care licensing boards, commissions, or associations.

The minimum standards also must provide that continuing education credits earned for the purpose of license renewal or certification by licensed health professionals serving on boards of health may be counted to fulfill the two-hour continuing education requirement.

### **Elimination of Public Health Standards Task Force**

(R.C. 3701.342; R.C. 3701.343 (repealed))

The act eliminates the nine-member Public Health Standards Task Force that assisted and advised the ODH Director in formulating and evaluating public health services standards for boards of health. Under prior law, the ODH Director adopted the standards after consulting with the Task Force.

### **Standardized reporting of public health data**

(R.C. 3701.98)

The act requires the ODH Director, not later than July 1, 2014, to establish both of the following by rule adopted under the Administrative Procedure Act:<sup>112</sup>

(1) A standardized process by which all general and city health districts must collect and report to the Director information regarding public health quality indicators.

(2) A policy and procedures for sharing the reported health data, with payers, providers, general and city health districts, and public health professionals.

The rules must identify the public health quality indicators that are to be a priority for general and city health districts and the information to be collected and reported regarding those indicators. The ODH Director must work with the Association of County Health Commissioners in identifying the indicators.

### **Patient Centered Medical Home Program**

(R.C. 3701.921, 3701.922, 3701.94, 3701.941, 3701.942, 3701.943, and 3701.944)

The act establishes the Patient Centered Medical Home (PCMH) Program in ODH. The act specifies that a PCMH model of care is an advanced model of primary

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<sup>112</sup> Rulemaking under the Administrative Procedure Act (R.C. Chapter 119.) requires notice and a public hearing.

care in which care teams attend to the multifaceted needs of patients, providing whole person comprehensive coordinated patient centered care.

The act's PCMH Program is established separately from the continuing PCMH Education Program. The ODH Director's authority to establish pilot projects that evaluate and implement the PCMH model of care under the PCMH Education Program is eliminated.

### **Voluntary PCMH certification program**

As part of the PCMH Program, ODH is required by the act to establish a voluntary PCMH certification program. Through certification of PCMHs, ODH is to seek to do all of the following:

(1) Expand, enhance, and encourage the use of primary care providers, including primary care physicians, advanced practice registered nurses, and physician assistants, as personal clinicians;

(2) Develop a focus on delivering high-quality, efficient, and effective health care services;

(3) Encourage patient centered care and the provision of care that is appropriate for a patient's race, ethnicity, and language;

(4) Encourage the education and active participation of patients and their families or legal guardians, as appropriate, in decision making and care plan development;

(5) Provide patients with consistent, ongoing contact with a personal clinician or team of clinical professionals to ensure continuous and appropriate care;

(6) Ensure that PCMHs develop and maintain appropriate comprehensive care plans for patients with complex or chronic conditions, including an assessment of health risks and chronic conditions;

(7) Ensure that PCMHs plan for transition of care from youth to adult to senior;

(8) Enable and encourage use of a range of qualified health care professionals, including dedicated care coordinators, in a manner that enables those professionals to practice to the fullest extent of their professional licenses.

## **Certification requirements**

A primary care practice that seeks PCMH certification must submit an application and pay any application fee ODH establishes. ODH may also require an annual renewal fee. If ODH establishes a fee, the fee must be in an amount sufficient to cover the cost of any on-site evaluations.

Each primary care practice with PCMH certification must do all of the following:

- (1) Meet any standards developed by national independent accrediting and medical home organizations, as determined by ODH;
- (2) Develop a systematic follow-up procedure for patients, including the use of health information technology and patient registries;<sup>113</sup>
- (3) Implement and maintain health information technology that meets the requirements of federal law;<sup>114</sup>
- (4) Report to ODH health care quality and performance information, including any data necessary for monitoring compliance with certification standards and for evaluating the impact of PCMHs on health care quality, cost, and outcomes;
- (5) Meet any process, outcome, and quality standards ODH specifies;
- (6) Meet any other requirements ODH establishes.

## **Data collection**

The act authorizes ODH to contract with a private entity to evaluate the effectiveness of certified PCMHs. ODH may provide to the entity any health care quality and performance information data that ODH has. ODH may also contract with national independent accrediting and medical home organizations to provide on-site evaluation of primary care practices and verification of data collected by ODH.

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<sup>113</sup> According to the National Center for Biotechnology Information, U.S. National Library of Medicine, "patient registry" refers to an organized system that uses observational study methods to collect uniform data to evaluate specified outcomes for a population defined by a particular disease, condition, or exposure, and that serves one or more predetermined scientific, clinical, or policy purposes ([www.ncbi.nlm.nih.gov/books/NBK49448/](http://www.ncbi.nlm.nih.gov/books/NBK49448/)).

<sup>114</sup> 42 U.S.C. 300jj.



## Report

The act requires ODH to submit two reports to the Governor and General Assembly evaluating the PCMH Program. The first report is due no later than three years after ODH adopts rules establishing the standards and procedures for certifying a primary care practice as a PCMH, the types of medical practices that constitute primary care practices eligible for certification, and the health care quality and performance information that a certified PCMH must report to ODH. The second report is due no later than five years after those rules are adopted. Each of the reports must include all of the following:

(1) The number of patients receiving primary care services from certified PCMHs, the number and characteristics of those patients with complex or chronic conditions, and to the extent available, information regarding the income, race, ethnicity, and language of the patients;

(2) The number and geographic distribution of certified PCMHs;

(3) Performance of and quality of care measures implemented by certified PCMHs;

(4) Preventative care measures implemented by certified PCMHs;

(5) Payment arrangements of certified PCMHs;

(6) Costs related to implementation of the PCMH Program and payment of care coordination fees;

(7) The estimated effect of certified PCMHs on health disparities;

(8) The estimated savings from establishing the PCMH Program, as those savings apply to the fee for service, managed care, and state-based purchasing sectors.

## Abortion informed consent and fetal ultrasound requirements

### Information provided before an abortion procedure

(R.C. 2317.56)

Under prior law, except when there was a medical emergency or medical necessity, one or more physicians or one or more agents of one or more physicians was required to 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 at least 24 hours prior to the performance or inducement of an abortion:



(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 certain published materials from ODH;

(3) Inform the pregnant woman that the materials given are published by the state and that they describe the embryo or fetus and list agencies that offer alternatives to abortion. The pregnant woman may choose to examine or not examine the materials. A physician or an agent of a physician may choose to be disassociated from the materials and may choose to comment or not comment on the materials.

The act provides that *the physician who is to perform or induce the abortion or the physician's agent* is required to provide the pregnant woman with the above-described information, rather than one or more physicians or one or more agents of one or more physicians.

Under the act, if it has been determined that the unborn human individual the pregnant woman is carrying has a detectable heartbeat, the physician who is to perform or induce the abortion must comply with the informed consent requirements established by the act (see "**Requirements before abortion in case of fetal heartbeat,**" below) in addition to complying with the informed consent requirements generally applicable to all abortions.

Under continuing law, except when there is a medical emergency or medical necessity, an abortion can be performed or induced only if, among other things, prior to the performance or inducement of the abortion, the pregnant woman signs a form consenting to the abortion and certifies certain information on that form. The act requires that the form contain the name and contact information of the physician who provided to the pregnant woman the required information.

For the purposes of determining whether information must be provided before an abortion procedure, prior law defined "medical emergency" as a condition of a pregnant woman that, in the reasonable judgment of the physician who is attending the woman, creates an immediate threat of serious risk to the life or physical health of the woman from the continuation of the pregnancy necessitating the immediate performance or inducement of an abortion. The act modifies the definition of "medical emergency" by providing that it means a condition that in the physician's good faith medical judgment, based upon the facts known to the physician at that time, so complicates the woman's pregnancy as to necessitate the immediate performance or inducement of an abortion in order to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily

function of the pregnant woman that delay in the performance or inducement of the abortion would create.<sup>115</sup>

### **Determination of fetal heartbeat before an abortion**

(R.C. 2919.191(A) and (C))

Under the act, a person who intends to perform or induce an abortion on a pregnant woman must determine whether there is a detectable fetal heartbeat of the unborn human individual the pregnant woman is carrying. The method of determining the presence of a fetal heartbeat must be consistent with the person's good faith understanding of standard medical practice.

Under the act, the ODH Director may promulgate rules specifying the appropriate methods of performing an examination for the presence of a fetal heartbeat of an unborn individual based on standard medical practice. The rules must require only that an examination must be performed externally. The rules are to be adopted under R.C. 111.15.

If rules have been adopted by the ODH Director, the method of determining the presence of the fetal heartbeat chosen must be one that is consistent with the rules.

The act requires the person who determines the presence or absence of a fetal heartbeat to record in the pregnant woman's medical record the estimated gestational age of the unborn human individual, the method used to test for a fetal heartbeat, the date and time of the test, and the results of the test.

### **Prohibition against an abortion before determining fetal heartbeat**

(R.C. 2919.191(B))

The act provides that, except when a medical emergency exists that prevents compliance with the requirements described in this paragraph, a person is prohibited from performing or inducing an abortion on a pregnant woman prior to determining if the unborn human individual the pregnant woman is carrying has a detectable fetal heartbeat. Any person who performs or induces an abortion on a pregnant woman because of a medical emergency must note in the pregnant woman's medical records that a medical emergency necessitating the abortion existed and must also note the medical condition of the pregnant woman that prevented compliance with the requirement. The person must maintain a copy of the notes in the person's own records for at least seven years after the notes are entered into the medical records.

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<sup>115</sup> R.C. 2919.16, not in the act.





The person who performs the examination for the presence of a fetal heartbeat must give the pregnant woman the option to view or hear the fetal heartbeat.

### **Abortion permitted if no fetal heartbeat**

(R.C. 2919.191(D))

The act provides that a person is not in violation of the provisions described above if that person has performed an examination for the presence of a fetal heartbeat in the fetus utilizing standard medical practice, that examination does not reveal a fetal heartbeat or the person has been informed by a physician who has performed the examination for fetal heartbeat that the examination did not reveal a fetal heartbeat, and the person notes in the pregnant woman's medical records the procedure utilized to detect the presence of a fetal heartbeat.

### **Penalties for abortion before determining fetal heartbeat**

(R.C. 2919.191(E) and (F))

The act provides that, unless there is a medical emergency that prevents compliance, a person is prohibited from knowingly and purposefully performing or inducing an abortion on a pregnant woman before determining whether the unborn human individual the pregnant woman is carrying has a detectable heartbeat. The failure of a person to satisfy this requirement prior to performing or inducing an abortion on a pregnant woman may be the basis for either of the following:

- (1) A civil action for compensatory and exemplary damages;
- (2) Disciplinary action by the State Medical Board.

### **Statistical probability rules**

(R.C. 2919.191(G) and 2919.192(C))

Under the act, the ODH Director may determine and specify in rules (to be adopted pursuant to R.C. 111.15 and based upon available medical evidence) the statistical probability of bringing an unborn human individual to term based on the gestational age of an unborn human individual who possesses a detectable fetal heartbeat.

## **Civil action for wrongful death**

(R.C. 2919.191(H))

Under the act, a woman on whom an abortion is performed in violation of the requirement for determining the presence of a fetal heartbeat or who has not been notified of the required information regarding a detectable fetal heartbeat may file a civil action for the wrongful death of the woman's unborn child. The woman may receive at the mother's election at any time prior to final judgment damages in an amount equal to \$10,000 or an amount determined by the trier of fact after consideration of the evidence subject to the same defenses and requirements of proof, except any requirement of live birth, as would apply to a suit for the wrongful death of a child who had been born alive.

## **Requirements before abortion in case of fetal heartbeat**

(R.C. 2919.192(A), (B), and (E))

If a person who intends to perform or induce an abortion on a pregnant woman has determined that the unborn human individual the pregnant woman is carrying has a detectable heartbeat, the person generally is prohibited from performing or inducing the abortion until all of the following requirements have been met and at least 24 hours have elapsed after the last of the requirements is met:

(1) The person intending to perform or induce the abortion must inform the pregnant woman in writing that the unborn human individual the pregnant woman is carrying has a fetal heartbeat.

(2) The person intending to perform or induce the abortion must inform the pregnant woman, to the best of the person's knowledge, of the statistical probability of bringing the unborn human individual possessing a detectable fetal heartbeat to term based on the gestational age of the unborn human individual or, if the ODH Director has specified statistical information regarding the probability of bringing the unborn human individual to term, must provide to the pregnant woman that information.

This prohibition does not apply if the person who intends to perform or induce the abortion believes that a medical emergency exists that prevents compliance with the requirements described above.

Whoever violates the prohibition is guilty of performing or inducing an abortion without informed consent when there is a detectable fetal heartbeat, a misdemeanor of the first degree on a first offense and a felony of the fourth degree on each subsequent offense.



## **Effect on other abortion consent laws**

(R.C. 2919.192(D))

The act specifies that the provisions of R.C. 2919.192 (described above) do not have the effect of repealing or limiting any other provisions of Ohio law relating to informed consent for an abortion, including the provisions specifying the information to be provided before an abortion procedure.

## **Pregnant woman not subject to criminal or civil penalties**

(R.C. 2919.193)

The act provides that a pregnant woman upon whom an abortion is performed or induced in violation of the act's fetal heartbeat detection and notification requirements (R.C. 2919.191 or 2919.192) is not guilty of violating any of those requirements; is not guilty of attempting to commit, conspiring to commit, or complicity in committing a violation of any of those requirements; and is not subject to a civil penalty based on the abortion being performed or induced in violation of any of those requirements.

## **Definitions**

(R.C. 2919.19)

The following terms are defined for the purposes of the act's fetal heartbeat detection and notification requirements (R.C. 2919.191, 2919.192, and 2919.193):

- "Fetal heartbeat" – cardiac activity or the steady and repetitive rhythmic contraction of the fetal heart within the gestational sac.
- "Fetus" – the human offspring developing during pregnancy from the moment of conception and includes the embryonic stage of development.
- "Gestational age" – the age of an unborn human individual as calculated from the first day of the last menstrual period of a pregnant woman.
- "Gestational sac" – the structure that comprises the extraembryonic membranes that envelop the fetus and that is typically visible by ultrasound after the fourth week of pregnancy.
- "Medical emergency" – a condition that in the physician's good faith medical judgment, based upon the facts known to the physician at that time, so complicates the woman's pregnancy as to necessitate the

immediate performance or inducement of an abortion in order to prevent the death of the pregnant woman or to avoid a serious risk of the substantial and irreversible impairment of a major bodily function of the pregnant woman that delay in the performance or inducement of the abortion would create.

- "Physician" – a person who is licensed to practice medicine and surgery or osteopathic medicine and surgery by the State Medical Board or a person who otherwise is authorized to practice medicine and surgery or osteopathic medicine and surgery in Ohio.
- "Pregnancy" – the human female reproductive condition that begins with fertilization, when the woman is carrying the developing human offspring, and that is calculated from the first day of the last menstrual period of the woman.
- "Serious risk of the substantial and irreversible impairment of a major bodily function" – any medically diagnosed condition that so complicates the pregnancy of the woman as to directly or indirectly cause the substantial and irreversible impairment of a major bodily function. A medically diagnosed condition that constitutes a "serious risk of the substantial and irreversible impairment of a major bodily function" includes pre-eclampsia, inevitable abortion, and premature rupture of the membranes, may include, but is not limited to, diabetes and multiple sclerosis, and does not include a condition related to the woman's mental health.
- "Standard medical practice" – the degree of skill, care, and diligence that a physician of the same medical specialty would employ in like circumstances. As applied to the method used to determine the presence of a fetal heartbeat for purposes of the act's requirements (R.C. 2919.191), "standard medical practice" includes employing the appropriate means of detection depending on the estimated gestational age of the fetus and the condition of the woman and her pregnancy.
- "Unborn human individual" – an individual organism of the species *Homo sapiens* from fertilization until live birth.

## **Ambulatory surgical facilities**

(R.C. 3702.30 and 3702.302 to 3702.308)

### **Overview**

The act requires each ambulatory surgical facility (ASF) to (1) maintain an infection control program and (2) in general, have a written transfer agreement with a local hospital that specifies an effective procedure for the transfer of patients from the facility to the hospital when medical care beyond the care that can be provided at the ASF is necessary. These requirements are similar to those in preexisting ODH rules establishing quality standards for specified types of health care facilities subject to ODH licensure.<sup>116</sup> As a result of the act, these rules will need to be amended to conform with the act's requirements. In addition, the act requires that an ASF notify the ODH Director when certain events occur and specifies certain requirements related to ASF inspections.

### **Infection control programs**

Relative to an ASF's infection control program, the act specifies that the purposes of the program are to minimize infections and communicable diseases and facilitate a functional and sanitary environment consistent with standards of professional practice. To achieve these purposes, the act requires ASF staff managing a program to create and administer a plan designed to prevent, identify, and manage infections and communicable diseases; ensure that the program is directed by a qualified professional trained in infection control; ensure that the program is an integral part of the ASF's quality assessment and performance improvement program; and implement, in an expeditious manner, corrective and preventive measures that result in improvement.

Under the rules referenced above, an ASF must establish and follow written infection control policies and procedures for the surveillance, control and prevention, and reporting of communicable disease organisms by both contact and airborne routes. These must be consistent with infection control guidelines issued by the U.S. Centers for Disease Control and Prevention. The policies and procedures must address use of protective clothing and equipment; storage, maintenance, and distribution of sterile supplies and equipment; disposal of biological waste (including blood, body tissue, and fluid) in accordance with Ohio law; standard precautions or body substance isolation (or the equivalent); and tuberculosis and other airborne diseases.<sup>117</sup>

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<sup>116</sup> O.A.C. 3701-83-09(D) and 3701-83-19(E). An ASF is one of six types of health care facilities subject to these quality standards and licensing provisions (R.C. 3702.30(A)(4)).

<sup>117</sup> O.A.C. 3701-83-09(D).



## Written transfer agreements

### Requirement

The act generally requires each ASF to have a written transfer agreement with a local hospital that specifies an effective procedure for the safe and immediate transfer of patients from the ASF to the hospital when medical care beyond the care that can be provided at the ASF is necessary. This includes situations when emergencies occur or medical complications arise. A copy of the agreement must be filed with the ODH Director, and an ASF must update an agreement every two years and file the updated agreement with the Director.

The act specifies that an ASF is not required to have a written transfer agreement if either of the following is the case:

(1) The ASF is a provider-based entity of a hospital and the ASF's policies and procedures to address such situations are approved by the governing body of the facility's parent hospital and implemented. Under federal law, "provider-based entity" is defined as a provider of health care services or a rural health clinic that is either created by, or acquired by, a main provider for the purpose of furnishing health care services of a different type from those of the main provider and that is under the ownership and administrative and financial control of the main provider. (A provider-based entity comprises both the physical facility that serves as the site of services of a type for which payment could be claimed under the Medicare or Medicaid program and the personnel and equipment needed to deliver the services at that facility.)<sup>118</sup>

(2) The ODH Director has granted the ASF a variance pursuant to the procedure specified in the act.

The act's requirement is similar to a requirement in ODH's preexisting rules under which an ASF is to have a written transfer agreement with a hospital for the transfer of patients in the event of "medical complications, emergency situations, and for other needs as they arise." But the rule does not require a formal agreement when the ASF is a provider-based entity of a hospital and the ASF's policies and procedures to accommodate medical complications, emergency situations, and other needs as they arise are in place and approved by the governing body of the parent hospital.<sup>119</sup>

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<sup>118</sup> 42 C.F.R. 413.65(a)(2).

<sup>119</sup> O.A.C. 3701-83-19(E).



## Variations

**Application.** The act authorizes the ODH Director to grant a variance from the written transfer agreement requirement if the ASF submits to the Director a complete variance application prescribed by the Director and the Director determines (after reviewing the application) that the ASF is capable of achieving the purpose of the written transfer agreement in the absence of one. The act specifies that the Director's determination is final.

Under the act, a variance application is complete if it contains or includes as attachments all of the following:

--A statement explaining why application of the requirement would cause the ASF undue hardship and why the variance will not jeopardize the health and safety of any patient;

--A letter, contract, or memorandum of understanding signed by the ASF and one or more consulting physicians who have admitting privileges at a minimum of one local hospital, memorializing the physician or physicians' agreement to provide back-up coverage when medical care beyond the level the ASF can provide is necessary;

--For each consulting physician described above, all of the following:

- A signed statement in which the physician attests that the physician is familiar with the ASF and its operations and agrees to provide notice to the ASF of any changes in the physician's ability to provide back-up coverage;
- The estimated travel time from the physician's main residence or office to each local hospital where the physician has admitting privileges;
- Written verification that the ASF has a record of the name, telephone numbers, and practice specialties of the physician;
- Written verification from the State Medical Board that the physician possesses a valid certificate to practice medicine and surgery or osteopathic medicine and surgery;
- Documented verification that each hospital at which the physician has admitting privileges has been informed in writing by the physician that the physician is a consulting physician for the ASF and has agreed to provide back-up coverage for the ASF when medical care beyond the care the ASF can provide is necessary;



- A copy of the ASF's operating procedures or protocols that, at a minimum, do all of the following: (1) address how back-up coverage by consulting physicians is to occur, including how back-up coverage is to occur when consulting physicians are temporarily unavailable, (2) specify that each consulting physician is required to notify the ASF, without delay, when the physician is unable to expeditiously admit patients to a local hospital and provide for continuity of care, and (3) specify that a patient's medical record maintained by the ASF must be transferred contemporaneously with the patient when the patient is transferred from the ASF to a hospital;
- Any other information the ODH Director considers necessary.

A preexisting ODH rule requires an ASF to submit an application for a variance containing the specific nature of the request and the rationale for the request; the specific building or safety requirement in question, with a reference to the relevant rule; the time period for which the variance is requested; and a statement of how the ASF will meet the intent of the requirement in an alternative manner.<sup>120</sup>

**Decision.** The act specifies that the ODH Director's decision to grant, refuse, or rescind a variance is final. The Director must consider each application for a variance independently without regard to any decision the Director may have made on a prior occasion to grant or deny a variance to that ASF or another ASF.

The act's requirement is similar to one in a preexisting ODH rule.<sup>121</sup> That rule:

--Authorizes the Director to grant a variance if the Director determines that the requirement has been met in an alternative manner;

--Specifies that the Director's refusal to grant a variance is final and does not create any rights to an administrative hearing;

--Prohibits the Director's granting of a variance from being construed as constituting precedence for the granting of any other variance; and

--Specifies that variance requests must be considered on a case-by-case basis.

**Conditions; revocation.** The act also authorizes the ODH Director to impose conditions on any variance the Director has granted. The Director may at any time rescind the variance for any reason, including a determination by the Director that the

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<sup>120</sup> O.A.C. 3701-83-14(B).

<sup>121</sup> O.A.C. 3701-83-14(C), (F), and (G).

ASF is failing to meet one or more of the conditions or no longer adequately protects public health and safety. The act specifies that the Director's decision to rescind a variance is final.

Similar authorizations are included in a preexisting ODH rule.<sup>122</sup>

**Duration.** The act specifies that a variance is effective for the period of time specified by the ODH Director, except that it cannot be effective beyond the date the ASF's license expires. If a variance is to expire on the date the ASF's license expires, the ASF may submit to the Director an application for a new variance with its next license renewal application.

A preexisting ODH rule permits the Director to stipulate a time period for which a variance is to be effective. The time period could be different from the time period sought by the ASF in the written variance request.<sup>123</sup>

## Inspections

The act requires that rules the ODH Director must adopt under continuing law establishing quality standards for health care facilities include provisions specifying the inspection form that must be used during ASF inspections. The act also requires the Director to conduct an inspection of any ASF that is not certified by the U.S. Centers for Medicare and Medicaid as an ambulatory surgical center each time the ASF submits a license renewal application. Under preexisting ODH rules, inspections are not required but could be made at any time the Director considers necessary or for the purpose of investigating alleged violations of law governing health care facilities.<sup>124</sup>

The act prohibits the Director from renewing an ASF license unless all of the following conditions are met:

(1) The inspector completes each item on the inspection form that must be used during ASF inspections. Until rules are adopted under the act specifying the form to be used, the inspector is to use the form approved by the Director on September 29, 2013 (the act's 90-day effective date).

(2) The inspection demonstrates that the ASF complies with all quality standards established by the Director in rules.

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<sup>122</sup> O.A.C. 3701-83-14(E).

<sup>123</sup> O.A.C. 3701-83-14(D).

<sup>124</sup> O.A.C. 3701-83-06(A) and (E).



(3) The Director determines that the most recent version of the updated written transfer agreement that the ASF files with the Director is satisfactory, unless the Director has granted a variance from the written transfer agreement requirement.

### **Notifications**

The act requires an ASF to notify the ODH Director under all of the following circumstances:

(1) When the ASF modifies any provision of the most recent written transfer agreement it has filed with the Director. Notification under these circumstances must occur not later than the business day after the modification is finalized. For this purpose, a business day does not include Saturday, Sunday, or a legal holiday.<sup>125</sup>

(2) When the ASF modifies its operating procedures or protocols that address back-up coverage by consulting physicians and medical record maintenance and transfers. Notification under these circumstances must occur not later than 48 hours after the modification is made.

(3) When the ASF becomes aware of an event, including disciplinary action by the State Medical Board, that may affect a consulting physician's certificate to practice or the physician's ability to admit patients to a hospital identified in a variance application. Notification under these circumstances must occur not later than one week after the ASF becomes aware of the event's occurrence.

Preexisting ODH rules do not contain similar notification requirements.

### **Severability clause**

If any provision of the act's new sections of law regarding ASFs (R.C. 3702.302 to 3702.307) is enjoined, the act specifies that the injunction does not affect any remaining provision of those sections, any provision of the section of law governing ASFs (R.C. 3702.30) that was in effect when the act was enacted, or any provision of the rules adopted under that section.

### **Public hospitals and written transfer agreements**

(R.C. 3727.60)

The act prohibits a public hospital from entering into a written transfer agreement with an ASF in which nontherapeutic abortions are performed or induced. It

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<sup>125</sup> R.C. 1.14, not in the act.

also prohibits a public hospital from authorizing a physician who has been granted staff membership or professional privileges at the public hospital to use that membership or those professional privileges as a substitution for, or alternative to, a written transfer agreement for the purpose of obtaining a variance from the requirement that an ASF in which nontherapeutic abortions are performed or induced have a written transfer agreement with a local hospital. (See "**Ambulatory surgical facilities, Written transfer agreements, Variances**," above.)

The act defines "public hospital" as a hospital registered with ODH that is owned, leased, or controlled by the state or any agency, institution, instrumentality, or political subdivision of the state. A public hospital includes any state university hospital, state medical college hospital, joint hospital, or public hospital agency. A "nontherapeutic abortion" is an abortion that is performed or induced when (1) the life of the mother would not be endangered if the fetus were carried to term or (2) the pregnancy was not the result of rape or incest reported to a law enforcement agency.<sup>126</sup>

### **Prioritized distribution of funds for family planning**

(R.C. 3701.027, 3701.033, 5101.101, 5101.46, and 5101.461)

The act requires that ODH and the Ohio Department of Job and Family Services (ODJFS), when distributing funds for family planning services, award them first to public entities that (1) have applied for funding, (2) are operated by state or local government entities, and (3) provide or are able to provide family planning services. If any funds remain after distributing funds to those public entities, the act permits ODH and ODJFS to distribute funds to nonpublic entities in the following order of descending priority:

(1) Nonpublic entities that are federally qualified health centers (FQHCs), FQHC look-alikes, or community action agencies;

(2) Nonpublic entities that provide comprehensive primary and preventive care services in addition to family planning services;

(3) Nonpublic entities that provide family planning services, but do *not* provide comprehensive primary and preventive care services.

### **Federal funds**

The act specifies that the funds subject to the priority levels described above include federal funds received under (1) the Maternal and Child Health Block Grant

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<sup>126</sup> R.C. 9.04, not in the act.



(Title V of the Social Security Act), (2) the Family Planning Program (Title X of the Public Health Service Act), (3) the Social Services Block Grant (Title XX of the Social Security Act), and (4) the Temporary Assistance for Needy Families Block Grant (TANF, Title IV-A of the Social Security Act), to the extent that TANF funds are being used by Ohio to provide Title XX social services.

### **Exemptions**

The act exempts from the prioritized distribution of funds both of the following: (1) the Medicaid program and (2) funds awarded by ODH as women's health services grants, which have their own order of priority.<sup>127</sup>

### **Management of long-term care facility residents' financial affairs**

(R.C. 3721.15)

Under continuing law, a home (including a nursing home, residential care facility, and veterans' home) that manages a resident's financial affairs must deposit the resident's funds in excess of a specified amount in an interest-bearing account, separate from any of the home's operating accounts. Under former law, this requirement applied to a resident's funds in excess of \$100. Under the act, a home is not required to place a resident's funds in an interest-bearing account unless the funds exceed \$1,000.

### **Nursing facilities' plans of correction**

(R.C. 5165.69)

Nursing facilities are required to undergo surveys to determine whether they continue to meet the requirements for certification to participate in the Medicaid program. Continuing law requires a nursing facility that receives a statement of deficiencies following a survey to submit to ODH a plan of correction for each finding cited in the statement. The act requires a nursing facility's plan of correction to include additional information.

Under the act, the part of a plan of correction that describes the actions the nursing facility will take to correct each finding must be detailed and include actions the facility will take to protect residents situated similarly to the residents affected by the causes of the findings. A plan of correction also must include both of the following:

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<sup>127</sup> R.C. 3701.046, not in the act.



(1) A detailed description of an ongoing monitoring and improvement process to be used at the nursing facility that is focused on preventing any recurrence of the causes of the findings;

(2) If the plan concerns a finding assigned a severity level indicating that a resident was harmed or that immediate jeopardy exists, (a) detailed analyses of the facts and circumstances of the finding, including identification of its cause, (b) a detailed explanation of how the actions the nursing facility will take to correct the finding relate to the cause of the finding, and (c) a detailed explanation of the relationship between the ongoing monitoring and improvement process and the cause of the finding.

The act requires ODH to approve a nursing facility's plan of correction, and any modification of an existing plan, if it includes all of the information that the act and continuing law require. This is in addition to the continuing law requirement that ODH approve a plan or any modification that conforms to the requirements for approval established in federal regulations, guidelines, and procedures issued by the U.S. Secretary of Health and Human Services under federal Medicare and Medicaid laws.

The act permits ODH to consult with the Ohio Departments of Medicaid and Aging and the Office of the State Long-Term Care Ombudsman Program when determining whether a plan of correction concerning a finding assigned a severity level indicating that a resident was harmed or immediate jeopardy exists, or modification of such a plan, conforms to the requirements for approval. ODH has sole authority to make the determination regardless of whether it consults with the other agencies.

### **Nursing facility technical assistance**

(R.C. 3721.027; R.C. 3721.026 (repealed))

The act eliminates a requirement that the ODH Director establish a unit within ODH to provide advice and technical assistance and to conduct on-site visits to nursing facilities for the purpose of improving resident outcomes.

### **Distribution of household sewage treatment permit fees**

(R.C. 3718.06)

The act reallocates the distribution of money collected from state household sewage treatment system installation and alteration permit fees as follows:

(1) Decreases to not less than 10% (from not less than 25%) the percentage allocated to fund installation and evaluation of sewage treatment new technology pilot projects; and



(2) Increases to not more than 90% (from not more than 75%) the percentage used by the ODH Director to administer and enforce the Household and Small Flow On-Site Sewage Treatment Systems Law and rules adopted under it.

## **Water systems**

(R.C. 3701.344)

The act exempts a water system that will be used in agriculture and that does not provide water for human consumption from obtaining a permit or license issued under, paying fees assessed or levied under, or complying with any rule adopted under the continuing statutes governing private water systems. A private water system is any water system for the provision of water for human consumption if the system has fewer than 15 service connections and does not regularly serve an average of at least 25 individuals daily at least 60 days out of the year.

## **Ohio Cancer Incidence Surveillance System**

(R.C. 3701.261, 3701.262, 3701.264, and 3701.99; R.C. 3701.263 (repealed))

The act authorizes ODH to designate, by contract, a state university as an agent to implement the Ohio Cancer Incidence Surveillance System (OCISS). "State university" means the following: 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, and Youngstown State University.

The OCISS is a population-based cancer registry established by the ODH Director that collects and analyzes cancer incidence data in Ohio. Continuing law requires each physician, dentist, hospital, or person providing diagnostic or treatment services to patients with cancer to report each case of cancer to ODH. ODH is required to record in the registry all reports of cancer it receives.

### **Confidentiality of cancer reports**

Prior law included confidentiality provisions that applied only to information on cancer provided to or obtained by a cancer registry and ODH. It specified that this information was confidential and was to be used only for statistical, scientific, and medical research for the purpose of reducing the morbidity or mortality of malignant disease. The act eliminates these confidentiality provisions. However, both federal law





and Ohio law unchanged by the act include general provisions governing the confidentiality of protected health information.<sup>128</sup>

### **Zoonotic disease program**

(R.C. 3701.96)

The act specifies that if ODH administers a zoonotic disease program, the ODH Director is authorized to charge a local board of health a fee for each service the program provides to the board.<sup>129</sup> The fee amount must be determined by the Director and be commensurate with ODH's cost to provide the service. The board must pay the fee associated with a service at the time the service is provided.

According to the federal Centers for Disease Control and Prevention (CDC), zoonotic diseases are contagious diseases spread between animals and humans. They are caused by bacteria, viruses, parasites, and fungi carried by animals and insects. Examples of zoonotic diseases include anthrax, dengue, Ebola hemorrhagic fever, *Escherichia coli* infection, Lyme disease, malaria, plague, Rocky Mountain spotted fever, *salmonellosis*, and West Nile virus infection.<sup>130</sup>

### **Hope for a Smile Program (VETOED)**

(R.C. 3701.139 and 5747.01(A)(32))

The Governor vetoed provisions that would have created the Hope for a Smile Program. The vetoed provisions specified that the Program's primary objective was to improve the oral health of school-age children, with services targeted at those who are indigent and uninsured. The Program was to be a collaboration between ODH, dental and dental hygiene academic programs, and professional associations.

The vetoed provisions would have:

--Required the ODH Director, with assistance from the Director of Administrative Services, to use the state's purchasing power to purchase or secure three buses equipped as mobile dental units. Each bus would have been assigned to one

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<sup>128</sup> See the Health Insurance Portability and Accountability Act of 1996, 104 Pub. L. No. 191, 42 U.S.C. 1320d *et seq.*; 45 C.F.R. 16.304; and R.C. 3701.17, not in the act.

<sup>129</sup> According to an ODH representative, ODH has been administering some form of a zoonotic disease program since 1965. Prior to 2005, the program operated as two separate programs—the Rabies Program and the Vectorborne Disease Program. In 2005, these two programs merged to become the Zoonotic Disease Program. (Electronic correspondence from ODH (May 30, 2013).)

<sup>130</sup> CDC, *What are zoonotic diseases?*, available at [www.cdc.gov/24-7/cdcfastfacts/zoonotic.html](http://www.cdc.gov/24-7/cdcfastfacts/zoonotic.html).



region of Ohio (northern, central, or southern). Dental professionals and faculty and staff of dental and dental hygiene programs would have staffed the buses.

--Authorized the program to (1) accept grants, donations, and awards, (2) seek Medicaid and private insurance reimbursement, and (3) apply for money allocated by the U.S. Department of Labor or other entities for workforce or economic development initiatives.

--Authorized dentists and dental hygienists who provided services free of charge under the program to take a state income tax deduction, equal to the fair market value of the services, beginning with the tax year starting on January 1, 2013.

--Required the ODH Director to appoint an advisory council to consult with the Director in adopting program rules and give input for an annual report on program achievements.

### **Financial assistance to purchase hearing aids for children**

(Sections 285.10 and 285.20)

The act requires the ODH Director to adopt rules governing the distribution of the additional \$200,000 it appropriates per year for fiscal years 2014 and 2015 to assist families in purchasing hearing aids for children under 21. The rules must (1) establish eligibility criteria to include families with incomes at or below 400% of the federal poverty line and (2) develop a sliding scale of disbursements based on family income. The act authorizes the Director to adopt any other rules necessary to distribute these funds.

### **Charges for copies of medical records**

(R.C. 3701.741 and 3701.742)

The act eliminates a requirement that adjustments to charges for copies of medical records be made not later than January 1 of each year. Continuing law specifies the maximum amounts that may be charged and provides for an annual adjustment based on the Consumer Price Index (CPI). Prior law required that this adjustment be made by January 1 based on the preceding 12-month period. Under the act, amounts specified in statute plus any previous adjustments must be increased or decreased by the average percentage of increase or decrease in the CPI for the immediately preceding calendar year over the calendar year immediately preceding that year.

The act eliminates a requirement that the ODH Director provide a list of the adjusted amounts on request but maintains a requirement that the list be available on ODH's web site.

### **Trauma center preparedness report**

(R.C. 149.43; R.C. 3701.072 (repealed))

Under prior law, the ODH Director was required to adopt rules requiring a trauma center to report to the Director information on the center's preparedness and capacity to respond to disasters, mass casualties, and bioterrorism. The Director had to review the information and, after the review, could evaluate the center's preparedness and capacity. The act eliminates the reporting requirement and the accompanying authority to evaluate a trauma center's preparedness and capacity.

### **Council on Stroke Prevention and Education**

(R.C. 3701.90, 3701.901, 3701.902, 3701.903, 3701.904, 3701.905, 3701.906, and 3701.907 (repealed))

The act abolishes the Council on Stroke Prevention and Education, which was established within ODH in 2001 to do the following:

- Develop and implement a comprehensive statewide public education program on stroke prevention, targeted to high-risk populations and to geographic areas where there is a high incidence of stroke;
- Develop or compile for primary care physicians recommendations that address risk factors for stroke, appropriate screening for risk factors, early signs of stroke, and treatment strategies;
- Develop or compile for physicians and emergency health care providers recommendations on the initial treatment of stroke;
- Develop or compile for physicians and other health care providers recommendations on the long-term treatment of stroke;
- Develop or compile for physicians, long-term care providers, and rehabilitation providers recommendations on rehabilitation of stroke patients; and
- Take other actions consistent with the purpose of the Council.



The Council was required to meet at least once annually, at the call of the chair, to review and make amendments as necessary to the recommendations developed or compiled by the Council.

### **System for Award Management web site**

(R.C. 3701.881)

Continuing law requires an individual to undergo a database review as part of a criminal records check if the individual is under final consideration for employment with (or is referred by an employment service to) a home health agency in a position that involves providing direct care to an individual. The ODH Director is permitted to adopt rules also requiring individuals already employed by (or referred to) home health agencies in such positions to undergo the database reviews.

Continuing law specifies various databases that are to be checked as part of a database review. The ODH Director is permitted to specify additional databases in rules. The Excluded Parties List System, which is maintained by the U.S. General Services Administration, is one of the databases specified in statute. The act specifies that the Excluded Parties List System is available at the federal web site known as the System for Award Management.

### **WIC vendor contracts**

(Section 285.40)

In Ohio, ODH administers the federal Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The act requires that during fiscal years 2014 and 2015 ODH review and process a WIC vendor contract application not later than 45 days after it is received if on that date the applicant is a WIC-contracted vendor and meets all of the following requirements:

- (1) Submits a complete WIC vendor application with all required documents and information;
- (2) Passes the required unannounced preauthorization visit within 45 days of submitting a complete application;
- (3) Completes the required in-person training within 45 days of submitting the complete application.

ODH must deny the application if the applicant fails to meet all of the requirements. After an application has been denied, the applicant may reapply for a



contract to act as a WIC vendor during the contracting cycle of the applicant's WIC region.

### **Department of Health Medicaid Fund**

(R.C. 3701.832)

The act creates in the state treasury the Department of Health Medicaid Fund. All funds ODH receives for the purpose of paying the expenses that ODH incurs under the Medicaid program must be deposited into the Fund. ODH is required to use the money in the Fund to pay the expenses that ODH incurs under the Medicaid program.



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## OHIO HISTORICAL SOCIETY

- Repeals provisions that require the Ohio Historical Society to maintain a State Registry of Archaeological Landmarks and a State Registry of Historic Landmarks.
- Exempts purchases from and payments to the Society from the prohibition of certain purchases and leases unless they are made by competitive selection or with the approval of the Controlling Board.
- Establishes the Ohio Cemetery Law Task Force to develop recommendations on modifications of Ohio laws relating to cemeteries.

### State registries of archaeological and historic landmarks

(R.C. 149.54, 317.08, 1506.30, and 3714.03; Section 747.20; R.C. 149.51 and 149.55 (repealed))

The act repeals provisions that require the Ohio Historical Society to maintain a State Registry of Archaeological Landmarks and a State Registry of Historic Landmarks. In consequence of this repeal, the act makes conforming changes that do the following:

- Eliminates the duty of county recorders to record agreements for the registration of lands as archaeological or historic landmarks in the record of deeds but requires the recorders to keep such existing records.
- Eliminates a requirement that a person who engages in archaeological survey or salvage work at any registered state archaeological landmark first must obtain written permission from the Director of the Ohio Historical Society.
- Eliminates, from the definition of "historical value" in the Submerged Lands Preservation Act, the inclusion of an object, structure, site, or district that is included in or eligible for inclusion in either the State Registry of Archaeological Landmarks or the State Registry of Historic Landmarks.
- Eliminates a prohibition against the Director of Environmental Protection or a board of health issuing a permit to establish a new construction and demolition debris facility when the horizontal limits of construction and demolition debris placement at the facility are proposed to be located



within 500 feet of land that has been placed on the State Registry of Historic Landmarks.

### **Historical Society exempted from Controlling Board oversight**

(R.C. 127.16)

The act exempts state agency purchases from, and state agency payments to, the Ohio Historical Society from the provision of continuing law that prohibits certain purchases and leases unless they are made by competitive selection or with the approval of the Controlling Board.

### **Ohio Cemetery Law Task Force**

(Section 747.10)

The act establishes the Ohio Cemetery Law Task Force to develop recommendations on modifications of Ohio laws relating to cemeteries.

The Task Force is to consist of the following 11 members: a representative of local government, other than townships, appointed by the President of the Senate; a representative of the Ohio Township Association appointed by the President of the Senate; a representative of Native Americans appointed by the President of the Senate; a representative of private cemeteries appointed by the Speaker of the House of Representatives; a representative of the Ohio Historical Society appointed by the Speaker; a representative of archeologists appointed by the Speaker; a representative of the Ohio Genealogical Society appointed by the Governor; a representative of the Ohio Cemetery Dispute Resolution Commission appointed by the Governor; a representative of the Division of Real Estate and Professional Licensing in the Department of Commerce appointed by the Governor; a representative of the Department of Transportation appointed by the Governor; and a representative of the Department of Natural Resources appointed by the Governor. Initial appointments are to be made not later than October 29, 2013. Vacancies are to be filled in the manner provided for original appointments.

The Task Force must elect two of its members to serve as co-chairpersons of the Task Force. The Task Force must meet as often as necessary to carry out its duties and responsibilities. Members of the Task Force serve without compensation.

The Task Force must issue a report of its recommendations to the President of the Senate, the Speaker of the House, and the Governor not later than September 29, 2014.

The Task Force ceases to exist upon submitting its report.





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## OFFICE OF INSPECTOR GENERAL

- Provides that a deputy inspector general, who has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission, is to be considered a peace officer during the term of the deputy inspector general's appointment for the purpose of maintaining a current and valid basic training certificate.
- Extends the position of the Deputy Inspector General for funds received through the American Recovery and Reinvestment Act of 2009, which would have expired on September 30, 2013, through June 30, 2014.

### **Deputy inspector general – authority to act as peace officer**

(R.C. 121.483)

The act provides that a deputy inspector general who has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission is to be considered a peace officer during the term of the deputy inspector general's appointment for the purpose of maintaining a current and valid basic training certificate. The certificate attests to the deputy inspector general's satisfactory completion of an approved state, county, or municipal peace officer basic training program.

### **Deputy Inspector General for ARRA funds**

(Section 105.05 of H.B. 2 of the 128th General Assembly; Sections 620.10 and 620.11)

The act extends the position of the Deputy Inspector General for funds received through the American Recovery and Reinvestment Act of 2009 (ARRA) through June 30, 2014. The position was scheduled to be eliminated on September 30, 2013.

The Deputy Inspector General for funds received through the ARRA is responsible for monitoring state agencies' distribution of the federal economic stimulus funds the agencies received under the ARRA and for investigating any wrongful acts or omissions committed with respect to those funds. The Deputy Inspector General for funds received through the ARRA also conducts random reviews of the processing of contracts funded with money received under the ARRA.<sup>131</sup>

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<sup>131</sup> R.C. 121.53, not in the act.



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## DEPARTMENT OF INSURANCE

- Limits agent appointment and agent appointment renewal fees charged by the Department of Insurance to not more than \$20 and terminates the \$5 agent appointment termination fee.

### **Agent appointment fees**

(R.C. 3905.40 and 3905.862)

Continuing law prescribes fees for services and certifications provided by the Department of Insurance. The act limits agent appointment and agent appointment renewal fees that the Department may charge to not more than \$20, as opposed to the former fee of \$20. It also abolishes the agent appointment termination fee of \$5 and makes conforming changes.



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## DEPARTMENT OF JOB AND FAMILY SERVICES

### Child care

- Changes the periodic criminal records check required for certain child care providers from every four to every five years.
- Permits the Ohio Department of Job and Family Services (ODJFS) Director to issue a child care license or provisional license to an applicant whose type B family day-care home certificate was revoked, if the revocation occurred more than five years before applying for the license.
- Requires a county department of job and family services (CDJFS), as part of the certification process for type B homes, to request from the public children services agency (rather than ODJFS) information concerning abuse or neglect reports.
- Permits ODJFS to issue a child care license to a youth development center that applies for and meets the requirements for the license.
- Exempts preschool programs operated by nonchartered, nontax-supported schools from child day-care licensing requirements, provided the programs meet specified conditions.
- Requires ODJFS to establish the Ohio Electronic Child Care System to track attendance and calculate payments for publicly funded child care and requires all publicly funded child care providers to participate in the system.

### Child welfare

- Requires a private child placing agency or private noncustodial agency seeking renewal of a certificate of fitness issued by ODJFS to provide ODJFS evidence of an independent financial statement audit performed by a licensed public accounting firm.
- Requires that the independent audits demonstrate that the agency operated in a fiscally accountable manner as determined by ODJFS.
- Eliminates provisions authorizing ODJFS, with respect to a criminal records check required for an adult resident of a prospective adoptive or foster home or a foster caregiver's home, to waive the requirement that the records check be based on fingerprints if the adult resident is physically unable to provide fingerprints and poses no danger to the children who may be placed in the home.



## **Child support**

- Revises the frequency of publication by ODJFS's Office of Child Support of a set of posters of delinquent child support obligors who cannot be located from not less than twice annually to annually and makes it discretionary for the Office to publish the poster.
- Relieves an employer of the obligation to make a new hire report to ODJFS when an employee is rehired after a period of separation from employment of less than 60 days.

## **Ohio Parenting and Pregnancy Program**

- Establishes the Ohio Parenting and Pregnancy Program to provide to pregnant women and parents or other relatives caring for children under 12 months of age services that promote childbirth, parenting, and alternatives to abortion.
- Specifies requirements that an entity seeking funds from the Program must meet, including having the primary purpose of promoting childbirth, not abortion.
- Allows an entity receiving funds under the Program to provide services through a subcontractor.

## **Therapeutic wilderness camps (VETOED)**

- Would have exempted therapeutic wilderness camps from certification by ODJFS (VETOED).
- Would have required a therapeutic wilderness camp to certify annually to the parents of the children attending the camp that the camp met specified minimum standards (VETOED).

## **Workforce training pilot (VETOED)**

- Would have established the Workforce Training Pilot Program for the Economically Disadvantaged which would have required the ODJFS Director to award grants to demonstration projects to provide training in life and technical skills (VETOED).

## Child care

### Regulation of child care: background

(R.C. Chapter 5104.; Section 815.20)

The Ohio Department of Job and Family Services (ODJFS) and county departments of job and family services (CDJFSs) are responsible for the regulation of child care providers, other than preschool programs and school child programs, which are regulated by the Ohio Department of Education.<sup>132</sup> Child care can be provided in a facility, the home of the provider, or the child's home. Not all child care providers are subject to regulation, but a provider must be licensed or certified to be eligible to provide publicly funded child care. The distinctions among the types of providers are described in the table below.

Child Care Providers		
Type	Description/Number of children served	Regulatory system
<b>Child day-care center</b>	Any place in which child care is provided as follows: --For 13 or more children at one time; or --For 7-12 children at one time if the place is not the permanent residence of the licensee or administrator (which is, instead, a type A home).	A child day-care center must be licensed by ODJFS, regardless of whether it provides publicly funded child care.
<b>Family day-care home</b>	<p><b>Type A home</b> – a permanent residence of an administrator in which child care is provided as follows:            --For 7-12 children at one time; or            --For 4-12 children at one time if 4 or more are under age 2.</p> <p><b>Type B home</b> – a permanent residence of the provider in which child care is provided as follows:            --For 1-6 children at one time; and            --No more than 3 children at one time under age 2.</p>	<p>A type A home must be licensed by ODJFS, regardless of whether it provides publicly funded child care.</p> <p>To be eligible to provide publicly funded child care, a type B home must be certified by a CDJFS or, beginning January 1, 2014, licensed by ODJFS.</p>

<sup>132</sup> R.C. 3301.51 to 3301.59, not in the act.



<b>Child Care Providers</b>		
<b>Type</b>	<b>Description/Number of children served</b>	<b>Regulatory system</b>
<b>In-home aide</b>	A person who provides child care in a child's home but does not reside with the child.	To be eligible to provide publicly funded child care, an in-home aide must be certified by a CDJFS.

## **Child care licensing**

### **Criminal records checks for child care providers**

(R.C. 5104.012 and 5104.013; Sections 110.20, 110.21, and 110.22)

ODJFS is required by continuing law to request a criminal records check of the following persons: (1) the owner, licensee, or administrator of a child day-care center, (2) the owner, licensee, or administrator of a type A family day-care home and any person 18 years of age or older who lives in a type A home, and (3) beginning January 1, 2014, the administrator of a licensed type B family day-care home and any person age 18 or older who lives in the home. In addition, a CDJFS is required to request a criminal records check of the following persons: (1) until January 1, 2014, an authorized provider of a certified type B family day-care home and any person age 18 or older who resides in the home, and (2) beginning January 1, 2014, an in-home aide. An administrator of a child day-care center or type A home must request a criminal records check of any applicant who has applied for employment as a person responsible for the care, custody, or control of a child.

Prior law required that the criminal records checks for all of the specified persons be requested at the time of the initial application for licensure, certification, or employment and every four years thereafter. The act continues the requirement that the criminal records checks be requested on initial application, but thereafter, requires that the records check be requested every five years rather than four.

### **Restriction on licensure for applicants with a prior revocation**

(R.C. 5104.03)

Continuing law prohibits the ODJFS Director from issuing a license or provisional license for a child day-care center or type A home if the Director determines, based on documentation from the CDJFS, that the applicant previously had been certified as a type B family day-care home, that the CDJFS revoked that certification, that the revocation was based on the applicant's refusal or inability to



comply with criteria for certification, and that the refusal or inability resulted in a risk to the health or safety of children.

The act maintains this restriction, but only if the revocation occurred less than five years before applying for the license.

#### **Requests for information on reports of abuse or neglect**

(R.C. 5104.11)

As part of the requirements for certification of type B homes, continuing law requires that a CDJFS request information concerning any abuse or neglect report of which the applicant for a type B home certification, any other adult residing in the applicant's home, or a person designated by the applicant to be an emergency or substitute caregiver is the subject. Under prior law, the request was to be made to the public children services agency until the Statewide Automated Child Welfare System (SACWIS) is finalized statewide; after SACWIS is finalized statewide, the request was to be made to ODJFS. The act provides that the CDJFS request this information from only the public children services agency.

#### **Authority to revoke a type B home certificate**

(R.C. 5104.11 and 5104.12)

Under prior law, a CDJFS director could revoke a type B home or in-home aide certificate after determining that the revocation was necessary. The act provides instead that a CDJFS director may revoke such a certificate (1) if the director determines, pursuant to rules adopted under the Administrative Procedure Act, that revocation is necessary or (2) if the authorized provider or in-home aide does not participate in the Ohio Electronic Child Care System or violates prohibitions regarding the system.

#### **Licensure of youth development programs**

(R.C. 5104.02 and 5104.021)

Under law unchanged by the act, youth development programs operated outside of school hours by a community-based center are exempt from child care licensure laws if all of the following apply:

(1) The children enrolled in the program are under age 19 and enrolled in or eligible to be enrolled in a grade of kindergarten or above;





(2) The program provides informal child care and at least two of the following supervised activities: educational, recreational, culturally enriching, social, and personal development activities;

(3) The program is eligible for participation in the child and adult care food program as an outside-school-hours care center pursuant to standards established by the Ohio Department of Education;

(4) The community-based center is operating the program under the charitable exemption from federal income taxation.

Prior law prohibited the ODJFS Director from issuing a child day-care center or type A home license to these youth development programs. The act permits the ODJFS Director to issue such a license if the program applies for and meets all of the requirements for the license. It clarifies that "informal child care" refers to child care that does not require parental signature, permission, or notice for the child receiving the care to enter or leave the program. The act removes the restriction that the program must provide at least two of the activities described in (2) above.

**Exemption for preschools operated by nonchartered, nontax-supported schools**

(R.C. 5104.02)

The act exempts preschool programs operated by nonchartered, nontax-supported schools from child care licensure if the following conditions are satisfied:

(1) The program complies with state and local health, fire, and safety laws;

(2) The program annually certifies in a report to the parents of its pupils that the school is in compliance with state and local health, fire, and safety laws, and a copy of the report is filed with ODJFS on or before September 30 of each year;

(3) The program complies with all applicable reporting requirements in the same manner as required by the State Board of Education for nonchartered, nonpublic primary and secondary schools;

(4) The program is associated with a nonchartered, nontax-supported primary or secondary school.

## **Publicly funded child care**

### **Ohio Electronic Child Care System**

(R.C. 5104.32 (primary), 5104.11, and 5104.12; Sections 110.20, 110.21, and 110.22)

During fiscal years 2012 and 2013, H.B. 153 of the 129th General Assembly required that, if ODJFS implemented a program using a swipe card system and point-of-service device to track attendance and submit invoices for payment for publicly funded child care, (1) misuse of the system by a provider participating in the program was a reason for which the provider's license or certification could be revoked and (2) misuse of the system by a caretaker parent participating in the program was a reason for which the parent could lose eligibility for publicly funded child care.

The act requires ODJFS to establish the Ohio Electronic Child Care System to track attendance and calculate payments for publicly funded child care. It requires that all child care providers seeking to provide publicly funded child care participate. A participating provider may not use or possess an electronic child care card issued to a caretaker parent, falsify attendance records, knowingly seek payment for publicly funded child care that was not provided, or knowingly accept reimbursement for publicly funded child care that was not provided.

## **Child welfare**

### **Audit prior to renewal of certificate**

(R.C. 5103.0323)

Continuing law requires ODJFS every two years to pass upon the fitness of every institution and association that receives, or desires to receive and care for children, or places children in private homes.<sup>133</sup> These institutions and associations include a private child placing agency or a private noncustodial agency. When ODJFS is satisfied as to the care given such children and that the requirements of the statutes and rules covering the management of such institutions and associations are being complied with, ODJFS must issue a certificate to that effect to the institution or association.

Under prior law, a private child placing agency or private noncustodial agency that sought renewal of its certificate from ODJFS, as a condition of renewal, had to provide ODJFS evidence of an independent audit of its first year of certification (initial renewal) or the two most recent years (subsequent renewal) it was possible to have such an audit unless the State Auditor had audited the agency during that year or years and

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<sup>133</sup> R.C. 5103.03, not in the act.



the audit set forth that no money has been illegally expended, converted, misappropriated, or is unaccounted for or set forth findings that are inconsequential, as defined by government auditing standards. The act eliminates this requirement and instead requires such an agency, as a condition of renewal, to provide ODJFS evidence of an independent financial statement audit performed by a licensed public accounting firm following applicable American Institute of Certified Public Accountants auditing standards for the most recent fiscal year for the first recertification or for the two most recent previous years it is possible to have such an audit for any subsequent recertifications.

The act eliminates the requirement that, for an agency to be eligible for renewal, the independent audit demonstrate that the agency operated in a fiscally accountable manner in accordance with state laws and rules and any agreement between the agency and a public children services agency and that all audits be conducted in accordance with generally accepted government auditing standards. The act instead requires that the independent audits demonstrate that the agency operated in a fiscally accountable manner as determined by ODJFS and provides that the ODJFS Director may adopt rules as necessary to implement the above-described provisions. The rules are to be adopted under R.C. 111.15, which does not require public notice or hearings on proposed rules.

### **Criminal records checks of adults in prospective adoptive or foster homes**

(R.C. 2151.86)

The act eliminates a provision authorizing ODJFS, with respect to a criminal records check required for an adult resident of a prospective adoptive or foster home or a foster caregiver's home, to waive the requirement that the records check be based on fingerprints if the adult resident is physically unable to comply with the fingerprinting requirement and poses no danger to foster children or adoptive children who may be placed in the home. Additionally, the act eliminates a provision specifying that in such cases, a records check using the person's name and Social Security number be requested from the Bureau of Criminal Identification and Investigation.

### **Child support**

#### **Poster of delinquent child support obligors**

(R.C. 3123.958)

The act authorizes, instead of requires as under former law, the Office of Child Support in ODJFS to publish throughout Ohio a set of posters of delinquent child support obligors who cannot be located. The set of posters may be published annually instead of not less than twice annually as under former law.



## Conditions for filing a new hire report

(R.C. 3121.89 and 3121.891 (primary); 3121.892 and 3121.893)

The act requires every employer to make a new hire report to ODJFS regarding a newly hired employee who resides, works, or will be assigned to work in Ohio and to whom the employer anticipates paying compensation. The act defines "newly hired employee" as either of the following: (1) an employee who has not previously been employed by the employer, or (2) an employee who was previously employed by an employer but has been separated from that prior employment for at least 60 consecutive days. Former law required every employer to make a new hire report to ODJFS regarding the hiring, rehiring, or return to work as an employee, of a person who resides, works, or would be assigned to work in Ohio to whom the employer anticipated paying compensation, but did *not* make an exception for an employee who was previously employed by an employer and had been separated from that employment for less than 60 consecutive days. Continuing law requires every employer to make a new hire report to ODJFS with regard to contractors.

## Ohio Parenting and Pregnancy Program

(R.C. 5101.804 (primary), 3125.18, 5101.35, 5101.80, 5101.801, 5101.803, and 5153.16)

The act establishes the Ohio Parenting and Pregnancy Program to provide Temporary Assistance to Needy Families (TANF) block grant funds to certain private, nonprofit entities that provide services to pregnant women and parents or other relatives caring for children under 12 months of age that promote childbirth, parenting, and alternatives to abortion and meet one of the purposes of the TANF block grant. ODJFS may provide funds to these entities by contract (to the extent permitted by federal law).

In accordance with criteria it develops, ODJFS may solicit proposals from entities seeking funds under the Program. ODJFS may enter into an agreement with the entity to receive Program funds only if the entity meets all of the following conditions:

- (1) The entity is a private and not-for-profit entity;
- (2) The entity is one whose primary purpose is to promote childbirth, rather than abortion, through counseling and other services, including parenting and adoption support;
- (3) The entity provides services to pregnant women and parents or other relatives caring for children 12 months of age or younger, including clothing,



counseling, diapers, food, furniture, health care, parenting classes, postpartum recovery, shelter, and any other supportive programs or related outreach;

(4) The entity does not charge pregnant women and parents or other relatives caring for children 12 months of age or younger a fee for any services received;

(5) The entity is not involved in or associated with any abortion activities, including providing abortion counseling or referrals to abortion clinics, performing abortion-related medical procedures, or engaging in pro-abortion advertising; and

(6) The entity does not discriminate in its provision of services on the basis of race, religion, color, age, marital status, national origin, disability, or gender.

Under the act, an entity that has entered into an agreement with ODJFS is permitted to provide some or all of the Program's services through a subcontractor. A subcontract may be entered into with another entity only if that entity meets all of the following conditions:

(1) The entity is a private and not-for-profit entity;

(2) The entity is physically and financially separate from any entity, or component of an entity, that engages in abortion activities;

(3) The entity is not involved in or associated with any abortion activities, including providing abortion counseling or referrals to abortion clinics, performing abortion-related medical procedures, or engaging in pro-abortion advertising.

The ODJFS Director is required to adopt rules as necessary to implement the Program.

### **Therapeutic wilderness camps (VETOED)**

(R.C. 5103.02 and 5103.05)

The Governor vetoed a provision that would have exempted therapeutic wilderness camps from the requirement to be certified by ODJFS that applies under continuing law to any institution or association that receives or desires to receive and care for children for two or more consecutive weeks. The act would have defined "therapeutic wilderness camp" as a structured, alternative residential setting for children who are experiencing emotional, behavioral, moral, social, or learning difficulties at home or school in which the children (1) are placed by their parents or with another relative with custody, and (2) spend the majority of their time either outdoors or in a primitive structure.



Under continuing law, administrators and employees of residential camps must report suspected child abuse or neglect to a public children services agency or law enforcement, and persons responsible for a child's care at residential camps are subject to criminal background check requirements. Residential camps also must meet requirements that the Department of Health adopts under its general authority to regulate public health. The act did not change these requirements; however, the Governor vetoed a provision that would have required a therapeutic wilderness camp to certify annually to the parents of the children attending the camp that the camp was in compliance with those requirements.

### **Workforce training pilot program (VETOED)**

(Sections 301.10, 301.171, 751.41, and 812.20)

The Governor vetoed a provision that would have created the Workforce Training Pilot Program for the Economically Disadvantaged. The provision would have required the ODJFS Director, in consultation with the Director of Development Services and JobsOhio, to issue a request for proposals to allow an entity to receive a grant under the Program to create and administer a workforce development demonstration project to provide training in life and technical skills. The Program would have utilized \$8,000,000 from the Economic Development Projects Fund for this purpose.

A detailed description of the vetoed provisions is available on pages 266 and 267 of LSC's analysis of the House version of H.B. 59. The analysis is available online at [www.lsc.state.oh.us/analyses130/h0059-ph-130.pdf](http://www.lsc.state.oh.us/analyses130/h0059-ph-130.pdf).



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## JUDICIARY/SUPREME COURT

### **Court of Claims – wrongful imprisonment**

- Provides that if an individual at the time of the wrongful imprisonment was serving 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 wrongful imprisonment that occurred during such a concurrent sentence.

### **Franklin County Probate Court Mental Health Fund**

- Authorizes the Franklin County Probate Court to accept funds or other program assistance from the Board of Alcohol, Drug Addiction, and Mental Health Services (ADAMH) of Franklin County or the Franklin County Board of Developmental Disabilities (BDD), to be paid into the Franklin County treasury and credited to the Franklin County Probate Court Mental Health Fund.
- Requires the moneys in the Fund to be used for services, including involuntary commitment proceedings and the establishment and management of adult guardianships, to ensure the treatment of persons who are under the care of ADAMH of Franklin County or the Franklin County BDD.
- Permits some of the moneys in the Fund to be used for specified court purposes, such as equipment purchases, staff hiring, and volunteer guardianship training, if the Franklin County probate judge determines that such use is needed for the court's efficient operation.

### **Common pleas special projects funds**

- Provides that if the court of common pleas requires a special program or additional services in cases of a specific type, the court by rule may assess an additional charge in a case of that type, over and above court costs, to cover the special program or service.

### **Court of Claims – wrongful imprisonment**

(R.C. 2743.48)

The act modifies the law regarding wrongful imprisonment claims by providing 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.

### **Franklin County Probate Court Mental Health Fund**

(R.C. 2101.026)

The act authorizes the Probate Court of Franklin County to accept funds or other program assistance from the Board of Alcohol, Drug Addiction, and Mental Health Services of Franklin County (ADAMH) or the Franklin County Board of Developmental Disabilities (BDD). Any such funds received by that Probate Court must be paid into the Franklin County treasury and credited to a fund to be known as the Franklin County Probate Court Mental Health Fund. The moneys in the Fund must be used for services to help ensure the treatment of any person who is under the care of ADAMH of Franklin County or the Franklin County BDD. These services include involuntary commitment proceedings and the establishment and management of adult guardianships, including all associated expenses, for wards who are under the care of the ADAMH or BDD.

If the judge of the Probate Court of Franklin County determines that some of the moneys in the Fund are needed for the efficient operation of that court, the moneys may be used for the acquisition of equipment, the hiring and training of staff, community services programs, volunteer guardianship training services, the employment of magistrates, and other related matters.

### **Common pleas special projects funds**

(R.C. 2303.201)

Under continuing law, a court of common pleas may determine that for the efficient operation of the court additional funds are necessary to acquire and pay for special projects of the court, including, but not limited to, the acquisition of additional facilities or the rehabilitation of existing facilities, the acquisition of equipment, the hiring and training of staff, community service programs, mediation or dispute resolution services, the employment of magistrates, the training and education of judges, acting judges, and magistrates, and other related services. Upon that determination, the court by rule may charge a fee, in addition to all other court costs, on the filing of each criminal cause, civil action or proceeding, or judgment by confession. Prior law provided that if the court of common pleas offered a special program or service in cases of a specific type, the court by rule could assess an additional charge in a case of that type, over and above court costs, to cover the special program or service.



The act provides that a court of common pleas by rule may assess an additional charge, over and above court costs to cover a special program or service if the court offers *or requires* a special program or *additional services* in cases of a specific type, to cover the service.



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## LEGISLATIVE SERVICE COMMISSION

- Specifies that beginning in 2014, the General Assembly members of the Ohio Constitutional Modernization Commission must elect one of the Commission's co-chairs from each house of the General Assembly.

### Ohio Constitutional Modernization Commission

(R.C. 103.63)

The act specifies that beginning in 2014, the General Assembly members of the Ohio Constitutional Modernization Commission must elect one of the Commission's co-chairs from each house of the General Assembly. Under continuing law, every two years, the 12 General Assembly members of the Commission must elect two co-chairs who are members of different political parties.



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## STATE LIBRARY BOARD

- Revises the manner by which the State Library Board may forward legislative documents to depository libraries, by permitting the documents to be sent in a paper or electronic format.

### Forwarding of legislative documents

(R.C. 149.12)

The act revises the manner in which the State Library Board must forward certain legislative documents to depository libraries, by permitting the documents to be sent in a paper or electronic format. The legislative documents thus forwarded are the Legislative Bulletin, the House and Senate journals, pamphlet laws, and the Summary of Enactments. Continuing law requires the State Library Board to forward these legislative documents to libraries that have been designated as depositories for state documents and to other designated libraries in counties that do not have depository libraries. The House and Senate journals must be forwarded on a weekly basis, and bulletins, pamphlet laws, and the Summary of Enactments must be forwarded as they are published.

Prior law did not specify the manner in which the documents were required to be forwarded. Since the documents traditionally were published in paper form, they were forwarded as paper documents. Under the act, the documents may be forwarded either in a paper or electronic format.



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## OHIO LOTTERY COMMISSION

- Removes the option that a lottery sales agent mail directly to the State Lottery Commission net proceeds due to the Commission.
- Removes the requirement that a lottery sales agent file with the Director of the Commission or the Director's designee reports of their receipts and transactions in the sale of lottery tickets in the form required by the Director.

### Lottery sales agents requirements

(R.C. 3770.02)

The act requires, under rules adopted by the State Lottery Commission, the Director of the Commission to require lottery sales agents to deposit to the credit of the State Lottery Fund, in banking institutions designated by the Treasurer of State, net proceeds due the Commission as determined by the Director. Formerly, lottery sales agents could either mail the net proceeds directly to the Commission or deposit them in designated banking institutions. Therefore, the act removes the option of mailing net proceeds directly to the Commission.

Additionally, the act removes the requirement that lottery sales agents must file with the Director or the Director's designee reports of their receipts and transactions in the sale of lottery tickets in the form required by the Director.



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## DEPARTMENT OF MEDICAID

### Creation of the Ohio Department of Medicaid

- Creates the Ohio Department of Medicaid (ODM).
- Makes the Medicaid Director (ODM Director) the executive head of ODM.
- Gives ODM and the ODM Director many of the same types of responsibilities and authorities that the Ohio Department of Job and Family Services (ODJFS) and the ODJFS Director have regarding administrative and program matters.
- Transfers to ODM (from ODJFS's Office of Medical Assistance) responsibility for the state-level administration of the following medical assistance programs: Medicaid, Children's Health Insurance Program (CHIP), and Refugee Medical Assistance (RMA).
- Makes CHIP and the RMA program subject to general requirements applicable to Medicaid, including requirements regarding third party liability, ODM's automatic right of recovery, automatic assignment of the right to medical support, and the rights of applicants, recipients, and former recipients to administrative appeals.
- Provides that the creation of ODM and reassignment of the functions and duties of ODJFS's Office of Medical Assistance regarding medical assistance programs are not appropriate subjects for public employees' collective bargaining.
- Authorizes the ODM Director and ODJFS Director, from July 1, 2013 to June 30, 2015, to establish, change, and abolish positions for their respective agencies and to assign, reassign, classify, reclassify, transfer, reduce, promote, or demote employees who are not subject to state law governing public employees' collective bargaining.
- Relocates and reorganizes provisions of the Revised Code governing medical assistance programs as part of the creation of ODM and the transfer of programs to ODM.

### Medicaid eligibility

#### Mandatory and optional eligibility groups

- Repeals laws that require or permit Medicaid to cover certain groups.
- Requires Medicaid to cover all mandatory eligibility groups and permits Medicaid's eligibility requirements for aged, blind, and disabled individuals to continue to be



more restrictive than the eligibility requirements for the Supplemental Security Income (SSI) program as authorized by the federal law known as the 209(b) option.

- Requires Medicaid to cover all optional eligibility requirements that state statutes require Medicaid to cover.
- Permits Medicaid to cover optional eligibility groups that state statutes expressly permit Medicaid to cover or do not address whether Medicaid may cover.
- Prohibits Medicaid from covering any eligibility group that state statutes prohibit Medicaid from covering.
- Requires Medicaid to cover all of the following optional eligibility groups: (1) children placed with adoptive parents, (2) women during and immediately after pregnancy, infants, and children, (3) employed individuals with disabilities or medically improved disabilities who qualify for the Medicaid Buy-In for Workers with Disabilities program, (4) independent foster care adolescents, (5) women in need of treatment for breast or cervical cancer, and (6) nonpregnant individuals who may receive family planning services and supplies.

#### **Medicaid expansion (VETOED)**

- Would have prohibited Medicaid from covering the eligibility group popularly known as the Medicaid expansion (VETOED).

#### **Transitional Medicaid**

- Requires the ODM Director to implement a federal option that permits individuals to receive transitional Medicaid for a single 12-month period rather than an initial 6-month period followed by a second 6-month period.

#### **Maintenance of effort requirement**

- Repeals the law that requires Medicaid to comply with the federal maintenance of effort requirement regarding Medicaid eligibility.

#### **Reduction in complexity**

- Repeals the law that requires a reduction in the complexity of the eligibility determination processes for Medicaid caused by the different income and resource standards for numerous Medicaid eligibility categories.



## **Tuition Savings and scholarships exempt from consideration**

- Repeals the law that requires the values of certain tuition payment contracts, scholarships, and payments made by the Ohio Tuition Trust Authority to be excluded from Medicaid eligibility determinations.

## **Copies of trust instruments**

- Requires a Medicaid applicant or recipient who is a beneficiary of a trust to submit a complete copy of the trust instrument to the relevant county department of job and family services (CDJFS) and ODM and specifies that the copies are confidential and not public records.

## **Third-party payers**

- Requires a medical assistance recipient and the recipient's attorney, if any, to cooperate with each of the recipient's medical providers by disclosing third-party payer information to the providers, specifies liability for failure to make those disclosures, and clarifies who must be notified about recovery actions.
- Beginning January 1, 2014, authorizes ODM to assign to a provider its right of recovery against a third party for a claim for medical assistance if ODM notifies the provider that ODM intends to recoup ODM's prior payment for the claim.
- Requires a third party, if ODM makes such an assignment, to do both of the following: (1) treat the provider as ODM, and (2) pay the provider the greater of (a) the amount ODM intends to recoup from the provider for the claim, or (b) the amount that is to be paid under an agreement between the third party and the provider.
- Repeals a provision that gives ODJFS a right of subrogation for workers' compensation benefits payable to a person who is subject to a child or spousal support order and who is a Medicaid recipient.

## **Provider agreements**

- Requires all Medicaid provider agreements to be time-limited.
- Eliminates the phase-in period for subjecting Medicaid provider agreements to time limits.
- Provides that Medicaid provider agreements expire after a maximum of five (rather than seven) years.



- Requires that rules regarding time-limited Medicaid provider agreements be consistent with federal regulations governing provider screening and enrollment and include a process for revalidating providers' continued enrollment as providers rather than a process for re-enrolling providers.
- Requires ODM to refuse to revalidate a Medicaid provider agreement if the provider fails to file a complete application for revalidation within the time and in the manner required by the revalidation process.
- Provides that, if a provider continues operating under an expired Medicaid provider agreement while waiting for ODM to revalidate the agreement and ODM decides against revalidation, Medicaid payments are not to be made for services provided beginning on the date the provider agreement expired and ending on the effective date of a subsequent provider agreement.
- Provides that ODM is not required to issue an adjudication order in accordance with the Administrative Procedure Act when it (1) denies an application for a Medicaid provider agreement because the application is not complete or (2) under certain circumstances, refuses to revalidate a provider agreement because the provider fails to file a complete application within the required time and in the required manner.
- Clarifies that the requirement to pay an application fee for a Medicaid provider agreement applies to former providers that seek re-enrollment as providers as well as providers seeking initial provider agreements or revalidation.
- Provides that application fees are nonrefundable when collected in accordance with a federal regulation governing such fees.
- Expressly permits the ODM Director to deny, refuse to revalidate, or terminate a Medicaid provider agreement for any type of provider, rather than only nursing facilities and intermediate care facilities for individuals with intellectual disabilities (ICFs/IID), when the Director determines that the action is in the best interests of Medicaid recipients or the state.
- Permits the ODM Director to exclude an individual, provider of services or goods, or other entity from participation in the Medicaid program when the Director determines that the exclusion is in the best interests of Medicaid recipients or the state.
- Permits the ODM Director to suspend a Medicaid provider agreement for any reason permitted or required by federal law and when the Director determines that the suspension is in the best interests of Medicaid recipients or the state.

- Eliminates a requirement that ODM issue an order pursuant to an adjudication conducted in accordance with the Administrative Procedure Act when entering into or revalidating a Medicaid provider agreement but maintains a requirement for such an order when ODM refuses to enter into or revalidate a provider agreement.
- Permits, until January 1, 2015, a nursing facility provider to exclude one or more of its parts from a Medicaid provider agreement if (1) the facility initially obtained its license and Medicaid certification on or after January 1, 2008, (2) the facility is located in a county that has more long-term care beds than it needs, (3) federal law permits the exclusion, and (4) the provider gives ODM notice of the exclusion.
- Creates the Nursing Facility Distinct Part Advisory Workgroup and requires the Workgroup to develop findings regarding the impact that allowing nursing facilities to exclude distinct parts of their facilities from their Medicaid provider agreements would have on access to nursing facility services, quality of care, and purchasing strategies for nursing facility services provided to Medicaid recipients with specialized health care needs.
- Permits, until January 1, 2015, a nursing facility to refuse to admit a person because the person is or may, as a resident of the nursing facility, become a Medicaid recipient if at least 25% (rather than 80%) of its Medicaid-certified beds are occupied by Medicaid recipients at the time the person would otherwise be admitted.

### **Criminal records checks**

- Permits an individual to be any of the following despite having been found eligible for intervention in lieu of conviction for certain disqualifying offenses: (1) a Medicaid provider, (2) an owner, officer, or board member of a Medicaid provider, and (3) with certain exceptions, an employee of a Medicaid provider.
- Permits certain individuals receiving or deciding whether to receive services from the subject of a criminal records check to receive the results of that records check.

### **Interest on excess payments**

- Requires a Medicaid provider who, without intent, obtains excess Medicaid payments to pay interest on the excess payments at the average bank prime rate in effect on the first day of the calendar quarter during which the provider receives notice of the excess payment.

## **Dispensing fee; generic drug copayments**

- Sets the Medicaid dispensing fee for noncompounded drugs at \$1.80 for the period beginning July 1, 2013, and ending on the effective date of a rule changing the amount of the fee.
- Effective July 1, 2014, provides that the survey used under continuing law to set the Medicaid drug dispensing fee applies to only Medicaid-participating terminal distributors of dangerous drugs (rather than retail pharmacy operations).
- Requires each terminal distributor that is a Medicaid provider to participate in the survey and provides that survey responses are confidential and not a public record.
- Provides for the Medicaid dispensing fee established in December of each even-numbered year to take effect the following July, rather than the following January.
- Eliminates the exclusion of generic drugs from Medicaid copayment requirements.

## **Miscellaneous payment rates**

- Would have required that the Medicaid payment rates for certain services provided by physician practice groups meeting requirements regarding hospital outpatient clinic services be determined in accordance with a preexisting Medicaid rule, and would have required ODM to report to the General Assembly on this provision within four years (VETOED).
- Provides for the Medicaid payment rates for hospital inpatient services to be the same as the Medicaid payment rates for the services in effect on June 30, 2013, until the effective date of the first of any ODM rules establishing new diagnosis-related groups for the services.
- Requires that the Medicaid payment rates for hospital outpatient services be, until June 30, 2015, the same as the Medicaid payment rates for the services in effect on June 30, 2015.
- Requires that the ODM Director, not earlier than January 1, 2014, reduce Medicaid payment rates for certain outpatient radiological services when repeated during the same session, establish varying payment rates for physician services based on the location of the services, and align Medicaid payment methodologies with Medicare payment methodologies.
- Establishes Medicaid payment amounts for noninstitutional services provided (from January 1, 2014 to July 1, 2015) to a dual eligible individual enrolled in Medicare Part B.

- Provides that specified persons are not eligible for Medicaid payments for providing certain nursing, home health aide, or private duty nursing services to the Medicaid recipient unless conditions specified by the ODM Director are met.

### **Mental health services**

- During fiscal years 2014 and 2015, permits Medicaid to cover inpatient psychiatric hospital services provided by psychiatric residential treatment facilities to Medicaid recipients under age 21 who are in the custody of the Ohio Department of Youth Services and have been identified as meeting a clinical criterion of serious emotional disturbance.
- Provides, for fiscal years 2014 and 2015, that a Medicaid recipient under age 21 satisfies all requirements for any prior authorization process for community mental health services provided under a Medicaid component administered by the Ohio Department of Mental Health and Addiction Services if the child meets certain requirements related to being an abused, neglected, dependent, unruly, or delinquent child.

### **Home health**

- Authorizes ODM to review Medicaid-covered home health nursing services, home health aide services, and private duty nursing services to improve efficiency and individual care in long-term care services.

### **Wheelchair, oxygen, and resident transportation services**

- Excludes, beginning January 1, 2014, custom wheelchair costs, repairs to and replacements of custom wheelchairs and parts, oxygen (other than emergency oxygen), and resident transportation services from the costs for bundled services included in the direct care costs that are part of nursing facilities' Medicaid-allowable costs and (2) beginning January 1, 2014, reduces to 86¢ (from \$1.88) the amount added, because of bundled services, to Medicaid rates paid for direct care costs.
- Requires the ODM Director, for the period beginning January 1, 2014, and ending June 30, 2015, to implement strategies for purchasing custom wheelchairs, oxygen (other than emergency oxygen), and resident transportation services for Medicaid recipients residing in nursing facilities.

### **Nursing facility services**

- To determine the Medicaid payment rates for nursing facilities in Mahoning and Stark counties for services provided during the period beginning October 1, 2013,



and ending on the first day of the first rebasing of the rates, provides that the facilities be treated as if they were in the peer group that includes such urban counties as Cuyahoga, Franklin, and Montgomery.

- Provides for nursing facilities located in Mahoning and Stark counties to be placed in the peer groups that include such urban counties as Cuyahoga, Franklin, and Montgomery counties when ODM first rebases nursing facilities' Medicaid payment rates.
- Revises the accountability measures that are used in determining nursing facilities' quality incentive payments under the Medicaid program for fiscal year 2015 and thereafter.
- Specifies a lower maximum quality incentive payment (\$13.16 rather than \$16.44 per Medicaid day) starting in fiscal year 2015 for nursing facilities that fail to meet at least one of the accountability measures regarding pain, pressure ulcers, physical restraints, urinary tract infections, and vaccinations.
- Would have provided for the total amount to be spent on quality bonuses paid to nursing facilities for a fiscal year to be \$30 million plus the amount, if any, that is budgeted for quality incentive payments but not spent (VETOED).
- Would have required ODM to pay the quality bonuses not later than the first day of each November (VETOED).
- Would have required a nursing facility to meet at least two of certain accountability measures to qualify for the quality bonus (VETOED).
- Establishes the following additional requirement for a nursing facility to qualify for a critical access incentive payment under Medicaid for a fiscal year: the nursing facility must have been awarded at least five points for meeting accountability measures and at least one of the points must have been for meeting specific accountability measures.
- Specifies the Medicaid cost report to be used to determine the occupancy rate used in setting a nursing facility's Medicaid rate for a reserved bed.
- Permits the ODM Director to establish as a Medicaid waiver program an alternative purchasing model for nursing facility services provided to Medicaid recipients with specialized health care needs during the period beginning July 1, 2013, and ending July 1, 2015.



- Requires ODM to terminate a nursing facility's Medicaid participation if the nursing facility is placed on the federal Special Focus Facility (SFF) list and fails to make improvements or graduate from the SFF program within certain periods of time.
- Requires the Ohio Department of Aging to provide technical assistance to such a nursing facility through the nursing home quality initiative at least four months before ODM would be required to terminate the nursing facility's Medicaid participation.
- Eliminates a requirement that a nursing facility that undergoes a change of operator that is an arm's length transaction, file a Medicaid cost report that covers the period beginning with the nursing facility's first day of operation under the new provider and ends on the first day of the month immediately following the first three full months of operation under the new provider.
- Permits ODM to conduct post-payment reviews of nursing facilities' Medicaid claims to determine whether overpayments have been made and requires nursing facilities to refund overpayments discovered by the reviews.
- Increases the monthly personal needs allowance for Medicaid recipients residing in nursing facilities.

### **Home and community-based services**

- For fiscal years 2014 and 2015, authorizes the ODM Director to contract with a person or government entity to collect patient liabilities for home and community-based services available under a Medicaid waiver component.
- Permits the ODM Director to create, as part of the Integrated Care Delivery System (ICDS), a Medicaid waiver program providing home and community-based services.
- Provides for eligible ICDS participants to be enrolled in the ICDS Medicaid waiver program instead of (1) the Medicaid-funded component of the PASSPORT program, (2) the Choices program, (3) the Medicaid-funded component of the Assisted Living program, (4) the Ohio Home Care program, and (5) the Ohio Transitions II Aging Carve-Out program.
- Requires the ODM Director to have the following additional Medicaid waiver programs cover home care attendant services: the Medicaid-funded component of the PASSPORT program and the ICDS Medicaid waiver program.



- During fiscal years 2014 and 2015, permits Medicaid to cover state plan home and community-based services for Medicaid recipients of any age who have behavioral health issues and countable incomes not exceeding 150% of the federal poverty line.
- Addresses administrative issues regarding termination of waiver programs.

### **Medicaid managed care**

- Eliminates a requirement that ODM prepare and submit to the General Assembly an annual report on the Medicaid care management system.
- Beginning January 1, 2014, prohibits the hospital inpatient capital payment portion of the payment made to Medicaid managed care organizations from exceeding any maximum rate that the ODM Director may establish in rules, and prohibits the organizations from compensating hospitals for inpatient capital costs in an amount that exceeds that rate.
- Provides that an agreement entered into between a Medicaid managed care participant, a participant's parent, or a participant's legal guardian that violates Ohio law regarding payment for emergency services is void and unenforceable.
- Beginning January 1, 2014, modifies provisions governing Medicaid payments for graduate medical education (GME) costs by (1) requiring the ODM Director to adopt rules that govern the allocation of payments for GME costs, and (2) eliminating provisions specifying how payments for GME costs are made under the Medicaid managed care system.
- Establishes 2% (an increase from 1%) as the maximum total amount of all Medicaid managed care premiums that may be withheld for the purpose of making performance payments to Medicaid managed care organizations through the Medicaid Managed Care Performance Fund.
- Modifies the uses of the Medicaid Managed Care Performance Payment Fund by (1) permitting, rather than requiring, amounts in the fund to be used to make performance payments and (2) permitting amounts to be used to meet provider agreement obligations or to pay for Medicaid services provided by a Medicaid managed care organization.
- For fiscal years 2014 and 2015, permits ODM to provide performance payments to Medicaid managed care organizations that provide care to participants of the Integrated Care Delivery System, and requires ODM to withhold a percentage of the premium payments made to the organizations for the purpose of providing the performance payments.





- Permits, rather than requires, ODM to recognize pediatric accountable care organizations that provide care coordination and other services under the Medicaid care management system to individuals under age 21 who are blind or disabled.
- Excludes (until July 1, 2014) certain recipients of services through the Bureau for Children with Medical Handicaps who have cystic fibrosis, hemophilia, or cancer from any required participation in the Medicaid care management system.

### **Sources of Medicaid revenues**

- Replaces the specific dollar amounts used for the franchise permit fee on nursing homes and hospital long-term care units with a formula for determining the amount of the franchise permit fee rate.
- Continues, for two additional years, both of the following: (1) the Hospital Care Assurance Program (HCAP) and (2) the assessments imposed on hospitals for purposes of obtaining funds for the Medicaid program.
- Requires ODM to continue the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program to provide supplemental Medicaid payments to hospitals for providing Medicaid-covered inpatient and outpatient services.
- Requires ODM to continue the Medicaid Managed Care Hospital Incentive Payment Program under which Medicaid managed care organizations are provided funds to increase payments to hospitals under contract with the organizations.

### **Recipient confidentiality**

- Reinstates the penalty (misdemeanor of the first degree) for violating confidentiality provisions regarding recipients of Medicaid, CHIP, or RMA.

### **Electronic health record and e-prescribing applications**

- Effective January 1, 2014, replaces a provision authorizing a Medicaid e-prescribing system for Medicaid with a provision authorizing the ODM Director to acquire or specify technologies to give information regarding Medicaid recipient eligibility, claims history, and drug coverage to Medicaid providers through certain electronic health record and e-prescribing applications.

### **State agency collaboration**

- Extends to fiscal years 2014 and 2015 provisions that authorize the Office of Health Transformation (OHT) Executive Director to facilitate collaboration between certain state agencies ("participating agencies") for health transformation purposes,



authorize the exchange of personally identifiable information between participating agencies regarding a health transformation initiative, and require the use and disclosure of such information in accordance with operating protocols.

- Includes ODM and the Ohio Department of Administrative Services (ODAS) as participating agencies.

### **Health information exchanges**

- Includes ODM and ODAS as state agencies to which covered entities may disclose certain protected health information.
- Transfers from the ODJFS Director to the ODM Director rule-making authority pertaining to (1) a standard authorization form for the use and disclosure of protected health information and substance abuse records by covered entities and (2) the operation of health information exchanges in Ohio.

### **Direct Care Worker Advisory Workgroup**

- Creates the Direct Care Worker Advisory Workgroup with the OHT Executive Director serving as chairperson and specifies the Workgroup's responsibilities, which include recommending policies to be incorporated in legislation regarding direct care worker certification.
- Requires the Workgroup to submit a report to the General Assembly not later than December 31, 2013, describing its findings and recommendations.

### **Medicaid data**

- Authorizes the ODM Director to enter into contracts with one or more persons to receive and process, on the Director's behalf, certain requests for Medicaid data by persons who intend to use the data for commercial or academic purposes.

### **Long-term services**

- Continues the Joint Legislative Committee for Unified Long-Term Services and Supports.
- Requires ODM, Ohio Department of Aging, and Ohio Department of Developmental Disabilities to have, by June 30, 2015, noninstitutionally based long-term services used by (1) at least 50% of Medicaid recipients who are age 60 or older and need long-term services and (2) at least 60% of Medicaid recipients who are under age 60 and have cognitive or physical disabilities for which long-term services are needed.

- Permits ODM to apply to participate in the federal Balancing Incentive Payments Program and requires that any funds Ohio receives be deposited into the Balancing Incentive Payments Program Fund.

### **Quality initiatives**

- Permits ODM to implement a quality incentive program to reduce available hospital and nursing facility admissions and emergency department utilizations by Medicaid recipients receiving certain home and community-based waiver services, home health services, or private duty nursing services.
- Permits the ODM Director to implement a children's hospitals quality outcomes program to encourage the development of certain programs and methods aimed at improving patient care and outcomes.
- Authorizes the ODM Director to develop and implement, during fiscal years 2014 and 2015, initiatives designed to improve birth outcomes for Medicaid recipients.

### **Veterans services**

- Authorizes ODM to collaborate with the Ohio Department of Veterans Services regarding the coordination of veterans' services and to implement, during fiscal years 2014 and 2015, certain initiatives that they determine will maximize the efficiency of the services and ensure that veterans' needs are met.

### **Health home services**

- Authorizes the ODM Director, in consultation with the Director of Developmental Disabilities, to develop and implement a system within the Medicaid program to provide health home services to Medicaid-eligible individuals with chronic health conditions and developmental disabilities.

### **Telemedicine policy workgroup**

- Creates a workgroup to study telemedicine and develop a comprehensive statewide policy encouraging its use.

### **Integrated Care Delivery System evaluation**

- Requires the ODM Director, if the ICDS is implemented, to conduct an annual evaluation of the ICDS unless the same evaluation is conducted for that year by an organization under contract with the U.S. Department of Health and Human Services.



## Funds

- Requires that federal payments made to Ohio for the Money Follows the Person demonstration project be deposited into the Money Follows the Person Enhanced Reimbursement Fund.
- Abolishes the Health Care Compliance Fund and provides for the money that would have been credited to that fund to be credited to the Managed Care Performance Payment Fund and the Health Care Services Administration Fund.
- Abolishes the Prescription Drug Rebates Fund and provides for the money that would have been credited to that fund to be credited to the Health Care/Medicaid Support and Recoveries Fund.

## Department of Medicaid created

(R.C. 121.02 (primary), 9.231, 9.239, 9.24, 101.39, 101.391, 103.144, 109.572, 109.85, 117.10, 119.01, 121.03, 122.15, 124.30, 127.16, 169.02, 173.20, 173.21, 173.39, 173.391, 173.394, 173.42, 173.425, 173.43, 173.431, 173.432, 173.433 (repealed), 173.434, 173.45, 173.47, 173.50, 173.501, 173.51, 173.52, 173.521, 173.522, 173.523, 173.53, 173.54, 173.541, 173.542, 173.543, 173.544, 173.545, 173.55, 191.04, 191.06, 317.08, 317.36, 329.04, 329.051, 329.06, 329.14, 340.03, 340.16, 340.192, 955.201, 1337.11, 1347.08, 1739.061, 1751.01, 1751.11, 1751.12, 1751.31, 1923.14, 2113.041, 2113.06, 2117.061, 2117.25, 2133.01, 2307.65, 2317.02, 2505.02, 2744.05, 2903.33, 2913.40, 2921.01, 3101.051, 3107.083, 3111.72, 3119.29, 3121.441, 3121.898, 3125.36, 3313.714, 3313.715, 3317.02, 3323.021, 3599.45, 3701.023, 3701.024, 3701.027, 3701.132, 3701.243, 3701.507, 3701.74, 3701.741, 3701.78, 3701.881, 3702.521, 3702.62, 3702.74, 3702.91, 3712.07, 3721.011, 3721.022, 3721.024, 3721.027, 3721.042, 3721.071, 3721.08, 3721.10, 3721.12, 3721.13, 3721.15, 3721.16, 3721.17, 3721.19, 3769.08, 3742.31, 3742.32, 3793.04, 3795.01, 3901.3814, 3923.281, 3923.443, 3923.50, 3923.601, 3923.83, 3924.42, 3963.04, 4121.50, 4141.162, 4715.36, 4719.01, 4723.18, 4729.80, 4731.151, 4731.71, 4755.481, 4761.01, 5101.01, 5101.11, 5101.141, 5101.16, 5101.162, 5101.18, 5101.181, 5101.183, 5101.184, 5101.26, 5101.272, 5101.273, 5101.30, 5101.35, 5101.36, 5101.47, 5101.49, 5101.503 (repealed), 5101.514 (repealed), 5101.515 (repealed), 5101.518 (repealed), 5101.523 (repealed), 5101.525 (repealed), 5101.526 (repealed), 5101.528 (repealed), 5101.529 (repealed), 5103.02, 5107.10, 5107.14, 5107.16, 5107.20, 5107.26, 5111.012 (repealed), 5111.014 (repealed), 5111.015 (repealed), 5111.0110 (repealed), 5111.0111 (repealed), 5111.0113 (repealed), 5111.0115 (repealed), 5111.0120 (repealed), 5111.0121 (repealed), 5111.0122 (repealed), 5111.0123 (repealed), 5111.0124 (repealed), 5111.0125 (repealed), 5111.176 (repealed), 5111.211 (repealed), 5111.236 (repealed), 5111.65 (repealed), 5111.70 (repealed), 5111.701 (repealed), 5111.702 (repealed), 5111.703



(repealed), 5111.704 (repealed), 5111.705 (repealed), 5111.706 (repealed), 5111.707 (repealed), 5111.708 (repealed), 5111.709 (repealed), 5111.7011 (repealed), 5111.8710 (repealed), 5111.8811 (repealed), 5119.061, 5119.351, 5119.61, 5119.69, 5120.65, 5120.652, 5120.654, 5123.01, 5123.021, 5123.0412, 5123.0417, 5123.171, 5123.19, 5123.192, 5123.197, 5123.198, 5123.38, 5126.01, 5126.054, 5126.055, 5309.082, 5731.39, 5739.01, 5747.122, and 5751.081; R.C. Chapters 5124., 5160., 5161., 5162., 5163., 5164., 5165., 5166., 5167., and 5168.; Sections 209.50, 259.260, 259.270, 323.10.10, 323.10.20, 323.10.30, 323.10.40, 323.10.50, 323.10.60, 323.10.70, 323.480, 610.20, and 610.21)

### **Single state agency**

Federal law requires a state participating in the Medicaid program to provide for the establishment or designation of a single state agency to administer or to supervise the administration of the Medicaid state plan.<sup>134</sup> Prior state law established the Office of Medical Assistance as a unit within the Ohio Department of Job and Family Services (ODJFS) and required the Office to act as the single state agency to supervise the administration of the Medicaid program. Effective July 1, 2013, the act abolishes the Office and creates the Ohio Department of Medicaid (ODM).<sup>135</sup> ODM replaces the Office as the single state agency to supervise the administration of the Medicaid program.

In addition to being responsible for Medicaid, the act provides for ODM to also oversee the administration of the Children's Health Insurance Program (CHIP) and the Refugee Medical Assistance (RMA) program. The act collectively identifies the programs that ODM is to administer as medical assistance programs. "Medical assistance program" is defined as including any program, in addition to Medicaid, CHIP, and RMA, that provides medical assistance and that state statutes authorize ODM to administer.

### **ODM Director**

The act provides for the ODM Director to be the executive head of ODM. All duties conferred on ODM by law or order of the Director are under the Director's control and are to be performed in accordance with rules the Director adopts. The ODM Director is to be appointed by the Governor, with the advice and consent of the Senate,

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<sup>134</sup> 42 U.S.C. 1396a(a)(5).

<sup>135</sup> ODM is created in a Revised Code (codified) section, R.C. 121.02, which is subject to the referendum and goes into effect on September 29, 2013. It is also created in an uncoded section (Section 323.10.10) that includes an earmark and is stated to be exempt from the referendum. The uncoded section provides for ODM to be created on July 1, 2013. The act provides that when ODM's creation under the codified section comes into effect, it is a continuation of ODM as created in the uncoded section.



and is to hold office during the Governor's term unless removed earlier at the pleasure of the Governor.

## **Staff**

The act requires the ODM Director to appoint one assistant director for ODM. The assistant director is to exercise powers, and perform duties, as ordered by the ODM Director. The assistant director is to act as the ODM Director in the Director's absence or disability and when the position of ODM Director is vacant.

The ODM Director is permitted by the act to appoint employees as are necessary for ODM's efficient operation. The Director may prescribe the title and duties of the employees.

Continuing law permits the Ohio Department of Administrative Services (ODAS) Director to fill without competition a position in the classified service that requires peculiar and exceptional qualifications of a scientific, managerial, professional, or educational character. To do this, there must be satisfactory evidence that for specified reasons competition in a special case is impracticable and that the position can best be filled by a person of high and recognized attainments in the qualifications.<sup>136</sup> The act provides for the ODM Director to provide the ODAS Director certification of a determination that a position with ODM can best be filled without competition because it requires peculiar and exceptional qualifications of a scientific, managerial, professional, or educational character. The ODAS Director is to suspend the competition requirement on receipt of the ODM Director's certification. The act also requires the ODM Director to provide the ODAS Director certification of a determination that a position with ODM can best be filled without regard to a residency requirement established by an ODAS rule.

Continuing law authorizes a public office to participate with the Bureau of Criminal Identification and Investigation (BCII) Superintendent in a fingerprint database program under which the Superintendent notifies the public office if an employee of the public office whose name is in the fingerprint database has been arrested for, convicted of, or pleaded guilty to any offense.<sup>137</sup> The act requires ODM to collaborate with the Superintendent to develop procedures and formats necessary to produce the notices in a format that is acceptable for use by ODM.

The act permits the ODM Director to require any of the employees of ODM who may be charged with custody or control of any public money or property or who is

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<sup>136</sup> R.C. 124.30.

<sup>137</sup> R.C. 109.5721, not in the act.



required to give bond, to give a bond, properly conditioned, in a sum to be fixed by the Director which, when approved by the Director, is to be filed in the Office of the Secretary of State. The costs of the bonds, when approved by the Director, must be paid from funds available for ODM. The bonds may, in the Director's discretion, be individual, schedule, or blanket bonds.

### **Administrative issues related to the creation of ODM**

The act includes the following provisions addressing administrative issues regarding the creation of ODM and the transfer of the responsibilities regarding medical assistance programs to ODM.

- (1) Employees of the Office of Medical Assistance are transferred to ODM.
- (2) The vehicles and equipment assigned to the Office's employees are transferred to ODM.
- (3) The assets, liabilities, other equipment not provided for, and records, irrespective of form or medium, of the Office are transferred to ODM.
- (4) ODM is named as the successor to, assumes the obligations of, and otherwise constitutes the continuation of, the Office.
- (5) Business commenced but not completed on July 1, 2013, by the Medical Assistance Director, Office, ODJFS Director, or ODJFS regarding a medical assistance program is to be completed by the ODM Director or ODM in the same manner, and with the same effect, as if completed by the Medical Assistance Director, Office, ODJFS Director, or ODJFS.
- (6) No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer but is to be administered by the ODM Director or ODM.
- (7) The rules, orders, and determinations pertaining to the Office and ODJFS regarding medical assistance programs continue in effect as rules, orders, and determinations of ODM until modified or rescinded by ODM.
- (8) No judicial or administrative action or proceeding pending on July 1, 2013, is affected by the transfer of functions from the Medical Assistance Director, Office, ODJFS Director, or ODJFS to the ODM Director or ODM and is to be prosecuted or defended in the name of the ODM Director or ODM.
- (9) On application to a court or other tribunal, the ODM Director or ODM must be substituted as a party in such actions and proceedings.





## **Creation of ODM not subject to collective bargaining**

The act provides that the creation of ODM and reassignment of the functions and duties of the Office of Medical Assistance regarding medical assistance programs are not appropriate subjects for collective bargaining under the state's law governing public employee collective bargaining.

## **Temporary authority regarding employees**

During the period beginning July 1, 2013, and ending June 30, 2015, the ODM Director has the authority under the act to establish, change, and abolish positions for ODM, and to assign, reassign, classify, reclassify, transfer, reduce, promote, or demote all employees of ODM who are not subject to the state's public employees collective bargaining law. As part of the transfer of medical assistance programs to ODM, the ODJFS has corresponding authority regarding ODJFS employees.

The authority described above includes assigning or reassigning an exempt employee to a bargaining unit classification if the ODM Director or ODJFS Director determines that the bargaining unit classification is the proper classification for that employee.<sup>138</sup> The actions of the ODM Director or ODJFS Director must comply with the requirements of a federal regulation establishing standards for a merit system of personnel administration. If an employee in the E-1 pay range is to be assigned, reassigned, classified, reclassified, transferred, reduced, or demoted to a position in a lower classification, the ODM Director or ODJFS Director, or in the case of a transfer outside ODM or ODJFS, the ODAS Director, must assign the employee to the appropriate classification and place the employee in Step X. The employee is not to receive any increase in compensation until the maximum rate of pay for that classification exceeds the employee's compensation. Actions the ODM Director, ODJFS Director, and ODAS Director take under this provision of the act are not subject to appeal to the State Personnel Board of Review.

## **Staff training regarding transfers**

The act permits the ODM Director and ODJFS Director to jointly or separately enter into one or more contracts with public or private entities for staff training and development to facilitate the transfer of the staff and duties regarding medical assistance programs to the ODM. The state's law governing competitive selection for purchases does not apply to contracts entered into under this provision of the act.

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<sup>138</sup> An exempt employee is a permanent full-time or permanent part-time employee paid directly by warrant of the OBM Director whose position is included in the job classification plan established by the ODAS Director but who is not considered a public employee for purposes of Ohio's collective bargaining law. (R.C. 124.152, not in the act.)

## **New and amended grant agreements with counties**

The ODJFS Director and boards of county commissioners are permitted by the act to enter into negotiations to amend an existing grant agreement or to enter into a new grant agreement regarding the transfer of medical assistance programs to ODM. Any such amended or new grant agreement must be drafted in the name of ODJFS. The amended or new grant agreement may be executed before July 1, 2013, if the amendment or agreement does not become effective sooner than that date.

## **Renumbering administrative rules**

On and after October 1, 2013, if necessary to ensure the integrity of the numbering of the Administrative Code, the Legislative Service Commission Director is required to renumber the rules of the Office of Medical Assistance within ODJFS to reflect its transfer to ODM.

## **ODM given various authorities similar to ODJFS**

The act gives ODM and the ODM Director many of the same types of responsibilities and authorities that ODJFS and the ODJFS Director have regarding administrative and program matters. These responsibilities and authorities are discussed below.

### **Rule-making procedures**

There are two general statutory processes under which a state agency may adopt a rule: R.C. Chapter 119. (known as the Administrative Procedure Act) and R.C. 111.15 (known as the abbreviated rule-making procedure). The major difference between them is that Chapter 119. requires an agency to provide public notice and conduct a hearing on a proposed rule before its adoption; R.C. 111.15 does not.

The act gives the ODM Director the same direction regarding which rule-making procedure to follow as continuing law gives the ODJFS Director.<sup>139</sup> It provides that, when authorized by statute to adopt a rule, the Director must adopt the rule in accordance with R.C. Chapter 119. if (1) the statute requires that it be adopted in that manner or (2) except as provided below, the statute does not specify the procedure for the rule's adoption.

The Director is to adopt a rule in accordance with R.C. 111.15 (without the requirement that the rule be filed with the Joint Committee on Agency Rule Review (JCARR)) if (1) the statute authorizing the rule requires that the rule be adopted in

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<sup>139</sup> R.C. 5101.09, not in the act.



accordance with R.C. 111.15 and, by the terms of that section, the requirement that it be filed with JCARR does not apply or (2) the statute does not specify the procedure for the rule's adoption and the rule concerns the day-to-day staff procedures and operations of ODM or financial and operational matters between ODM and a person or government entity receiving a grant from ODM. The Director is to adopt a rule in accordance with R.C. 111.15, including the requirement that it be filed it with JCARR, if the statute requires that the rule be adopted in accordance with that section and the rule is not exempt from the JCARR requirement.

Except as otherwise required by a statute, the adoption of a rule in accordance with Chapter 119. does not make ODM subject to the notice, hearing, or other requirements of the Administrative Procedure Act.

### **Funding issues**

The act permits the ODM Director to expend funds appropriated or available to ODM from persons and government entities. For this purpose, the Director may enter into contracts or agreements with persons and government entities and make grants to persons and government entities. To the extent permitted by federal law, the Director may advance funds to a grantee when necessary for the grantee to perform duties under the grant as specified by the Director. ODJFS has the same type authority under continuing law regarding funds appropriated or available to ODJFS.<sup>140</sup>

The act creates the State Health Care Grants Fund in the state treasury. Money ODM receives from private foundations in support of pilot projects that promote exemplary programs that enhance programs ODM administers are to be credited to the fund. ODM is permitted to expend the money on such projects, may use the money, to the extent allowable, to match federal financial participation in support of such projects, and must comply with requirements the foundations have stipulated in their agreements with ODM as to the purposes for which the money may be expended. The State Health Care Grants Fund is similar to ODJFS's Foundation Grant Fund.<sup>141</sup>

Continuing law permits ODJFS, at the request of any public entity having authority to implement an ODJFS-administered program or any private entity under contract with a public entity to implement such a program, to seek federal financial participation for costs the entity incurs.<sup>142</sup> The act gives ODM this authority regarding the medical assistance programs it administers.

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<sup>140</sup> R.C. 5101.10, not in the act.

<sup>141</sup> R.C. 5101.111, not in the act.

<sup>142</sup> R.C. 5101.11.



The act authorizes ODM to enter into contracts with private entities to maximize federal revenue without the expenditure of state money. In selecting private entities with which to contract, ODM must engage in a request for proposals process. Subject to the Controlling Board's approval, ODM may also directly enter into contracts with public entities providing revenue maximization services. ODJFS has this authority under continuing law.<sup>143</sup>

### **Investigations and audits**

Continuing law permits ODJFS to appoint and commission any competent person to serve as a special agent, investigator, or representative to perform a designated duty for and on behalf of ODJFS. ODJFS must give specific credentials to each person so designated, and each credential must state the person's name, the agency with which the person is connected, the purpose of the appointment, the date the appointment expires (if appropriate), and information ODJFS considers proper.<sup>144</sup> The act gives this authority to ODM.

ODM is permitted to conduct any audits or investigations that are necessary in the performance of its duties. For this purpose, ODM is given the same power as a judge of a county court to administer oaths and to enforce the attendance and testimony of witnesses and the production of books or papers. ODM is required to keep a record of its audits and investigations stating the time, place, charges, or subject; witnesses summoned and examined; and its conclusions. Witnesses are to be paid the fees and mileage provided for by the Administrative Procedure Act (R.C. Chapter 119.). ODJFS has this authority under continuing law.<sup>145</sup>

As under continuing law regarding ODJFS, a court of common pleas, on ODM's application, may compel the attendance of witnesses, the production of books or papers, and the giving of testimony before ODM, by a judgment for contempt or otherwise, in the same manner as in cases before those courts.<sup>146</sup>

An audit report and any working paper, other document, and record that ODM prepares for an audit that is the subject of the audit's report is not a public record until ODM formally releases the report. This is the case with ODJFS under continuing law.<sup>147</sup>

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<sup>143</sup> R.C. 5101.12, not in the act.

<sup>144</sup> R.C. 5101.38, not in the act.

<sup>145</sup> R.C. 5101.37(A), not in the act.

<sup>146</sup> R.C. 5101.37(C), not in the act.

<sup>147</sup> R.C. 5101.37(D), not in the act.



The act gives the State Auditor authority to take actions on ODM's behalf as the Auditor may do under continuing law for ODJFS.<sup>148</sup> Specifically, the Auditor, on the ODM Director's request, may conduct an audit of any recipient of a medical assistance program. If the Auditor decides to conduct an audit, the Auditor must enter into an interagency agreement with ODM that specifies that the Auditor agrees to comply with state law that restricts the release of information about medical assistance program recipients.

The State Auditor and Attorney General, or their designees, are permitted by the act to examine any records, whether in computer or printed format, in the possession of the ODM Director or any county director of job and family services regarding medical assistance programs. The Auditor and Attorney General have this authority under continuing law applicable to ODJFS.<sup>149</sup> The Auditor and Attorney General must (1) provide safeguards that restrict access to the records to purposes directly connected with an audit or investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of the programs and (2) comply, and ensure that their designees comply, with state law restricting the disclosure of information regarding medical assistance recipients. Any person who fails to comply with the restrictions is disqualified from acting as an agent or employee or in any other capacity under appointment or employment of any state board, commission, or agency.

The act makes the State Auditor responsible for the costs the Auditor incurs in carrying out the duties discussed above. The Auditor is responsible for such costs under continuing law regarding ODJFS.<sup>150</sup>

### **Assignment of rights and third party liability**

The act provides for provisions of law regarding assignment of rights and third party liability to apply to all medical assistance programs ODM administers. Under prior law, certain provisions expressly applied only to Medicaid and others expressly applied to Medicaid and CHIP. For example, prior law required third parties to cooperate with ODJFS in identifying individuals for the purpose of establishing third party liability for Medicaid only.<sup>151</sup> The act requires instead that third parties cooperate

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<sup>148</sup> R.C. 5101.181(E).

<sup>149</sup> R.C. 5101.181(G).

<sup>150</sup> R.C. 5101.181(H).

<sup>151</sup> R.C. 5101.572.



with ODM in identifying individuals for the purpose of establishing third party liability regarding all medical assistance programs that ODM administers.<sup>152</sup>

Certain parts of prior law governing assignment of rights and third party liability applied to the Ohio Works First program, which is one of the state's Temporary Assistance for Needy Families programs. The laws regarding assignment of rights and third party liability concern the state's ability to recoup expenses its incurs for medical assistance, but the Ohio Works First program provides cash assistance not medical assistance. The act, therefore, removes the Ohio Works First program from the application of these laws.

### **Confidentiality of medical assistance information**

As part of the transfer of the responsibilities regarding medical assistance programs from the Office of Medical Assistance within ODJFS to ODM, the act assigns to ODM the types of duties ODJFS had under prior law regarding the restrictions on the release of information about medical assistance recipients. The act also requires ODM to enter into any necessary agreements with the U.S. Department of Health and Human Services and neighboring states to join and participate as an active member in the Public Assistance Reporting Information System. ODM is permitted to disclose information regarding a medical assistance recipient to the extent necessary to participate as an active member in the system. ODJFS continues to be required to enter into such agreements regarding the programs ODJFS administers.<sup>153</sup>

### **Income and eligibility verification system**

Continuing law requires the ODJFS Director to establish an income and eligibility verification system (IEVS) that complies with federal law. Several programs use IEVS as part of their eligibility determination procedures, including the Unemployment Compensation program, Temporary Assistance for Needy Families programs, and the Supplemental Nutrition Assistance Program (also known as the Food Stamp program). Because the Medicaid program is another program that uses IEVS, the act requires the ODJFS Director to consult with the ODM Director regarding the implementation of IEVS. The act also requires the ODJFS Director to consult with the ODAS Director regarding IEVS's implementation.

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<sup>152</sup> R.C. 5160.39.

<sup>153</sup> R.C. 5101.273.





## Eligibility determinations

Prior law permitted the Office of Medical Assistance to accept applications, determine eligibility, redetermine eligibility, and perform related administrative activities for Medicaid and CHIP. The Office also could enter into agreements with one or more other state agencies, local government entities, or political subdivisions to accept applications, determine eligibility, redetermine eligibility, and perform related administrative activities on behalf of the Office with respect to Medicaid and CHIP.<sup>154</sup>

The act gives ODM the Office's authority to accept applications, determine eligibility, redetermine eligibility, and perform related administrative activities for Medicaid and CHIP. ODM is also given this authority for the other medical assistance program, RMA. The act permits ODM to enter into agreements with one or more agencies of the federal government, the state, other states, and local governments of this or other states to accept applications, determine eligibility, redetermine eligibility, and perform related administrative activities on behalf of ODM with respect to medical assistance programs.

The act maintains provisions of law regarding eligibility determinations for Medicaid and CHIP previously applicable to the Office and makes them applicable to ODM and all three medical assistance programs. Specifically, if federal law requires a face-to-face interview to complete an eligibility determination for a medical assistance program, ODM is prohibited from conducting the face-to-face interview. If ODM elects to accept applications, determine eligibility, redetermine eligibility, and perform related administrative activities for a medical assistance program, (1) an individual may apply for the program to ODM or an agency authorized by an agreement with ODM to accept the individual's application and (2) ODM is subject to federal statutes and regulations and state statutes and rules that require, permit, or prohibit an action regarding accepting applications, determining or redetermining eligibility, and performing related administrative activities for the program.

Prior law was inconsistent regarding the role of county departments of job and family services in making Medicaid and CHIP eligibility determinations. As discussed above, the Office was authorized to make Medicaid and CHIP eligibility determinations and to enter into agreements with one or more local government entities to make the eligibility determinations. Prior law required county departments to make Medicaid eligibility determinations if the Office elected to enter into agreements with county departments to have them make Medicaid eligibility determinations. However, prior law also required county departments to make Medicaid eligibility determinations for

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<sup>154</sup> R.C. 5101.47.





Supplemental Security Income (SSI) recipients and, if assigned by the Medical Assistance Director, make eligibility determinations for Part II or III of CHIP. The act eliminates the provisions that expressly provide for county departments to make eligibility determinations.

## **Appeals**

Prior law permitted a Medicaid applicant, recipient, or former recipient who disagreed with a decision regarding Medicaid to receive a state hearing by ODJFS. The individual could make an administrative appeal of the state hearing decision to the ODJFS Director and, if the individual disagreed with the administrative appeal decision, to a court of common pleas.<sup>155</sup>

The act provides that an individual who is an applicant for, or recipient or former recipient of, any of the three medical assistance programs may appeal a decision regarding the individual's eligibility for the program or services available to the recipient under the program. ODM is required to do one or more of the following regarding such appeals:

- (1) Administer an appeals process similar to the ODJFS appeals process;
- (2) Contract with ODJFS to provide for ODJFS to hear the appeals;
- (3) Delegate authority to hear appeals to an Exchange or Exchange appeals entity.<sup>156</sup>

If an individual files an appeal regarding a medical assistance program, ODM is permitted to (1) take corrective action regarding the matter being appealed before a hearing decision regarding the matter is issued and (2) if a hearing decision, administrative appeal decision, or court ruling is against the individual, take action in favor of the individual despite the contrary decision or ruling, unless, in the case of a court's ruling, the ruling prohibits ODM from taking the action.

## **Relocation and reorganization of Revised Code sections**

The act relocates and reorganizes many provisions of the Revised Code governing medical assistance programs as part of the creation of ODM and the transfer

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<sup>155</sup> R.C. 5101.35.

<sup>156</sup> An Exchange is a governmental agency or nonprofit entity that meets applicable standards of federal regulations adopted under the Patient Protection and Affordable Care Act and makes qualified health plans available to qualified individuals and qualified employers. An Exchange may be a state Exchange, regional Exchange, subsidiary Exchange, or federally facilitated Exchange. (45 C.F.R. 155.20.)

of the programs to ODM. See below for tables regarding the relocations and reorganizations.

As part of the reorganization, the act creates the following ten new Revised Code chapters:

(1) Chapter 5124. (administration by the Ohio Department of Developmental Disabilities of Medicaid's coverage of intermediate care facility for individuals with intellectual disabilities (ICF/IID) services);

(2) Chapter 5160. (general administrative provisions, provisions applying to all medical assistance programs, and ODM's administration of RMA);

(3) Chapter 5161. (ODM's administration of CHIP);

(4) Chapter 5162. (ODM's administration of Medicaid and Medicaid funds);

(5) Chapter 5163. (Medicaid eligibility);

(6) Chapter 5164. (Medicaid state plan services, other than ICF/IID and nursing facility services, and general Medicaid provider issues);

(7) Chapter 5165. (Medicaid's coverage of nursing facility services);

(8) Chapter 5166. (federal Medicaid waiver programs);

(9) Chapter 5167. (Medicaid managed care);

(10) Chapter 5168. (Hospital Care Assurance Program and other health care provider assessments and fees).

The act provides that the ODM Director is not required to amend any rule for the sole purpose of updating the citation in the Ohio Administrative Code to the rule's authorizing statute to reflect that the act renumbers the authorizing statute or relocates it to another Revised Code section. Such citations are to be updated as the Director amends the rules for other purposes.<sup>157</sup>

### **Duplicative statutes**

Many prior statutes governing Medicaid included provisions that were repeated in other statutes. The act, instead, creates general statutes that deal with particular

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<sup>157</sup> Similar authority is given to the Director of Aging and Director of Developmental Disabilities regarding updating citations to authorizing statutes in their rules.



issues, such as the need to obtain federal approval before implementing changes to the Medicaid program. The following are examples of these general statutes.

### **Compliance with federal requirements**

Whereas prior law included a number of provisions that required or permitted the Office of Medical Assistance to seek federal approval to implement the various components of the Medicaid program included in state statutes, the act establishes general statutes that apply to all other statutes that require or permit Medicaid to include various components.

Under the act, the Medicaid program must be implemented in accordance with (1) the Medicaid state plan approved by the U.S. Secretary of Health and Human Services, including amendments to the plan approved by the U.S. Secretary, (2) federal Medicaid waivers granted by the U.S. Secretary, including amendments to waivers approved by the U.S. Secretary, (3) other types of federal approval, including demonstration grants, that establish requirements for components of the Medicaid program, (4) except as otherwise authorized by a federal Medicaid waiver granted by the U.S. Secretary, all applicable federal statutes, regulations, and policy guidances, and (5) all applicable state statutes.

Notwithstanding any other state statute, no component, or aspect of a component, of the Medicaid program is to be implemented without (1) receipt of federal approval if the component, or aspect of the component, requires federal approval, (2) sufficient federal financial participation for the component or aspect of the component, and (3) sufficient nonfederal funds for the component or aspect of the component that qualify as funds needed to obtain the federal financial participation. A component, or aspect of a component, of the Medicaid program that requires federal approval may begin to be implemented before receipt of federal approval, however, if federal law authorizes implementation to begin before receipt of federal approval. Implementation must cease if the federal approval is ultimately denied.

The ODM Director is required to seek federal approval for all components, and aspects of components, of the Medicaid program for which federal approval is needed, except that the Director is permitted rather than required to seek federal approval for components, and aspects of components, that state statutes permit rather than require be implemented. Federal approval must be sought in the following forms as appropriate:

- (1) The Medicaid state plan;
- (2) Amendments to the Medicaid state plan;



- (3) Federal Medicaid waivers;
- (4) Amendments to federal Medicaid waivers;
- (5) Other types of federal approval, including demonstration grants.

### **ODM's authorizing rules for other state agencies**

Continuing state law authorizes ODM to contract 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 ODM's supervision. A federal regulation, however, prohibits a state's Medicaid agency from delegating, to other than its own officials, authority to issue policies, rules, and regulations on program matters. To address this federal regulation, prior law included a number of provisions that required or permitted the state Medicaid agency to adopt rules that authorize other state agencies that are administering a component, or aspect of a component, of the Medicaid program to adopt rules regarding the component or aspect of a component the other state agency administers.

The act eliminates the authorizing provisions and creates a general statute addressing the issue. The general statute requires the ODM Director to adopt rules as necessary to authorize the directors of other state agencies to adopt rules regarding Medicaid components, or aspects of Medicaid components, the other state agencies administer pursuant to contracts with ODM.

### **Medical assistance programs relocation tables**

In the reorganization of the laws governing Medicaid, the act renumbers numerous Revised Code sections and moves provisions of some sections that are not renumbered to other sections of the Revised Code by amending preexisting sections and enacting provisions in new sections. Regarding the movement of provisions, the act does all of the following:

- (1) Copies, sometimes with modifications, parts of law regarding administrative matters regarding ODJFS and enacts them in new Revised Code sections that apply to ODM;

- (2) Relocates provisions of law governing Medicaid coverage of ICF/IID services to a new Revised Code chapter next to the Revised Code chapter regarding the Ohio Department of Developmental Disabilities, the agency assuming responsibilities regarding Medicaid coverage of ICF/IID services;



(3) Relocates other provisions of law regarding Medicaid to new Revised Code sections.

Table I shows the renumbering of Revised Code sections. Table II shows where certain provisions were located in prior law and where they are located in the act. As used in Table II, "ICFs/IID" refers to provisions regarding intermediate care facilities for individuals with intellectual disabilities and "NFs" refers to provisions regarding nursing facilities.

**Table I**

<b>Renumbered Revised Code sections</b>	
<b>R.C. section number under prior law</b>	<b>R.C. section number under the act</b>
173.40	173.52
173.401	173.521
173.402	173.524
173.403	173.53
173.404	173.55
3721.50	5168.40
3721.51	5168.42
3721.511	5168.43
3721.512	5168.44
3721.513	5168.45
3721.52	5168.46
3721.53	5168.47
3721.531	5168.48
3721.532	5168.49
3721.533	5168.50
3721.54	5168.51
3721.541	5168.52
3721.55	5168.53
3721.56	5168.54
3721.57	5168.55
3721.58	5168.56
5101.271	5160.45
5101.31	5164.756
5101.50	5161.05



<b>Renumbered Revised Code sections</b>	
<b>R.C. section number under prior law</b>	<b>R.C. section number under the act</b>
5101.501	5161.06
5101.502	5161.02
5101.51	5161.10
5101.511	5161.11
5101.5110	5161.35
5101.512	5161.12
5101.513	5161.30
5101.516	5161.22
5101.517	5161.24
5101.519	5161.27
5101.52	5161.15
5101.521	5161.16
5101.522	5161.17
5101.524	5161.20
5101.527	5161.25
5101.571	5160.35
5101.572	5160.39
5101.573	5160.40
5101.574	5160.41
5101.575	5160.42
5101.58	5160.37
5101.59	5160.38
5101.591	5160.43
5111.01	5162.03
5111.011	5163.02
5111.013	5163.40
5111.016	5164.26
5111.018	5164.07
5111.0112	5162.20
5111.0114	5164.754
5111.0116	5163.30
5111.0117	5163.31



<b>Renumbered Revised Code sections</b>	
<b>R.C. section number under prior law</b>	<b>R.C. section number under the act</b>
5111.0118	5163.32
5111.0119	5163.45
5111.02	5164.02
5111.021	5164.70
5111.022	5164.56
5111.023	5164.15
5111.024	5164.08
5111.025	5164.76
5111.027	5164.20
5111.028	5164.32
5111.029	5164.06
5111.0210	5164.92
5111.0211	5165.48
5111.0212	5164.80
5111.0213	5164.77
5111.0214	5164.82
5111.0215	5164.93
5111.03	5164.35
5111.031	5164.37
5111.032	5164.34
5111.033	5164.342
5111.034	5164.341
5111.035	5164.36
5111.04	5164.05
5111.042	5164.25
5111.05	5164.45
5111.051	5164.48
5111.052	5164.46
5111.053	5164.301
5111.054	5164.47
5111.06	5164.38
5111.061	5164.57





<b>Renumbered Revised Code sections</b>	
<b>R.C. section number under prior law</b>	<b>R.C. section number under the act</b>
5111.062	5164.39
5111.063	5164.31
5111.07	5164.752
5111.071	5164.753
5111.08	5164.759
5111.081	5164.755
5111.082	5164.751
5111.083	5164.757
5111.084	5164.7510
5111.085	5164.758
5111.086	5164.75
5111.09	5162.13
5111.091	5162.131
5111.092	5162.132
5111.10	5162.10
5111.101	5162.15
5111.102	5162.04
5111.11	5162.21
5111.111	5162.211
5111.112	5162.212
5111.113	5162.22
5111.114	5163.33
5111.12	5162.23
5111.121	5162.24
5111.13	5164.85
5111.14	5164.88
5111.141	5164.89
5111.15	5163.20
5111.151	5163.21
5111.16	5167.03
5111.161	5167.031
5111.162	5167.20



<b>Renumbered Revised Code sections</b>	
<b>R.C. section number under prior law</b>	<b>R.C. section number under the act</b>
5111.163	5167.201
5111.17	5167.10
5111.171	5167.31
5111.172	5167.12
5111.173	5167.40
5111.174	5167.41
5111.175	5167.26
5111.177	5167.11
5111.178	5167.25
5111.179	5167.13
5111.1710	5167.14
5111.1711	5167.30
5111.18	5164.86
5111.181	5163.22
5111.19	5164.74
5111.191	5164.741
5111.20	5165.01
5111.201	5165.011
5111.202	5165.03
5111.203	5165.031
5111.204	5165.04
5111.21	5165.06
5111.212	5165.35
5111.22	5165.07
5111.221	5165.37
5111.222	5165.15
5111.223	5165.071
5111.224	5124.15
5111.225	5165.155
5111.226	5124.02
5111.23	5124.19
5111.231	5165.19



<b>Renumbered Revised Code sections</b>	
<b>R.C. section number under prior law</b>	<b>R.C. section number under the act</b>
5111.232	5165.192
5111.233	5124.194
5111.235	5124.23
5111.24	5165.16
5111.241	5124.21
5111.242	5165.21
5111.244	5165.25
5111.245	5165.26
5111.246	5165.23
5111.25	5165.17
5111.251	5124.17
5111.254	5165.151
5111.255	5124.151
5111.257	5165.28
5111.258	5165.153
5111.259	5165.156
5111.26	5165.10
5111.261	5165.107
5111.262	5165.47
5111.263	5124.29
5111.264	5165.30
5111.265	5165.29
5111.266	5165.101
5111.27	5165.108
5111.271	5165.1010
5111.28	5165.40
5111.29	5165.38
5111.291	5124.154
5111.30	5165.073
5111.31	5165.08
5111.32	5165.081
5111.33	5124.34



<b>Renumbered Revised Code sections</b>	
<b>R.C. section number under prior law</b>	<b>R.C. section number under the act</b>
5111.331	5165.34
5111.35	5165.60
5111.36	5165.61
5111.37	5165.62
5111.38	5165.63
5111.39	5165.64
5111.40	5165.65
5111.41	5165.66
5111.411	5165.67
5111.42	5165.68
5111.43	5165.69
5111.44	5165.70
5111.45	5165.71
5111.46	5165.72
5111.47	5165.73
5111.48	5165.74
5111.49	5165.75
5111.50	5165.76
5111.51	5165.77
5111.511	5165.78
5111.52	5165.79
5111.53	5165.80
5111.54	5165.81
5111.55	5165.82
5111.56	5165.83
5111.57	5165.84
5111.58	5165.85
5111.59	5165.86
5111.60	5165.87
5111.61	5165.88
5111.62	5162.66
5111.63	5165.89



<b>Renumbered Revised Code sections</b>	
<b>R.C. section number under prior law</b>	<b>R.C. section number under the act</b>
5111.66	5165.50
5111.661	5165.501
5111.67	5165.51
5111.671	5165.511
5111.672	5165.512
5111.673	5165.513
5111.674	5165.514
5111.675	5165.515
5111.676	5165.516
5111.677	5165.517
5111.68	5165.52
5111.681	5165.521
5111.682	5165.522
5111.683	5165.523
5111.684	5165.524
5111.685	5165.525
5111.686	5165.526
5111.687	5165.527
5111.688	5165.528
5111.689	5165.53
5111.70	5163.09
5111.701	5163.091
5111.702	5163.092
5111.703	5163.093
5111.704	5163.094
5111.705	5163.095
5111.706	5163.096
5111.707	5163.097
5111.708	5163.098
5111.709	5163.099
5111.7011	5163.0910
5111.71	5162.36



<b>Renumbered Revised Code sections</b>	
<b>R.C. section number under prior law</b>	<b>R.C. section number under the act</b>
5111.711	5162.361
5111.712	5162.362
5111.713	5162.363
5111.714	5162.64
5111.715	5162.364
5111.83	5162.30
5111.84	5166.03
5111.85	5166.02
5111.851	5166.04
5111.852	5166.05
5111.853	5166.06
5111.854	5166.07
5111.855	5166.08
5111.856	5166.10
5111.86	5166.11
5111.861	5166.12
5111.862	5166.121
5111.863	5166.13
5111.864	5166.14
5111.865	5166.141
5111.87	5166.20
5111.871	5166.21
5111.872	5166.22
5111.873	5166.23
5111.874	5124.60
5111.875	5124.61
5111.876	5124.62
5111.877	5124.63
5111.878	5124.64
5111.879	5124.65
5111.88	5166.30
5111.881	5166.301



<b>Renumbered Revised Code sections</b>	
<b>R.C. section number under prior law</b>	<b>R.C. section number under the act</b>
5111.882	5166.302
5111.883	5166.303
5111.884	5166.304
5111.885	5166.305
5111.886	5166.306
5111.887	5166.307
5111.888	5166.308
5111.889	5166.309
5111.8810	5166.3010
5111.89	173.54
5111.891	173.541
5111.892	173.544
5111.893	173.547
5111.894	173.542
5111.90	5162.32
5111.91	5162.35
5111.911	5162.37
5111.912	5162.371
5111.914	5164.58
5111.915	5162.11
5111.92	5162.40
5111.93	5162.41
5111.94	5162.54
5111.941	5162.52
5111.943	5162.50
5111.944	5162.58
5111.945	5162.56
5111.96	5164.90
5111.97	5166.35
5111.98	5162.031
5111.981	5164.91
5111.982	5167.21





<b>Renumbered Revised Code sections</b>	
<b>R.C. section number under prior law</b>	<b>R.C. section number under the act</b>
5111.99	5165.99
5112.01	5168.01
5112.03	5168.02
5112.04	5168.05
5112.05	5168.03
5112.06	5168.06
5112.07	5168.07
5112.08	5168.09
5112.09	5168.08
5112.10	5168.04
5112.11	5168.10
5112.17	5168.14
5112.18	5168.11
5112.19	5168.12
5112.21	5168.13
5112.30	5168.60
5112.31	5168.61
5112.32	5168.62
5112.33	5168.63
5112.331	5168.64
5112.34	5168.65
5112.341	5168.66
5112.35	5168.67
5112.37	5168.68
5112.371	5168.69
5112.38	5168.70
5112.39	5168.71
5112.40	5168.20
5112.41	5168.21
5112.42	5168.22
5112.43	5168.23
5112.44	5168.24



<b>Renumbered Revised Code sections</b>	
<b>R.C. section number under prior law</b>	<b>R.C. section number under the act</b>
5112.45	5168.25
5112.46	5168.26
5112.47	5168.27
5112.48	5168.28
5112.99	5168.99
5112.991	5168.991

**Table II**

<b>Relocation of Medicaid provisions</b>	
<b>Where the provision was found in prior law</b>	<b>Where the provision is found in the act</b>
173.40(A)	173.51
173.40(D)	173.522
173.401(A)	173.51
173.403(A)	173.51
5101.01	5160.011
5101.02	5160.03
5101.03	5160.04
5101.05	5160.05
5101.051	5160.051
5101.08	5160.06
5101.09	5160.021
5101.10	5160.10
5101.11	5160.12
5101.111	5160.11
5101.12	5160.13
5101.141(H)	5160.52
5101.181(A)(2)	5160.01(C)
5101.181(E)	5160.21
5101.181(G)	5160.22
5101.181(H)	5160.23
5101.26(C)	5160.45(A)



<b>Relocation of Medicaid provisions</b>	
<b>Where the provision was found in prior law</b>	<b>Where the provision is found in the act</b>
5101.26(E)	5160.01(D)
5101.26(F)	5160.01(E)
5101.272	5160.46
5101.273	5160.47
5101.30(A)	5160.48
5101.30(B)	5160.481
5101.32	5160.052
5101.36	5160.36
5101.37	5160.20
5101.38	5160.16
5101.47	5160.30
5101.49	5160.50
5111.01 (third and fourth sentences of the fourth paragraph of (B))	5162.022
5111.01(C)(2)	5163.05
5111.01(C)(3)	5163.03(A)
5111.01(D)	5163.03(B)
5111.013(C)	5162.31
5111.016(A)	5164.01(A) and (C)
5111.0117(A)(5)	5163.01
5111.021(B)	5164.71
5111.021(C)	5164.59
5111.021(D)	5164.55
5111.021(E)	5164.72
5111.021(F)	5164.73
5111.03(D)	5164.33
5111.03(E)	5164.60
5111.03 (first paragraph of (G))	5164.61
5111.16(E)	5167.032
5111.162(A)	5167.01(C) and (E)
5111.163(A)	5167.01(C), (E), and (H)
5111.172 (first paragraph of (C))	5167.01(A)
5111.1711(C)	5162.60



<b>Relocation of Medicaid provisions</b>	
<b>Where the provision was found in prior law</b>	<b>Where the provision is found in the act</b>
5111.20 (ICFs/IID)	5124.01
5111.21 (ICFs/IID)	5124.06
5111.21(C) (NFs)	5165.082
5111.212 (ICFs/IID)	5124.35
5111.22 (other than the last sentence of (A), the last sentence of the second-to-last paragraph, and the last paragraph) (ICFs/IID)	5124.07
5111.22 (last sentence of (A)) (ICFs/IID)	5124.33
5111.22 (last sentence of (A)) (NFs)	5165.33
5111.22 (last sentence of the second-to-last paragraph and the last paragraph) (ICFs/IID)	5124.072
5111.22 (last sentence of the second-to-last paragraph and the last paragraph) (NFs)	5165.072
5111.211 (ICFs/IID)	5124.37
5111.222(A) (NFs)	5165.01(Y)
5111.222(C) (NFs)	5165.152
5111.223 (ICFs/IID)	5124.071
5111.225 (part of (A)) (NFs)	5160.01(A)
5111.232 (first paragraph of (C)) (ICFs/IID)	5124.191
5111.232 ((B), second paragraph of (C), (D), and (E)) (ICFs/IID)	5124.192
5111.232 (first paragraph of (C) and (E)(1) and (2)) (NFs)	5165.191
5111.251(G) (ICFs/IID)	5124.28
5111.258(A) (ICFs/IID)	5124.152
5111.258(B) (ICFs/IID)	5124.153
5111.258(B) (NFs)	5165.154
5111.26(A)(1)(a), (b), and (c) (other than the second and sixth sentences of (A)(1)(a)) (ICFs/IID)	5124.10
5111.26 (second sentence of (A)(1)(a)) (ICFs/IID)	5124.103
5111.26 (second sentence of (A)(1)(a)) (NFs)	5165.103
5111.26 (sixth sentence of (A)(1)(a)) (ICFs/IID)	5124.104
5111.26 (sixth sentence of (A)(1)(a)) (NFs)	5165.104



<b>Relocation of Medicaid provisions</b>	
<b>Where the provision was found in prior law</b>	<b>Where the provision is found in the act</b>
5111.26(A)(2) (ICFs/IID)	5124.106
5111.26(A)(2) (NFs)	5165.106
5111.26(B) (ICFs/IID)	5124.102
5111.26(B) (NFs)	5165.102
5111.26(C) (ICFs/IID)	5124.105
5111.26(C) (NFs)	5165.105
5111.264 (ICFs/IID)	5124.30
5111.27(A) (ICFs/IID)	5124.108
5111.27(B) and (D) (ICFs/IID)	5124.109
5111.27(B) and (D) (NFs)	5165.109
5111.27(C) and (D) (ICFs/IID)	5124.193
5111.27(C) and (D) (NFs)	5165.193
5111.27(E) (ICFs/IID)	5124.32
5111.27(E) (NFs)	5165.32
5111.27(F) (ICFs/IID)	5124.31
5111.28(A) (ICFs/IID)	5124.40
5111.28(B) (ICFs/IID)	5124.41
5111.28(B) (NFs)	5165.41
5111.28(C) (ICFs/IID)	5124.42
5111.28(C) (NFs)	5165.42
5111.28(D) (ICFs/IID)	5124.44
5111.28(D) (NFs)	5165.44
5111.28(E) (ICFs/IID)	5124.45
5111.28(E) (NFs)	5165.45
5111.28(F) (ICFs/IID)	5124.43
5111.28(F) (NFs)	5165.43
5111.29(A) (ICFs/IID)	5124.38
5111.29(B) (ICFs/IID)	5124.46
5111.29(B) (NFs)	5165.46
5111.31 (ICFs/IID)	5124.08
5111.32 (other than part of the second sentence of the first paragraph) (ICFs/IID)	5124.081



<b>Relocation of Medicaid provisions</b>	
<b>Where the provision was found in prior law</b>	<b>Where the provision is found in the act</b>
5111.32 (part of the second sentence of the first paragraph) (ICFs/IID)	5124.01(WW)
5111.32 (part of the second sentence of the first paragraph) (NFs)	5165.01(PP) and (RR)
5111.65(A) (ICFs/IID)	5124.01(A)
5111.65(A) (NFs)	5165.01(A)
5111.65(B) (ICFs/IID)	5124.01(E)
5111.65(B) (NFs)	5165.01(G)
5111.65(C) (ICFs/IID)	5124.01(N)
5111.65(C) (NFs)	5165.01(N)
5111.65(D) (ICFs/IID)	5124.01(O)
5111.65(D) (NFs)	5165.01(O)
5111.65(E) (ICFs/IID)	5124.01(P)
5111.65(E) (NFs)	5165.01(P)
5111.65(F) (ICFs/IID)	5124.01(Q)
5111.65(G) (NFs)	5165.01(Q)
5111.65(H) (ICFs/IID)	5124.01(R)
5111.65(H) (NFs)	5165.01(R)
5111.65(I) (ICFs/IID)	5124.01(S)
5111.65(I) (NFs)	5165.01(S)
5111.65(J) (ICFs/IID)	5124.01(U)
5111.65(J) (NFs)	5165.01(T)
5111.65(L) (ICFs/IID)	5124.01(CC)
5111.65(L) (NFs)	5165.01(X)
5111.65(M) (ICFs/IID)	5124.01(ZZ)
5111.65(N) (NFs)	5165.01(VV)
5111.66 (ICFs/IID)	5124.50
5111.67 (ICFs/IID)	5124.51
5111.671 (ICFs/IID)	5124.511
5111.672 (ICFs/IID)	5124.512
5111.673 (ICFs/IID)	5124.513
5111.674 (ICFs/IID)	5124.514
5111.675 (ICFs/IID)	5124.515



<b>Relocation of Medicaid provisions</b>	
<b>Where the provision was found in prior law</b>	<b>Where the provision is found in the act</b>
5111.676 (ICFs/IID)	5124.516
5111.677 (ICFs/IID)	5124.517
5111.68 (ICFs/IID)	5124.52
5111.681 (ICFs/IID)	5124.521
5111.682 (ICFs/IID)	5124.522
5111.683 (ICFs/IID)	5124.523
5111.684 (ICFs/IID)	5124.524
5111.685 (ICFs/IID)	5124.525
5111.686 (ICFs/IID)	5124.526
5111.687 (ICFs/IID)	5124.527
5111.688 (ICFs/IID)	5124.528
5111.689 (ICFs/IID)	5124.53
5111.71(A)	5162.01(B)(12)
5111.85(A)	5166.01
5111.851(A)	5166.01
5111.874(A) (ICFs/IID)	5124.01(X), (Y), (BB), and (VV)
5111.89(A)	173.51
5111.89(D)	173.543
5111.90(A)(1)	5162.01(B)(10)
5111.90(A)(2)	5162.01(B)(13)
5111.91 (third paragraph)	5162.62
5111.94(A)	5162.01(B)(14)
5111.944 (definition of "dual eligible individual")	5160.01(A)
5111.944 (definition of "Medicare program")	5162.01(A)(2)
5111.981 (definition of "dual eligible individual")	5160.01(A)
5111.981 (definition of "Medicare program")	5162.01(A)(2)

## **Medicaid eligibility**

Federal law establishes mandatory and optional eligibility groups for the Medicaid program. Generally, a state's Medicaid program must cover all of the



mandatory eligibility groups and may cover one or more of the optional eligibility groups.

The act revises the law governing the different eligibility groups covered by Medicaid in Ohio. Many of the revisions reflect corresponding provisions of federal law.

### **Eligibility groups under prior law**

(R.C. 5111.01 (primary and renumbered as 5162.03), 5101.18, 5111.014 (repealed), 5111.015 (repealed), 5111.0110 (repealed), 5111.0111 (repealed), 5111.0113 (repealed), 5111.0115 (repealed), 5111.0120 (repealed), and 5111.0121 (repealed))

The Medicaid program was permitted by prior state law to cover, as long as federal funds were provided, all of the following:

(1) Families with children that met the income, resource, and family composition requirements in effect July 16, 1996, for the former Aid to Dependent Children program or any changes made to those requirements in accordance with federal law that permits states to make such changes;

(2) Aged, blind, and disabled persons who received aid under the Supplemental Security Income (SSI) program or were eligible for but not receiving SSI, provided that the income from all other sources for individuals with independent living arrangements did not exceed an amount adjusted annually;

(3) Aged, blind, and disabled persons who would have been eligible for SSI if not for having countable income above the SSI eligibility limit and would have incurred medical expenses that equaled or exceeded the amount by which their income exceeded the SSI eligibility limit;

(4) Aged, blind, and disabled individuals who did not receive SSI but received Aid for the Aged, Aid to the Blind, or Aid for the Permanently and Totally Disabled before January 1, 1974, and continued to meet all the same eligibility requirements;

(5) Aged, blind, and disabled individuals who ceased to receive SSI as a result of a general increase in Old-Age, Survivors, and Disability Insurance benefits;

(6) Persons required by federal law to be covered by Medicaid as a condition of state participation in Medicaid;

(7) Persons under age 21 who met the income requirements for the Ohio Works First program but did not meet other eligibility requirements for the program specified in rules.





Prior law also permitted Medicaid to cover all of the following:

(1) If sufficient funds were appropriated, persons in groups designated by federal law as groups to which a state, at its option, may cover;

(2) Individuals under age 19 with family incomes not exceeding 150% of the federal poverty line;

(3) If federal funds were provided, former participants of the Ohio Works First program who (a) were ineligible for Ohio Works First solely as a result of increased income due to employment, (b) were not covered by, and did not have access to, medical insurance coverage through an employer with benefits comparable to those provided under Medicaid, and (c) met any other requirements established in rules.

In addition to having authority to cover the groups discussed above, prior state law required the Medicaid program to cover all of the following:

(1) Pregnant women with family incomes not exceeding 200% of the federal poverty line;

(2) Women under age 65 who (a) were not otherwise eligible for Medicaid, (b) had been screened for breast and cervical cancer under the U.S. Centers for Disease Control and Prevention Breast and Cervical Cancer Early Detection program, (c) needed treatment for breast or cervical cancer, and (d) were not otherwise covered under creditable coverage;

(3) Any individual under age 21 who (a) was in foster care under the responsibility of the state on the individual's 18th birthday and (b) received foster care maintenance payments or independent living services under a Title IV-E program before the individual's 18th birthday;<sup>158</sup>

(4) Children who were in the temporary or permanent custody of a certified public or private nonprofit agency or institution or in state-subsidized adoptions;

(5) Parents of children under age 19 who (a) resided with their children, (b) had family income not exceeding 90% of the federal poverty line, and (c) were not otherwise eligible for Medicaid.

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<sup>158</sup> Title IV-E is the part of the Social Security Act that makes federal funds available to states for foster care and adoption assistance programs.



## **Eligibility groups under the act**

### **Mandatory eligibility groups and 209(b) exception**

(R.C. 5163.03 (primary), 5163.01, and 5163.05)

With one exception, the act requires the Medicaid program to cover all mandatory eligibility groups. "Mandatory eligibility groups" is defined as the groups of individuals that must be covered by the Medicaid state plan as a condition of the state receiving federal financial participation for Medicaid.

The exception to the requirement to cover all mandatory eligibility groups concerns the aged, blind, and disabled group. Generally, an individual receiving SSI benefits is eligible for Medicaid as part of a mandatory eligibility group established by federal law. However, federal law permits states to establish more restrictive Medicaid eligibility requirements for aged, blind, and disabled persons that cause some individuals receiving SSI benefits to not qualify for Medicaid. This option is often referred to as the "209(b)" option, which reflects the section of the Social Security Act that authorizes the option. Ohio's Medicaid program has implemented the 209(b) option. The act expressly authorizes the Medicaid program to continue to implement the 209(b) option.

### **Optional eligibility groups**

(R.C. 5163.03 (primary), 5163.01, 5163.06, 5163.061, and 5163.07)

The act (1) requires Medicaid to cover all of the optional eligibility groups that state statutes require Medicaid to cover, (2) permits Medicaid to cover any of the optional eligibility groups that state statutes either expressly permit Medicaid to cover or do not address whether Medicaid may cover, and (3) prohibits Medicaid from covering any eligibility group that state statutes prohibit Medicaid from covering. "Optional eligibility groups" is defined as the groups of individuals who may be covered by the Medicaid state plan or a federal Medicaid waiver and for whom Medicaid receives federal financial participation.

The act requires Medicaid to cover all of the following optional eligibility groups:

- (1) The group consisting of children placed with adoptive parents;<sup>159</sup>

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<sup>159</sup> 42 U.S.C. 1396a(a)(10)(A)(ii)(VIII).



(2) The group consisting of women during pregnancy (and the 60-day period beginning on the last day of the pregnancy), infants, and children (see "**Income eligibility threshold for pregnant women**," below);<sup>160</sup>

(3) The group consisting of employed individuals with disabilities, and the group consisting of employed individuals with medically improved disabilities, who qualify for the Medicaid Buy-In for Workers with Disabilities program (see "**Medicaid Buy-In for Workers with Disabilities program**," below);<sup>161</sup>

(4) The group consisting of independent foster care adolescents;<sup>162</sup>

(5) The group consisting of women in need of treatment for breast or cervical cancer;<sup>163</sup>

(6) The group consisting of nonpregnant individuals who may receive family planning services and supplies.<sup>164</sup>

#### **Income eligibility threshold for parents and caretaker relatives**

(R.C. 5163.07 (primary) and 5163.01)

The act requires the ODM Director to continue to implement an option available under federal law regarding the income eligibility threshold for parents and caretaker relatives. Under this option, the income eligibility threshold for parents and caretaker relatives is set at 90% of the federal poverty line instead of the amount of the income eligibility threshold for the former Aid to Dependent Children program in effect on July 16, 1996.

#### **Income eligibility threshold for pregnant women**

(R.C. 5163.061 (primary) and 5163.01)

The act provides that the income eligibility threshold continues to be 200% of the federal poverty line for women during pregnancy and the 60-day period beginning on the last day of the pregnancy.

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<sup>160</sup> 42 U.S.C. 1396a(a)(10)(A)(ii)(IX).

<sup>161</sup> 42 U.S.C. 1396a(a)(10)(A)(ii)(XVI) and (XVII).

<sup>162</sup> 42 U.S.C. 1396a(a)(10)(A)(ii)(XVII).

<sup>163</sup> 42 U.S.C. 1396a(a)(10)(A)(ii)(XVIII).

<sup>164</sup> 42 U.S.C. 1396a(a)(10)(A)(ii)(XXI).

### **Presumptive eligibility for pregnant woman and children**

(R.C. 5163.10 and 5163.101 (both primary) and 5163.01)

The act retains laws that require Medicaid to implement options authorized by federal law under which a state may make certain Medicaid services available to a child or pregnant woman during a presumptive eligibility period. This period begins on the date a qualified entity or provider determines, based on preliminary information, that the family income of the child or pregnant woman does not exceed the state's eligibility threshold and ends on the earlier of (1) the day a Medicaid eligibility determination is made or (2) the last day of the month following the month the eligibility determination is made if a Medicaid application is not filed by that day.

### **Medicaid Buy-In for Workers with Disabilities program**

(R.C. 5163.09 to 5163.0910 (primary) and 5163.01)

The act retains the Medicaid Buy-In for Workers with Disabilities program. The program is the method by which Medicaid covers the following two optional eligibility groups: the group consisting of employed individuals with disabilities and the group consisting of employed individuals with medically improved disabilities.

### **Medicaid expansion (VETOED)**

(R.C. 5163.04 (primary), 5163.01, and 5163.03)

The federal health care reform legislation enacted in 2010, the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010, includes a major expansion of the Medicaid program. As enacted, the federal health care reform legislation requires a state's Medicaid program to cover, beginning January 1, 2014, individuals who (1) are under age 65, (2) not pregnant, (3) not entitled to (or enrolled for) benefits under Medicare Part A, (4) not enrolled for benefits under Medicare Part B, (5) not otherwise eligible for Medicaid, and (6) have incomes not exceeding 133% (138% after using individuals' modified adjusted gross incomes) of the federal poverty line.<sup>165</sup> Although the federal health care reform legislation made the Medicaid expansion a mandatory eligibility group, the U.S. Supreme Court, in its 2012 ruling on the reform, effectively made the expansion an optional eligibility group by prohibiting the U.S. Secretary of Health and Human Services from withholding all or part of a state's other federal Medicaid funds for failure to implement the expansion.<sup>166</sup>

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<sup>165</sup> 42 U.S.C. 1396a(a)(10)(A)(i)(VIII) and (e)(14).

<sup>166</sup> *National Federation of Independent Business v. Sebelius* (2012), 132 S. Ct. 2566.



The Governor vetoed a provision that would have prohibited the Medicaid program from covering the expansion group. Under the vetoed provision, the prohibition would not have affected the Medicaid eligibility of any individual who began to participate in the MetroHealth Care Plus Medicaid waiver program on or after February 5, 2013.

### **Transitional Medicaid**

(R.C. 5163.08)

Federal law includes a provision for transitional Medicaid. This provision requires a state's Medicaid program to continue to cover certain low-income families with dependent children that would otherwise lose Medicaid eligibility because of changes to their incomes for an additional six months and, if certain requirements are met, up to another additional six months. The requirements for the second 6-month period of eligibility include reporting and income requirements. Federal law gives states the option to provide the low-income families transitional Medicaid for a single 12-month period rather than an initial 6-month period followed by a second 6-month period.<sup>167</sup> The 12-month option enables the low-income families to receive transitional Medicaid for up to a year without having to meet the additional requirements for the second 6-month period.

The act requires the ODM Director to implement the single 12-month eligibility period for transitional Medicaid.

### **Federal maintenance of effort requirement**

(R.C. 5111.0122 (repealed))

Federal law requires states participating in Medicaid to comply with a maintenance of effort requirement regarding Medicaid eligibility. During the period that begins on March 23, 2010, and ends on the date on which the U.S. Secretary of Health and Human Services determines that a health care benefits exchange is fully operational in the state, a state cannot have in effect eligibility standards, methodologies, or procedures for its Medicaid program that are more restrictive than the eligibility standards, methodologies, or procedures in effect on March 23, 2010. This maintenance of effort requirement continues through September 30, 2019, with respect

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<sup>167</sup> 42 U.S.C. 1396r-6. This federal law is scheduled to expire December 31, 2013. Congress has extended the law when it was scheduled to expire on previous occasions.



to the eligibility standards, methodologies, and procedures for individuals under age 19 (or a higher age as the state may have elected).<sup>168</sup>

The act repeals a requirement that Ohio comply with the maintenance of effort requirement while it is in effect except to the extent, if any, otherwise authorized by the U.S. Secretary.

### **Eligibility simplification**

(R.C. 5111.0123 (repealed))

The act repeals a requirement that rules be adopted to reduce the complexity of the eligibility determination processes for the Medicaid program caused by the different income and resource standards for the numerous Medicaid eligibility categories. The Office of Medical Assistance adopted such rules after this provision was enacted in 2011.

### **Tuition savings and scholarships exempt from consideration**

(R.C. 5111.015 (repealed))

The act repeals a law that required the value of the following to be exempt from consideration in Medicaid eligibility determinations: tuition payment contracts entered into under state law; scholarships for college savings programs authorized by state law; and payments made by the Ohio Tuition Trust Authority pursuant to the contract or scholarship.

### **Trust reporting for Medicaid eligibility**

(R.C. 5163.21)

The act requires a Medicaid applicant or recipient who is a beneficiary of a trust to submit a complete copy of the trust instrument to the relevant county department of job and family services (CDJFS) and ODM. A copy is considered to be complete if it contains all pages of the trust instrument and all schedules, attachments, and accounting statements referenced in or associated with the trust. The act specifies that the copy is confidential and is not subject to disclosure under Ohio's Public Records Law.<sup>169</sup>

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<sup>168</sup> 42 U.S.C. 1396a(gg).

<sup>169</sup> R.C. 149.43.



Under law generally unchanged by the act, the CDJFS must determine what type of trust it is and whether the trust or a portion of it is a resource available to the applicant or recipient, contains income available to the applicant or recipient, or both, for purposes of determining the applicant's or recipient's eligibility for Medicaid. The act requires this responsibility to be completed when the CDJFS receives the trust instrument or when the CDJFS determines that the applicant or recipient is a trust beneficiary.

The act also eliminates a reference to an obsolete category of low-income Medicare beneficiaries – known as "qualifying individuals-2" or "Q2s" – who participated in a federal program called the "Qualified Individuals Program." Since January 1, 2003, that program has paid the Medicare Part B premiums for only one category of low-income Medicare beneficiaries known as "qualifying individuals-1" or "Q1s." Q2s had to have incomes between 135% and 175% of the federal poverty level; Q1s have even lower income (between 120% and 135% of the federal poverty level).<sup>170</sup>

## **Third-party payers**

### **Disclosure of third-party payer information**

(R.C. 5160.37 and 5160.371)

Congress intended that Medicaid be the payer of last resort; that is, if a Medicaid recipient has another source of payment for health services, that source is to pay instead of Medicaid.<sup>171</sup> Consistent with this principle, prior law gave ODJFS and a CDJFS an automatic right of recovery against the liability of a third party for the cost of medical assistance paid on behalf of a medical assistance recipient. The act continues to give that right to a CDJFS and gives that right to ODM in place of ODJFS.

In connection with the right of recovery, a medical assistance recipient and the recipient's attorney (if any) must, pursuant to continuing law, cooperate with ODM and the relevant CDJFS. In furtherance of this requirement, the recipient or attorney must, not later than 30 days after initiating informal recovery activity or filing a legal recovery action against a third party, provide written notice of the activity or action to ODM or, under the act, the relevant CDJFS if it has paid medical assistance.

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<sup>170</sup> U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, *List and Definitions of Dual-Eligibles* (revised April 2, 1999), available at: [www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareEnrpts/downloads/Buy-InDefinitions.pdf](http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareEnrpts/downloads/Buy-InDefinitions.pdf).

<sup>171</sup> U.S. Government Accountability Office, *Medicaid Third Party Liability: Federal Guidance Needed to Help States Address Continuing Problems* (Sept. 2006), available at [www.gao.gov/new.items/d06862.pdf](http://www.gao.gov/new.items/d06862.pdf), at p. 1.





Similar to the requirement in continuing law described above, the act requires a medical assistance recipient and the recipient's attorney (if any) to cooperate with each medical provider of the recipient. The act specifies that cooperation consists of disclosing to the provider all information the recipient and attorney possess that would assist the provider in determining each third party that is responsible for the payment or processing of a claim for medical assistance provided to the recipient. If such disclosure is not made, the act specifies that the recipient and the recipient's attorney are liable to reimburse ODM for the amount that would have been paid by a third party had a third party been disclosed to the provider by the recipient or the recipient's attorney.

### **Assignment of ODM's right of recovery**

(R.C. 5160.37(K) and 5160.40; Section 812.40)

Beginning January 1, 2014, the act authorizes ODM to assign to a medical assistance provider its right of recovery against a third party for a claim for medical assistance if ODM notifies the provider that ODM intends to recoup ODM's prior payment for the claim. If ODM makes such an assignment, the act requires the third party to treat the provider as ODM and pay the provider the greater of the following:

- (1) The amount ODM intends to recoup from the provider for the claim;
- (2) If the third party and the provider have an agreement that requires the third party to pay the provider at the time the provider presents the claim to the third party, the amount that is to be paid under that agreement.

### **Medicaid subrogation for workers' compensation benefits**

(R.C. 5101.36)

The act repeals a provision that gives ODJFS a right of subrogation for workers' compensation benefits payable to a person who is subject to a child or spousal support order and who is a Medicaid recipient (to the extent Medicaid payments were made on the recipient's behalf). The act does not modify continuing law that gives ODJFS a right of subrogation for workers' compensation benefits payable to a person who is subject to a child or spousal support order and who is a recipient of public assistance under the Ohio Works First Program; the Prevention, Retention, and Contingency Program; or the Disability Financial Assistance Program.



## **Medicaid services**

### **Mandatory and optional services**

(R.C. 5164.03 (primary) and 5164.01)

As with eligibility groups, federal law requires a state's Medicaid program to cover certain health care services and permits the program to cover other health care services. The services that must be covered are called mandatory health care services and the services that may be covered are optional services.

Continuing state law specifies certain services that the Medicaid program must, may, or cannot cover. Generally, however, whether Ohio's Medicaid program covers a service is specified in rules authorized by continuing law that establish the amount, duration, and scope of Medicaid services.

The act establishes general requirements regarding the Medicaid program's coverage of services. It requires Medicaid to cover all mandatory services and all of the optional services that state statutes require Medicaid to cover. The act permits Medicaid to cover any of the optional services that state statutes expressly permit Medicaid to cover and optional services that state statutes do not address whether Medicaid may cover. Medicaid is prohibited by the act from covering any optional services that state statutes prohibit Medicaid from covering.

### **Rules regarding payment amounts**

(R.C. 5164.02)

The rules regarding Medicaid services are to establish the payment amount for each Medicaid service or, in lieu of the payment amount, the method by which the payment amount is to be determined for each Medicaid service. The act provides that the ODM Director is not required to adopt a rule establishing the payment amount for a Medicaid service if the Director adopts a rule establishing the method by which the payment amount is to be determined for the Medicaid service and makes the payment amount available on the Internet web site maintained by ODM.

## **Provider agreements**

### **Requirement to have provider agreement with ODM**

(R.C. 5164.30)

Continuing law has many provisions regarding Medicaid provider agreements that indirectly establish the requirement for providers to have such an agreement to



participate in Medicaid. The act expressly prohibits any person or government entity from participating in Medicaid as a provider without a valid provider agreement with ODM.

### **Time limit on provider agreements**

(R.C. 5164.32 (primary), 5164.31, 5164.38, and 5165.07)

Continuing law requires the ODM Director to adopt rules establishing procedures for the use of time-limited Medicaid provider agreements. The act revises the law governing time-limited Medicaid provider agreements. Under the revisions, all provider agreements, including provider agreements with Medicaid managed care organizations, nursing facilities, ICFs/IID, and hospitals, are to be time-limited. The act eliminates the phase-in process for converting provider agreements to time-limited provider agreements. The act also eliminates provisions that permitted ODM to (1) take an action to convert a provider agreement by sending a notice by regular mail to the address of the provider on record with ODM advising the provider of the conversion and (2) make the effective date of a provider agreement retroactive for a period not to exceed one year from the date of the provider's application for the agreement, as long as the provider met all Medicaid program requirements during that period. Whereas prior law provided that a provider agreement was to expire not later than seven years from its effective date, the act sets the maximum duration of a provider agreement to five years.

The act requires that ODM's rules regarding time-limited provider agreements include a process for revalidating providers' continued enrollment as providers rather than a process for re-enrolling providers. The rules must be consistent with federal Medicaid regulations regarding provider screening and enrollment. All of the following apply to the revalidation process:

(1) ODM must refuse to revalidate a provider's provider agreement when the provider fails to file a complete application for revalidation within the time and in the manner required under the revalidation process.

(2) If a provider files an application for revalidation within the required time and in the required manner, but the provider agreement expires before ODM acts on the application or before the effective date of ODM's decision on the application, the provider may continue operating under the terms of the expired provider agreement until the effective date of ODM's decision. However, if ODM denies the provider's application, Medicaid payments cannot be made for Medicaid services provided during the period beginning on the date the provider agreement expired and ending on the

effective date of a subsequent provider agreement, if any, that ODM enters into with the provider.

### **Adjudications regarding provider agreements**

(R.C. 5164.38)

Generally, ODM is required to issue an order pursuant to an adjudication conducted in accordance with the Administrative Procedure Act (R.C. Chapter 119.) when taking various actions regarding Medicaid provider agreements, such as refusing to enter into a provider agreement. The act eliminates a requirement to issue an order pursuant to an adjudication when ODM enters into a provider agreement.

Renewing and refusing to renew a provider agreement were other actions that generally required an adjudication under prior law. The act replaces references to renewal with references to revalidation to conform with the changes discussed above regarding time limits on provider agreements. It eliminates the requirement to issue an order pursuant to an adjudication when revalidating a provider agreement. Therefore, an adjudication is required when ODM refuses to revalidate a provider agreement but not when ODM agrees to revalidate a provider agreement.

The act provides that the requirement to issue an order pursuant to an adjudication does not apply when ODM (1) denies an application for a Medicaid provider agreement because the application is not complete or (2) unless the provider is a nursing facility or ICF/IID, refuses to revalidate a provider agreement because the provider fails to file a complete application for revalidation within the required time and in the required manner.

### **Application fees for provider agreements**

(R.C. 5164.31)

ODM was required by prior law to charge an application fee to a provider seeking to enter into or renew a Medicaid provider agreement, unless the provider was exempt from paying the fee under federal Medicaid regulations. The act requires ODM to collect an application fee from a provider before (1) entering into a Medicaid provider agreement with a provider seeking initial enrollment as a provider, (2) entering into a provider agreement with a former provider seeking re-enrollment as a provider, and (3) revalidating a provider's continued enrollment as a provider. The act maintains the exception for providers who are exempt under the federal Medicaid regulations.



The act specifies that the application fees are nonrefundable when collected in accordance with the federal Medicaid regulation governing the fees.

### **Denying, terminating, and suspending provider agreements**

(R.C. 5164.33 (primary), 5164.38, and 5165.07)

Continuing law provides that a Medicaid provider agreement may be denied or terminated for any reason permitted or required by federal law. Also, an individual, provider of services or goods, or other entity may be excluded from participating in Medicaid for any reason permitted or required by federal law. Under prior law, a provider agreement for a nursing facility or ICF/IID could be denied, not renewed, or terminated when ODM determined that the provider agreement would not be in the best interests of Medicaid recipients or the state.

The act permits the ODM Director to deny, refuse to revalidate, or terminate a Medicaid provider agreement for any type of provider, rather than only nursing facilities and ICFs/IID, when the Director determines that the action is in the best interests of Medicaid recipients or the state. The act also permits the Director to exclude an individual, provider of services or goods, or other entity from participation in the Medicaid program when the Director determines that the exclusion is in the best interests of Medicaid recipients or the state. The ODM Director is permitted by the act to suspend a Medicaid provider agreement for any reason permitted or required by federal law and when the Director determines that the suspension is in the best interests of Medicaid recipients or the state.

### **Nursing facilities' provider agreement terms**

(R.C. 5165.08, 5165.513, 5165.515, and 5165.99; Sections 110.25, 110.26, 110.27, and 323.235)

#### **Distinct part of a nursing facility**

The act revises the terms that must be included in a provider agreement for a nursing facility. Under prior law, every provider agreement with a nursing facility had to include any part of the facility that met standards for certification of compliance with federal and state laws and rules for participation in the Medicaid program. However, beds added during the period beginning July 1, 1987, and ending July 1, 1993, were not required to be included in a provider agreement unless otherwise required by federal law. If a nursing facility chose to include such a bed in a provider agreement, the bed could not be removed from the provider agreement unless the nursing facility withdrew entirely from the Medicaid program.

In place of the prior law provisions described above, the act provides that a nursing facility may exclude, until January 1, 2015, one or more of its parts from the provider agreement, even though those parts meet federal and state standards for Medicaid certification, if all of the following apply:

(1) The nursing facility initially obtained both its nursing home license and Medicaid certification on or after January 1, 2008;

(2) The nursing facility is located in a county that has, according to the Director of Health, more long-term care beds than it needs at the time the nursing facility excludes the parts from the provider agreement;

(3) Federal law permits the provider to exclude the parts from the provider agreement;

(4) The provider gives ODM written notice of the exclusion not less than 45 days before the first day of the calendar quarter in which the exclusion is to occur.

The act provides that a nursing facility that so excludes one or more of its parts from a provider agreement does not violate continuing law that prohibits a person who is granted a certificate of need (CON) from carrying out the reviewable activity authorized by the CON in a manner that is not in substantial accordance with the approved application for the CON.

#### **Distinct part advisory workgroup**

The act creates the Nursing Facility Distinct Part Advisory Workgroup to develop findings regarding the impact that allowing nursing facilities to exclude distinct parts of their facilities from their Medicaid provider agreements would have on access to nursing facility services, quality of care, and purchasing strategies for nursing facility services provided to Medicaid recipients with specialized health care needs.

The Workgroup is to consist of all of the following members:

(1) The Office of Health Transformation (OHT) Executive Director or the Executive Director's designee;

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

(3) The Director of Health or the Director's designee;

(4) The ODM Director or the Director's designee;

(5) The State Long-Term Care Ombudsman or the Ombudsman's designee;



(6) Two representatives, from each of the following, appointed by the organization's chief executive officer or the individual serving in an equivalent capacity for the organization: the Ohio Health Care Association, LeadingAge Ohio, AARP Ohio, and the Academy of Senior Health Sciences;

(7) Two members of the House of Representatives, one from the majority party and one from the minority party, appointed by the Speaker;

(8) Two members of the Senate, one from the majority party and one from the minority party, appointed by the Senate President.

The act requires that members of the Workgroup be appointed not later than October 14, 2013. Vacancies are to be appointed in the same manner as the original appointments. Each member is to serve without compensation or reimbursement for expenses incurred while serving on the Workgroup, except to the extent that serving on the Workgroup is considered to be among the member's employment duties.

The OHT Executive Director, or the Executive Director's designee, is to serve as the Workgroup's chairperson. ODM must provide staff and other support services.

The Workgroup is required to submit a report to the General Assembly not later than December 31, 2013. The report is to include the Workgroup's findings and recommendations for policies on nursing facilities' excluding distinct parts of their facilities from their Medicaid provider agreements. The Workgroup is to cease to exist on submission of its report.

### **Denials of admissions**

Another term of a provider agreement for a nursing facility that the act revises concerns denials of admission on the basis that an individual is or may become a Medicaid recipient. Under prior law, a provider agreement had to prohibit a nursing facility from failing or refusing to accept an individual because the individual was, or as a resident of the nursing facility could become, a Medicaid recipient if less than 80% of its residents were Medicaid recipients.<sup>172</sup> Under the act, a nursing facility may fail or refuse, until January 1, 2015, to admit such an individual if at least 25% (rather than 80%) of its Medicaid-certified beds are occupied by Medicaid recipients at the time the individual would otherwise be admitted. The 80% occupancy-rate standard is restored on January 1, 2015.

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<sup>172</sup> The prohibition against refusing admission does not apply when a nursing facility is subject to an order denying Medicaid payments for new residents due to failure to comply with certification requirements. The act does not affect this exception.

## **Medicaid-related criminal records checks**

(R.C. 5164.34 (primary), 109.572, 5164.341, and 5164.342)

The act revises the law governing Medicaid-related criminal records checks. Continuing law requires an independent provider of home and community-based services covered by an ODM-administered Medicaid waiver program to submit to a criminal records check as a condition of obtaining or maintaining a provider agreement. Continuing law also requires an individual to submit to a database review and, unless the individual fails the database review, a criminal records check as a condition of being employed by a waiver agency in a position that involves providing home and community-based services covered by an ODM-administered Medicaid waiver program. (An individual already employed in such a position is subject to a database review and criminal records check only if so required by ODM rules.)

ODM has authority under continuing law to require the following: (1) that other providers, including applicants for provider agreements, submit to criminal records checks as a condition of maintaining or obtaining provider agreements, (2) that other providers, including applicants for provider agreements, require their owners, officers, and board members (including prospective owners, officers, and board members) to submit to criminal records checks, and (3) that other providers, including applicants for provider agreements, (a) determine, pursuant to database reviews, whether any employee or prospective employee is included in certain databases and (b) unless a provider cannot employ an employee or prospective employee because of the results of the database review, require the employee or prospective employee to submit to a criminal records check. These provisions do not apply to individuals who are subject to other laws regarding criminal records checks applicable to providers or employees of various health services, including hospice, home health, and nursing home care.

### **Intervention in lieu of conviction**

The act eliminates a requirement for ODM to terminate or deny a provider agreement, as well as the requirement for a provider to prohibit a person from being an owner, officer, board member, or employee, when the provider or person has been found eligible for intervention in lieu of conviction for a disqualifying offense.

### **Release of results of criminal records check**

Continuing law provides that the report of a criminal records check to which a Medicaid provider (or owner, officer, board member, or employee of a provider) submits is not a public record and may be made available only to certain persons, such as the subject of the check and the ODM Director. The act permits the results to be released to an individual receiving or deciding whether to receive, from the subject of





the check, home and community-based services available under an ODM-administered Medicaid waiver program or the Medicaid state plan. In the case of a criminal records check of an independent provider of home and community-based services covered by an ODM-administered Medicaid waiver program, the law already permitted the results to be released to an individual receiving the services from the provider. The act permits the results to be released, in addition, to an individual deciding whether to receive the services from the provider.

### **System for Award Management web site**

Before a waiver agency providing home and community-based services covered by an ODM-administered Medicaid waiver program requires an employee or prospective employee to submit to a criminal records check, continuing law requires the waiver agency to conduct a review of certain databases to determine whether the waiver agency may employ the employee or prospective employee. (The requirement to conduct a database review for an existing employee applies only if ODM rules require that the database review be conducted.) The Excluded Parties List System is one of the databases that must be reviewed. It is maintained by the U.S. General Services Administration. The act specifies that the Excluded Parties List System is available at the federal web site known as the System for Award Management.

### **Interest on Medicaid provider excess payments**

(R.C. 5164.60)

Under the act, any Medicaid provider who, without intent, obtains excess Medicaid payments is liable for payment of interest on the amount of the excess payments. The interest is to be paid at the average bank prime rate in effect on the first day of the calendar quarter during which the provider receives notice of the excess payment. ODM must determine the average bank prime rate using Statistical Release H.15, "Selected Interest Rates," a weekly publication of the Federal Reserve Board, or any successor publication. If Statistical Release H.15, or its successor, ceases to include the bank prime rate information or ceases to be published, ODM is to request a written statement of the bank prime rate from the Federal Reserve Bank of Cleveland or the Federal Reserve Board.

Prior law similarly made a Medicaid provider liable for payment of interest on the amount of excess payments, but the interest was to be paid at the maximum interest rate allowable for real estate mortgages on the date the payment was made to the provider for the period from the date on which payment was made to the date on which repayment was made to the state.





## **Dispensing fee; generic drug copayments**

### **Medicaid dispensing fee for noncompounded drugs**

(Section 323.130)

The act sets the Medicaid dispensing fee for each noncompounded drug covered by the Medicaid program at \$1.80 for the period beginning July 1, 2013, and ending on the effective date of a rule changing the amount of the fee that the ODM Director adopts. This is the same amount that has been in effect since July 1, 2009.

### **Drug dispensing fee survey**

(R.C. 5164.752 and 5164.753; Section 812.40)

For the purpose of establishing a Medicaid drug dispensing fee, continuing law requires ODM to conduct a survey of retail pharmacy operations. Under prior law, retail pharmacy operations in Ohio were the subject of the survey.

Effective July 1, 2014, the act modifies the provisions regarding the survey. The act requires that all Medicaid-participating terminal distributors of dangerous drugs participate in the survey. In place of a provision specifying that the survey is private, the act specifies that survey responses are confidential and not a public record, except as necessary to publish the survey's results.

The act retains provisions requiring that the survey include operational data and direct prescription expenses, professional services and personnel costs, and usual and customary overhead expenses of the survey participants. The requirement that the survey include "profit data," however, is eliminated.

Under prior law, the dispensing fee was effective the January following the survey. The act instead provides that the fee is effective the following July.

### **Medicaid copayments for drugs**

(R.C. 5162.20 (primary), 5162.01, 5164.01, 5164.20, 5164.751, 5164.752, 5164.758, 5164.7510, 5167.01, 5167.12, and 5167.13)

Continuing law imposes cost-sharing requirements on Medicaid recipients. The act eliminates a provision that excluded of generic drugs from the cost-sharing requirements.

The act replaces, in the Medicaid law, references to prescription drugs with references to prescribed drugs. The act provides that "prescribed drugs" has the same meaning as in a federal regulation. The federal regulation defines "prescribed drugs" as



simple or compound substances or mixtures of substances prescribed for the cure, mitigation, or prevention of disease, or for health maintenance that are (1) prescribed by a physician or other licensed practitioner of the healing arts within the scope of this professional practice as defined and limited by federal and state law, (2) dispensed by licensed pharmacists and licensed authorized practitioners in accordance with state law, and (3) dispensed by the licensed pharmacist or practitioner on a written prescription that is recorded and maintained in the pharmacist's or practitioner's records.<sup>173</sup>

## **Miscellaneous payment rates**

### **Physician groups acting as outpatient hospital clinics (VETOED)**

(R.C. 5164.78)

The Governor vetoed a provision that would have required that the Medicaid payment rates for physician, pregnancy-related, evaluation, and management services provided by a physician group practice be determined in accordance with provisions based on a preexisting administrative rule.<sup>174</sup> The rule requires different Medicaid payment amounts (generally the regular Medicaid payment multiplied by 1.4) for physician group practices that meet both of the following criteria:

(1) The physician group practice is physically attached to a hospital that does not provide physician clinic outpatient services and the hospital and physician group practice have signed a letter of agreement indicating that the physician group practice provides the outpatient hospital clinic service for that hospital;

(2) The state Medicaid provider utilization summary for calendar year 1990 establishes that the physician group practice, in that year, provided at least 40% of the total number of Medicaid physician visits provided in the county in which the physician group practice is located and an aggregate total of at least 10% of the physician visits provided in the contiguous counties.

Under the vetoed provision, ODM would have been required to submit a report to the General Assembly within four years.

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<sup>173</sup> 42 C.F.R. 440.120.

<sup>174</sup> See O.A.C. 5101:3-1-60.1.



## **Medicaid rates for hospital inpatient and outpatient services**

(Section 323.103)

The act requires that the Medicaid payment rates for Medicaid-covered hospital inpatient services be the same as the Medicaid payment rates for the services in effect on June 30, 2013, until the effective date of the first of any ODM rules establishing new diagnosis-related groups for the services. Medicaid payment rates for hospital outpatient services must be, until June 30, 2015, the same as the rates for the services in effect on June 30, 2013.

## **Medicaid payment rate adjustments**

(Sections 323.250, 323.260, and 323.270)

The ODM Director is required by the act to make all of the following adjustments to Medicaid payment rates:

(1) Reduce the payment rate for radiological services in situations in which the services are provided (a) in a physician's office or an independent diagnostic testing facility and (b) more than once by the same provider for the same Medicaid recipient during the same session;

(2) Identify physician services for which Medicaid payment rates should vary depending on where the services are provided and establish varying Medicaid payment rates for those services;

(3) Identify Medicaid services for which Medicaid payment methodologies should be aligned with Medicare payment methodologies for the services and establish those aligned payment methodologies.

The act requires the adjustments to be made by adopting rules. It specifies that the rules cannot take effect before January 1, 2014.

## **Medicaid payments for noninstitutional services to Medicare Part B enrollees**

(Section 323.230)

The act establishes Medicaid payment amounts for noninstitutional services, provided from January 1, 2014 through July 1, 2015, to a Medicaid recipient who is a dual eligible individual enrolled for benefits under Medicare Part B. Physician services are excluded from this provision of the act, but free standing dialysis center services are included. Under the act, a Medicaid payment for noninstitutional services is to equal the lesser of the following:



(1) The sum of the Medicare Part B deductible, coinsurance, and copayment for the services that apply to the individual;

(2) The greater of: (a) the maximum allowable Medicaid payment for the services when provided to other Medicaid recipients, less the total Medicaid payment (if any) most recently paid on the Medicaid recipient's behalf for such services, or (b) zero.

### **Medicaid payments for home health and private duty nursing services**

(Section 323.233)

For fiscal years 2014 and 2015, the act authorizes Medicaid payments to be made for home health and private duty nursing services provided by the responsible adult of a Medicaid recipient if the provision of services meets conditions to be established by the ODM Director. "Responsible adult" under the act is the spouse of a Medicaid recipient or, in the case of a minor, the minor's parent, foster caregiver, stepparent, guardian, legal custodian, or any other person who stands in the place of a parent for the minor.

The ODM Director is required to consult with provider representatives, consumer representatives, and other stakeholders in developing rules regarding Medicaid payments to responsible adults for such services. The rules may include any of the following:

(1) Qualification and training requirements necessary for responsible adults to receive Medicaid payments;

(2) Oversight requirements necessary for responsible adults to receive Medicaid payments;

(3) Procedures designed to protect against fraud, waste, and abuse that may occur as a result of making Medicaid payments to responsible adults;

(4) Any other procedures, standards, or requirements the ODM Director considers appropriate.

### **Mental health services**

#### **Inpatient psychiatric hospital services for certain individuals under age 21**

(Section 323.340)

During fiscal years 2014 and 2015, the act permits Medicaid to cover inpatient psychiatric hospital services provided by psychiatric residential treatment facilities to

Medicaid recipients under age 21 who are in the custody of the Ohio Department of Youth Services (ODYS) and have been identified as meeting a clinical criterion of serious emotional disturbance.

The act requires ODYS, in collaboration with ODM and the Ohio Department of Mental Health and Addiction Services (ODMHAS), to specify the clinical criterion of serious emotional disturbance to be used for purposes of identifying these individuals.

### **Prior authorization for community mental health services**

(Section 323.80)

The act continues for fiscal years 2014 and 2015 a provision that H.B. 153 of the 129th General Assembly established for fiscal years 2012 and 2013. Under the provision, a Medicaid recipient under 21 years of age automatically satisfies all requirements for any prior authorization process for community mental health services provided under a component of the Medicaid program administered by ODMHAS if the recipient (1) is in the temporary or permanent custody of a public children services agency or private child placing agency, (2) is in a planned permanent living arrangement, (3) has been placed in protective supervision by a juvenile court, (4) has been committed to ODYS, or (5) is an alleged or adjudicated delinquent or unruly child receiving services under the Felony Delinquent Care and Custody Program.

### **Review of home health services**

(Section 323.290)

The act authorizes ODM to review home health nursing services, home health aide services, and private duty nursing services covered by the Medicaid program to identify opportunities to improve the efficiency of, and individual care provided by, long-term care services and supports. In its review, ODM may consider establishing any of the following:

(1) New methods for authorizing and coordinating long-term care services and supports, including such services and supports covered by the Medicaid state plan, using case managers or care coordinators;

(2) Competency and training requirements for the case managers or care coordinators;

(3) Other mechanisms for improving efficiency and individual care in the delivery of long-term care services and supports.

## Medicaid coverage of wheelchairs, oxygen, and transportation

(R.C. 5165.01 and 5165.19; Section 323.236)

### Services removed from bundling

H.B. 1 of the 128th General Assembly included the costs of wheelchairs, oxygen, and resident transportation services among the costs included in nursing facilities' Medicaid allowable costs.<sup>175</sup> The inclusion of wheelchair, oxygen, and resident transportation costs in nursing facilities' costs is part of what has been called "bundling." Other costs that are part of bundling include, over-the-counter pharmacy products, physical therapy, occupational therapy, speech therapy, and audiology. Bundling affects nursing facilities' Medicaid payments.

The act removes custom wheelchairs from nursing facilities' Medicaid-allowable costs, as well as repairs to and replacements of custom wheelchairs and parts that are made in accordance with the instructions of the physician of the individual who uses the custom wheelchair. "Custom wheelchair" is defined as a wheelchair that (1) has been measured, fitted, or adapted in consideration of the body size or disability of the individual who is to use the wheelchair or the individual's period of need for, or intended use of, the wheelchair and (2) has customized features, modifications, or components that the supplier or manufacturer added or made in accordance with the instructions of the individual's physician. The act also removes oxygen (other than emergency oxygen) and resident transportation services from nursing facilities' Medicaid-allowable costs. All of the removals take effect January 1, 2014.

Continuing law provides for a portion of nursing facilities' Medicaid payment rates for direct care costs to be based on their costs for bundled services. Under prior law, this was reflected in an \$1.88 per Medicaid day payment rate increase for nursing facilities' costs per case-mix unit, a factor in determining their Medicaid payment rates for direct care costs. With the removal of custom wheelchair, oxygen (other than emergency oxygen), and resident transportation costs, this amount is reduced to 86¢ beginning January 1, 2014.

Both the prior increase and the act's lower increase are to cease when ODM first rebases nursing facilities' costs per case-mix unit. Rebasing is a redetermination of nursing facilities' costs per case-mix unit using information from Medicaid cost reports for a calendar year that is later than the calendar year used for the previous determination of such costs. Continuing law provides that ODM does not have to conduct a rebasing more than once every ten years.

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<sup>175</sup> Emergency oxygen had already been a Medicaid-allowable cost for nursing facilities.



## **Purchasing strategies**

The act requires the ODM Director to implement, for the period beginning January 1, 2014, and ending June 30, 2015, strategies for purchasing custom wheelchairs, oxygen (other than emergency oxygen), and resident transportation services for Medicaid recipients residing in nursing facilities. In implementing the purchasing strategies, the Director is to seek to achieve a more efficient allocation of resources and price and quality competition among providers of the goods and services. The Director must consider one or more of the following when determining the purchasing strategies:

- (1) Establishing competitive bidding;
- (2) Establishing manufacturers rebate programs;

(3) Another purchasing strategy that saves the Medicaid program an amount equivalent to the savings that would be realized from one or both of the purchasing strategies specified above.

## **Nursing facility services**

### **Nursing facilities' peer groups**

(R.C. 5165.15, 5165.16, 5165.17, and 5165.19)

Nursing facilities are placed into various peer groups for the purposes of determining their Medicaid payment rates for ancillary and support costs, capital costs, and direct care costs. The act provides for a nursing facility located in Mahoning or Stark county to be treated as if it were in a different peer group when its Medicaid payment rate is determined for the period beginning October 1, 2013, and ending on the first day of the first rebasing of nursing facilities' Medicaid payment rates. This will affect the Medicaid payment rates only for nursing facilities located in those counties. Nursing facilities located in either county are to become a part of the different peer groups beginning with the first rebasing. This will affect the Medicaid payment rates for all nursing facilities in the peer groups affected by the changes. A rebasing is a redetermination of nursing facilities' Medicaid payment rates for certain cost centers using information from Medicaid cost reports for a calendar year that is later than the calendar year used for the previous determination of the costs.

For the purpose of determining nursing facilities' Medicaid payment rates for ancillary and support costs and capital costs, a nursing facility located in Mahoning or Stark county is placed in either peer group five or six, depending on how many beds it has. If it has fewer than 100 beds, it is placed in peer group five. If it has 100 or more





beds, it is placed in peer group six. Nursing facilities located in any of the following counties are also placed in peer group five or six, depending on their number of beds: Adams, Allen, Ashland, Athens, Auglaize, Belmont, Carroll, Columbiana, Coshocton, Crawford, Defiance, Erie, Gallia, Guernsey, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Jefferson, Lawrence, Logan, Meigs, Mercer, Monroe, Morgan, Muskingum, Noble, Paulding, Perry, Pike, Putnam, Richland, Scioto, Shelby, Trumbull, Tuscarawas, Van Wert, Vinton, Washington, Wayne, Williams, and Wyandot.

During the period beginning October 1, 2013, and ending on the first day of the first rebasing, a nursing facility located in Mahoning or Stark county is to be treated as if it were part of peer group three if it has fewer than 100 beds and peer group four if it has 100 or more beds. Beginning with the first rebasing, nursing facilities located in Mahoning or Stark County are to be placed, rather than just treated as if they were part of, peer group three or four. Under continuing law, peer groups three and four consist of nursing facilities located in any of the following counties: Ashtabula, Champaign, Clark, Cuyahoga, Darke, Delaware, Fairfield, Fayette, Franklin, Fulton, Geauga, Greene, Hancock, Knox, Lake, Licking, Lorain, Lucas, Madison, Marion, Medina, Miami, Montgomery, Morrow, Ottawa, Pickaway, Portage, Preble, Ross, Sandusky, Seneca, Summit, Union, and Wood.

For the purpose of determining nursing facilities' Medicaid payment rates for direct care costs, a nursing facility located in Mahoning or Stark county is placed in peer group three. Peer group three also consists of nursing facilities located in any of the following counties: Adams, Allen, Ashland, Athens, Auglaize, Belmont, Carroll, Columbiana, Coshocton, Crawford, Defiance, Erie, Gallia, Guernsey, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Jefferson, Lawrence, Logan, Meigs, Mercer, Monroe, Morgan, Muskingum, Noble, Paulding, Perry, Pike, Putnam, Richland, Scioto, Shelby, Trumbull, Tuscarawas, Van Wert, Vinton, Washington, Wayne, Williams, and Wyandot. During the period beginning October 1, 2013, and ending on the first day of the first rebasing, a nursing facility is to be treated as if it were part of peer group two. Beginning with the first rebasing, nursing facilities located in Mahoning or Stark County are to be placed, rather than just treated as if they were part of, peer group two. Under continuing law, peer group two consists of nursing facilities located in any of the following counties: Ashtabula, Champaign, Clark, Cuyahoga, Darke, Delaware, Fairfield, Fayette, Franklin, Fulton, Geauga, Greene, Hancock, Knox, Lake, Licking, Lorain, Lucas, Madison, Marion, Medina, Miami, Montgomery, Morrow, Ottawa, Pickaway, Portage, Preble, Ross, Sandusky, Seneca, Summit, Union, and Wood.



## **Nursing facilities' quality incentive payments**

(R.C. 5165.25 (primary), 173.47, and 5165.26)

### **Maximum quality incentive payment**

Continuing law provides for a quality incentive payment to be part of nursing facilities' Medicaid payments. A nursing facility's per Medicaid day quality incentive payment for a fiscal year is the product of \$3.29 and the number of points it is awarded for meeting accountability measures. There is, however, a cap on the quality incentive payment that may be paid. Under prior law, the maximum per Medicaid day payment was \$16.44 for all nursing facilities. Beginning with fiscal year 2015, the act revises the law governing the maximum payment as follows:

(1) The maximum payment is to remain at \$16.44 per Medicaid day for a nursing facility that is awarded at least one point for meeting accountability measures regarding pain, pressure ulcers, physical restraints, urinary tract infections, and vaccinations.

(2) The maximum payment is to be reduced to \$13.16 per Medicaid day for a nursing facility that fails to be awarded at least one point for the accountability measures specified above.

### **Fiscal year 2014 accountability measures**

The act retains the accountability measures for which nursing facilities may be awarded points for fiscal year 2014. However, the act includes specific percentage amounts to be used for certain accountability measures rather than having those percentages determined administratively in accordance with directions included in provisions the act eliminates. The following are the accountability measures for which the act establishes specific percentage amounts to be used and the percentage amounts so specified:

(1) Not more than 13.35% of a nursing facility's long-stay residents report severe to moderate pain during the minimum data set assessment process;<sup>176</sup>

(2) Not more than 5.73% of a nursing facility's long-stay, high-risk residents have been assessed as having one or more stage two, three, or four pressure ulcers during the minimum data set assessment process;

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<sup>176</sup> The minimum data set is the standardized, uniform, and comprehensive assessment of nursing facility residents that is used to identify potential problems, strengths, and preferences of residents and is part of the resident assessment instrument required by federal Medicaid law.

(3) Not more than 1.52% of a nursing facility's long-stay residents were physically restrained as reported during the minimum data set assessment process;

(4) Less than 7.78% of a nursing facility's long-stay residents had a urinary tract infection as reported during the minimum data set assessment process.

#### **Fiscal year 2015 and thereafter accountability measures**

The act revises the list of accountability measures for which nursing facilities can be awarded points for fiscal year 2015 and thereafter. A nursing facility is to be awarded one point for each of the following accountability measures it meets:

(1) Its overall score on its resident satisfaction survey is at least 87.5;

(2) Its overall score on its family satisfaction survey is at least 85.9;

(3) It satisfies the requirements for participation in the Advancing Excellence in America's Nursing Homes campaign;

(4) Both of the following apply:

(a) It had not been listed on Table B of the Special Focus Facility list for 18 or more consecutive months during any time during the calendar year immediately preceding the fiscal year for which the point is to be awarded.<sup>177</sup>

(b) It had neither of the following on its most recent standard survey conducted not later than the last day of the calendar year immediately preceding the fiscal year for which the point is to be awarded or any complaint surveys conducted in the calendar year immediately preceding the fiscal year for which the point is to be awarded: (i) a health deficiency with a scope and severity level greater than F, or (ii) a deficiency that constitutes a substandard quality of care.

(5) It does all of the following:

(a) Offers at least 50% of its residents at least one of the following dining choices for at least two meals each day: restaurant-style dining, buffet-style dining, family-style dining, open dining, or 24-hour dining;

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<sup>177</sup> See "**Special Focus Facility Program**," below, for a discussion of the Special Focus Facility list and its tables.

(b) Maintains a written policy specifying the manner or manners in which residents' dining choices for meals are offered;

(c) Communicates the policy to its staff, residents, and families of residents.

(6) It does all of the following:

(a) Enables at least 50% of its residents to take a bath or shower when they choose;

(b) Maintains a written policy regarding residents' choices in bathing;

(c) Communicates the policy to its staff, residents, and families of residents.

(7) It has at least both of the following scores on its resident satisfaction survey:

(a) With regard to the question in the survey regarding residents' ability to choose when to go to bed in the evening, at least 89;

(b) With regard to the question in the survey regarding residents' ability to choose when to get out of bed in the morning, at least 76.

(8) It has at least both of the following scores on its family satisfaction survey:

(a) With regard to the question in the survey regarding residents' ability to choose when to go to bed in the evening, at least 88;

(b) With regard to the question in the survey regarding residents' ability to choose when to get out of bed in the morning, at least 75.

(9) Not more than 13.35% of its long-stay residents report severe to moderate pain during the minimum data set assessment process.

(10) Not more than 5.16% of its long-stay, high-risk residents have been assessed as having one or more stage two, three, or four pressure ulcers during the minimum data set assessment process.

(11) Not more than 1.52% of its long-stay residents were physically restrained as reported during the minimum data set assessment process.

(12) Less than 7% of its long-stay residents had a urinary tract infection as reported during the minimum data set assessment process.



(13) It does both of the following:

(a) Uses a tool for tracking residents' admissions to hospitals;

(b) Annually reports to ODM data on hospital admissions by month for all residents.

(14) Both of the following apply:

(a) At least 95% of its long-stay residents are vaccinated against pneumococcal pneumonia, decline the vaccination, or are not vaccinated because the vaccination is medically contraindicated;

(b) At least 93% of its long-stay residents are vaccinated against seasonal influenza, decline the vaccination, or are not vaccinated because the vaccination is medically contraindicated.

(15) An average of at least 50% of its Medicaid-certified beds are in either, or in a combination of both, of the following:

(a) Private rooms;

(b) Semi-private rooms to which all of the following apply: (i) each room provides a distinct territory for each resident occupying the room, (ii) each distinct territory has a window and is separated by a substantial wall from the other distinct territories in the room,<sup>178</sup> (iii) each resident is able to enter and exit the distinct territory of the resident's room without entering or exiting another resident's distinct territory, and (iv) complete visual privacy for each distinct territory may be obtained by drawing a curtain or other screen.

(16) It obtains at least a 95% compliance rate with requesting resident reviews required by a federal regulation for individuals who are exempted hospital discharges.<sup>179</sup>

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<sup>178</sup> "Substantial wall" is defined as a permanent structure that reaches from floor to ceiling and divides a semi-private room into two distinct living spaces, each with its own window.

<sup>179</sup> "Exempted hospital discharge" is defined as an individual (1) who is admitted to a nursing facility directly from a hospital after receiving acute inpatient care at the hospital, (2) who requires nursing facility services for the condition for which the individual received care in the hospital, and (3) whose attending physician has certified before admission to the nursing facility that the individual is likely to require less than 30 days of nursing facility services (42 C.F.R. 483.106(b)(2)(i)).

(17) It does both of the following:

(a) Maintains a written policy that requires consistent assignment of nurse aides and specifies the goal of having a resident receive nurse aide care from not more than 12 different nurse aides during a 30-day period;

(b) Communicates the policy to its staff, residents, and families of residents.

(18) Its staff retention rate is at least 75%.

(19) Its turnover rate for nurse aides is not higher than 65%.

(20) For at least 50% of its resident care conferences, a nurse aide who is a primary caregiver for the resident attends and participates in the conference.

(21) All of the following apply:

(a) At least 75% of its residents have the opportunity, following admission and before completing or quarterly updating their individual plans of care, to discuss their goals for the care they are to receive there, including their preferences for advance care planning, with a member of the resident's health care teams that the facility, its residents, and residents' sponsors consider appropriate.

(b) It records the residents' care goals, including their advance care planning preferences, in their medical records.

(c) It uses the residents' care goals, including their advance care planning preferences, in the development of their individual plans of care.

(22) It does both of the following:

(a) Maintains a written policy that prohibits the use of overhead paging systems or limits their use to emergencies, as defined in the policy;

(b) Communicates the policy to its staff, residents, and families of residents.

Points may be awarded for the accountability measures specified in (21) and (22), above, only for fiscal year 2015. Not later than July 1, 2014, ODM is required to submit recommendations to the General Assembly for accountability measures to replace the accountability measures specified in (21) and (22), above.



As with the accountability measures to be used until fiscal year 2015, to be awarded a point for meeting an accountability measure for fiscal year 2015 and thereafter (other than the accountability measure specified in (4)(b), above), a nursing facility must meet the accountability measure in the calendar year immediately preceding the fiscal year for which the point is to be awarded. A nursing facility is to be awarded points for meeting accountability measures regarding resident satisfaction surveys or family satisfaction surveys only if a resident satisfaction survey or family satisfaction survey, as appropriate, was initiated for the nursing facility in the calendar year immediately preceding the fiscal year for which the points are to be awarded.

### **Nursing facilities' quality bonuses (VETOED)**

(R.C. 5165.26)

The Governor vetoed a provision that would have revised the eligibility requirements that a nursing facility must meet to qualify for a quality bonus and would have provided for quality bonuses to be paid each fiscal year regardless of whether the total amount budgeted for quality incentive payments was spent. Under the vetoed provision, a total of at least \$30 million would have been spent each fiscal year for quality bonuses. Any amount budgeted for quality incentive payments for a fiscal year but not spent was to be added to the \$30 million to determine the total amount to be spent on quality bonuses for that fiscal year. The quality bonuses would have been paid not later than the first day of each November.

To qualify for a quality bonus for a fiscal year under continuing law, a nursing facility must be awarded, for that fiscal year, more than five points for meeting accountability measures applicable to the quality incentive payments. The Governor vetoed a provision that would have required that at least two of the points be awarded for the following:

(1) In the case of fiscal year 2014, for meeting accountability measures regarding pain, pressure ulcers, physical restraints, urinary tract infections, and tools for tracking hospital admissions;

(2) In the case of fiscal year 2015 and thereafter, for meeting accountability measures regarding the same topics described in (1), above, as well as accountability measures regarding vaccinations.



## **Critical access incentive payments**

(R.C. 5165.23)

Continuing law requires ODM to pay, each fiscal year, a critical access incentive payment to each nursing facility that qualifies as a critical access nursing facility. The act adds a new requirement that a nursing facility must meet to qualify as a critical access nursing facility. A nursing facility meets the new requirement if it is awarded at least five points for meeting accountability measures applicable to quality incentive payments for the fiscal year and at least one of the five points is awarded as follows:

(1) For fiscal year 2014, for meeting accountability measures regarding pain, pressure ulcers, physical restraints, and urinary tract infections;

(2) For fiscal year 2015 and thereafter, for meeting accountability measures regarding the same topics described in (1), above, as well as accountability measures regarding vaccinations.

## **Medicaid payment to reserve nursing facility bed**

(R.C. 5165.34)

Continuing law permits ODM to make Medicaid payments to a nursing facility provider to reserve a bed for a Medicaid recipient during a temporary absence under conditions prescribed by ODM. The Medicaid payment rate to reserve a bed for a day is to equal the following:

(1) In the case of a nursing facility that had an occupancy rate exceeding 95%, an amount not exceeding 50% of the payment rate the provider would be paid if the recipient were not absent from the facility that day;

(2) In the case of a nursing facility that had an occupancy rate not exceeding 95%, an amount not exceeding 18% of the payment rate the provider would be paid if the recipient were not absent from the facility that day.

The act specifies the Medicaid cost report to be used to determine a nursing facility's occupancy rate. For the purpose of setting a nursing facility's payment rate to reserve a bed for a day during the period beginning on September 29, 2013, and ending December 31, 2013, ODM is to determine the facility's occupancy rate by using information reported on its Medicaid cost report for calendar year 2012. For the purpose of setting a nursing facility's payment rate to reserve a bed for January 1, 2014, or thereafter, ODM is to determine the facility's occupancy rate by using information reported on its Medicaid cost report for the calendar year preceding the fiscal year in which the reservation falls.





## **Alternative purchasing model for nursing facility services**

(Section 323.280)

The act permits the ODM Director to establish as a Medicaid waiver program an alternative purchasing model for nursing facility services that are provided during the period beginning July 1, 2013, and ending July 1, 2015, to Medicaid recipients with specialized health care needs, including recipients dependent on ventilators, recipients who have severe traumatic brain injury, and recipients who would be admitted to long-term acute care hospitals or rehabilitation hospitals if they did not receive nursing facility services. If established, the alternative purchasing model must (1) recognize a connection between enhanced Medicaid payment rates and improved health outcomes capable of being measured, (2) include criteria for identifying Medicaid recipients with specialized health care needs, and (3) include procedures for ensuring that Medicaid recipients so identified receive facility services under the alternative purchasing model. The total Medicaid payment rate for nursing facility services provided under the alternative purchasing model may differ from the rate that would otherwise be paid.

### **Special Focus Facility Program**

(R.C. 5165.771 and 5165.80)

The act requires ODM to terminate a nursing facility's Medicaid participation if the nursing facility is placed on the federal Special Focus Facility (SFF) list and fails to make improvements or graduate from the SFF program within certain periods of time. The SFF list is part of the SFF program that federal law requires the U.S. Department of Health and Human Services to create for nursing facilities identified as having substantially failed to meet applicable requirements of the Social Security Act.<sup>180</sup> The SFF list has different tables. Table A identifies nursing facilities that are newly added to the list. Table B identifies nursing facilities that have not improved. Table C identifies nursing facilities that have shown improvement. Table D identifies nursing facilities that have recently graduated from the SFF program.

Under the act, ODM is to issue an order terminating a nursing facility's participation in Medicaid if any of the following apply:

(1) The nursing facility is listed in Table A or Table B on September 29, 2013, and fails to be placed on Table C not later than September 29, 2014 (12 months after the provision's effective date);

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<sup>180</sup> 42 U.S.C. 1396r(f)(10).





(2) The nursing facility is listed in Table A, Table B, or Table C on September 29, 2013, and fails to be placed on Table D not later than September 29, 2015 (24 months after the provision's effective date);

(3) The nursing facility is placed in Table A after September 29, 2013, and fails to be placed in Table C not later than 12 months after the placement in Table A;

(4) The nursing facility is placed in Table A after September 29, 2013, and fails to be placed in Table D not later than 24 months after the placement in Table A.

An order terminating a nursing facility's Medicaid participation is not subject to appeal under the Administrative Procedure Act (R.C. Chapter 119.).

To help a nursing facility avoid having its participation in the Medicaid program terminated, the Ohio Department of Aging is required to provide the nursing facility technical assistance through the nursing home quality initiative at least four months before ODM would be required to terminate the nursing facility's participation (see "**ODA nursing home quality initiative**," above).

Under continuing law, ODM or an agency under contract with ODM may do either of the following when a nursing facility's Medicaid participation is terminated for certain reasons: (1) appoint a temporary manager for the nursing facility subject to the provider's continuing consent or (2) apply to a common pleas court for such injunctive relief as is necessary for the appointment of a special master. The act permits ODM or the contract agency to take either of these actions when a nursing facility's Medicaid participation is terminated pursuant to the act's provisions regarding the SFF list.

### **Nursing facility cost report after a change of operator**

(R.C. 5165.10)

Nursing facilities are required to file annual cost reports with ODM as part of the process of determining their Medicaid payment rates. Usually, a cost report is due not later than 90 days after the end of the calendar year that the report covers.

Under certain circumstances, a nursing facility must submit a cost report before the annual report is due. The act eliminates one of these cost reports. A nursing facility that undergoes a change of provider that is an arm's length transaction no longer must submit a Medicaid cost report for that facility not later than 90 days after the end of the facility's first three full calendar months of operation under the new provider.

## **Post-payment reviews of nursing facility Medicaid claims**

(R.C. 5165.49 (primary) and 5165.41)

The act permits ODM to conduct a post-payment review of a claim submitted by a nursing facility and paid by the Medicaid program to determine whether the nursing facility was overpaid. ODM must provide the nursing facility a written summary of the review's results. The results are not subject to an adjudication under the Administrative Procedure Act (R.C. Chapter 119.). However, the nursing facility may request that the ODM Director reconsider the results. The ODM Director is to reconsider the results on receipt of a request made in good faith. ODM is prohibited from deducting from the nursing facility's Medicaid payments any amounts that ODM claims to be due from the nursing facility as a result of the review until the conclusion of the Director's reconsideration, if any.

ODM is required to redetermine a nursing facility's Medicaid payment rate for a nursing facility using revised information if a post-payment review results in a determination that the nursing facility received a higher Medicaid payment rate than it was entitled to receive. The nursing facility must refund the overpayment and ODM may charge interest on the overpayment.

## **Nursing facility resident's personal needs allowance**

(R.C. 5163.33)

Continuing law establishes a personal needs allowance for residents of a nursing facility. A personal needs allowance is income used for personal items that must be disregarded in determining a nursing facility resident's eligibility for Medicaid or patient liability for the cost of services.

The act increases the amount of the personal needs allowance for Medicaid recipients residing in nursing facilities as follows:

(1) For calendar year 2014, increases the amount to not less than \$45 (from \$40) for an individual and not less than \$90 (from \$80) for a married couple;

(2) Beginning in calendar year 2015, increases the amount to not less than \$50 for an individual and not less than \$100 for a married couple.



## Home and community-based services

### Collection of patient liabilities

(Section 323.320)

The act authorizes the ODM Director, for fiscal years 2014 and 2015, to (1) contract with a person or government entity to collect patient liabilities for home and community-based services available under a Medicaid waiver component and (2) adopt rules as necessary to implement the above provision.

### Integrated Care Delivery System Medicaid waiver

(R.C. 5166.16)

The act permits the ODM Director to create, as part of the Integrated Care Delivery System (ICDS), a Medicaid waiver program covering home and community-based services.<sup>181</sup> ICDS is a program created to test and evaluate the integration of care that individuals eligible for both Medicaid and Medicare (dual eligible individuals) receive under those programs.

When the ICDS Medicaid waiver program begins to accept enrollments, no ICDS participant who is eligible for the waiver program is to be enrolled in another Medicaid waiver program (the PASSPORT program, Choices program, Ohio Home Care program, and Ohio Transitions II Aging Carve-Out program) regardless of whether the participant prefers to remain enrolled or be enrolled in the other Medicaid waiver program administered by ODM or the Ohio Department of Aging (ODA). A dual eligible individual who is eligible for another ODM- or ODA-administered Medicaid waiver program may enroll in that waiver program before the individual begins to participate in ICDS. But the dual eligible individual must disenroll from the other ODM- or ODA-administered Medicaid waiver program and enroll in the ICDS Medicaid waiver program once the individual becomes an ICDS participant and it is possible to enroll the individual in the ICDS Medicaid waiver program. This requirement applies regardless of whether the dual eligible individual prefers to remain enrolled in the other ODM- or ODA-administered Medicaid waiver program.

An ICDS participant's disenrollment from another ODM- or ODA-administered Medicaid waiver program and enrollment in the ICDS Medicaid waiver program must be accomplished without a disruption in the participant's services.

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<sup>181</sup> See "**Integrated Care Delivery System evaluation**," below, for more detailed information about ICDS.

## **Home care attendant services**

(R.C. 5166.30, 5166.301, 5166.302, 5166.305, 5166.306, 5166.307, 5166.309, 5166.3010, and 5811.8811 (repealed))

The act provides for two additional Medicaid waiver programs, the PASSPORT program and the ICDS Medicaid waiver program, to cover home care attendant services. Under prior law, only the Ohio Home Care program and Ohio Transitions II Aging Carve-Out program covered those services. Home care attendant services are all of the following as provided by a home care attendant: (1) personal care aide services, (2) assistance with self-administration of medication, and (3) assistance with nursing tasks.

Because ODA administers the PASSPORT program, the act provides for the ODA Director to perform many of the same types of actions regarding the PASSPORT program's coverage of home care attendant services that the ODM Director performs regarding home care attendant services covered by ODM-administered Medicaid waiver programs. For example, a home care attendant providing services under the PASSPORT program annually must provide the ODA Director satisfactory evidence of having completed not less than 12 hours of in-service continuing education regarding home care attendant services. However, the ODM Director is to enter into provider agreements with all home care attendants, including those who are to provide services under the PASSPORT program.

## **Home and community-based services regarding behavioral health**

(Section 323.330)

During fiscal years 2014 and 2015, the act permits Medicaid to cover state plan home and community-based services for Medicaid recipients of any age who have behavioral health issues and countable incomes not exceeding 150% of the federal poverty line. A Medicaid recipient is not required to undergo a level of care determination to be eligible for the services. The act authorizes the ODM Director to adopt rules as necessary to implement these provisions.

## **Administrative issues related to termination of waiver programs**

(Section 323.110)

If ODM and ODA terminate the PASSPORT, Choices, Assisted Living, Ohio Home Care, or Ohio Transitions II Aging Carve-Out program, the act provides that all applicable statutes, and all applicable rules, standards, guidelines, or orders issued by ODM or ODA before the program is terminated, are to remain in full force and effect on



and after that date, but solely for purposes of concluding the program's operations, including fulfilling ODM's and ODA's legal obligations for claims arising from the program relating to eligibility determinations, covered medical assistance provided to eligible persons, and recovering erroneous overpayments. The right of subrogation for the cost of medical assistance and an assignment of the right to medical assistance continue to apply with respect to the terminated program and remain in force to the full extent provided under law governing the right of subrogation and assignment. ODM and ODA are permitted to use appropriated funds to satisfy any claims or contingent claims for medical assistance provided under the terminated program before the program's termination. Neither ODM nor ODA has liability under the terminated program to reimburse any provider or other person for claims for medical assistance rendered under the program after it is terminated.

## **Medicaid managed care**

### **Annual report**

(R.C. 5167.03)

The act eliminates a requirement that ODM prepare and submit to the General Assembly an annual report on the Medicaid care management system. The requirement for the annual report, which had to address ODM's ability to implement the system, was established when the Medicaid managed care system was expanded by H.B. 66 of the 126th General Assembly. The first report was due by October 1, 2007.

### **Hospital inpatient capital payments**

(R.C. 5167.10; Section 812.40)

One part of the payment made by ODM to Medicaid managed care organizations is referred to in statute as the hospital inpatient capital payment portion. ODM or its actuary must base this portion of the payment on data for services provided to all recipients enrolled in Medicaid managed care organizations, as reported by hospitals on relevant cost reports.

The act provides that, beginning January 1, 2014, the hospital inpatient capital payment portion may not exceed any maximum rate established in rules the ODM Director may adopt. If ODM establishes a maximum rate, the act prohibits a Medicaid managed care organization from compensating hospitals for inpatient capital costs in an amount that exceeds the maximum rate.

## **Emergency services**

(R.C. 5167.201)

Law unmodified by the act provides that, when a Medicaid recipient enrolled in a Medicaid managed care organization receives emergency services from a provider that is not under contract with that organization, the provider must accept from the organization, as payment in full, not more than the amounts that the provider could collect if the Medicaid recipient received Medicaid other than through the managed care system.

The act provides that any agreement entered into by a Medicaid managed care participant, or a participant's parent or legal guardian, that requires payment for emergency services in violation of this law is void and unenforceable.

## **Graduate medical education costs**

(R.C. 5164.74 and 5164.741; Section 812.40)

Continuing law requires the ODM Director to adopt rules governing the calculation and payment of graduate medical education (GME) costs associated with services rendered to Medicaid recipients, including reimbursement of allowable and reasonable GME costs associated with services rendered to Medicaid managed care recipients. Beginning January 1, 2014, the act eliminates provisions specifying how payments for GME costs are made under the Medicaid managed care system. Also beginning on that date, the act requires the ODM Director to adopt rules governing the allocation of payments for GME costs associated with both the fee-for-service component of Medicaid and the managed care system.

Under the eliminated provisions, if ODM required a Medicaid managed care organization to pay for GME costs, ODM had to include in its payment to the organization an amount sufficient for the organization to pay those costs; if ODM did include a sufficient amount, all of the following applied:

(1) Unless the provider was a hospital that refused without good cause to contract with a Medicaid managed care organization, ODM had to pay the provider for GME costs;

(2) The provider was prohibited from seeking reimbursement from the organization for those costs;

(3) The organization was not required to pay providers for those costs.



## Medicaid Managed Care Performance Payment Program

(R.C. 5167.30 (primary), 5162.60, and 5162.62; Section 323.60)

A portion of the premiums made to Medicaid managed care organizations are withheld and used by ODM to make payments under the Managed Care Performance Payment Program. Under prior law, the sum of all funds withheld could not exceed 1% of all premium payments made to all Medicaid managed care organizations. The act increases the total that may be withheld to 2% of all premium payments made to all Medicaid managed care organizations.

Continuing law provides for amounts withheld from Medicaid managed care organizations to be held in the Managed Care Performance Payment Fund. The act provides that the fund also is to include any fines imposed on and collected from Medicaid managed care organizations for failure to meet performance standards or other requirements specified in a provider agreement or by the ODM Director (see "**Health Care Compliance Fund abolished**," below). The act also modifies the use of the fund to provide that the amounts in it may, rather than must, be used to make performance payments. The amounts may also be used to (1) meet obligations specified in provider agreements, (2) pay for Medicaid services provided by a Medicaid managed care organization, (3) reimburse Medicaid managed care organizations that have been fined and have later come into compliance or (4) make performance payments to Medicaid managed care organizations providing care under a demonstration project for integration of care received by individuals dually eligible for Medicare and Medicaid, as described below.

### ICDS performance payments

(Section 323.300)

ODM is authorized under continuing law to implement a demonstration project to test and evaluate the integration of care received by individuals dually eligible for Medicaid and Medicare. The project is to be known as the Integrated Care Delivery System (ICDS).<sup>182</sup> For fiscal years 2014 and 2015, the act requires ODM, if it implements ICDS in a way that provides participants with care through Medicaid managed care organizations, to do both of the following:

(1) Develop quality measures designed specifically to determine the effectiveness of the health care and other services provided to participants by Medicaid managed care organizations;

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<sup>182</sup> R.C. 5164.91. In Section 323.300, ICDS is referred to as the Dual Eligible Integrated Care Demonstration Project.





(2) Determine an amount to be withheld from the Medicaid premium payments paid to Medicaid managed care organization for participants.

For purposes of the amount to be withheld from premium payments, the act requires ODM to establish a percentage amount and apply the same percentage to all Medicaid managed care organizations providing care to ICDS participants. Each organization must agree to the withholding as a condition of receiving or maintaining its Medicaid provider agreement. The act authorizes the ODM Director to use these amounts to provide performance payments to Medicaid managed care organizations providing care to ICDS participants in accordance with rules that the Director may adopt. The act provides that an organization providing care under ICDS is not subject to withholdings under the Medicaid Managed Care Performance Payment Program, described above.

### **Pediatric accountable care organizations**

(R.C. 5167.031)

The act permits, rather than requires, ODM to recognize pediatric accountable care organizations that provide care coordination and other services under the Medicaid care management system to individuals under age 21 who are in the category of individuals who receive Medicaid on the basis of being aged, blind, or disabled. H.B. 153 of the 129th General Assembly required the recognition system to be implemented by July 1, 2012.<sup>183</sup> The act also eliminates a provision specifying that the purpose of the recognition system is to meet the complex medical and behavioral needs of disabled children through new approaches to care coordination.

### **Exclusion of BCMH participants from Medicaid managed care**

(Section 323.70)

Until July 1, 2014, the act excludes from any required participation in the Medicaid care management system certain recipients of services through Bureau for Children with Medical Handicaps (BCMh) in the Ohio Department of Health. The exclusion applies to BCMh recipients who have one or more of the following: cystic fibrosis, hemophilia, or cancer. The act provides, however, that such a BCMh recipient may be designated for participation in the Medicaid care management system if the individual was receiving services through the system immediately before July 1, 2013.<sup>184</sup>

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<sup>183</sup> Rules to develop the recognition system have not been adopted.

<sup>184</sup> Similar exclusions were granted by the 129th General Assembly. (See Section 309.30.53 of H.B. 153, as amended by H.B. 487.)





## Sources of Medicaid revenues

### Nursing home and hospital long-term care franchise permit fees

(R.C. 5168.41 (primary) and 5168.40; Sections 812.20 and 812.30)

The act revises the law governing the amount of the franchise permit fee that nursing homes and hospital long-term care units are assessed for each fiscal year. The fees are a source of revenue for nursing facility and home and community-based services covered by the Medicaid program and the Residential State Supplement program.

Under prior law, the franchise permit fee rate was \$11.67 per bed per day. The act replaces the specific dollar amount of the per bed per day rate of the fee with a formula to be used to determine the per bed per day fee rate. Effective July 1, 2013, the franchise permit fee rate is to be determined each fiscal year as follows:

(1) Determine the estimated total net patient revenues for all nursing homes and hospital long-term care units for the fiscal year;

(2) Multiply the amount estimated above by the lesser of (a) the indirect guarantee percentage<sup>185</sup> or (b) 6%;

(3) Divide the product determined above by the number of days in the fiscal year;

(4) Determine the sum of (a) the total number of beds in all nursing homes and hospital long-term care units that are subject to the franchise permit fee for the fiscal year and (b) the total number of nursing home beds that are exempt from the fee for the fiscal year because of a federal waiver;

(5) Divide the quotient determined under (3), above, by the sum determined under (4) above.

In determining the estimated total net patient revenue for all nursing homes and hospital long-term care units for a fiscal year, ODM is required to use at least (1) information from Medicaid cost reports that are the most recent at the time the determination is made, (2) the projected total Medicaid payment rates for nursing

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<sup>185</sup> The indirect guarantee percentage is the percentage specified in federal law that is to be used to determine whether a class of providers is indirectly held harmless for any portion of the costs of a broad-based health-care related tax. The indirect guarantee percentage is currently 6%. (42 U.S.C. 1396b(w)(4)(C)(ii).)



facility services for the fiscal year, and (3) the projected total number of Medicaid days for the fiscal year.

### **Hospital Care Assurance Program**

(Sections 125.10 and 125.12)

The act continues the Hospital Care Assurance Program (HCAP) for two additional years. HCAP was scheduled to end October 16, 2013, but under the act, will continue until October 16, 2015. Under HCAP, hospitals are annually assessed an amount based on their total facility costs and government hospitals make annual intergovernmental transfers. ODM distributes to hospitals money generated by the assessments and intergovernmental transfers along with federal matching funds generated by the assessments and transfers. A hospital compensated under HCAP must provide, without charge, basic, medically necessary, hospital-level services to Ohio residents who are not recipients of Medicare or Medicaid and whose income does not exceed the federal poverty line.

### **Hospital assessments**

(Sections 125.11, 125.13, and 323.100)

The act continues the assessments imposed on hospitals for two additional years, ending October 1, 2015, rather than October 1, 2013. The assessments are in addition to HCAP, but like HCAP, they raise money to help pay for the Medicaid program.

The act provides for a portion of the hospital assessments to be used during fiscal years 2014 and 2015 to continue the Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program, to continue the Medicaid Managed Care Hospital Incentive Payment Program, and to pay the Medicaid rates for hospital inpatient and outpatient services required by the act. Under the first program, supplemental payments are made to hospitals for Medicaid-covered inpatient and outpatient services. Under the second program, additional funds are provided to Medicaid managed care organizations to be used by the organizations to increase payments to hospitals for providing services to Medicaid recipients who are enrolled in the Medicaid managed care organizations (see "**Medicaid rates for hospital inpatient and outpatient services**," above).

### **Medical assistance confidentiality**

(R.C. 5160.99)

Continuing law prohibits, with certain exceptions, any person or government entity from using or disclosing information regarding a medical assistance recipient for



any purpose not directly connected with the administration of a medical assistance program.<sup>186</sup> The act provides that, in addition to Medicaid, CHIP, and RMA, the prohibition applies to any other program that provides medical assistance and that state statutes authorize ODM to administer.

The act reinstates a penalty that previously applied with respect to violations of the confidentiality provisions applicable to medical assistance programs. The penalty was inadvertently eliminated when H.B. 153 of the 129th General Assembly relocated statutory medical assistance provisions to a Revised Code section separate from the confidentiality provisions that apply to other public assistance programs, such as Ohio Works First.

### **Technologies to monitor eligibility, claims history, and drug coverage**

(R.C. 5164.757; Section 812.40)

In place of a prior law provision authorizing establishment of an e-prescribing system for Medicaid, the act authorizes the ODM Director to acquire or specify technologies to give information regarding Medicaid eligibility, claims history, and drug coverage to Medicaid providers through electronic health record and e-prescribing applications. The act's provisions granting this authority take effect January 1, 2014.

If the ODM Director chooses to acquire or specify the technologies, the act requires the e-prescribing applications of the technologies to enable a Medicaid provider to do what the provider could do under the preexisting e-prescribing system – prescribe a drug for a Medicaid recipient through an electronic system without issuing prescriptions by handwriting or telephone. Like the e-prescribing system authorized by prior law, the technologies acquired or specified by the Director also must give Medicaid providers an up-to-date, clinically relevant drug information database and a system of electronically monitoring Medicaid recipients' medical history, drug regimen compliance, and fraud and abuse.

Associated with the elimination of the authority to establish an e-prescribing system, the act eliminates the requirement that the Director take the following actions: (1) determine before the beginning of each fiscal year the ten Medicaid providers that issued the most prescriptions for Medicaid recipients receiving hospital services during the preceding calendar year and make certain notifications to those providers, and (2) seek the most federal financial participation available for the development and implementation of the system.

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<sup>186</sup> R.C. 5160.45.

## Exchange of certain information by state agencies

(R.C. 191.01, 191.02, 191.04, and 191.06; Section 323.10.63)

H.B. 487 of the 129th General Assembly authorized the Office of Health Transformation (OHT) Executive Director or the Executive Director's designee to facilitate the coordination of operations and exchange of information between certain state agencies ("participating agencies") during fiscal year 2013. H.B. 487 specified that the purpose of this authority was 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 this authority, H.B. 487 required the OHT Executive Director or the Executive Director's designee to identify each health transformation initiative in Ohio that involved the participation of two or more participating agencies and that permitted or required an interagency agreement. For each health transformation initiative identified, the OHT Executive Director or the Executive Director's designee had to, in consultation with each participating agency, adopt one or more operating protocols.

H.B. 487 also authorized a participating agency to exchange, during fiscal year 2013 only, personally identifiable information with another participating agency for purposes related to or in support of a health transformation initiative that had been identified as described above. If a participating agency used or disclosed personally identifiable information during fiscal year 2013, it was required to do so in accordance with all operating protocols adopted as described above that applied to the use or disclosure.

The act extends the authorizations and requirements regarding the use and disclosure of personally identifiable information, described above, to fiscal years 2014 and 2015. It also includes ODM and the Ohio Department of Administrative Services as participating agencies effective June 30, 2013.



## Health information exchanges

(R.C. 3798.01, 3798.10, 3798.13, 3798.14, 3798.15, and 3798.16)

H.B. 487 of the 129th General Assembly enacted provisions, largely consistent with those in the HIPAA Privacy Rule,<sup>187</sup> governing the disclosure of protected health information.<sup>188</sup> Two of H.B. 487's provisions do the following:

(1) Prohibit a covered entity<sup>189</sup> from disclosing protected health information without patient authorization (meeting requirements set forth in the HIPAA Privacy Rule) unless the disclosure is to a health information exchange approved by the ODJFS Director and certain conditions are satisfied. Those conditions do not, however, render unenforceable or restrict in any manner a continuing provision of Ohio law that existed before H.B. 487's immediate effective date (June 11, 2012) and requires a person or governmental entity to disclose protected health information to a state agency, political subdivision, or other governmental entity.

(2) Specify that, in general, H.B. 487's provisions are to be supreme if they conflict with 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: a section of the Revised Code not in R.C. Chapter 3798., a rule, an internal management rule, guidance issued by an agency, orders or regulations of a local board of health, an ordinance or resolution adopted by a political subdivision, or a professional code of ethics. The supremacy policy does not

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<sup>187</sup> The HIPAA Privacy Rule, 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. U.S. Department of Health and Human Services, *Understanding Health Information Privacy*, accessible at [www.hhs.gov/ocr/privacy/hipaa/understanding/index.html](http://www.hhs.gov/ocr/privacy/hipaa/understanding/index.html).

<sup>188</sup> "Protected health information" is defined in federal regulations (45 C.F.R. 160.103) generally as 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.

<sup>189</sup> "Covered entity" is defined in federal regulations (45 C.F.R. 160.103) as 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.



apply, however, to a continuing provision of the Revised Code that existed before H.B. 487's immediate effective date (June 11, 2012) and requires a person or governmental entity to disclose protected health information to a state agency, political subdivision, or other governmental entity.

The act includes ODM and the Ohio Department of Administrative Services as "state agencies" for purposes of the two provisions described above. As a result, the act authorizes covered entities to disclose protected health information in accordance with state law to these additional two state agencies notwithstanding H.B. 487's provisions pertaining to conditions on the disclosure of protected health information and supremacy, described above.

The act also transfers to the ODM Director (from the ODJFS Director) rule-making authority pertaining to (1) a standard authorization form for the use and disclosure of protected health information and substance abuse records by covered entities, and (2) the operation of health information exchanges in Ohio.

## **Direct Care Worker Advisory Workgroup**

(Section 323.234)

### **Creation and membership**

The act creates the Direct Care Worker Advisory Workgroup. The act defines "direct care worker" as an individual who, for direct or indirect payment, provides direct care services to a Medicaid recipient in the recipient's home or other place of residence. "Direct care services" is defined as health care services, ancillary services, or services related to or in support of the provision of health care or ancillary services. "Direct payment" is a Medicaid payment made directly to a direct care worker for the worker's provision of direct care services to a Medicaid recipient. "Indirect payment" is a Medicaid payment made to a third party who pays a direct care worker for the worker's provision of direct care services to a Medicaid recipient.

The Workgroup consists of the following members:

- The Director of Aging or the Director's designee.
- The Director of Developmental Disabilities or the Director's designee.
- The Director of Health or the Director's designee.
- The ODM Director or the Director's designee.



--The Office of Health Transformation (OHT) Executive Director or the Executive Director's designee.

--Two representatives from each of the following organizations, appointed by the organization's chief executive officer or the individual serving in an equivalent capacity for the organization:

- The Ohio Council for Home Care and Hospice;
- The Ohio Health Care Association;
- The Ohio Provider Resource Association;
- The Ohio Nurses Association;
- The Midwest Care Alliance;
- The Ohio Assisted Living Association;
- LeadingAge Ohio.

--Two members of the House of Representatives, one from the majority party and the other from the minority party, appointed by the Speaker.

--Two members of the Senate, one from the majority party and the other from the minority party, appointed by the President of the Senate.

The act specifies that the OHT Executive Director or the Executive Director's designee must serve as the Workgroup's chairperson and that the Ohio Department of Health and ODM must provide staff and other support services for the Workgroup. Members must be appointed not later October 14, 2013. Vacancies must be filled in the same manner as the original appointments. Each member must serve without compensation or reimbursement for expenses incurred while serving on the Workgroup, except to the extent that serving on the Workgroup is considered to be among the member's employment duties.

## **Responsibilities**

The act requires the Workgroup to do all of the following:

- Determine core competencies – the minimum standards a direct care worker must meet when providing direct care services and engaging in any one or more of the following activities associated with care for a





Medicaid recipient: maintaining a clean and safe environment, ensuring recipient-centered care, promoting the recipient's development, assisting the recipient with activities of daily living, communicating with the recipient, completing administrative tasks, and participating in professional activities;

- Designate which direct care workers should meet core competencies;
- Determine whether existing regulatory requirements are equivalent or similar to core competencies;
- Identify funding sources that could be used to assist direct care workers in meeting core competencies;
- Recommend policies that may be incorporated in legislation the General Assembly intends to consider regarding certification of direct care workers and Medicaid payments for direct care services provided by those workers.

## **Report**

Not later than December 31, 2013, the Workgroup must submit a report to the General Assembly describing its findings and recommendations.<sup>190</sup> On submission of the report, the Workgroup ceases to exist.

## **Future legislation intended**

The act specifies that it is the General Assembly's intent to enact legislation in the future that takes into account the Workgroup's recommendations regarding certification of direct care workers and Medicaid payments for direct care services provided by those workers. The legislation is intended to:

--Require the Director of Health to establish, not later than October 1, 2014, a direct care worker certification program that applies to the workers designated by the Workgroup; and

--Prohibit ODM, beginning October 1, 2015, from allowing a direct or indirect payment to be made for direct care services provided by a direct care worker to whom

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<sup>190</sup> In submitting the report to the General Assembly, the Workgroup must provide it to the Senate President, Senate Minority Leader, Speaker of the House of Representatives, House Minority Leader, and the Director of the Legislative Service Commission (R.C. 101.68(B), not in the act).





the certification program applies unless the worker is appropriately certified by that program.

## **Contracts for the management of Medicaid data requests**

(R.C. 5162.12 and 5162.54)

The act authorizes the ODM Director to enter into a contract with one or more persons to receive and process, on the Director's behalf, requests for Medicaid recipient or claims payment data, data from nursing facility audit reports, or extracts or analyses of any of the foregoing data, made by persons who intend to use the items for commercial or academic purposes. The contracts must do both of the following:

--Authorize the contracting person to engage in the activities described above for compensation, which must be stated as a percentage of the fees paid by persons who are provided the items;

--Specify the schedule of fees the contracting person is to charge for the items.

The act requires the ODM Director to use the fees received pursuant to a contract to pay obligations the Director has to the persons who have entered into the contracts. Any money remaining after those obligations are paid must be deposited in the Health Care Services Administration Fund created under continuing law.

The act specifies that, except as otherwise required by federal or state law and subject to certain exclusions, both of the following conditions apply with respect to a request for data covered by a contract:

--The request must be made through a person who has entered into a contract with the ODM Director as described above;

--An item prepared pursuant to a request may be provided to ODM and is confidential and not subject to disclosure under Ohio's Public Records Law<sup>191</sup> or the statute governing the confidentiality of personal information held by state and local agencies.<sup>192</sup>

### **Exclusions**

The act specifies that requests for Medicaid recipient or claims payment data, data from nursing facility audit reports, and extracts or analyses of any of the foregoing

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<sup>191</sup> R.C. 149.43.

<sup>192</sup> R.C. 1347.08.



data that are for any of the following reasons are excluded from the act's contracting provisions:

- Treatment of Medicaid recipients;
- Payment of Medicaid claims;
- Establishment or management of Medicaid third party liability;
- Compliance with the terms of an agreement the ODM Director enters into for purposes of administering the Medicaid program;
- Compliance with an operating protocol the Office of Health Transformation Executive Director or the Executive Director's designee adopts under continuing law for health transformation initiatives.<sup>193</sup>

## **Long-term services**

### **Joint Legislative Committee for Unified Long-Term Services and Supports**

(Section 323.90)

The act provides for the continued existence of the Joint Legislative Committee for Unified Long-Term Services and Supports, which was created under H.B. 153 of the 129th General Assembly. The Committee is to consist of the following members:

- (1) Two members of the House of Representatives from the majority party and one member from the minority party, all appointed by the Speaker;
- (2) Two members of the Senate from the majority party and one member from the minority party, all appointed by the Senate President.

The Speaker of the House is required to designate one of the House members from the majority party to serve as co-chairperson of the Committee. The Senate President is to designate one of the Senate members from the majority party to serve as the other co-chairperson. The Committee is to meet at the call of the co-chairpersons. The co-chairpersons are permitted to request assistance for the Committee from the Legislative Service Commission.

The Committee may examine the following issues:

- (1) Implementing the Dual Eligible Integrated Care Demonstration Project;

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<sup>193</sup> R.C. 191.06(D).

(2) Implementing the unified long-term services and support Medicaid waiver component;

(3) Providing consumers choices regarding a continuum of services that meet their health care needs, promote autonomy and independence, and improve quality of life;

(4) Ensuring that long-term care services and supports are delivered in a cost effective and quality manner;

(5) Subjecting county homes, county nursing homes, and district homes to the nursing home franchise permit fee;

(6) Other issues of interest to the Committee.

The act requires the Committee's co-chairpersons to provide for the ODM Director to testify before the Committee at least quarterly regarding the issues that the Committee examines.

### **Rebalancing long-term care**

(Section 323.160)

The act requires ODM, the Ohio Department of Aging, and the Ohio Department of Developmental Disabilities to continue efforts to achieve a sustainable and balanced delivery system for long-term services and supports. In working to achieve such a delivery system, the three agencies are to strive to meet, by June 30, 2015 (extended from an earlier date of June 30, 2013), certain goals regarding the utilization of non-institutionally-based long-term services and supports. The goals are to have the services and supports used as follows: (1) by at least 50% of Medicaid recipients who are age 60 or older and need long-term services and supports and (2) by at least 60% of Medicaid recipients who are less than age 60 and have cognitive or physical disabilities for which long-term services and supports are needed. "Non-institutionally based long-term services and supports" is a federal term that means services not provided in an institution, including (1) home and community-based services, (2) home health care services, (3) personal care services, (4) PACE<sup>194</sup> services, and (5) self-directed personal assistance services.

The act permits ODM, if it determines that participating in the Balancing Incentives Payments Program will assist in achieving the goals regarding long-term

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<sup>194</sup> "PACE" stands for the Program of All-inclusive Care for the Elderly, a component of the Medicaid program.



services, to apply to participate. The Program was created as part of the federal health care reform law to encourage states to increase the use of non-institutional care provided under their Medicaid programs. A participating state receives a larger federal match for non-institutionally-based long-term services and supports provided under its Medicaid program.<sup>195</sup>

Prior law required that any funds Ohio receives as the result of the larger federal match be deposited into the Balancing Incentive Payments Program Fund. The act, however, does not specify where such funds are to be placed. As a result, any such funds are to be deposited into the General Revenue Fund.<sup>196</sup>

## **Quality initiatives**

### **Quality incentive program to reduce avoidable admissions**

(Section 323.30)

The act permits ODM to implement, for fiscal years 2014 and 2015, a quality incentive program to reduce the use of avoidable emergency department services, as well as avoidable hospital and nursing facility admissions, by Medicaid recipients who are enrolled in a home and community-based services Medicaid waiver component administered by ODM, are receiving nursing or home health aide services available under the Medicaid home health services benefit, or are receiving private duty nursing services.

If ODM implements the quality incentive program, the act requires that ODM establish methods to determine the program's actual savings to Medicaid. Moreover, if the program is implemented, ODM must distribute not more than 50% of the savings to participating Medicaid providers.

### **Children's hospitals quality outcomes program**

(Section 323.40)

The act permits the ODM Director to implement, for fiscal years 2014 and 2015, a children's hospitals quality outcomes program. The act defines "children's hospital" as a hospital (1) located in Ohio, (2) primarily serving patients 18 years of age or younger, (3) subject to the Medicaid prospective payment system for hospitals established in ODM rules, and (4) excluded from Medicare prospective payments under federal law.

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<sup>195</sup> Section 10202 of the Patient Protection and Affordable Care Act (Public Law 111-148).

<sup>196</sup> R.C. 113.09, not in the act.



The quality outcomes program is to encourage children's hospitals to develop the following:

- (1) Infrastructures that are needed to care for patients in the least restrictive setting and that promote the care of patients and their families;
- (2) Programs designed to improve birth outcomes and measurably reduce neonatal intensive care admissions;
- (3) Patient-centered methods to measurably reduce utilization of emergency department services for primary care needs and nonemergency health conditions;
- (4) Other quality-focused reforms that the ODM Director identifies.

### **Improved birth outcomes initiatives**

(Section 323.360)

The act authorizes the ODM Director to develop and implement, during fiscal years 2014 and 2015, initiatives designed to improve birth outcomes for Medicaid recipients, including improvements designed to (1) reduce the number of preterm births, (2) reduce Medicaid costs, and (3) improve the quality of Medicaid services. In developing the initiatives, the ODM Director is permitted to consult with experts in practice improvement, Medicaid managed care organizations, hospitals, and other Medicaid providers.

The ODM Director, Medicaid managed care organizations, and other Medicaid providers involved in the initiatives must make information about the initiatives available on their web sites.

### **Medicaid and Veterans' Services collaboration**

(Section 323.350)

The act authorizes ODM to collaborate with the Ohio Department of Veterans Services to determine ways to improve the coordination of veterans' services in a manner that enhances veterans' receipt of the services. It also authorizes both agencies to implement, during fiscal years 2014 and 2015, initiatives that they determine during the collaboration will maximize the efficiency of the services and ensure that veterans' needs are met.



## Health home services

(R.C. 5164.881)

The act authorizes the ODM Director, in consultation with the Director, to develop and implement a system within the Medicaid program under which Medicaid-eligible individuals with chronic conditions and mental retardation or other developmental disabilities may receive health home services.

Federal law defines "eligible individual with chronic conditions" as someone who is eligible for assistance and has at least two chronic conditions, one chronic condition and is at risk for another, or one serious and persistent mental health condition. It further defines "chronic condition" as a mental health condition, substance use disorder, asthma, diabetes, heart disease, or being overweight. "Health home services" is defined as comprehensive and timely high-quality services that are furnished by a designated provider, a team of health care professionals operating with a provider, or a health team.<sup>197</sup>

Under the act, when developing a health home services system, the ODM Director and Director of Developmental Disabilities must consult with representatives of county boards of developmental disabilities, the Ohio Provider Resource Association, and the ARC of Ohio. The act also permits the Directors to consult with other individuals or entities that have an interest in the well-being of those with developmental disabilities.

If the ODM Director develops and implements the system, the act requires that it focus on the needs of individuals and aim to improve Medicaid services and outcomes by better integrating long-term care and supportive services with primary and acute health care services.

## Telemedicine policy workgroup

(Section 737.20)

The act authorizes the Office of Health Transformation Executive Director to convene a workgroup of state agency directors to study policy matters regarding the potential benefits of using telemedicine as a means of increasing the quality and availability of health care services in Ohio. If established, the workgroup must include at least the ODM Director and Superintendent of Insurance and may include others at the Executive Director's discretion. The act requires a study conducted by the

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<sup>197</sup> 42 U.S.C. 1396w-4(h).



workgroup to focus on developing a comprehensive statewide policy that encourages the use of telemedicine as an integral component of Ohio's health care system. The workgroup is to focus on telemedicine practice, technology, implementation, and reimbursement.

## **Integrated Care Delivery System evaluation**

(R.C. 5164.911 (primary), 5164.01, and 5166.01)

Continuing law permits the ODM Director to implement a demonstration project called the Integrated Care Delivery System (ICDS) to test and evaluate the integration of the care received by individuals who are eligible for both Medicaid and Medicare (dual eligible individuals). The act requires the Director, if ICDS is implemented, to conduct an annual evaluation of ICDS unless the same evaluation is conducted by an organization under contract with the U.S. Department of Health and Human Services.

All of the following are to be examined as part of the evaluation:

- (1) The health outcomes of ICDS participants;
- (2) How changes to the administration of ICDS affect claims processing, the appeals process, the number of reassessments requested, and prior authorization requests for services;
- (3) The provider panel selection process used by Medicaid managed care organizations participating in ICDS.

When conducting the evaluation, the Director must do all of the following:

- (1) Compare the health outcomes of ICDS participants to the health outcomes of individuals who are not ICDS participants;
- (2) Use a control group consisting of ICDS participants who receive health care services from providers not participating in ICDS and a control group consisting of ICDS participants who receive health care services from alternative providers that are not part of a Medicaid managed care organization's provider panel but provide health care services in the geographic service area in which ICDS participants receive health care services;
- (3) To the extent the data is available, use data from Medicaid's fee-for-service component, Medicaid managed care organizations, and managed care organizations participating in the Medicare Advantage Program;



(4) Identify (a) changes in the amount of time it takes to process claims and the number of claims denied and the reasons for the changes, (b) the impact that changes to the administration of ICDS had on the appeals process and number of reassessments requested, and (c) the number of prior authorization denials that were overturned and the reasons for the overturned denials;

(5) Require Medicaid managed care organizations participating in ICDS to submit to the Director any data the Director needs for the evaluation.

The act requires the Director to complete a report of the evaluation not later than the first day of each July. The Director must provide a copy of the report to the General Assembly and make it available to the public.

## **Funds**

### **Money Follows the Person Enhanced Reimbursement Fund**

(Section 323.140)

The act provides for federal funds Ohio receives for the Money Follows the Person demonstration project to be deposited into the Money Follows the Person Enhanced Reimbursement Fund. The fund was created in 2008 by H.B. 562 of the 127th General Assembly after Ohio was first awarded a federal grant for the demonstration project. ODM is required to continue to use the money in the fund for system reform activities related to the demonstration project.

The Deficit Reduction Act of 2005 authorizes the U.S. Secretary of Health and Human Services to award grants to states for Money Follows the Person demonstration projects.<sup>198</sup> The projects are to be designed to achieve the following objectives with respect to institutional and home and community-based long-term care services under a state's Medicaid program:

(1) Increase the use of home and community-based, rather than institutional, long-term care services;

(2) Eliminate barriers or mechanisms that prevent or restrict the flexible use of Medicaid funds to enable Medicaid-eligible individuals to receive support for appropriate and necessary long-term services in the settings of their choice;

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<sup>198</sup> Section 6071 of the Deficit Reduction Act of 2005, Public Law No. 109-171. The federal health care reform law extended authority for Money Follows the Person demonstration project through federal fiscal year 2016 (Section 2403 of the Patient Protection and Affordable Care Act, Public Law 111-148).





(3) Increase the ability of a state's Medicaid program to assure continued provision of home and community-based long-term care services to eligible individuals who choose to transition from an institution to a community setting;

(4) Ensure that procedures are in place to provide quality assurance for eligible individuals receiving Medicaid home and community-based services and to provide for continuous quality improvement in such services.

### **Health Care Compliance Fund abolished**

(R.C. 5111.946 (repealed), 5162.54, and 5162.60; Section 323.380)

The act abolishes the Health Care Compliance Fund. Under prior law, the fund was in the state treasury and all of the following had to be credited to it:

(1) All fines imposed on and collected from Medicaid managed care organizations for failure to meet performance standards or other requirements specified in Medicaid provider agreements or ODM rules;

(2) Money that ODM receives in a fiscal year for performing eligibility verification services necessary for compliance with a federal regulation regarding independent, certified audits, other than the amounts credited to the Health Care/Medicaid Support and Recoveries Fund;

(3) The fund's investment earnings.

Prior law required that money credited to the Health Care Compliance Fund be used solely for the following purposes:

(1) To reimburse Medicaid managed care organizations that paid fines for failure to meet performance standards or other requirements and had come into compliance by meeting requirements specified by ODM;

(2) To provide financial incentive awards to Medicaid managed care organizations.

The act provides for part of the money that would have been credited to the Health Care Compliance Fund to be credited to the Managed Care Performance Payment Fund and the remaining money to be credited to the Health Care Services Administration Fund. The Managed Care Performance Payment Fund is to be credited with all fines imposed on and collected from Medicaid managed care organizations for failure to meet performance standards or other requirements specified in Medicaid provider agreements or ODM rules. The Health Care Services Administration Fund is to be credited with money that ODM receives in a fiscal year for performing eligibility



verification services necessary for compliance with a federal regulation regarding independent, certified audits, other than the amounts that are to be credited to the Health Care/Medicaid Support and Recoveries Fund.

### **Prescription Drug Rebates Fund abolished**

(R.C. 5111.942 (repealed) and 5162.52; Section 323.370)

The act abolishes the Prescription Drug Rebates Fund. Under prior law, the fund was in the state treasury and both of the following had to be credited to it:

(1) The nonfederal share of all rebates paid by drug manufacturers to ODM in accordance with rebate agreements required by federal law;

(2) The nonfederal share of all supplemental rebates paid by drug manufacturers to ODM in accordance with the Supplemental Drug Rebate program established by continuing state law.

Prior law required ODM to use money credited to the fund to pay for Medicaid services and contracts. The act provides for the money that would have been credited to the Prescription Drug Rebates Fund to be credited instead to the Health Care/Medicaid Support and Recoveries Fund.

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## STATE MEDICAL BOARD

### Temporary hearing examiners

- Allows the State Medical Board to enter into a personal service contract with an attorney to serve as a temporary hearing examiner subject to the Controlling Board's continuing law authority to approve a purchase without competitive selection, rather than subject to only Controlling Board approval as under former law.

### Internal management and assessment

- Requires the State Medical Board to adopt internal management rules setting forth criteria for assessing the Board's accomplishments and requires the Board to include data gleaned from the assessments in its annual report.
- Requires the rules adopted by the Board, as well as the Board's annual report, to be publicly accessible on the Board's web site.

### Expedited certificate to practice medicine

- Creates an expedited certificate to practice medicine surgery or osteopathic medicine and surgery by endorsement for certain physicians who are licensed in another state or in Canada.

### Educational requirements for genetic counselor licensure

- Provides that an individual who meets all other genetic counselor licensure requirements is eligible for a license by attaining a master's or higher degree in education or in a field closely related to genetic counseling and requires the individual to apply for licensure by December 31, 2013.

### Approval of temporary hearing examiners

(R.C. 4731.23, by reference to R.C. 127.16)

The act allows the State Medical Board to enter into a personal service contract with an attorney to serve as a temporary hearing examiner subject to the Controlling Board's continuing law authority to approve a purchase without competitive selection, rather than subject to only Controlling Board approval as under former law. Competitive selection (competitive sealed bidding, competitive sealed proposals, or reverse auctions) is required when a state agency, using money that has been appropriated to it directly, makes any purchase from a particular supplier that would



amount to \$50,000 or more when combined with both the amount of all disbursements to the supplier during the fiscal year for purchases made by the agency and the amount of all outstanding encumbrances for purchases made by the agency from the supplier. The Controlling Board may approve a purchase without competitive selection upon request of a state agency or the Director of Budget and Management and upon determination that an emergency exists.

## **Internal management and assessment**

(R.C. 4731.05)

The act requires the State Medical Board to adopt internal management rules that set forth criteria for assessing the Board's accomplishments, activities, and performance data, including metrics detailing the following:

- (1) Revenues and reimbursements;
- (2) Budget distribution;
- (3) Investigation and licensing activity, including processing time frames;
- (4) Enforcement data, including processing time frames.

Under the act, the Board must include the data gleaned from the assessment in the Board's annual report, which is required by continuing law.<sup>199</sup> The act requires the Board to cause the internal management rules and the annual report to be publicly accessible on the Board's web site.

## **Expedited certificate to practice medicine**

(R.C. 4731.299)

The act creates an expedited certificate to practice medicine and surgery or osteopathic medicine and surgery by endorsement for certain physicians who are licensed in another state or in Canada. The act permits the State Medical Board to issue the certificate, without examination, to an applicant who meets the act's requirements. The Board's authority under the act to issue an expedited certificate by endorsement is in addition to its authority under continuing law to issue a certificate to practice under a different process to physicians who are licensed in another state or in Canada and meet specified requirements.<sup>200</sup>

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<sup>199</sup> See R.C. 149.01.

<sup>200</sup> R.C. 4731.29, not in the act.



## Eligibility

To be eligible for the expedited certificate by endorsement, the act requires an applicant to do both of the following:

(1) Provide evidence satisfactory to the Board that the applicant meets all of the following requirements:

- Has passed Steps One, Two, and Three of the United States Medical Licensing Examination; Levels One, Two, and Three of the Comprehensive Osteopathic Medical Licensing Examination of the United States; or any other medical licensing examination recognized by the Board;
- For at least five years immediately preceding the date of application, has held a current, unrestricted license to practice medicine and surgery or osteopathic medicine and surgery issued by the licensing authority of another state or a Canadian province;
- For at least two years immediately preceding the date of application, has actively practiced medicine and surgery or osteopathic medicine and surgery in a clinical setting;
- Is in compliance with the medical education and training requirements that must be met under continuing law to be eligible for a certificate to practice medicine and surgery or osteopathic medicine and surgery.

(2) Certify to the Board that all of the following are the case:

- Not more than two malpractice claims have been filed against the applicant within a period of ten years and no malpractice claim against the applicant has resulted in total payment of more than \$500,000;
- The applicant does not have a criminal record according to the criminal records check required by the act;
- The applicant does not have a medical condition that could affect the applicant's ability to practice according to acceptable and prevailing standards of care;
- No adverse action has been taken against the applicant by a health care institution;



- To the applicant's knowledge, no federal agency, medical society, medical association, or branch of the U.S. military has investigated or taken action against the applicant;
- No professional licensing or regulatory authority has filed a complaint against, investigated, or taken action against the applicant and the applicant has not withdrawn a professional license application;
- The applicant has not been suspended or expelled from any institution of higher education or school, including a medical school.

### **Application and issuance**

The act requires a person seeking an expedited certificate by endorsement to file with the Board a written application on a form prescribed and supplied by the Board, pay a nonrefundable application fee of \$1,000, and submit to a criminal records check. The application must include all the information the Board considers necessary to process the application.

The Board must review all applications received. After review, if the Board determines that an applicant meets the requirements for an expedited certificate by endorsement, the Board must issue the certificate to the applicant.

### **Compliance with education and training requirements**

Not later than September 29, 2013, the act requires the Board to approve acceptable means for an applicant for an expedited certificate by endorsement to demonstrate compliance with the medical education and training requirements specified under continuing law for a regular certificate to practice medicine and surgery or osteopathic medicine and surgery.

### **Educational requirements for genetic counselor licensure**

(R.C. 4778.02 and 4778.03)

The act establishes a limited exception to the educational requirements that must be met to be eligible for a genetic counselor license. Continuing law requires an applicant for a license to have attained a master's degree or higher from a genetic counseling graduate program accredited by the American Board of Genetic Counseling, its successor, or an equivalent organization recognized by the State Medical Board.

The act provides that an individual who meets all other genetic counselor licensure requirements is eligible for a license by attaining a master's or higher degree in education or in a field that the Board considers to be closely related to genetic



counseling. An individual seeking a license under this provision must file a license application with the Board not later than December 31, 2013.



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## DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES

### Creation of new department

#### **Merger of Department of Mental Health and Department of Alcohol and Drug Addiction Services**

- Merges the Department of Mental Health (ODMH) and the Department of Alcohol and Drug Addiction Services (ODADAS), making the Department of Mental Health and Addiction Services (ODMHAS).
- Enacts uncodified law to provide for the transition.

#### **Substantive law changes**

##### **Administrative changes**

- Removes the requirement that ODMH receive the approval of the Governor and the Attorney General when conducting a transaction involving real estate in favor of utilizing the services of the Department of Administrative Services (DAS) for such transactions.
- Specifies that moneys received from the sale, lease, or exchange of property be deposited into the Department of Mental Health Trust Fund, as opposed to the GRF.
- Removes specifications for rules adopted by ODMH for the purpose of prior law related to local boards and the hospitalization of the mentally ill.
- Alters policies and procedures related to confidential records and compilation of statistics.

##### **Interaction with other departments, agencies, and facilities**

- Revises the laws relating to certification of services providers.
- Alters requirements ODMHAS places on local boards related to providing information for inclusion in ODMHAS' behavioral health information systems.
- Alters ODMHAS' policies and procedures related to the submission of services plans by local boards and the allocation and withholding of funds.
- Makes the requirement that ODMH (ODMHAS) contract with licensed hospitals to provide services for mentally ill patients a permissive authority.





- Removes the authority of ODMH to provide for the care of mentally ill persons hospitalized elsewhere than within the enclosure of a hospital, if ODMH determined that such care is necessary.
- Makes permissive ODMHAS and the Department of Youth Services (DYS) entering into a written agreement for ODMHAS to receive from DYS certain persons for psychiatric observation, diagnosis, or treatment.
- Removes the requirement that ODMH provide training to those ODMH employees who are utilized by state operated, community based mental health services providers.
- Requires ODMHAS to design and set criteria for the determination of priority populations rather than the determination of severe mental disability.
- Requires that an individual with a mental illness undergo a level of care determination before admission or readmission to a nursing facility from a hospital if the hospital is either of the following:
  - Maintained, operated, managed, and governed by ODMHAS; or
  - Licensed by ODMHAS as a freestanding hospital or unit of a hospital.
- Increases from two years after the date of issuance to up to three years after the date of issuance that a full license for a residential facility is valid.
- Requires that ODMHAS, in consultation with the Department of Medicaid, administer the Recovery Requires a Community Program to identify individuals residing in nursing facilities who can be moved successfully into community settings.
- Requires ODMHAS to conduct a pilot program to provide addiction treatment to offenders participating in certified drug court programs in certain counties.

#### **Funds and funding**

- Authorizes the issuance of bonds to finance capital facilities for the housing of people with substance abuse disorders.
- Alters certification standards and provisions related to the provision of mental health and addiction services.
- Alters eligibility standards and policies related to residential state supplement payments.

### **Personnel changes**

- Removes the authority of ODMH to appoint an individual to the position of chief executive officer of an institution from persons holding positions in the classified services in ODMH.
- Specifies that the suspension from employment of a special police officer positioned at a mental health institution is to be done in accordance with applicable collective bargaining agreements, as opposed to the Administrative Procedure Act.
- Revises the required qualifications of the ODMHAS medical director.
- Removes the procedures prescribed for ODMH in relation to the appointment of a person in a classified to an unclassified position in favor of the standard procedures and stipulations prescribed by DAS.

### **Outright repeals**

- Abolishes the Council on Alcohol, Drug, and Gambling Addiction Services.
- Abolishes the Revolving Loans for Recovery Homes Fund.

### **Miscellaneous changes**

- Makes conforming changes to reflect the merger of ODMH and ODADAS into ODMHAS.
- Updates certain terms to reflect industry terminology.

## **Alcohol, drug addiction, and mental health service districts**

### **Changes to membership of local boards**

- Makes changes to the membership requirements of alcohol, drug addiction, and mental health services boards; alcohol and drug addiction services boards; and community mental health boards.

### **Establishment of standing committees on addiction services**

- Removes the requirement that each service district without an alcohol and drug addiction services board create a standing committee on alcohol and drug addiction services.



## **Duties of boards**

### **Planning duties**

- Revises the planning duties of boards.

### **Fiduciary duties**

- Requires a board of alcohol, drug addiction, and mental health services to submit to ODMHAS a budget for all federal, state, and local moneys the board expects to receive and establishes a procedure for approval and amendment of the budget.
- Permits ODMHAS to withhold funds to boards if the boards' use of the funds fails to comply with an approved budget.
- Requires a board to create lists of services that are compatible with the approved budget and to include crisis intervention services and services required for a parent, guardian, or custodian of a child who is in imminent risk of being abused or neglected.

### **Other duties**

- Requires a board to enter into a continuity of care agreement with the state institution operated by ODMHAS that serves the district.
- Requires boards to submit to ODMHAS a report summarizing complaints concerning the rights of persons receiving services, investigation of the complaints, and outcomes of the investigations.
- Requires boards to submit annually, and upon any change in membership, to ODMHAS a list of all current members of the boards, the appointing authority of each member, and the members' specific qualifications.
- Prohibits a board from contracting with an unlicensed residential facility that is required to be licensed by the Director.
- Authorizes a board of alcohol, drug addiction, and mental health services to inspect any residential facility located in its district and licensed under the Hospitalization of the Mentally Ill Law, eliminating the requirement that the inspection be pursuant to a contract with ODMH.
- Requires a board to submit any other information reasonably required for ODMHAS's operations, service evaluation, reporting activities, research, system administration, and oversight.



- Makes permissive that a utilization review process be established as part of a contract for services entered into between a board and a community addiction or mental health agency services provider.

#### **Repealed duties**

- Removes boards' requirements for administration of mental health clinics and child guidance homes financed partly by state funds as of June 30, 1967.

#### **ODMHAS reimbursement**

- Reorganizes the list of services performed by a board for which a county can be reimbursed and specifies that the services must be approved by ODMHAS within the continuum of care or approved support functions.

#### **EDGE business enterprise procurement goals**

- Requires a board to strive to attain a yearly construction contract dollar procurement goal of 5% for EDGE business enterprises, instead of setting the percentage aside for minority business enterprises.
- Permits a board that is unable to comply with the EDGE procurement goal after having made a good faith effort to apply in writing to the Director for a waiver or modification of the goal.

### **Creation of new department**

#### **Merger of Department of Mental Health and the Department of Alcohol and Drug Addiction Services**

(R.C. Chapters 3793. and 5119.; conforming changes in multiple R.C. sections; section 327.20 *et. seq.*; Sections 512.50 and 815.20)

The act merges the Department of Mental Health (ODMH) and the Department of Alcohol and Drug Addiction Services (ODADAS), making the Department of Mental Health and Addiction Services (ODMHAS). By and large, the majority of responsibilities and authorities granted remain intact under the act, with the act primarily merging the administrative and oversight functions under one department. As part of merging ODMH and ODADAS, the act merges the two Revised Code chapters governing the two departments (R.C. Chapters 3793. and 5119.) into a single chapter, R.C. Chapter 5119. The act also reorganizes this surviving chapter. Below, under "**ODMHAS relocation tables**," the analysis identifies the provisions that have



been merged and where those provisions appear in the surviving chapter. Following a description of the temporary law provisions relating to the transition of the merger and the relocation tables is a discussion of the substantive changes to prior law. Finally, the act updates certain terms to reflect current terminology in use at the two departments.

### **Transition relating to consolidation**

(Sections 327.20, 327.20.10, 327.20.20, 327.20.30, 327.20.40, 327.20.50, 327.20.60, and 512.50)

On July 1, 2013, the act creates the ODMHAS, which is to be administered by the Director of Mental Health and Addiction Services. The Director of ODMHAS is to be appointed by the Governor, with the advice and consent of the Senate, and is to hold office during the term of the appointing Governor, and is subject to removal at the pleasure of the Governor. The Director is the executive head of ODMHAS. ODADAS and the ODMH are to be consolidated into ODMHAS. All of the authority, functions, and assets and liabilities of ODMH and ODADAS are transferred to ODMHAS. ODMHAS is thereupon and thereafter successor to, assumes the obligations of, and otherwise constitutes the continuation of ODMH and ODADAS. The Director assumes all of the duties, authorities, and responsibilities of the Director of ODMH and the Director of ODADAS. Any action, license, or certification that was undertaken or issued by the ODMH or ODADAS that is current and valid on the effective date of the consolidation is deemed to be an action, license, or certification undertaken or issued by ODMHAS under the statute creating ODMHAS.

Any business commenced but not completed by July 1, 2013, by ODMH or ODADAS is to be completed by ODMHAS. The business is to be completed in the same manner, and with the same effect, as if completed by ODMH or ODADAS prior to July 1, 2013.

No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of this act's transfer of responsibility from ODMH and ODADAS to ODMHAS. Each such validation, cure, right, remedy, obligation, or liability is to be administered by ODMHAS pursuant to the statute creating ODMHAS.

All rules, orders, and determinations made or undertaken pursuant to the authority and responsibilities of ODMH and ODADAS prior to July 1, 2013, is to continue in effect as rules, orders, and determinations of the ODMHAS until modified or rescinded by ODMHAS. If necessary to ensure the integrity of the numbering system of the Administrative Code, the Director of the Legislative Service Commission is to renumber the rules to reflect the transfer of authority and responsibility to ODMHAS.



Any action or proceeding that is related to the functions or duties of ODMH or ODADAS pending on July 1, 2013, is not affected by the transfer of responsibility to the ODMHAS and is to be prosecuted or defended in the name ODMHAS. In all such actions and proceedings, ODMHAS, on application to the court, is to be substituted as a party.

It is the intention of ODMHAS that community subsidies allocated or distributed by ODMHAS will be used to fund mental health and addiction services in largely the same proportion that such services were funded when allocated or distributed as separate funding streams through the separate ODMH and ODADAS.

All employees of ODMH and ODADAS are to be employees of ODMHAS and are to serve in the positions previously held within their respective agencies unless ODMHAS determines otherwise. The merger of ODMH and ODADAS is not to be deemed a transfer of employees pursuant to Ohio Public Employee Personnel Law. Any unclassified employee of ODMH or ODADAS who held a right to resume a position within the classified service of his or her previous respective agency is to retain the right subject to specified exceptions.

On July 1, 2013, or as soon as possible thereafter, notwithstanding any provision of law to the contrary, and if requested by ODMHAS, the Director of OBM is to make budget changes made necessary by the consolidation, if any, including administrative organization, program transfers, the creation of new funds, the transfer of state funds, and the consolidation of funds. The Director of OBM may make any transfer of cash balances between funds.

On July 1, 2013, or as soon as possible thereafter, the Director of ODMHAS is to certify to the Director of OBM all encumbrances held by ODMH and ODADAS, and specify which of those encumbrances are requested to be transferred to ODMHAS. The Director of OBM may cancel any existing encumbrances as certified by the Director of ODMHAS and re-establish them in the new agency. The act appropriates the re-established encumbrance amounts. Any business commenced but not completed with regard to the encumbrances certified is to be completed by ODMHAS in the same manner and with the same effect as if it were completed by the ODMH and ODADAS.

Not later than 30 days after the transfer and consolidation of the operations and related management functions of ODMH and ODADAS to ODMHAS, an authorized officer of the former ODMH and the former ODADAS must certify to the Director of ODMHAS the unexpended balance and location of any funds and accounts designated for building and facility operation and management functions, and the custody of such funds and accounts is to be transferred to ODMHAS.



Effective July 1, 2013, the Director of ODMHAS must perform activities that parallel continuing law and law amended by the act regarding local boards.

Effective July 1, 2013, all records and reports, other than court journal entries or court docket entries, identifying a person and pertaining to the person's mental health condition, assessment, provision of care or treatment, or payment for assessment, care, or treatment that are maintained in connection with any services certified by the ODMHAS, or any hospitals or facilities licensed or operated by ODMHAS, are to be kept confidential and are not to be disclosed by any person, with certain exceptions. This provision and the exceptions to this requirement mirror R.C. 5119.28, which is enacted in the act.

Effective July 1, 2013, ODMHAS may adopt rules governing licensure and operation of residential facilities, that include procedures for conducting criminal records checks for operators, employees, and volunteers who have direct access to facility residents.

Effective July 1, 2013, to the extent funds are available and on application of boards of alcohol, drug addiction, and mental health services, ODMHAS may approve state reimbursement of, or state grants for, community construction programs, including residential housing for severely mentally disabled persons and persons with substance use disorders. ODMHAS may also approve an application for reimbursement or a grant for such programs submitted by other governmental entities or by private, nonprofit organizations after the board of alcohol, drug addiction, and mental health services has reviewed and approved the application and the application is consistent with the plan, budget, and statement of services submitted and approved by ODMHAS. ODMHAS is to adopt rules in accordance with the Administrative Procedure Act that specify procedures for applying for state reimbursement and for state grants for community construction programs, including residential housing for severely mentally disabled persons and persons with substance use disorders.

Effective July 1, 2013, ODMHAS must collect information about services delivered and persons served as required for reporting and evaluation relating to state and federal funds expended for such purposes. No alcohol, drug addiction, or mental health program, agency, or services provider may fail to supply statistics or other information within its knowledge and with respect to its programs or services upon the request of ODMHAS.

ODMHAS is required to administer specified Medicaid services as delegated by the State's single agency responsible for the Medicaid program (the Department of Medicaid).





The act renames the "Mental Health Fund" the "Office of Support Services Fund." Continuing law requires ODMHAS to deposit moneys paid by agencies, services providers, or free clinics for goods and services provided by ODMHAS into the state treasury to the credit of the Fund.<sup>201</sup>

### ODMHAS relocation tables

In merging ODMH and ODADAS into ODMHAS, the act relocates a large number of sections. In some cases, the act simply renumbers a section. In others, the act repeals the prior section and merges the operative provisions into another section, either verbatim or in substance. Below are two charts. The first chart shows the reorganization by prior section number. The second chart shows the reorganization by new section number.

#### Prior location to new location

R.C. section number under prior law	R.C. section number under the act
3793.01	5119.01
3793.02	5119.21
3793.03	5119.10
3793.031	5119.201
3793.032	5119.47
3793.04	5119.22(D) (partial)
3793.041	5119.22(D) (partial)
3793.05	5119.22(D) (partial)
3793.051	5119.161
3793.06	5119.36
3793.061	5119.37 <sup>202</sup>
3793.08	5119.60
3793.09	Repealed
3793.10	5119.38
3793.11	5119.391
3793.12	5119.61
3793.13	5119.27

<sup>201</sup> Also, R.C. 5119.16 (renumbered 5119.44).

<sup>202</sup> As a result of the act, there are two sections with the number 5119.37. This numbering problem will need to be resolved pursuant to R.C. 103.131.





R.C. section number under prior law	R.C. section number under the act
3793.14	5119.26
3793.15	5119.17
3793.16	5119.188
3793.18	5119.30
3793.19	Repealed
3793.20	5119.42
3793.21	5119.24
3793.22	5119.49
3793.31	5119.90
3793.32	5119.91
3793.33	5119.92
3793.34	5119.93
3793.35	5119.94
3793.36	5119.95
3793.37	5119.96
3793.38	5119.97
3793.39	5119.98
3793.99	5119.99
5119.01	5119.10
5119.011	5119.14
5119.012	5119.141
5119.013	5119.10(B)(8)
5119.02	5119.14
5119.03	5119.14
5119.04	5119.04
5119.05	5119.10
5119.06	5119.21
5119.06(B)	5119.14
5119.061	5119.40
5119.07	5119.11
5119.071	5119.18
5119.072	5119.181
5119.08	5119.182



R.C. section number under prior law	R.C. section number under the act
5119.09	5119.09
5119.10	5119.184
5119.101	5119.185
5119.11	5119.186
5119.12	5119.187
5119.14	5119.08
5119.16	5119.44
5119.161	5119.45
5119.17	5119.51
5119.18	5119.46
5119.20	5119.33
5119.201	5119.331
5119.202	5119.332
5119.21	5119.333
5119.22(A) to (D), (F) to (O)	5119.34
5119.22(E)	5119.341
5119.221	5119.342
5119.23	5119.311
5119.24	5119.15
5119.27	5119.05
5119.30	5119.091
5119.31	5119.31
5119.33	5119.54
5119.34	5119.50
5119.35	5119.56
5119.351	5119.55
5119.36	5119.52
5119.37	5119.201 5119.37
5119.39	5119.201 5119.39
5119.42	5119.07
5119.43	5119.06



R.C. section number under prior law	R.C. section number under the act
5119.44	5119.051
5119.46	5119.60
5119.47	5119.14
5119.50	5119.70
5119.51	5119.71
5119.52	5119.72
5119.53	5119.73
5119.57	5119.29
5119.60	5119.32
5119.61	5119.22 5119.01
5119.611	5119.36
5119.612	5119.371
5119.613	5119.361
5119.62	5119.23
5119.621	5119.24
5119.622	5119.25(A) and (C)
5119.623	5119.25(B)
5119.63	5119.42
5119.631	5119.421
5119.64	Repealed
5119.65	Repealed
5119.66	Repealed
5119.67	Repealed
5119.68	Repealed
5119.69	5119.41
5119.691	5119.411
5119.99	5119.99



**New location to prior location**

<b>R.C. section number under the act</b>	<b>R.C. section number under prior law</b>
5119.01	3793.01 5119.61
5119.04	5119.04
5119.05	5119.27
5119.051	5119.44
5119.06	5119.43
5119.07	5119.42
5119.08	5119.14
5119.091	5119.09 5119.30
5119.10	3793.03 5119.01 5119.05
5119.10(B)(8)	5119.013
5119.11	5119.07
5119.14	5119.011 5119.02 5119.03 5119.06(B) 5119.47
5119.141	5119.012
5119.15	5119.24
5119.161	3793.051
5119.17	3793.15
5119.18	5119.071
5119.181	5119.072
5119.182	5119.08
5119.184	5119.10
5119.185	5119.101
5119.186	5119.11
5119.187	5119.12
5119.188	3793.16



R.C. section number under the act	R.C. section number under prior law
5119.201	3793.031 5119.37 5119.39
5119.21	3793.02 5119.06
5119.22(D)	3793.04 3793.041 3793.05
5119.22	5119.61
5119.23	5119.62
5119.24	3793.21 5119.621
5119.25(A) and (C)	5119.622
5119.25(B)	5119.623
5119.26	3793.14
5119.27	3793.13
5119.29	5119.57
5119.30	3793.18
5119.311	5119.23 5119.31
5119.32	5119.60
5119.33	5119.20
5119.331	5119.201
5119.332	5119.202
5119.333	5119.21
5119.34	5119.22(A) to (D), (F) to (O)
5119.341	5119.22(E)
5119.342	5119.221
5119.36	3793.06 5119.611
5119.361	5119.613
5119.371	3793.061 5119.37 5119.612



<b>R.C. section number under the act</b>	<b>R.C. section number under prior law</b>
5119.38	3793.10
5119.391	3793.11 5119.39
5119.40	5119.061
5119.41	5119.69
5119.411	5119.691
5119.42	3793.20 5119.63
5119.421	5119.631
5119.44	5119.16
5119.45	5119.161
5119.46	5119.18
5119.47	3793.032
5119.49	3793.22
5119.50	5119.34
5119.51	5119.17
5119.52	5119.36
5119.54	5119.33
5119.55	5119.351
5119.56	5119.35
5119.60	3793.08 5119.46
5119.61	3793.12
5119.70	5119.50
5119.71	5119.51
5119.72	5119.52
5119.73	5119.53
5119.90	3793.31
5119.91	3793.32
5119.92	3793.33
5119.93	3793.34
5119.94	3793.35
5119.95	3793.36



R.C. section number under the act	R.C. section number under prior law
5119.96	3793.37
5119.97	3793.38
5119.98	3793.39
5119.99	3793.99 5119.99
Repealed	3793.09 3793.19 5119.64 5119.65 5119.66 5119.67 5119.68

## Substantive law changes

### Administrative changes

#### *Department organization and duties*

(R.C. 340.09, 5119.01 (renumbered 5119.10) (A), (E), and (F), and 5119.02 (renumbered 5119.14(B)); R.C. 3793.03, 5119.013, and 5119.05)

The act specifies that the Director of ODMHAS may organize ODMHAS for its efficient operation, including creating divisions or offices as necessary.

The act enables ODMHAS, with the approval of the Governor, to designate the name and purpose and change the designation and name of any institution under its jurisdiction when necessary.

Under prior law, ODMH was required to contract with hospitals licensed by ODMH for the care and treatment of mentally ill patients, or with persons, organizations, or agencies for the custody, evaluation, supervision, care, or treatment of mentally ill persons receiving services elsewhere than within the enclosure of a hospital. The act authorizes ODMHAS to enter into such contracts, but does not require it.

The act removes the authority for ODMHAS to prepare and publish regularly a state mental health plan that describes ODMHAS' philosophy, current activities, and long term and short term goals and activities.



The act adds approved continuum-of-care-related activities to the list of activities for which ODMHAS is required to provide assistance to any county for the operation of boards of alcohol, drug addiction, and mental health services.

***Department of Mental Health requirements***

(R.C. 5119.06 (renumbered 5119.21))

The act adds pregnant women, parents, and guardians or custodians of children at risk of abuse or neglect to the list of demographic groups for which ODMHAS is to provide special focus when promoting and developing mental health and addiction services.

The act requires ODMHAS to design and set criteria for the determination of priority populations rather than the determination of severe mental disability.

The act removes the requirement that ODMH provide training related to the provision of community based mental health services to those ODMH employees who are utilized in state operated, community based mental health services.

***Real estate transactions***

(R.C. 3793.031 (renumbered 5119.201) (A), (B), and (C) and 5119.37)

The act removes the requirement that ODMH receive the approval of the Governor and the Attorney General when conducting a transaction involving real estate, and authorizes ODMHAS to use the services of the Department of Administrative Services (DAS) for such transactions.

Under the act, moneys received from the sale, lease, or exchange of property must be deposited into the Department of Mental Health Trust Fund, as opposed to the GRF, as stipulated under prior law.

***Rules***

(R.C. 5119.012 (renumbered 5119.141) and 5119.61 (renumber 5119.22))

In addition to the authority provided to ODMH (ODMHAS) to carry out its powers and duties, the act authorizes ODMHAS to adopt rules pursuant to the Administrative Procedure Act that may be necessary to carry out the purposes of Mental Health and Addiction Services Law.

The act removes specifications for rules adopted by ODMH for the purpose of carrying out prior law related to local boards and the hospitalization of the mentally ill, instead granting the ODMHAS Director the broader authority to adopt rules necessary





to carry out the purposes of those laws. Specifically, the act removes all of the following requirements related to adopted rules:

- Rules governing a community mental health agency's services to an individual referred to the agency.
- Rules governing the duties of mental health agencies and boards of alcohol, drug addiction, and mental health services regarding referrals of individuals with mental illness or severe mental disability to residential facilities and effective arrangements for ongoing mental health services for those individuals.
- Rules related to governing the method of paying a community mental health facility for providing services.

The act authorizes ODMHAS to specify the information that must be provided to ODMHAS by local boards of alcohol, drug addiction, and mental health services for inclusion in ODMHAS' behavioral health information systems, rather than requiring specified information be included and permitting ODMH to require other information. The act alters the specific requirements related to the information collected as follows:

- Expands the type of information that can be collected by ODMHAS: from information on services provided under a contract with a local board to information on services provided generally.
- Rather than financial information other than price-related data regarding expenditures of local boards, ODMHAS may collect financial information related to expenditures of federal, state, or local funds.
- ODMHAS may require boards to provide information about persons served under a contract with a board.

The act removes the requirement that boards submit this information no less than annually for each client and each time a client's case is opened or closed. Instead, boards must submit such information in accordance with timeframes set by ODMHAS.

In addition to submitting a mental health and addiction services plan, the act requires local boards to submit a budget and statement of services. The act removes the following requirements related to the submission of the plan:

- The Director of ODMH was required to issue criteria for determining when a plan was complete, for plan approval or disapproval, and provisions for conditional approval.



- If the Director disapproved all or part of any plan, the Director was to provide the board an opportunity to present its position. The Director was to inform the board of the reasons for the disapproval and of the criteria that had to be met before the plan may be approved.
- The Director was to give the board a reasonable time in which to meet the criteria and was to offer technical assistance to the board to help it meet the criteria.
- If approval of a plan remained in dispute, either party could request that the dispute be resolved by a mediator, with the cost of the mediator being shared between both parties.
- The mediator was to issue a recommendation on the dispute.
- The Director, taking into account the recommendation of the mediator, was to issue a final decision on the dispute.

In place of the previous policies and procedures, the act enacts the following provisions:

- ODMHAS may withhold all or part of the funds allocated to a board if ODMHAS disapproves all or part of the board's plan, budget, or statement of services.
- Prior to a final decision to withhold funds, a representative of ODMHAS is to meet with the board with regard to the issue provide corrective action that should be taken to make the plan, budget, or statement of services acceptable to ODMHAS.
- The board is to be given a reasonable time to resolve the issue and to submit a revised plan, budget, or statement of services, and ODMHAS must offer technical assistance to the board.
- If a board decides to amend an already approved plan, budget, or statement, the board must submit such an amendment to ODMHAS. ODMHAS may approve or disapprove the amendment.
- If ODMHAS disapproves the amendment, the board is to be allowed an opportunity to present its position.
- ODMHAS is to provide the board with the reason for the disapproval and provide the board a reasonable time within which to meet related criteria.

- ODMHAS is required to provide technical assistance in meeting the criteria and must offer technical assistance.
- ODMHAS is required to establish procedures for the review of plans, budgets, or statements of services and for corrective action or the revising of such documents.

***Compilation of statistics***

(R.C. 3793.12 (renumbered 5119.61))

Continuing law requires ODMHAS to collect and compile statistics and other information related to addiction services. The act requires ODMHAS to also collect and compile statistics and other information on the care and treatment of mentally disabled persons. In addition, under the act ODMHAS is to collect information about services delivered and persons served as required for reporting and evaluation relating to state and federal funds expended for such purposes.

***Confidential documents***

(R.C. 5119.28 and 5119.99(C) and 3793.13 (renumbered 5119.27))

The act enacts new requirements related to confidential mental health records. All records, and reports, other than court journal entries or court docket entries, identifying a person and pertaining to the person's mental health condition, assessment, provision of care or treatment, or payment for assessment, care or treatment that are maintained in connection with any services certified by ODMHAS, or any hospitals or facilities licensed or operated by ODMHAS, are to be kept confidential and are not to be disclosed by any person except:

- If the person identified, or the person's legal guardian, if any, or if the person is a minor, the person's parent or legal guardian, consents;
- When disclosure is provided for in the ODMHAS Law, the local board law, the Hospitalization of the Mentally Ill Law, or other state or federal law;
- That hospitals, boards of alcohol, drug addiction, and mental health services, licensed facilities, and community mental health services providers may release necessary information to insurers and other third-party payers, including government entities responsible for processing and authorizing payment, to obtain payment for goods and services furnished to the person. Before disclosing this type of record, the custodian must attempt to obtain the person's consent to the disclosure.



- Pursuant to a court order signed by a judge;
- That a person is to be granted access to the person's own psychiatric and medical records, unless access specifically is restricted in a person's treatment plan for clear treatment reasons;
- That ODMHAS may exchange psychiatric records and other pertinent information with community mental health services providers and boards of alcohol, drug addiction, and mental health services relating to the person's care or services. Records and information that may be exchanged pursuant to this provision is to be limited to medication history, physical health status and history, financial status, summary of course of treatment, summary of treatment needs, and a discharge summary, if any. Before disclosing this type of record, the custodian must attempt to obtain the person's consent to the disclosure.
- That ODMHAS, hospitals and community providers operated by ODMHAS, hospitals licensed by ODMHAS, and community mental health services providers may exchange psychiatric records and other pertinent information with payers and other providers of treatment and health services if the purpose of the exchange is to facilitate continuity of care for the person or for the emergency treatment of the person;
- That ODMHAS and community mental health services providers may exchange psychiatric records and other pertinent information with boards of alcohol, drug addiction, and mental health services for purposes of any board function set forth in the local board law. Boards of alcohol, drug addiction, and mental health services are to not access any personal information from ODMHAS or providers except as required or permitted by law for purposes related to payment, care coordination, health care operations, program and service evaluation, reporting activities, research, system administration, oversight, or other authorized purposes.
- That a person's family member who is involved in the provision, planning, and monitoring of services to the person may receive medication information, a summary of the person's diagnosis and prognosis, and a list of the services and personnel available to assist the person and the person's family, if the person's treatment provider determines that the disclosure would be in the best interests of the person. No such disclosure is to be made unless the person is notified first and receives the information and does not object to the disclosure.

- That community mental health services providers may exchange psychiatric records and certain other information with the board of alcohol, drug addiction, and mental health services and other providers in order to provide services to a person involuntarily committed to a board. Release of records under this provision is to be limited to medication history, physical health status and history, financial status, summary of course of treatment, summary of treatment needs, and discharge summary, if any. Before disclosing this type of record, the custodian must attempt to obtain the person's consent to the disclosure.
- That information may be disclosed to the executor or the administrator of an estate of a deceased person when the information is necessary to administer the estate;
- That information may be disclosed to staff members of the appropriate board or to staff members designated by the Director of ODMHAS for the purpose of evaluating the quality, effectiveness, and efficiency of services and determining if the services meet minimum standards. Information obtained during such evaluations is to not be retained with the name of any person.
- That records pertaining to the person's diagnosis, course of treatment, treatment needs, and prognosis is to be disclosed and released to the appropriate prosecuting attorney if the person was committed pursuant to the laws relating to competency to stand trial and acquittal by reason of insanity, or to the attorney designated by the board for proceedings pursuant to involuntary commitment under the Hospitalization of the Mentally Ill Law;
- That ODMHAS may exchange psychiatric hospitalization records, other mental health treatment records, and other pertinent information with the Department of Rehabilitation and Correction (DRC) and with the Department of Youth Services (DYS) to ensure continuity of care for inmates and offenders who are receiving mental health services in a DRC or DYS institution and may 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 services providers to ensure continuity of care for inmates or offenders who are receiving mental health services in an institution and are scheduled for release within six months. The release of records under this provision 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 a discharge summary, if any.

- That a community mental health services provider that ceases to operate may transfer to either a community mental health services provider that assumes its caseload or to the board of alcohol, drug addiction, and mental health services of the service district in which the person resided at the time services were most recently provided any treatment records that have not been transferred elsewhere at the person's request.

No person is to reveal the content of a medical record of a person except as authorized by law. The act makes violating these requirements a fifth degree felony.

Continuing law contains a confidentiality provision for persons seeking or receiving addiction services.

### **Interaction with other departments, agencies, and facilities**

#### ***Services providers and certification of services***

(R.C. 5119.611 (renumbered 5119.36), 5119.612 (renumbered 5119.371) and 3793.06 (repealed))

Continuing law requires ODMHAS to adopt rules and standards related to the certification of services providers. Under the act, ODMHAS is no longer required to establish standards specifically for the qualification of mental health professionals and personnel who provide community mental health services. Continuing law requires the rules to prescribe certification standards for mental health services and addiction services and requires these standards to address certain topics. The act adds the limitations that are to be placed on a provider that is granted conditional certification to the list of these topics. The act also removes the requirement that the amount of certification review fees for community mental health services and addiction services be based on a portion of the cost of performing the review. The act also makes permissive, rather than a requirement, that an ODMHAS visit (on-site review) be made in cooperation with the local board.

Under continuing law, if a community services provider does not satisfy the standards for certification, the Director must identify the areas of noncompliance. Under prior law, ODMHAS was required to offer technical assistance to the local board. The act makes this offer permissive but also permits the offer to be made to the services provider.



Continuing law requires the Director of Mental Health to accept the appropriate accreditation of mental health services, integrated mental health and alcohol and other drug addiction services, or integrated mental health and physical health services of a services provider in lieu of a determination that the services provider meets the standards for certification that ODMHAS uses. The act adds alcohol and drug addiction services and integrated alcohol and other drug addiction and physical health services to the list of accredited services for which the services provider may receive alternative certification. Under continuing law, such services may be accredited by the Joint Commission, the Commission on Accreditation of Rehabilitation Facilities, and the Council on Accreditation. The act adds to this list other behavioral health accreditation as determined by ODMHAS.

***Responsibilities to provide services outside of a hospital***

(R.C. 5119.02 (renumbered 5119.14) (B), (D), and (H) and 5119.03)

The act authorizes ODMHAS to provide or contract to provide addiction services for offenders incarcerated in the state prison system.

The act removes the authority of ODMH to provide for the custody, supervision, control, treatment, and training of mentally ill persons hospitalized elsewhere than within the enclosure of a hospital, if ODMH determined that such action is necessary.

***Psychiatric rehabilitation facilities***

(R.C. 5119.04)

The act removes the exemption for facilities designated by ODMH for use as a psychiatric rehabilitation center from the requirement that institutions under the supervision of ODMH be in substantial compliance with standards set forth for psychiatric facilities adopted by the Joint Commission on Accreditation of Health Care Organizations (Joint Commission).

***Contracts between ODMHAS and the Department of Youth Services***

(R.C. 5119.02 (renumbered R.C. 5119.14))

Continuing law permits ODMHAS to receive from DYS, on agreement between ODMHAS and DYS, persons 18 years of age or older in the custody of DYS for psychiatric observation, diagnosis, or treatment. The act permits the departments to enter into a written agreement that specifies the procedures necessary to implement the receiving, while prior law required the departments to enter into such a written agreement.



### ***Training agreements***

(R.C. 5119.11 (renumbered 5119.186(A)))

The act specifies that either the Director of ODMHAS (continuing law) or the managing officer of an institution of ODMHAS (added by the act) may enter into an agreement with the directors of one or more institutions of higher education or hospitals licensed to establish collaborative training efforts for students preparing for careers in mental health-related fields. The act expands this provision to apply to addiction services as well. The act also removes the duty of the Director of ODMH to determine which positions and occupations are substantially related enough to the care and treatment of persons receiving mental health or addiction services to warrant developing collaborative training programs with institutions of higher education.

### ***Determination of services needed***

(R.C. 5119.061 (renumbered 5119.40))

Continuing law requires ODMHAS to determine whether a mentally ill person seeking admission to a nursing facility requires the level of services provided by a nursing facility. This evaluation is not required in certain situations, however, unless certain criteria, newly added by the act, apply. In other words, an evaluation for a situation that would normally be exempt is required if the hospital from which the individual is transferred or directly admitted to a nursing facility is either of the following:

- A hospital that ODMHAS maintains, operates, manages, and governs for the care and treatment of mentally ill persons;
- A free-standing hospital, or unit of a hospital, licensed by ODMHAS.

### ***Residential facility licenses***

(R.C. 5119.22 (renumbered 5119.34))

The act increases the length of time for which a full residential facility license may be valid. The act provides that a full license issued to a residential facility by ODMHAS expires up to three years after the date of issuance. Prior law provided that a full license issued to a residential facility by ODMH expired two years after the date of issuance.



## ***Recovery Requires a Community Program***

(Section 751.10)

The act requires that ODMHAS, in consultation with the Department of Medicaid (ODM), administer the Recovery Requires a Community Program to identify individuals residing in nursing facilities who can be successfully moved into community settings with the aid of non-Medicaid services. The ODMHAS and ODM Directors must agree on an amount that represents the savings realized from decreased nursing facility utilizations as a result of the program. The savings are to be transferred, within the 2014 and 2015 biennium, from ODM to ODMHAS to support non-Medicaid program costs for individuals moving into community settings.

## ***Addiction treatment pilot program***

(Section 327.120)

***Participating courts.*** The act requires ODMHAS to conduct a pilot program in the courts of certain counties with certified drug court programs to provide addiction treatment to criminal offenders selected to participate in the program who are dependent on opioids, alcohol, or both. "Certified drug court program" is defined by the act as a session of a common pleas court, municipal court, or county court (or a division of one of those courts) that holds certification from the Supreme Court as a specialized docket program for drugs.

The pilot program is to be conducted in the courts of Crawford, Franklin, Hardin, Mercer, and Scioto counties that are conducting certified drug court programs. If in any of these counties there is no drug court program, ODMHAS must conduct the pilot program in a court that is conducting a certified drug court program in another county. In addition, ODMHAS may conduct the pilot program in any other court that is conducting a drug court program.

***Collaboration.*** In conducting the pilot program, ODMHAS must collaborate with the Supreme Court, Department of Rehabilitation and Correction, and any other state agency that it determines may be of assistance in accomplishing the objectives of the pilot program. ODMHAS may also collaborate with the boards of alcohol, drug addiction, and mental health services that serve the counties in which the courts participating in the pilot program are located.

***Evaluation plan.*** ODMHAS must select a nationally recognized criminal justice research institute with extensive experience in the evaluation of criminal justice and substance abuse projects to develop an evaluation plan for the pilot program. The selection must be made not later than August 28, 2013.



The evaluation plan is to include performance measures that reflect the purpose of the pilot program, which is to assist participants in addressing their dependence on opioids, alcohol, or both, by maintaining abstinence from the use of those substances and reducing recidivism. The evaluation plan must be put in place with each of the certified drug court programs included in the pilot program and the community addiction services providers that will provide treatment to participants.

Once the evaluation plan has been put in place, the certified drug court programs are to select criminal offenders to be participants in the pilot program. To be selected, an offender must meet the legal and clinical eligibility criteria for the certified drug court program and be an active participant in the program.

The total number of persons participating in the pilot program at any one time is not to exceed 500, but ODMHAS may authorize the maximum number to be exceeded in circumstances ODMHAS considers appropriate.

**Treatment.** Treatment may be provided under the pilot program only by community addiction services providers certified by the Director of ODMHAS. A treatment provider must do all of the following:

- Provide treatment based on an integrated service delivery model that consists of the coordination of care between the doctor or other person who prescribes a drug and the treatment provider;
- Conduct professional, comprehensive substance abuse and mental health diagnostic assessment of each person under consideration for selection as pilot program participant; determine, based on the assessment, the treatment needs of each participant; and develop individualized goals and objectives for each participant;
- Provide access to the long-acting antagonist therapies, partial agonist therapies, or both that are included in the pilot program's medication-assisted treatment;
- Provide other types of therapies, including psychosocial therapies, for substance abuse and any disorders that are considered by the treatment provider to be co-occurring disorders;
- Monitor pilot program compliance through the use of regular drug testing, including urinalysis, of the participants being served by the treatment provider.

The act does not define "antagonist therapies" or "partial agonist therapies." Generally available information describes an antagonist as a substance that acts against and blocks the action of another substance, while an agonist mimics the action of another substance.

Treatment under the pilot program may include medication-assisted treatment. All of the following apply to medication-assisted treatment:

- A drug may be used only if it has been approved by the U.S. Food and Drug Administration for use in treating dependence on opioids, alcohol, or both, or for preventing relapse into the use of opioids, alcohol, or both;
- Each drug used must constitute long-acting antagonist therapy or partial agonist therapy;
- If a drug constituting partial agonist therapy is used, the pilot program must provide safeguards to minimize abuse and diversion of the drug, such as routine drug testing of participants.

**Report.** The research institute selected by ODMHAS to develop the evaluation plan is to prepare a report of the findings obtained from the pilot program. The report must include data derived from the drug testing and performance measures used in the pilot program. In preparing the report, the research institute is to obtain assistance from ODMHAS.

The research institute must complete its report not later than six months after the conclusion of the pilot program. On completion, the report is to be submitted to the Governor, Chief Justice of the Supreme Court, President of the Senate, Speaker of the House of Representatives, ODMHAS, Department of Rehabilitation and Correction, and any other state agency the Supreme Court collaborates with in conducting the pilot program.

### **Funds and funding**

#### ***Capital funding for substance use facilities***

(R.C. 154.20)

Continuing law unchanged by the act enables the state to issue bonds in order to pay the costs of capital facilities for mental hygiene and retardation, including housing for mental hygiene and retardation patients. The act expands the type of facility that can be financed in this manner to include housing for persons with substance use disorders.



### ***Fund allocation for operation of state hospital services***

(R.C. 5119.62 (renumbered 5119.23))

The act removes specific requirements related to the allocation of funds appropriated by the General Assembly to boards of alcohol, drug addiction, and mental health services for the operation of state hospital services in favor of a general requirement that the ODMHAS is to establish guidelines related to the allocation of such funds in consultation with the boards. Accordingly, all of the following provisions are removed:

- If ODMH allocated the fund, ODMH was to:
  - In consultation with the boards, annually determine the unit costs of providing state hospital services and establish the methodology for allocating the funds to the boards;
  - Determine the type of unit costs of providing state hospital services to be included as a factor in the methodology and include that unit cost as a factor in the methodology;
  - Allocate the funds to the boards in manner consistent with the methodology and other state and federal laws and rules;
  - Notify each board of ODMH's estimate of the amount of funds to be allocated to the board during the next fiscal year;
  - If ODMH made an allocation, notify each board of the unit costs of providing state hospital services for the upcoming fiscal year.
- Each board was to notify ODMH as to whether the board had elected to accept or decline the funds allocated by ODMH.
- An express statement that a board's use of allocated funds were subject to audit by county, state, and federal authorities.

The act removes the prohibition against using state funds allocated to a local board for the purpose of discouraging employees from seeking collective bargaining representation or encouraging employees to decertify a recognized collective bargaining agent. The act removes the requirement that ODMH was to charge against an allocation made to a local board any unreimbursed costs for services provided by ODMH.



***Withholding funds due to discrimination***

(R.C. 5119.622 (renumbered 5119.25) (B) and (C) and 5119.623)

Continuing law enables ODMHAS to withhold funds from a local board for failure to comply with applicable laws. In addition to this authority, continuing law authorizes ODMHAS to withhold funds otherwise to be allocated to a local board if the board denies available service on the basis of race, color, religion, creed, sex, national origin, developmental disability, age, or disability. If ODMHAS decides to withhold funds, ODMHAS must provide information on how the board can come into compliance with the applicable laws, and give the board a reasonable time within which to comply. Under the act, the board has ten days to comply, and ODMHAS may, but is not required to, offer technical assistance. Additionally, ODMHAS must hold a hearing on the matter and, under the act, the hearing is to be held within ten days of receipt of the board's position on the matter.

***Residential state supplement – purpose***

(R.C. 5119.69 (renumbered 5119.41) and 5119.691 (renumbered 5119.411))

The act expands the purpose of residential state supplement payments to permit them to be used to provide accommodations, supervision, and personal care services to social security and social security disability insurance recipients who ODMHAS determines are at risk of needing institutional care.

Continuing law prescribes eligibility standards for residential state supplement payments. Under prior law one of the places that a person must reside in to be eligible for the supplement was a home or facility, other than a nursing home or nursing home unit of a home for the aging, licensed accordingly. Under the act, this eligible residence is replaced by a residential care facility, licensed accordingly, or an assisted living program.

Prior law required ODMH to notify each person denied approval for residential state supplement payments of the person's right to a hearing on the matter. The act requires the county department of job and family services to provide this notification.

Continuing law requires each residential state supplement administrative agency to determine, for individuals who reside in the agency's area and are on a waiting list for the residential state supplement program, whether those individuals have been admitted to a nursing facility. Under prior law, if an agency determined that such an individual had been admitted to a facility, the agency was to notify the long-term care consultation program administrator serving the area in which the individual resides about the determination. The administrator is then required to make another



determination as to whether the nursing facility or the residential state supplement program is appropriate for the individual and notify ODMH of the determination. The act removes this process in favor of a more general requirement that ODMHAS have in place a process for making a determination as to whether the nursing facility or the residential state supplement program is appropriate for the individual.

Prior law required ODMH to submit each quarter to OBM the estimated increase in costs of the residential state supplement program resulting from the enrollment of such individuals. The act requires such reports to be made only in those quarters in which such a waiting list exists.

***Residential state supplement – criteria***

(Section 327.100)

The act specifies the criteria to be used for the Residential State Supplement Program when determining whether a resident is eligible for payment and the monthly payment amount that such a resident is to receive. A resident is eligible for Residential State Supplement payments if the resident's monthly income meets the following criteria:

- Up to \$927 for a residential care facility;
- Up to \$927 for a residential facility that provides accommodations, supervision, and personal care services for six to 16 unrelated adults;
- Up to \$824 for a residential facility that provides accommodations, supervision, and personal care services for one or two unrelated adults;
- Up to \$824 for a residential facility providing accommodations, supervision, and personal care services to three to five unrelated adults;
- Up to \$824 for a residential facility that provides accommodations, supervision, and personal care services for one or two unrelated persons with mental illness or persons with severe mental disabilities who are referred by or are receiving mental health services from a community mental health services provider or a hospital;
- \$618 for community mental health housing services.

Under the act, ODMHAS must reflect these amounts in applicable rules adopted by ODMHAS.



ODMHAS is required to, with the input of stakeholders and impacted state agencies, conduct a review of the state and federal rules and statutes governing the Residential State Supplement Program and report on potential improvements to be made in governing the program not later than January 1, 2014.

***Federal block grant funds***

(R.C. 5119.60 (renumbered 5119.32))

The act makes ODMHAS the administrative agency for the federal Substance Abuse Prevention Treatment Block Grant and the federal Community Mental Health Services Block Grant, which are the successors to the Alcohol, Drug Abuse, and Mental Health Services Block Grant. With regard to these grants, the act removes the requirement that ODMH establish and administer an annual plan to utilize federal block grant funds.

***Problem Casino Gambling and Addictions Fund***

(R.C. 3793.032 (renumbered 5119.47))

The act replaces the requirement that programs supported by the Problem Casino Gambling and Addiction Fund be services that are provided by prevention programs certified by ODADAS or by counselors certified by ODADAS with a requirement that the services supported by the Fund be services certified by ODMHAS.

**Personnel changes**

***Classified service***

(R.C. 5119.27 (renumbered 5119.05))

The act removes the express authority of ODMHAS to appoint an individual to the position of chief executive officer of an institution from persons holding positions in the classified services in ODMHAS. The act specifies that the managing officer has the authority and responsibility for entering into contracts and other agreements for the efficient operations of the institution.

***Special police officers***

(R.C. 5119.14 (renumbered 5119.08) (C)(4))

The act specifies that the suspension or termination from employment of a special police officer positioned at a mental health institution is to be done in accordance with applicable collective bargaining agreements, as opposed to the Administrative Procedure Act.





### ***Medical director***

(R.C. 5119.07 (renumbered 5119.11))

The act requires a person appointed as the medical director of ODMHAS to have, in addition to continuing qualification standards, certification or substantial training and experience in the field of addiction medicine or addiction psychiatry. In addition to continuing responsibilities, under the act the medical director is responsible for decisions relating to the prevention of addiction and the clinical aspects of the licensure of outpatient facilities, community addiction and mental health services plans, and the certification of mental health and addiction services.

### ***Certified position appointments***

(R.C. 5119.071 (renumbered 5119.18))

The act removes the procedures and stipulations prescribed for ODMH in relation to the appointment of a person in a certified position in the classified service to a position in the unclassified service in favor of the standard procedures and stipulations prescribed by DAS. As such, the following procedures and policies are removed in favor of the standard DAS policies and procedures for persons in certified or permanent positions:

- An employee's right to resume such a position is only valid when the employee is demoted to a pay range lower than the employee's original pay range or when ODMHAS revokes the employee's appointment to the unclassified service.
- An employee forfeits the right to resume a classified position if the employee is removed from the unclassified position due to specified reasons.
- An employee forfeits the right to resume a position in the classified service upon transfer to a different agency.
- Reinstatement to a classified position is to be to a position substantially equal to the classified position previously held.
- If the classified position the person previously held is no longer available, the employee is to be appointed to a comparable classified position.
- Service in the unclassified position is to be counted as service in the classified position originally held.





- When a person is reinstated to a classified position, the person is entitled to all rights, statuses, and benefits accruing to the classified position during the person's time of service in the unclassified position.

Under the act, the standard DAS procedures also apply to such persons who hold a permanent position in the classified service within ODMHAS.

### **Outright repeals**

The following is a list and brief description of those sections that are completely repealed in the merger of ODMH and ODADAS into ODMHAS.

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

(R.C. 3793.09 (repealed))

The act abolishes the Council on Alcohol, Drug, and Gambling Addiction Services.

#### ***Revolving Loans for Recovery Homes Fund***

(R.C. 3793.19 (repealed))

This section created the Revolving Loans for Recovery Homes Fund, consisting of money received from the federal government. Such funds are no longer being received.

#### ***Statement of policy***

(R.C. 5119.47 (repealed))

This section specified that it was the policy of Ohio, and of ODMH, to operate state hospital inpatient services and other community-based services, in order to provide for a full range of services for persons in need of mental health services.

#### ***Operation of runaway shelters for minors***

(R.C. 5119.65 through 5119.68 (repealed))

These sections provided for the operation of runaway shelters for minors. These requirements have been subsumed by general requirements and laws related to facilities overseen by ODMHAS.

## Definitions

(R.C. 3793.01 (renumbered 5119.01), 5119.22 (renumbered 5119.34), and 5119.69 (renumbered 5119.41))

The act adds definitions that mirror definitions in related chapters and alters definitions to reflect practices of ODMH and ODADAS.

## Miscellaneous changes

(R.C. 340.01, 340.031, 340.032, 340.05, 340.07, 340.091, 340.10, 340.11, 340.12, 340.15, and 340.16)

The act makes conforming changes to reflect the merger, by the act, of ODMH and ODADAS into ODMHAS. The act also updates certain terms to reflect industry terminology:

Former law	Act
Agency Agency, corporation, or association Agency, corporation, or individual	Services provider Provider
Client Consumer Patient	Person receiving services
Alcohol and drug addiction services	Addiction services Alcohol, drug, and gambling addiction services
Programs	Services Services and facilities
Comprehensive community mental health plan Community mental health plan	Comprehensive community addiction and mental health services budget Budget Budget and statement of services

For purposes of qualification as the executive director of a board, the act defines "mental health professional" and "addiction services professional" as an individual who is qualified to work with mentally ill persons or persons receiving addiction services, pursuant to standards established by the Director of ODMHAS under state law.

The act removes the expired requirement that ODMHAS and the Department of Job and Family Services collaborate to formulate a plan for funding responsibilities of public children services agencies and alcohol, drug addiction, and mental health services boards.



## **Alcohol, drug addiction, and mental health service districts**

(R.C. 340.01, 340.011, 340.02, 340.021, 340.022 (repealed), 340.03, 340.031, 340.032, 340.033 (repealed), 340.04, 340.05, 340.06 (repealed), 340.07, 340.08, 340.09, 340.091, 340.10, 340.11, 340.12, 340.13, 340.14 (repealed), 340.15, and 340.16; conforming changes in multiple R.C. sections)

### **Changes to membership of local boards**

(R.C. 340.011, 340.02, and 340.021)

Continuing law requires each alcohol, drug addiction, and mental health service district to have either (1) a board of alcohol, drug addiction, and mental health services (ADAMHS) or (2) an alcohol and drug addiction services (ADAS) board and a community mental health (CMH) board. The act makes several changes to the membership requirements of these boards.

### **Alcohol, drug addiction, and mental health services boards**

The act permits ADAMHS boards, with the approval of the board of county commissioners of the county in which the alcohol, drug addiction, and mental health service district is located, to elect to decrease its membership from 18 members, as provided in continuing law, to 14 members. If an ADAMHS board elects to remain at 18 members, neither the ADAMHS board nor the board of county commissioners is required to take any action. If, however, the ADAMHS board elects a recommendation to become a 14-member board, that recommendation must be approved by the board of county commissioners in order for the transition to a 14-member board to occur. Not later than September 30, 2013, each ADAMHS board that wishes to become a 14-member board must notify the board of county commissioners of that recommendation. If a board of county commissioners fails to take action within 30 days after receipt of the recommendation, that failure is deemed agreement by the board of county commissioners for the ADAMHS board to transition to a 14-member board. If the board of county commissioners rejects the recommendation, the board of county commissioners is required to adopt a resolution stating that rejection within 30 days after receipt of the recommendation. Upon adoption of the resolution, the board of county commissioners must meet with the ADAMHS board to discuss the matter. After the meeting, the board of county commissioners is required to notify ODMHAS of its election not later than January 1, 2014. In a joint-county district, a majority of the boards of county commissioners must not reject the recommendation of a joint-county ADAMHS board to become a 14-member board in order for the transition to a 14-member board to occur. If a joint-county district has an even number of counties, and the boards of county commissioners of these counties tie in terms of whether or not to accept the recommendation of the ADAMHS board, the recommendation of the



ADAMHS board will prevail, and the ADAMHS board will transition to a 14-member board. This election is final. If an existing board provides timely notice of its election to transition to operate as a 14-member board, the number of board members may decline from 18 to 14 through attrition as members' terms expire, provided that the composition of the board reflects the act's requirements for 14-member boards. For ADAMHS boards, the provision of law regarding the proportion of members interested in mental health services and addiction services is retained by the act (half must be interested in mental health services and half must be interested in addiction services), however, under the act, interest in addiction services is expanded to include gambling addiction services in addition to alcohol or drug addiction services.

Reflecting the act's merger of ODMH and ODADAS, the act combines the number of members the director of each agency appointed under former law (four by the ODMH Director and four by the ODADAS Director) by requiring the Director of ODMHAS to appoint eight members of an 18-member ADAMHS Board. Continuing law requires the board of county commissioners to appoint the remaining ten members. For ADAMHS boards operating as 14-member boards, the act requires the Director of ODMHAS to appoint six members and the board of county commissioners to appoint eight members.

The act retains law regarding the appointment of members of an 18-member board and enacts provisions regarding the appointment of members of a 14-member board. For 14-member boards, each member is appointed for a term of four years, commencing the first day of July, except that four of the initial appointments to a newly established board, and to the extent possible to expanded boards, are for terms of two years, five initial appointments are for terms of three years, and five initial appointments are for terms of four years.

The act allows, in specific circumstances, a member to serve longer on a board than under former law. The act prohibits a member of a board from serving more than two consecutive four-year terms **under the same appointing authority**. Similarly, the act provides that a member may serve for three consecutive terms **under the same appointing authority** only if one of the terms is for less than two years. The act provides that a member who has served two consecutive four-year terms or three consecutive terms totaling less than ten years is eligible for reappointment **by the same appointing authority** one year following the end of the second or third term. Prior law prohibited any member from (1) serving more than two consecutive four-year terms, (2) serving for three consecutive terms only if one of the terms was for less than two years, or (3) being eligible for reappointment one year following the end of the second or third term, regardless of appointing authority.



The act retains some provisions of law regarding composition of the board: the Director of ODMHAS is required to ensure that an ADAMHS board includes a person who has received or is receiving mental health services paid for by public funds and a parent or other relative of such a person. The act replaces or repeals other provisions related to board composition:

<b>Directors of ODMH and ODADAS were required by former law to ensure these members are on each ADAMHS board</b>	<b>Director of ODMHAS is required by the act to ensure these members are on each ADAMHS board</b>
Psychiatrist or licensed physician	Clinician with experience in the delivery of mental health services
Mental health professional	No provision
Professional in the field of alcohol or drug addiction services	Clinician with experience in the delivery of addiction services
Advocate for persons receiving treatment for alcohol or drug addiction	No provision
Person who has received or is receiving alcohol or drug addiction services	Person who has received or is receiving addiction services paid for by public funds
Parent or relative of a person who has received or is receiving alcohol or drug addiction services	Parent or relative of a person who has received or is receiving addiction services paid for by public funds

Thus, the act requires the Director to ensure that one member of the board is a clinician with experience in the delivery of mental health, one member is a person who has received or is receiving mental health services paid for by public funds, one member is a parent or relative of such a person, one member is a clinician with experience in the delivery of addiction services, one member is a person who has received or is receiving addiction services paid for by public funds, and one member is a parent or other relative of such a person.

The act provides that a single member of a board who meets both the clinician qualifications may fulfill the requirement for a clinician with experience in the delivery of mental health services and a clinician with experience in the delivery of addiction services.

The act prohibits any member of a board from being an employee of any provider with which the board has entered into a contract for the provision of services or facilities. Former law allowed an ADAMHS board member to be an employee of a provider with which the board had entered into a contract for the provision of services or facilities, if the board member's employment duties with the provider consisted of



providing, only outside the district the board serves, services for which the Medicaid program paid.

The act removes prior law's prohibition against the required annual in-service training sessions that each board member is required to attend from being considered to be a regularly scheduled meeting of the board.

#### **Alcohol and drug addiction services (ADAS) and community mental health (CMH) boards**

The act permits ADAS and CMH boards to elect to consist either of 18 members, as provided for in continuing law, or of 14 members. The act requires the boards to notify ODMHAS not later than January 1, 2014, of a board's election to continue to operate as an 18-member board or to transition to operation as a 14-member board. This election is final. If a board fails to provide the notice within the time period, the failure is deemed an election to continue operation as an 18-member board. If a board provides timely notice of its election to transition to operate as a 14-member board, the number of board members may decline from 18 to 14 through attrition as members' terms expire, provided that the composition of the board reflects the act's requirements for 14-member boards. Continuing law requires that six members of 18-member ADAS and CMH boards be appointed by the Director of ODMHAS and that 12 members be appointed by the board of county commissioners. The act provides that for 14-member boards, the Director is required to appoint six members and the board of county commissioners is required to appoint eight members.

The act requires that the Director **ensure** one member of an ADAS board be each of the following (1) a person who has received or is receiving services for alcohol, drug, or gambling addiction paid for with public funds, (2) a parent or relative of such a person, (3) and a clinician with experience in the delivery of addiction services. Prior law required the Director to **appoint** each of the following (1) a person who had received or was receiving services for alcohol or drug addiction, (2) a parent or relative of such a person, (3) a professional in the field of alcohol or drug addiction services, and (4) an advocate for persons receiving treatment for alcohol or drug addiction. Thus, the act includes gambling addiction in addition to drug and alcohol addiction, specifies that the services of the service-receiving board member are paid for with public funds, replaces the professional with a clinician with experience, and removes the requirement that an advocate be on the board.

The act requires that the Director **ensure** that one member of the CMH board be each of the following (1) a person who has received or is receiving mental health services paid for with public funds, (2) a parent or relative of such a person, and (3) a clinician with experience in the delivery of mental health services. Prior law required



that the Director **appoint** each of the following (1) a person who had received or was receiving mental health services, (2) a parent or relative of such a person, (3) a psychiatrist or a physician, and (4) a mental health professional. Thus, the act specifies that the services of the service-receiving board member are paid for with public funds, replaces the professional with a clinician with experience, and removes the requirement that a psychiatrist or physician be on the board.

### **Establishment of boards and standing committees on addiction services**

(R.C. 340.021; R.C. 340.022 (repealed))

The act (1) removes expired language that provided for the establishment of an ADAMHS board between the original deadline for establishment (within 30 days of October 10, 1989) and January 1, 2007, (2) allows a board of county commissioners to adopt a final resolution, at any time in the future, that establishes an ADAMHS board in lieu of ADAS and CMH boards, and (3) removes the requirement that each service district without an alcohol and drug addiction services board create a standing committee on alcohol and drug addiction services.

### **Duties of boards**

(R.C. 340.03, 340.031, 340.033 (repealed), 340.04, 340.06 (repealed), and 340.08)

The act consolidates, amends, reorganizes, and enacts provisions regarding board duties with respect to mental health services and alcohol and drug addiction services. The law regarding duties remains largely unchanged by the act, and the act combines those duties that previously were split between addiction services and mental health services. Most of these provisions are organized under R.C. 340.03 and R.C. 340.08 of the act, which enumerate the responsibilities of ADAMHS, ADAS, and CMH boards.

### **Planning duties**

Instead of implementing an annual plan that is approved by ODMHAS, the act specifies that a board must operate in accordance with such a plan. The act requires boards, in serving as the community addiction and mental health services planning agency, to evaluate strengths and challenges for such services and, when setting priorities as required by continuing law, to include treatment and prevention priorities. The act expands the duties of a continuum of care to include in addition to treatment, support, and rehabilitation services and opportunities. Prior law referred to a continuum of care as a community support system, and continuing law requires a board to establish the continuum to the extent resources are available. The act requires





residential addiction and mental health services to be components of the system in addition to other services unchanged by the act.

The act replaces the requirement that the annual plan include the needs of all residents of the district residing in state mental institutions and severely mentally disabled adults, children, and adolescents, with a requirement that the annual plan include the needs of all residents of the district currently receiving inpatient services in state-operated hospitals and the needs of other populations as required by state or federal law.

The act removes the requirement that the annual plan include a statement of the inpatient and community based services the board proposes that ODMH operate and an assessment of the number and types of residential facilities needed, and consequently removes the requirement that ODMH's statement of approval or disapproval specifies these services that ODMH will operate for the board. For a district that has ADAS and CMH boards, the act requires the ADAS board to submit a community addiction services plan and the CMH board to submit a community mental health services plan. The act directs the ADAS and CMH boards (1) to consult with each other in developing the plans and (2) to address the interaction between the local addiction services and mental health services systems and populations with regard to needs and priorities in developing its plan.

Under the act, the board must submit to ODMHAS a statement identifying the services described in categories of continuum of care and support functions, approved by ODMHAS, which the board intends to make available (see "**ODMHAS reimbursement**" below). Crisis intervention services for individuals in emergency situations and services required for a parent, guardian, or custodian of a child who is in imminent risk of being abused or neglected must be included in the statement, and the board is required to explain the manner in which it will make the services available.

### **Fiduciary duties**

The act requires each board, in accordance with rules or guidelines issued by the Director, to submit to ODMHAS a report of receipts and expenditures for all federal, state, and local moneys the board expects to receive. Former law required the board to receive, compile, and transmit to ODMHAS an application for funding. The act states that the board's proposed budget for expenditures of state and federal funds distributed to the board by ODMHAS will be deemed an application for funds, and ODMHAS must approve or disapprove the budget for these expenditures. If the budget is disapproved, ODMHAS is required to inform the board of the reasons for disapproval and of the criteria that must be met before the budget may be approved. The Director is required (1) to provide the board an opportunity to present its case on behalf of the





submitted budget, (2) to give the board a reasonable time in which to meet the criteria, and (3) to offer the board technical assistance to help it meet the criteria.

If, after approval of the budget, a board determines that it is necessary to amend the budget, the act requires the board to submit a proposed amendment to the Director. The Director must approve or disapprove of all or part of the amendment and then inform the board of the reasons for disapproval of all or part of the amendment and the criteria that must be met before the amendment may be approved. Then, the Director must complete (1), (2), and (3) in the paragraph above.

With regard to the statement that a board is required to submit to ODMHAS that identifies the services described in categories of continuum of care and support functions (see "**Planning duties**" above and "**ODMHAS reimbursement**" below), the act requires the list to be compatible with the submitted budget. ODMHAS must approve or disapprove the proposed listing of services and, in the case of disapproval, inform the board of the reasons for disapproval and the criteria that must be met before the listing may be approved. The Director is required to complete (1), (2), and (3) above.

Similar to prior law, the act allows the Director to withhold funds otherwise to be allocated to a board if the board's use of state and federal funds fails to comply with the approved budget, or an amended approved budget (see "**Merger of Department of Mental Health and the Department of Alcohol and Drug Addiction Services – Rules**" above).

Law unchanged by the act requires that state funds for local boards are deposited with the relevant county treasurer and are then disbursed on order of the relevant county auditor. The act clarifies that, of the payments made by the county auditor on behalf of a local board, those payments made from funds distributed to a local board by ODMHAS must be made in compliance with a board's budget statement.

#### **Other duties**

The act requires boards to enter into a continuity of care agreement with the state institution operated by ODMHAS and designated as the institution serving the district encompassing the board's service district. The agreement must outline ODMHAS's and the board's responsibilities to plan for and coordinate with each other to address the needs of board residents who are patients in the institution, with an emphasis on managing appropriate hospital bed day use and discharge planning. Continuity of care agreements between local boards and state institutions designated as the institution serving the local board's service district must not require a local board to provide resources beyond the total amount set forth in the board's budget statement.

Boards must submit to ODMHAS a report summarizing complaints and grievances received by the board concerning the rights of persons seeking or receiving services, investigations of complaints and grievances, and outcomes of the investigations.

Annually, and upon any change in membership, boards must submit to ODMHAS a list of all current members of the board, including the appointing authority for each member, and the member's specific qualification for appointment in accordance with the law.

The act requires boards to establish a mechanism for obtaining advice and involvement of persons receiving publicly funded addiction or mental health services on matters pertaining to mental health services in the district. Former law did not specify that the services be publicly funded. The act prohibits a board from contracting with an unlicensed residential facility that is required to be licensed by the Director.

With regard to inspections of residential facilities, the act permits a board to conduct an inspection of any residential facility licensed under the Hospitalization of the Mentally Ill Law that is located in the board's district. This eliminates former law's requirement that the inspection be pursuant to a contract with ODMH.

Boards are required by the act to submit to ODMHAS other information as is reasonably required for purposes of ODMHAS's operations, service evaluation, reporting activities, research, system administration, and oversight.

The act makes permissive that a utilization review process be established as part of a contract for services entered into between a board and a community addiction or mental health agency services provider. Prior law required the utilization review process to be established.

The act creates references in Chapter 340. (the law regarding local boards), to both of the following provisions: (1) duties of boards to operate, in conjunction with ODMHAS, a coordinated system for tracking and monitoring certain persons found not guilty by reason of insanity and (2) duties of boards to provide to ODMHAS information submitted to the community information system or systems established by ODMHAS.

### **Repealed duties**

The act removes the requirement that boards administer mental health clinics and child guidance homes financed partly by state funds as of June 30, 1967.



## **ODMHAS reimbursement**

(R.C. 340.09)

The act reorganizes the list of board services for which a county is eligible for monetary assistance from appropriated funds. The act specifies that the services must be approved by ODMHAS within the continuum of care or be approved support functions. Categories in the continuum of care may include (1) inpatient, (2) residential, (3) outpatient treatment, (4) intensive and other support, (5) recovery support, and (6) prevention and wellness management. Support functions may include (1) consultation, (2) research, (3) administrative, (4) referral and information, (5) training, and (6) service and program evaluation.

Former law provided that a county could be reimbursed for the following services: (1) outpatient, (2) inpatient, (3) partial hospitalization, (4) rehabilitation, (5) consultation, (6) mental health education and other preventive services, (7) emergency, (8) crisis intervention, (9) research, (10) administrative, (11) referral and information, (12) residential, (13) training, (14) substance abuse, (15) service and program evaluation, (16) community support system, (17) case management, (18) residential housing, and (19) other services approved by the board and the Director.

## **EDGE business enterprise procurement goals**

(R.C. 340.13)

The act requires, to the extent that a board is authorized to enter into contracts for construction, the board to strive to attain a yearly contract dollar procurement goal the aggregate value of which equals approximately 5% of the aggregate value of construction contracts for the current fiscal year for EDGE business enterprises only. Former law set aside these contracts for bidding by certified minority business enterprises. "EDGE business enterprise" means a sole proprietorship, association, partnership, corporation, limited liability corporation, or joint venture certified as a participant in the Encouraging Diversity, Growth, and Equity Program by the Director of Administrative Services (DAS). The act requires any EDGE business enterprise that desires to bid on a contract to first apply to the Equal Employment Opportunity Coordinator of DAS.

The act permits a board that is unable to comply with the EDGE contracting procurement goal, after having made a good faith effort, to apply in writing to the Director for a waiver or modification of the goal. The application must be on a form prescribed by DAS. The act specifies that the provisions regarding EDGE contracts do not preclude any EDGE business enterprise from bidding on any other contract not specifically subject to the procurement goals.



Continuing law requires each board to file a report with ODMHAS, within 90 days after the beginning of each fiscal year, that shows for that fiscal year the name of each minority business enterprise with which the board entered into a contract, the value and type of each such contract, the total value of the contracts, and the total value of contracts for construction and purchases of equipment, materials, supplies, or services, other than contracts entered into pursuant to the planning duties of local ADAMHS boards. The act additionally applies these provisions to each EDGE business enterprise with which the board entered into a contract.

The act provides that any person who intentionally misrepresents the person's self as owning, controlling, operating, or participating in an EDGE business enterprise in order to obtain contracts or other benefits is guilty of theft by deception.



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## DEPARTMENT OF NATURAL RESOURCES

### Oil and gas

- Revises restrictions in the Oil and Gas Law regarding the disposal of brine, crude oil, natural gas, or other fluids associated with the exploration or development of oil and gas resources, and applies the restrictions to such fluids associated with well stimulation, production operations, and plugging.
- Prohibits a person, beginning January 1, 2014, from storing, recycling, treating, processing, or disposing of brine or other waste substances associated with oil and gas operations unless the person has been issued a specified order or permit under the act or continuing law.
- Excludes from the above prohibition:
  - A person who disposes of such waste substances other than brine in accordance with the Solid, Hazardous, and Infectious Wastes Law; and
  - A person who is in operation prior to January 1, 2014, and who has received approval of the Chief of the Division of Oil and Gas Resources Management to conduct such activities and been issued any permit or authorization required under environmental law.
- Requires the Chief to adopt rules regarding recycling, treatment, and processing of brine and other waste substances in addition to storage and disposal as in ongoing law.
- Requires the rules to establish procedures and requirements in accordance with which a person must apply for a permit or order to store, recycle, treat, process, or dispose of brine and other waste substances that are not subject to specified oil and gas permits, and establishes a nonrefundable \$2,500 permit application fee.
- States that the recycling, treatment, and processing of brine and other waste substances and the Chief's rules regarding those activities, in addition to storage and disposal as in continuing law, are subject to statutory standards.
- Allows disposal of brine by any method not specified in the statutory standards governing disposal of brine that is approved by a permit or order of the Chief rather than by methods approved by the Chief for testing or implementing a new technology or method of disposal as in former law.
- With regard to impoundments used for temporary storage:



--Refers to impoundments rather than earthen impoundments;

--Specifies that impoundments must be constructed utilizing a synthetic liner;  
and

--Adds that impoundments may be used for the temporary storage of waste substances, rather than fluids as in former law, used in the construction or plugging of a well in addition to the stimulation of a well as in ongoing law.

- Precludes brine that is produced from a horizontal well from being allowed to be spread on a road.
- Revises the definition of "production operation" in the Oil and Gas Law by including equipment and facilities at a wellpad or other location that are used for specified purposes and that may be used or reused at the same or another operation or will be disposed of in accordance with applicable laws and rules.
- Requires the owner of a horizontal well to file production statements quarterly rather than annually.
- Generally requires an owner of a well, beginning March 31, 2015, to disclose to the Division of Oil and Gas Resources Management the country in which each oil country tubular good initially used in a production operation was manufactured unless that country cannot be determined by the owner.
- Requires the Division to perform specified duties related to the country of origin requirement, including prescribing the disclosure form in consultation with certain industry representatives and using the information specified on the form to establish a quality well infrastructure catalog.
- Requires the term "material safety data sheet," as used in the statute governing well completion records in the Oil and Gas Law, to conform to any changes in the term by the Occupational Safety and Health Administration.

### **TENORM and other material from horizontal wells**

- Does all of the following with regard to material that results from the construction, operation, or plugging of a horizontal well:

--Generally requires the owner of a well or a person that is an authorized agent of the owner (hereafter owner) to determine the concentration level of radium in representative samples of the material if it is technologically enhanced naturally occurring radioactive material (TENORM);

--Generally prohibits the material from being removed from the location associated with the production operation of the well until an analysis of the material is complete and the results are available;

--Specifies that the owner is not required to determine the concentration level of radium in TENORM if specified circumstances apply, including that the material is reused in the horizontal well from where it originated or is transferred to another site for reuse in a horizontal well;

--Requires the owner to transport and dispose of TENORM in accordance with all applicable laws;

--If the material is not TENORM and the material has come in contact with a refined oil-based substance, requires the owner to dispose of it at a solid waste facility, beneficially use it, or recycle it; and

--If the material is not TENORM and has not come in contact with a refined oil-based substance, allows the material to be used at the location associated with the production operation of the horizontal well or at another location associated with a production operation.

- Prohibits the owner or operator of a solid waste facility from accepting for transfer or disposal TENORM if that material contains or is contaminated with a specified concentration level of radium (hereafter contaminated TENORM).
- Generally authorizes the owner or operator of a solid waste facility to receive and process contaminated TENORM for purposes other than transfer or disposal.
- Authorizes the Director of Environmental Protection to adopt rules regarding the receipt, acceptance, processing, handling, management, and disposal by solid waste facilities of material that contains or is contaminated with radioactive material, including contaminated TENORM.
- Authorizes the rules to include, at a minimum, requirements in accordance with which the owner or operator of a solid waste facility must perform specified activities, including monitoring leachate and ground water for radionuclides.
- Prohibits the owner or operator of a solid waste facility from receiving, accepting, processing, handling, managing, or disposing of TENORM associated with drilling operations without first obtaining representative analytical results to determine compliance with the act and applicable rules adopted under it.



- Authorizes the Director to adopt rules establishing requirements governing the beneficial use of material from a horizontal well that has come in contact with a refined oil-based substance and that is not TENORM.
- Requires the Director of Health to adopt rules establishing requirements governing TENORM and requiring the maintenance of certain records regarding TENORM, and states that the rules must not apply to naturally occurring radioactive material.
- Defines "TENORM" as naturally occurring radioactive material with radionuclide concentrations that are increased by or as a result of past or present human activities, excluding drill cuttings, natural background radiation, byproduct material, or source material.
- Defines "naturally occurring radioactive material" as material that contains any nuclide that is radioactive in its natural physical state, excluding source material, byproduct material, or special nuclear material.

### **Watercraft and waterways**

- Exempts sailboards, kiteboards, paddleboards, and belly boats or float tubes from the requirement to be registered under the Watercraft and Waterways Law, and defines those terms.
- Requires a livery owner to be issued a tag for each watercraft that has been registered in accordance with continuing law governing liveries, and requires the tag to be affixed to each such watercraft in accordance with the act prior to the watercraft's being rented to the public.
- Revises the requirement that a livery watercraft registration number be displayed on each watercraft in the fleet for which an annual certificate of livery registration has been issued by requiring a livery owner, not later than March 15, 2015, to identify each watercraft in the owner's fleet in one of two specified ways.
- Requires each watercraft in a livery fleet to be identified in a uniform and consistent manner.
- Specifies that rental agreements, rather than rental receipts as in former law, are subject to inspection by Division of Watercraft personnel.
- Eliminates the authority of the Chief of the Division to permanently restrict or suspend a certificate of livery registration and associated privileges without a hearing if the Chief finds that the certificate holder has violated the Watercraft and Waterways Law, but retains the Chief's authority to temporarily do so.



## **Watercraft Revolving Loan Program**

- Eliminates the Watercraft Revolving Loan Program and the Watercraft Revolving Loan Fund.

## **Funds**

- Eliminates the Division of Forestry Law Enforcement Fund and the Division of Natural Areas and Preserves Law Enforcement Fund.
- Requires proceeds from forfeited property resulting from investigations conducted by the Divisions of Forestry and Natural Areas and Preserves to be deposited in the Division of Parks and Recreation Law Enforcement Fund, and requires that Fund to be used by the Division of Parks and Recreation for law enforcement purposes.
- Eliminates the Wild Animal Fund, which consisted of moneys received from the sale of wild animals to other states, state or federal agencies, and conservation or zoological organizations, and requires the moneys instead to be credited to the Wildlife Fund.
- Eliminates the Mined Land Set Aside Fund, which consisted of federal grants and was used for specified reclamation and restoration activities.
- Eliminates annual transfers of investment earnings from the Coal-Workers Pneumoconiosis Fund to the Mine Safety Fund and the Coal Mining Administration and Reclamation Reserve Fund, the authority for which expired on June 30, 2013.
- Eliminates the Conservancy District Organization Fund, which was used to provide an advance of money to a conservancy district for specified purposes.

## **Ohio Lake Erie Commission**

- Adds the Director of Development Services as a member of the Ohio Lake Erie Commission.

## **Brine and other waste substances**

(R.C. 1509.22, 1509.226, and 1509.227)

The act revises the restrictions in the Oil and Gas Law regarding the disposal of brine, crude oil, natural gas, or other fluids by prohibiting a person from doing any of the following with brine, crude oil, natural gas, or other waste fluids associated with the



exploration, development, well stimulation, production operations, or plugging of oil and gas resources except when acting in accordance with the statute governing the surface application of brine to roads if any of the following acts causes or could reasonably be anticipated to cause damage or injury to public health or safety or the environment:

- (1) Placing or causing them to be placed in ground water;
- (2) Placing or causing them to be placed in or on the land; or
- (3) Discharging or causing them to be discharged in surface water.

Former law instead prohibited anyone, except when acting in accordance with the statute governing the surface application of brine to roads, from placing or causing to be placed brine, crude oil, natural gas, or other fluids associated with the exploration or development of oil and gas resources in surface or ground water or in or on the land in such quantities or in such manner as to have caused or could reasonably have been anticipated to cause either water used for consumption by humans or domestic animals to exceed the standards of the Safe Drinking Water Act or damage or injury to public health or safety or the environment.

The act also prohibits a person, beginning January 1, 2014, from storing, recycling, treating, processing, or disposing of brine or other waste substances associated with the exploration, development, well stimulation, production operations, or plugging of oil and gas resources unless the person has been issued a permit or order authorizing those activities under the act or continuing law, a permit for drilling or plugging, or a permit for secondary or additional recovery operations. It states that for purposes of that prohibition, a permit or other form of authorization issued by another state agency or a political subdivision cannot be considered a permit or order issued by the Chief of the Division of Oil and Gas Resources Management under the Oil and Gas Law. The act then excludes from the prohibition both of the following:

(1) A person who disposes of such waste substances other than brine in accordance with the Solid, Hazardous, and Infectious Wastes Law and rules adopted under it; and

(2) A person who is in operation prior to January 1, 2014, has received approval by the Chief to store, recycle, treat, process, or dispose of brine or other waste substances, and has been issued any required permit or other form of authorization by the Environmental Protection Agency.



In addition, the act revises statutory provisions requiring the Chief to adopt rules and issue orders regarding the storage and disposal of brine and other waste substances. It requires the Chief to adopt rules regarding not only the storage and disposal of brine and other waste substances, but also the recycling, treatment, and processing of those substances. The rules must establish procedures and requirements in accordance with which a person must apply for a permit or order to store, recycle, treat, process, or dispose of brine and other waste substances that are not subject to a permit for drilling or plugging or a permit for secondary or additional recovery operations and in accordance with which the Chief may issue such a permit or order. It also establishes a nonrefundable \$2,500 application fee for such a permit.

The act states that the recycling, treatment, and processing of brine and other waste substances and the Chief's rules regarding those activities, in addition to storage and disposal of those substances as in continuing law, are subject to statutory standards that previously applied only to the disposal and storage of brine. The act revises one of those standards by allowing the disposal of brine by any method not specified in the statutory standards governing disposal of brine that is approved by a permit or order of the Chief. Under former law, a person instead could dispose of brine by other methods that were approved by the Chief for testing or implementing a new technology or method of disposal.

With regard to impoundments used for temporary storage, the act does all of the following:

- (1) Refers to impoundments rather than earthen impoundments as in former law;
- (2) Specifies that impoundments must be constructed utilizing a synthetic liner;  
and
- (3) Adds that impoundments may be used for the temporary storage of waste substances, rather than fluids as in prior law, used in the construction or plugging of a well in addition to the stimulation of a well as in continuing law.

Finally, the act precludes brine that is produced from a horizontal well from being allowed to be spread on a road.

## **Definition of "production operation" in Oil and Gas Law**

(R.C. 1509.01)

The act revises the definition of "production operation" in the Oil and Gas Law to include equipment and facilities at a wellpad or other location that are used for the transportation, handling, recycling, temporary storage, management, processing, or



treatment of any equipment, material, and by-products or other substances from an operation at a wellpad that may be used or reused at the same or another operation or that will be disposed of in accordance with applicable laws and rules adopted under them.

## **Production reports**

(R.C. 1509.062 and 1509.11)

The act requires the owner of a horizontal well that is producing or capable of producing oil or gas to file a production statement with the Chief on a quarterly basis rather than annually as in prior law. It then makes a conforming change by requiring the owner of a horizontal well that has no reported production for eight consecutive reporting periods rather than two consecutive reporting periods as in former law – both of which equal two years – to plug the well, obtain temporary inactive well status for the well, or perform another activity regarding the well that is approved by the Chief. The act retains requirements governing production statements for all wells and specifically applies them to production statements for horizontal wells.

## **Country of origin disclosure for certain steel products used**

(R.C. 1509.16)

The act requires an owner of a well, beginning March 31, 2015, to file with the Division of Oil and Gas Resources Management a disclosure form that specifies the country in which each oil country tubular good initially used in a production operation on or after that date was manufactured unless that country cannot be determined by the owner. Under the act, oil country tubular goods are circular steel pipes that are seamless or welded and used in drilling for oil or natural gas, including casing, tubing, and drill pipe, whether finished or unfinished, and steel couplings and drill collars used with the pipes.

The Division must do all of the following:

- (1) Prescribe the disclosure form and consult with representatives from the natural gas, oil, and steel industries when developing it;
- (2) Determine the date on which the disclosure form must be filed; and
- (3) Use the information specified on the form to establish a quality well infrastructure catalog.



## **Material safety data sheet**

(R.C. 1509.10)

The act requires the term "material safety data sheet," as used in the statute governing well completion records in the Oil and Gas Law, to conform to any revision of or change in the term by the Occupational Safety and Health Administration.

## **TENORM and other material from horizontal wells**

(R.C. 1509.074, 3734.01, 3734.02, 3734.125, 3748.01, and 3748.04)

The act establishes requirements and procedures governing technologically enhanced naturally occurring radioactive material as defined by the act (hereafter TENORM) (see below) and other material from horizontal wells. It assigns to the Departments of Natural Resources and Health and the Environmental Protection Agency specific functions and responsibilities regarding those requirements and procedures. Under the Oil and Gas Law, a horizontal well is a well that is drilled for the production of oil or gas in which the wellbore reaches a horizontal or near horizontal position in the Point Pleasant, Utica, or Marcellus formation and the well is stimulated.

### **Department of Natural Resources**

With regard to material, presumably any material, that results from the construction, operation, or plugging of a horizontal well, the act establishes all of the following requirements and procedures in the Oil and Gas Law:

(1) Except as discussed below, the owner of a well or a person that is an authorized agent of the owner (hereafter owner) must determine the concentration of radium-226 and radium-228 in representative samples of the material if the material is TENORM. The owner must provide for the collection and analysis of the representative samples of the material, which must be performed in accordance with requirements approved by the Chief of the Division of Oil and Gas Resources Management. The act does not specify under what authority or in accordance with what procedures the Chief approves those requirements.

Additionally, the owner cannot remove the material from the location associated with the production operation of the horizontal well until the analysis is complete and the results are available. However, the owner may do one of the following:

--Temporarily store the material in an area adjacent to that location while the results from the analysis are pending if the material is located in an area that is designated by the Division of Oil and Gas Resources Management and the owner complies with all conditions imposed by the Chief; or



--Prior to the collection of representative samples, transport the material to a location for which a permit or order has been issued under the act for the storage, recycling, treatment, processing, or disposal of brine or other waste substances (see "**Brine and other waste substances**," above). The owner must provide for the collection of representative samples of the material at that location in the same manner as discussed above and must temporarily store the material at that location while the results from the analysis are pending.

The act does not specify any other purpose of the analysis or use of the results.

An owner who has obtained results from the collection and analysis must keep and maintain the results for a period of three years. The owner must provide a copy of the results to the Chief upon request.

(2) The owner is not required to determine the concentration of radium-226 and radium-228 of the TENORM if any of the following applies:

--The material is reused in the horizontal well from where it originated or is transferred to another site for reuse in a horizontal well. For purposes of that provision, a material is reused if the material is used in a substantially similar manner as it was originally used.

--The owner disposes of the material at an injection well for which a permit has been issued under continuing law;

--The owner uses the material in association with a method of enhanced recovery for which a permit has been issued under ongoing law; or

--The material is transported out of the state for lawful disposal, in which case the owner must retain records that substantiate the lawful disposal and provide them to the Chief upon request.

(3) Except as discussed above in item (2), the owner must transport and dispose of TENORM in accordance with all applicable laws.

(4) If the material is not TENORM and the material has come in contact with a refined oil-based substance, the owner must do one of the following:

--If the material is removed from the location associated with the production operation of the well or from a location specified in a permit or order issued under the act for the storage, recycling, treatment, processing, or disposal of brine or other waste substances as discussed above, dispose of the material at a solid waste facility that is authorized to accept the material in accordance with the Solid, Hazardous, and

Infectious Wastes Law and rules adopted under it, or beneficially use the material in accordance with rules adopted by the Director of Environmental Protection under the act (see below); or

--If the material is not removed from the location associated with the production operation of the well, recycle or reuse it with the approval of the Chief.

(5) If the material is not TENORM and the material has not come in contact with a refined oil-based substance, the material may be used at the location associated with the production operation of the horizontal well or at another location associated with a production operation.

### **Environmental Protection Agency**

The act prohibits the owner or operator of a solid waste facility licensed under the Solid, Hazardous, and Infectious Wastes Law (hereafter licensed solid waste facility) from accepting for transfer or disposal TENORM if that material contains or is contaminated with radium-226, radium-228, or both (hereafter contaminated TENORM) at concentrations equal to or greater than five picocuries per gram above natural background. It defines "natural background" as two picocuries per gram or the actual number of picocuries per gram as measured at an individual licensed solid waste facility, subject to verification by the Director of Health. The act does not specify who is required to take the measurements or how it is determined if the two picocuries level or the actual number of picocuries level applies.

The owner or operator of a licensed solid waste facility may receive and process, for purposes other than transfer or disposal, contaminated TENORM at concentrations equal to or greater than five picocuries per gram above natural background, provided that the owner or operator has obtained and maintains all other necessary authorizations, including any authorization required by rules adopted by the Director of Health under the Radiation Control Program Law.

Under the act, the Director of Environmental Protection may adopt rules in accordance with the Administrative Procedure Act governing the receipt, acceptance, processing, handling, management, and disposal by licensed solid waste facilities of material that contains or is contaminated with radioactive material, including contaminated TENORM at concentrations less than five picocuries per gram above natural background. The rules may include, at a minimum, requirements in accordance with which the owner or operator of a licensed solid waste facility must do both of the following:

(1) Monitor leachate and ground water for radium-226, radium-228, and other radionuclides; and





(2) Develop procedures to ensure that TENORM accepted at the facility neither contains nor is contaminated with radium-226, radium-228, or both at concentrations equal to or greater than five picocuries per gram above natural background.

Additionally, the act prohibits the owner or operator of a licensed solid waste facility from receiving, accepting, processing, handling, managing, or disposing of TENORM associated with drilling operations without first obtaining representative analytical results to determine compliance with the above provisions and rules adopted by the Director under them. The act defines "drilling operation" to include a production operation as that term is defined in the Oil and Gas Law, which defines "production operation" in part as all operations and activities and all related equipment, facilities, and other structures that may be used in or associated with the exploration and production of oil, gas, or other mineral resources that are regulated under that Law.

Under the act, the Director may adopt rules in accordance with the Administrative Procedure Act establishing requirements governing the beneficial use of material from a horizontal well that has come in contact with a refined oil-based substance and that is not TENORM. The act expands the definition of "beneficially use" in the Solid, Hazardous, and Infectious Wastes Law to include, with regard to material from a horizontal well as described above, to use the material in any manner authorized as a beneficial use in rules adopted by the Director under the act.

### **Department of Health**

The act requires the Director of Health to adopt rules in accordance with the Administrative Procedure Act establishing requirements governing TENORM and requiring the maintenance of records on the receipt, use, storage, transfer, and disposal of TENORM. It stipulates that the rules must not apply to naturally occurring radioactive material. The act defines "technologically enhanced naturally occurring radioactive material" as naturally occurring radioactive material with radionuclide concentrations that are increased by or as a result of past or present human activities, excluding drill cuttings, natural background radiation, byproduct material, or source material. "Naturally occurring radioactive material" is defined by the act to mean material that contains any nuclide that is radioactive in its natural physical state, excluding source material, byproduct material, or special nuclear material. "Drill cuttings" means the soil, rock fragments, and pulverized material that are removed from a borehole and that may include a de minimus amount of fluid that results from a drilling process. "Byproduct material," "source material," and "special nuclear material" are defined in the continuing Radiation Control Program Law.





## **Exemption of certain watercraft from registration**

(R.C. 1547.532)

The act exempts sailboards, kiteboards, paddleboards, and belly boats or float tubes from the requirement to be registered under the Watercraft and Waterways Law. It defines all of those terms as follows:

(1) "Belly boat" or "float tube" as a vessel that is inflatable, propelled solely by human muscular effort without using an oar, paddle, or pole, and designed to accommodate a single individual as an operator in such a manner that the operator remains partially submerged in the water;

(2) "Kiteboard" as a recreational vessel that is inherently buoyant, has no cockpit, and is operated by an individual who is standing on the vessel while using a kite as a means of propulsion and lift;

(3) "Paddleboard" as a recreational vessel that is inherently buoyant, is propelled by human muscular effort using a pole or single- or double-bladed paddle, and is operated by an individual who is kneeling, standing, or lying on the vessel; and

(4) "Sailboard" as a recreational vessel that is inherently buoyant, has no cockpit, has a single sail mounted on a mast that is connected to the vessel by a free-rotating, flexible joint, and is operated by an individual who is standing on the vessel.

## **Registration and identification of watercraft owned by liveries**

(R.C. 1547.542)

The act revises the law governing the registration of liveries and the identification of watercraft owned by liveries. It requires a livery owner to be issued a tag for each watercraft that has been registered in accordance with continuing law, requires the tag to be affixed to each such watercraft in accordance with the act prior to the watercraft's being rented to the public, and requires the Chief of the Division of Watercraft to prescribe the content and form of the tag in rules.

The act revises the requirement that a livery watercraft registration number be displayed on each watercraft in the fleet for which an annual certificate of livery registration has been issued by requiring a livery owner, not later than March 15, 2015, to identify each watercraft in the owner's fleet in one of the following ways:

(1) By displaying the livery watercraft registration number assigned to the livery owner on the forward half of both sides of the watercraft in block characters that are of a single color that contrasts with the color of the hull and are at least three inches in



height. The registration number must be displayed in such a manner that it is visible under normal operating conditions. In addition, the tag that has been issued to the watercraft must be placed not more than six inches from the registration number on the port side of the watercraft.

(2) By displaying the livery name on the rear half of the watercraft in such a manner that it is clearly visible under normal operating conditions. However, if there is insufficient space or it is impractical to display the livery name on the sides of the watercraft, the name may be displayed on the rear half of the watercraft's deck, provided that the display of the name does not interfere with the placement of the tag that has been issued to the watercraft. In addition, the tag must be placed in one of the following locations:

--In the upper right corner of the transom so that the tag does not interfere with the legibility of the hull identification number of the watercraft;

--Six inches from the stern on the outside of the watercraft below the port side gunwale;

--On the inside of the watercraft on the upper portion of the starboard side gunwale so that the tag is visible from the port side of the watercraft; or

--On a deck on the rear half of the watercraft.

The act requires each watercraft in a livery fleet to be identified in a uniform and consistent manner. It specifies that rental agreements, rather than rental receipts as in former law, are subject to inspection at any time at the livery's place of business by any authorized representative of the Division of Watercraft or any law enforcement officer.

Finally, the act eliminates the Chief's authority to issue an order permanently restricting or suspending a watercraft livery certificate of registration and the privileges associated with it without a hearing if the Chief finds that the holder of the certificate has violated the Watercraft and Waterways Law. It retains the Chief's authority to temporarily restrict or suspend a registration and privileges without a hearing.

### **Watercraft Revolving Loan Program and Fund**

(R.C. 1547.721, 1547.722, 1547.723, 1547.724, 1547.725, and 1547.726, repealed)

The act eliminates the Watercraft Revolving Loan Program. Under former law, loans were made to public or private entities to pay allowable costs of eligible projects involving marine recreational facilities and refuge harbors. The act also eliminates the



Watercraft Revolving Loan Fund, which was used to fund the Program and consisted of money appropriated or transferred to it.

### **Law enforcement funds**

(R.C. 1501.45)

The act eliminates the Division of Forestry Law Enforcement Fund and the Division of Natural Areas and Preserves Law Enforcement Fund. Under former law, both of the Funds consisted of proceeds from forfeited property that were seized pursuant to a law enforcement investigation. The act then requires proceeds from forfeited property resulting from investigations conducted by the Division of Forestry and the Division of Natural Areas and Preserves to be deposited in the Division of Parks and Recreation Law Enforcement Fund. Finally, it requires money in that Fund to be used by the Division of Parks and Recreation for law enforcement purposes.

### **Wild Animal Fund**

(R.C. 1531.06 and 1531.17; R.C. 1531.34, repealed)

The act eliminates the Wild Animal Fund. Under prior law, the Fund consisted of moneys received from the sale of wild animals to other states, state or federal agencies, and conservation or zoological organizations and was used to fund programs for the acquisition, development, and management of lands and waters in Ohio for wildlife purposes. The act requires money received from those sales instead to be credited to the continuing Wildlife Fund.

### **Mined Land Set Aside Fund**

(R.C. 1513.371, repealed)

The act eliminates the Mined Land Set Aside Fund. Under former law, the Fund consisted of federal grants and was used for specified activities for the reclamation and restoration of land and water resources that were adversely affected by past coal mining practices.

### **Transfers from the Coal-Workers Pneumoconiosis Fund**

(R.C. 4131.03)

The act eliminates the authority of the Director of Natural Resources to annually request the Administrator of Workers' Compensation to transfer a portion of the investment earnings earned by the Coal-Workers Pneumoconiosis Fund to the Mine Safety Fund and the Coal Mining Administration and Reclamation Reserve Fund. The



act also eliminates the Administrator's authority to transfer up to \$3 million to the Mine Safety Fund and up to \$1.5 million to the Coal Mining Administration and Reclamation Reserve Fund. Consequently, the act eliminates the requirement that the Administrator adopt rules governing those transfers to ensure the solvency of the Coal-Workers Pneumoconiosis Fund. Law that established that request and transfer process expired June 30, 2013.

### **Conservancy District Organization Fund**

(R.C. 6101.451, repealed)

The act eliminates the Conservancy District Organization Fund. Under prior law, the Fund was used to provide an advance of money to a conservancy district or a subdistrict to pay expenses of organization, surveys and plans, appraisals, estimates of cost, land options, and other incidental expenses of the district or subdistrict.

### **Ohio Lake Erie Commission**

(R.C. 1506.21)

The act adds the Director of Development Services as a member of the Ohio Lake Erie Commission.



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## OCCUPATIONAL THERAPY, PHYSICAL THERAPY, AND ATHLETIC TRAINERS BOARD

- Permits each section of the Occupational Therapy, Physical Therapy, and Athletic Trainers Board, when determining whether to issue a summary suspension of a license or limited permit, to review the allegations and vote on the suspension by telephone conference call.
- Exempts the summary suspension meeting held by conference call from the requirements of the Open Meetings Law.
- Prohibits a court of common pleas from suspending a summary suspension issued by one of the sections of the Board during an administrative appeal of that summary suspension.
- Requires a summary suspension to remain in effect, unless reversed on appeal, until a final adjudication order is issued by the appropriate section of the Board.
- Requires each section of the Board to issue its final adjudication order regarding a summary suspension not later than 90 days after completing its hearing.
- Dissolves a summary suspension if the respective section of the Board fails to issue its final adjudication order within 90 days, but states that the failure does not invalidate any subsequent, final adjudication order.

### **Procedures for summary suspensions**

(R.C. 121.22, 4755.11, 4755.47, and 4755.64)

Under continuing law, each section of the Occupational Therapy, Physical Therapy, and Athletic Trainers Board, on receipt of a complaint that a person who holds a license or limited permit issued by that section of the Board has committed any of the prohibited actions listed in continuing law, may immediately suspend the license or limited permit prior to holding a hearing in accordance with the Administrative Procedure Act if it determines, based on the complaint, that the licensee or limited permit holder poses an immediate threat to the public. The act permits the appropriate section of the Board to review the allegations and vote on the suspension by telephone conference call. This meeting, under the act, is exempt from the requirements of the Open Meetings Law.



The act prohibits a court of common pleas from granting a suspension of a summary suspension order issued by a section of the Board pending the determination of an appeal filed under the Administrative Procedure Act. This provision of the act is an exception to the general provision of the Administrative Procedure Act that allows a court to grant a suspension and fix its terms if it appears to the court that an unusual hardship to the appellant will result from the execution of an agency's order pending determination of the appeal.

Any summary suspension order issued under the act remains in effect, unless reversed on appeal, until a final adjudication order issued by the respective section of the Board pursuant to continuing law becomes effective. The act requires the respective section of the Board to issue its final adjudication order regarding an order of summary suspension not later than 90 days after completion of its hearing. Failure to issue the order within 90 days results in immediate dissolution of the suspension order, but does not invalidate any subsequent, final adjudication order.



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## OPPORTUNITIES FOR OHIOANS WITH DISABILITIES AGENCY

- Replaces the Rehabilitation Services Commission (RSC) with the Opportunities for Ohioans with Disabilities Agency (OODA), and generally requires the OODA to perform the duties and exercise the responsibilities assigned to the RSC under prior law.
- Replaces the Administrator of the RSC with the Executive Director of the OODA, and generally requires the Executive Director to perform the duties and exercise the responsibilities assigned to the Administrator under prior law.
- Requires the Governor to appoint the Opportunities for Ohioans with Disabilities Commission (OODC), and provides that members serving on the RSC immediately prior to September 29, 2013, are to continue serving on the new OODC.
- Requires the OODC to do all of the following:
  - approve the state vocational rehabilitation plan and, with the Ohio State Independent Living Council, the state plan for independent living;
  - appoint a consumer advisory committee, which is a continuation of the consumer advisory committee appointed by the RSC under former law; and
  - review and analyze the effectiveness of and consumer satisfaction with the functions performed by the OODA, vocational rehabilitation services provided by state agencies and other entities, and employment outcomes achieved by individuals receiving services.
- Revises several definitions in the law governing the OODA, including replacing "handicapped person" with "person with a disability."
- Eliminates the Governor's Program on Employment Initiatives in the former RSC.

### Replacement of the Rehabilitation Services Commission

(R.C. 121.35, 121.37, 123.01, 124.11, 125.602, 125.603, 126.45, 127.16, 191.02, 2151.83, 3303.41, 3304.12, 3304.13, 3304.14 (3304.15), 3304.15 (3304.16), 3304.16 (3304.14), 3304.17, 3304.18, 3304.181, 3304.182, 3304.20, 3304.21, 3304.22, 3304.231 (3335.61), 3304.25, 3304.28, 3304.41, 3501.01, 3798.01, 4112.31, 4115.32, 4121.69, 4123.57, 4503.44, 4511.191, 5107.64, 5120.07, 5123.022, 5123.023, and 5126.051; R.C. 3304.26 (repealed); Sections 259.90, 327.80, 327.90, 340.10, 515.30, and 815.20)



The act replaces the Rehabilitation Services Commission (RSC) with the Opportunities for Ohioans with Disabilities Agency (OODA), generally requires the OODA to perform the duties and exercise the responsibilities formerly assigned to the RSC (see below), and makes conforming changes. The act states that the OODA is the designated state unit authorized under the federal Rehabilitation Act of 1973 to provide vocational rehabilitation to eligible persons with disabilities. Under law revised by the act, the OODA is required to provide vocational rehabilitation services to all eligible persons with disabilities, including any person with a disability who is eligible under the terms of an agreement or arrangement with another state or with the federal government. Under the act, the OODA may establish up to five positions in the unclassified civil service. Prior law did not provide for such positions.

### **Executive Director; functions and responsibilities**

The act replaces the Administrator of the RSC with the Executive Director of the OODA and generally requires the Executive Director to perform the duties and exercise the responsibilities formerly assigned to the Administrator. In addition, the act requires the Executive Director, rather than the RSC as in prior law, to establish administrative subdivisions as necessary or appropriate to carry out the OODA's functions and duties. The Executive Director also is required to appoint deputy directors of the Bureau of Services for the Visually Impaired and Bureau of Vocational Rehabilitation, but, unlike the Administrator as in prior law, does not need to obtain the approval of the OODA (RSC in former law).

Additionally, the act states that the Executive Director of the OODA is the executive and administrative officer of the OODA. The act authorizes the Executive Director to establish procedures for the governance of the OODA, the conduct of OODA employees and officers, the performance of OODA business, and the custody, use, and preservation of OODA records, papers, books, documents, and property. Under the act, the Executive Director of the OODA, like the former Administrator of the RSC, is appointed by the Governor, and the Governor may grant the Executive Director authority to appoint, remove, and discipline staff as necessary to carry out the functions of the OODA. In exercising exclusive authority to administer the daily operation and provision of vocational rehabilitation services under the Worker Retraining Law, the Executive Director may perform specified activities.

As discussed in the table below, a number of those activities formerly were assigned to the RSC. The act instead assigns them to the Executive Director. In addition, several of the activities previously specified in statute instead are incorporated in the act's broad statutory directive that the Executive Director must administer the provision of rehabilitation services to eligible persons with disabilities. Finally, although several



activities are specifically eliminated by the act, it appears that they may continue to be performed by the Executive Director under other authority established by the act.

<b>Responsibility of RSC under prior law</b>	<b>Responsibility under the act</b>
Adopt all necessary rules	Executive Director
Prepare and submit annual reports to the Governor	Executive Director
Certify disbursement of funds	Executive Director
Take appropriate action to guarantee rights of services to handicapped persons (see below)	Executive Director
Consult with and advise other state agencies and coordinate applicable programs	Executive Director
Establish an administrative division of consumer affairs and advocacy to promote and help guarantee rights of handicapped persons	Eliminated
Maintain an inventory of state services available to handicapped persons	Specifically eliminated, but may be undertaken by the Executive Director under the authority to adopt rules or to take appropriate action to guarantee rights of persons with disabilities to services
Utilize, support, assist, and cooperate with the Governor's committee on employment of the handicapped	Specifically eliminated, but may be performed by the Executive Director under the authority to consult with and advise other state agencies and coordinate programs for persons with disabilities
Take any other necessary or appropriate action for cooperation with public and private agencies and organizations, which may include reciprocal agreements with other states, contracts with public and other nonprofit agencies, cooperative agreements with the federal government, and functions and services for the federal government	Executive Director
Conduct research and demonstration projects	Executive Director
Accept, hold, invest, reinvest, or otherwise use gifts to further vocational rehabilitation	Executive Director
Ameliorate the condition of the aged, blind, or other severely disabled individuals by establishing a program of home visitation by Commission employees for the purpose of instruction	Specifically eliminated, but may be undertaken by the Executive Director under the authority to adopt rules or to take appropriate action to guarantee rights of persons with disabilities to services
For purposes of the Business Enterprise Program, establish and manage small businesses owned or operated by visually impaired persons, purchase insurance, and accept computers	Executive Director
Enter into contracts	Executive Director



## **Opportunities for Ohioans with Disabilities Commission (OODC)**

(R.C. 3304.12, 3304.13, 3304.16 (3304.14), and 3304.22; R.C. 3304.24 (repealed); Sections 610.20, 610.21, and 803.41)

The act requires the Governor to appoint the Opportunities for Ohioans with Disabilities Commission (OODC) within the OODA, applies the membership qualifications of the former RSC to the OODC, and provides that members serving on the RSC immediately prior to September 29, 2013, are to continue serving on the new OODC until the end of their terms. The act thus continues staggered seven-year terms.

The act requires the OODC to approve the state vocational rehabilitation plan and, with the Ohio State Independent Living Council, the state plan for independent living; appoint a consumer advisory committee, which the act states is a continuation of the consumer advisory committee appointed by the RSC under prior law; and, to the extent feasible, review and analyze the effectiveness of and consumer satisfaction with the functions performed by the OODA, vocational rehabilitation services provided by state agencies and other entities responsible for providing such services under federal law, and employment outcomes achieved by individuals receiving services.

### **Definitions**

(R.C. 3304.11, 3304.12, 3304.17, 3304.19, 3304.27, and 4503.44)

The act replaces the term "handicapped person" or "disabled person" with "person with a disability" in the Worker Retraining Law and defines it to mean any person with a physical or mental impairment that is a substantial impediment to employment who can benefit in terms of an employment outcome from the provision of vocational rehabilitation services. It also changes "physical or mental disability" to "physical or mental impairment" and "substantial handicap to employment" to "substantial impediment to employment" in that Law, but retains the definitions in continuing law. The act then makes conforming changes throughout that Law. The act also replaces the term "handicapped person" with "person with a disability" in the Licensing of Motor Vehicles Law and makes conforming changes.

### **Governor's Program on Employment Initiatives**

(R.C. 3304.38, repealed)

The act eliminates the Governor's Program on Employment Initiatives in the former RSC. The purpose of the Program was to create employment opportunities for persons with disabilities by providing equipment or supplies to businesses in consideration for job slots being reserved by the businesses for persons with disabilities referred by the RSC.



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## STATE BOARD OF OPTOMETRY

- Requires the State Board of Optometry to post once annually on its web site a list of courses approved for continuing education.
- Permits the Board to notify licensees of approved continuing education courses and to send notices regarding license renewals by electronic mail.
- Requires the Board to send notices regarding license renewals to the most recent electronic mail or mailing address shown in the Board's records.

### Electronic notifications

(R.C. 4725.16)

The act requires the State Board of Optometry to post, at least once annually, on its web site a list of continuing education courses approved by the Board. Continuing law requires this information to be mailed once annually, and the act allows this mailing to be electronic.

The act permits the Board to send both the first and second notices regarding license renewal required by continuing law to each optometrist by electronic mail or mail to the most recent electronic mail or mail address shown in the Board's records. Former law provided for the notices to be sent by mail to the last address shown in the Board's records.



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## STATE BOARD OF PHARMACY

- Requires, rather than permits, the State Board of Pharmacy to provide information in the Ohio Automated Rx Reporting System (OARRS) to the medical director of a Medicaid managed care organization and the Medicaid Director.
- Requires the Board to notify the Medicaid Director if it determines from a review of OARRS information that a provider of services under a program administered by the Department of Medicaid may have violated the law.

### Ohio Automated Rx Reporting System

#### Access to information

(R.C. 4729.80)

Under continuing law, information contained in the Ohio Automated Rx Reporting System (OARRS), information obtained from OARRS, and information contained in the records of requests for information from OARRS are not public records. The act modifies the circumstances when information from OARRS may or must be released by the State Board of Pharmacy. Prior law permitted the Board to provide information to the medical director of a Medicaid managed care organization, if the information relates to a Medicaid recipient enrolled in the managed care organization. The act instead requires the Board to provide this information, including information related to prescriptions for the recipient that were not covered or reimbursed under a program administered by the Ohio Department of Medicaid (ODM).

Prior law permitted the Board to provide information to the Director of the Ohio Department of Job and Family Services (ODJFS), if the information related to a recipient of an ODJFS-administered program, such as Medicaid, Children's Health Insurance Program (CHIP), Ohio Works First, and unemployment compensation. The act modifies this provision by requiring the Board to provide information to the Medicaid Director if the information relates to a recipient of an ODM-administered program (such as Medicaid and CHIP), including information related to prescriptions for the recipient that were not covered or reimbursed the program. The act eliminates the Board's authority to provide OARRS information to the ODJFS Director.



## **Notification to ODM Director**

(R.C. 4729.81)

Continuing law requires the Board to review OARRS information and, if it determines that a violation of law may have occurred, requires the Board to notify the appropriate law enforcement agency or government entity responsible for the licensure, regulation, or discipline of licensed health professionals authorized to prescribe drugs. The act requires, in addition, that the Board notify the Medicaid Director if it determines from its review of OARRS information that a violation of law may have been committed by a provider of services under an ODM-administered program.



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## STATE BOARD OF PSYCHOLOGY

- Prohibits, beginning September 29, 2014, an individual from practicing applied behavior analysis in Ohio or holding the individual's self out to be a certified Ohio behavior analyst without a certificate from the State Board of Psychology.
- Subjects an individual who violates the prohibition to a fine of not less than \$100 nor more than \$500, imprisonment for not less than six months nor more than one year, or both.
- Defines the practice of applied behavior analysis.
- Lists the requirements an applicant must satisfy to receive a certificate.
- Makes a certificate valid for two years and lists renewal requirements, including a renewal fee of \$150 and continuing education requirements.
- Lists the disciplinary actions and the reasons for which the Board may impose discipline.

### **Certified Ohio behavior analysts**

(R.C. 109.572, 4732.06, 4732.07, 4732.08, 4776.01, 4783.01 to 4783.05, 4783.09 to 4783.13, and 4783.99; Sections 747.30 and 812.10)

#### **Certification requirement**

(R.C. 4783.02, 4783.01, and 4783.99; Section 812.10)

The act defines the term "practice of applied behavior analysis" as the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The practice of applied behavior analysis includes the following:

- The empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis;
- Interventions based on scientific research and the direct observation and measurement of behavior and the environment;
- Utilization of contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences to help people



develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.

The practice of applied behavior analysis does not include psychological testing, diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities.

The act, beginning September 29, 2014, prohibits any person from doing either of the following:

(1) Engaging in the practice of applied behavior analysis in Ohio without holding a certificate issued by the State Board of Psychology;

(2) Holding the person's self out to be a certified Ohio behavior analyst unless the person holds a certificate issued by the Board.

Under the act, whoever violates these prohibitions is to be fined not less than \$100 nor more than \$500, imprisoned for not less than six months nor more than one year, or both. Each violation is a separate offense.

### **Exceptions to certification requirement**

(R.C. 4783.02(B) and (C))

The requirement to obtain a certificate to practice applied behavior analysis does not apply to any of the following:

(1) An individual licensed under the Psychologist Law to practice psychology, if the practice of applied behavior analysis engaged in by the licensed psychologist is within the licensed psychologist's education, training, and experience;

(2) An individual licensed under the Counselors, Social Workers, and Marriage and Family Therapists Law to practice counseling, social work, or marriage and family therapy, if the practice of applied behavior analysis engaged in by the licensed professional counselor, licensed professional clinical counselor, licensed social worker, or licensed marriage and family therapist is within the licensee's education, training, and experience;

(3) An individual acting under the authority and direction of a person licensed as described in (1) or (2) above, if the licensed person signs an attestation stating that the licensed person is responsible for the care provided by the individual;



(4) An individual practicing applied behavior analysis who is supervised by a certified Ohio behavior analyst and acting under the authority and direction of that behavior analyst, if the behavior analyst signs an attestation stating that the behavior analyst is responsible for the care provided by the individual;

(5) The delivery of interventions by a direct care provider or family member to implement components of an applied behavior analysis treatment plan;

(6) A behavior analyst who practices with nonhuman or nonpatient clients or consumers, including applied animal behaviorists and practitioners of organizational behavior management;

(7) A licensed professional authorized to practice in Ohio who, in the offering or rendering of services, does not represent oneself in any printed materials or verbally by incorporating the term "applied behavior analyst," if the services of the licensed professional are within the scope of practice of the licensing law governing the licensed professional and the services performed are commensurate with the licensed professional's education, training, and experience;

(8) A matriculated graduate student or postdoctoral trainee whose activities are part of a defined program of study or professional training;

(9) An individual employed by the Department of Developmental Disabilities, a county board of developmental disabilities, or a council of government consisting of county boards of developmental disabilities, when the individual is acting in the scope of that employment;

(10) A professional employed in a school or other setting that falls under the regulation of the State Board of Education when the professional is acting within the scope of that employment.

### **Requirements to obtain a certificate**

(R.C. 109.572(A)(9), 4732.07, 4776.01, 4783.04, and 4783.01)

Under the act, an individual seeking a certificate to practice as a certified Ohio behavior analyst must file with the Board a written application on a form prescribed and supplied by the Board. To be eligible for a certificate, the individual must do all of the following:

(1) Demonstrate that the applicant is of good moral character and conducts the applicant's professional activities in accordance with accepted professional and ethical standards;





(2) Comply with the continuing law requirements to obtain a criminal records check through the Bureau of Criminal Identification and Investigation (the Board must adopt rules under the Administrative Procedure Act establishing administrative and procedural requirements for the criminal records checks);

(3) Demonstrate an understanding of the law regarding behavioral health practice;

(4) Demonstrate current certification as a Board Certified Behavior Analyst by the Behavior Analyst Certification Board (BACB) or its successor organization or demonstrate completion of equivalent requirements and passage of a psychometrically valid examination administered by a nationally accredited credentialing organization;

(5) Pay the fee established by the Board.

The Board must review all applications received and keep a register of applicants for a certificate. The act prohibits the Board from granting a certificate to an applicant for an initial certificate unless the applicant complies with the criminal records check requirement and the Board, in its discretion, decides that the results of the criminal records check do not make the applicant ineligible for a certificate. If the Board determines that an applicant satisfies the requirements for a certificate to practice as a certified Ohio behavior analyst, the Board must issue the applicant a certificate. A person who obtains a certificate is a "certified Ohio behavior analyst."

### **Grandfathering provision**

(Section 747.30)

Under the act, if an individual certified as a board certified behavior analyst by BACB or its successor organization can demonstrate active practice in a manner prescribed in rules adopted by the Board within one year after the effective date of those rules, the individual may apply for immediate certification as a certified Ohio behavior analyst without paying a fee or satisfying other requirements specified in the act or requirements prescribed by the Board. The Board, under the act, must provide Internet access to the study guide produced by the Board that summarizes the applicable laws and rules. An individual issued a certificate pursuant to the grandfathering provision is responsible for knowledge of Ohio law based on self-study of these documents.

Following initial certification under the grandfathering provision, a certified Ohio behavior analyst must comply with the act with respect to biennial registration, payment of fees, and continuing education requirements.



## **Certification renewal**

(R.C. 4783.05)

Except as otherwise provided below, a certificate issued under the act is valid for a period of two years. On or before August 31 of each even-numbered year, each certified Ohio behavior analyst must do both of the following:

(1) Register with the Board on a form prescribed by the Board, giving the behavior analyst's name, address, certificate number, the continuing education information required under the act, and any other reasonable information as the Board requires;

(2) Pay to the Board secretary a biennial registration fee of \$150.

If an individual is issued a certificate for the first time on or before August 31 of an even-numbered year, the individual is next required to register on or before August 31 of the next even-numbered year.

Every two years, a certified Ohio behavior analyst who wishes to renew the certified Ohio behavior analyst's certificate must produce proof of not less than 23 hours of continuing education, including not less than four hours in ethics, professional conduct, or cultural competency. Continuing education hours may be earned through providers of continuing education approved by the BACB or its successor organization or other organizations approved by the Board as providers of continuing education.

## **Discipline**

### **Disciplinary actions**

(R.C. 4732.06 and 4783.09(A) and (D))

The act allows the Board to empower any one or more of its members to conduct any proceeding, hearing, or investigation necessary to its purposes, including the administration and enforcement of the certification of certified Ohio behavior analysts. Under the act, the Board may refuse to issue a certificate to any applicant, may issue a reprimand, or may suspend or revoke the certificate of any certified Ohio behavior analyst, on any of the grounds discussed below. Generally, before the Board may discipline the holder of a certificate, written charges must be filed with the Board by the secretary and a hearing must be had thereon in accordance with the Administrative Procedure Act.



## Reasons for discipline

(R.C. 4783.09)

The Board may impose discipline against a certified Ohio behavior analyst for any of the following reasons:

(1) Conviction of a felony, or of any offense involving moral turpitude, in a court of Ohio or any other state or in a federal court;

(2) Using fraud or deceit in the procurement of the certificate to practice applied behavior analysis or knowingly assisting another in the procurement of that certificate through fraud or deceit;

(3) Accepting commissions or rebates or other forms of remuneration for referring persons to other professionals;

(4) Willful, unauthorized communication of information received in professional confidence;

(5) Being negligent in the practice of applied behavior analysis;

(6) Using any controlled substance or alcoholic beverage to an extent that such use impairs the person's ability to perform the work of a certified Ohio behavior analyst with safety to the public;

(7) Violating any rule of professional conduct promulgated by the Board;

(8) Practicing in an area of applied behavior analysis for which the person is clearly untrained or incompetent;

(9) An adjudication by a court that the person is incompetent for the purpose of holding the certificate (a person may have the person's certificate issued or restored only upon determination by a court that the person is competent for the purpose of holding the certificate and upon the decision by the Board that the certificate be issued or restored; the Board may require an examination prior to that issuance or restoration);

(10) Waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers applied behavior analysis services, would otherwise be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from that provider;



(11) Advertising that the person will waive the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers applied behavior analysis services, would otherwise be required to pay.

The act prohibits, for purposes of the reasons listed in (10) and (11) above, sanctions from being imposed against any certificate holder who waives deductibles and copayments in compliance with the health benefit plan that expressly allows such a practice (waiver of the deductibles or copays must be made only with the full knowledge and consent of the plan purchaser, payer, and third-party administrator, and that consent must be made available to the Board upon request), or for professional services rendered to any other person holding a certificate as a certified Ohio behavior analyst to the extent allowed by the act and the Board's rules.

### **Summary suspensions**

(R.C. 4783.10)

On receipt of a complaint that any of the act's grounds for discipline exist, the Board may suspend the certificate of the certified Ohio behavior analyst prior to holding a hearing in accordance with the Administrative Procedure Act if it determines, based on the complaint, that an immediate threat to the public exists. After suspending a certificate pursuant to this provision, the Board must notify the certified Ohio behavior analyst of the suspension in accordance with the Administrative Procedure Act. (The notice must state the reasons for the Board's action, cite the law or rule directly involved, and state that the party will be afforded a hearing if the party requests it within 30 days of the time of mailing the notice.) If the individual whose certificate is suspended fails to make a timely request for an adjudication, the Board must enter a final order permanently revoking the individual's certificate.

### **Discipline for actions involving sexual conduct or contact**

(R.C. 4783.11)

If, at the conclusion of a hearing required by the act, the Board determines that a certified Ohio behavior analyst has engaged in sexual conduct or had sexual contact with the certified Ohio behavior analyst's patient or client in violation of any prohibition contained in Ohio law governing sex offenses, the Board must do one of the following:

- (1) Suspend the certified Ohio behavior analyst's certificate;
- (2) Permanently revoke the certified Ohio behavior analyst's certificate.



However, if the Board determines at the conclusion of the hearing that neither of the sanctions described above is appropriate, the Board must impose another sanction it considers appropriate and issue a written finding setting forth the reasons for the sanction imposed and the reason that neither of the sanctions described above is appropriate.

### **Child support orders**

(R.C. 4783.12, by reference to R.C. 3123.41 to 3123.50)

On receipt of a notice that a certified Ohio behavior analyst is in default under a child support order under the procedures established under continuing law, the act requires the Board to comply with the requirements of that law or rules adopted pursuant to it with respect to a certificate issued under the act.

### **Human trafficking**

(R.C. 4783.13, by reference to R.C. 4776.20)

On receipt of a notice that a certified Ohio behavior analyst has been convicted of, pleaded guilty to, or a judicial finding of guilt of or judicial finding of guilt resulting from a plea of no contest was made to the offense of trafficking in persons, the act requires the Board to immediately suspend the certified Ohio behavior analyst's certificate in accordance with continuing law requirements.

### **Administration**

(R.C. 4732.06, 4732.08, and 4783.03)

The Board must administer and enforce the act's provisions governing certified Ohio behavior analysts and may employ assistants and clerical help as necessary. The act requires the Board to adopt rules under the Administrative Procedure Act establishing all of the following:

- (1) Procedures and requirements for applying for a certificate;
- (2) Fees for issuance of a certificate;
- (3) Reductions of the required hours of continuing education for persons in their first certificate period.

The act permits the Board to adopt additional rules in accordance with the Administrative Procedure Act as the Board determines are necessary to implement and enforce the act's provisions governing certified Ohio behavior analysts.



Similar to continuing law regarding Board receipts, the act requires moneys collected with respect to certified Ohio behavior analysts to be deposited in the state treasury to the credit of the Occupational Licensing and Regulatory Fund.



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## OHIO PUBLIC DEFENDER COMMISSION

- Authorizes the State Public Defender, effective July 1, 2013, to conduct a legal assistance referral service for children committed to the Department of Youth Services (DYS) relative to conditions of confinement claims.
- Requires DHS, effective July 1, 2013, to provide the State Public Defender reasonable access to any child committed to DHS, to any DHS Institution, and to any DHS record that the State Public Defender needs to provide the child access to the courts.

### Representation of a child committed to DHS

(R.C. 120.06(A) and (G) to (J) and 5139.04(H); Section 812.20)

The act permits the State Public Defender to conduct a legal assistance referral service for children committed to the Department of Youth Services (DYS) relative to conditions of confinement claims. If the legal assistance referral service receives a request for assistance from a child confined in a facility operated, or contract for, by DHS and the State Public Defender determines that the child has a conditions of confinement claim that has merit, the State Public Defender may refer the child to a private attorney. If no private attorney who the child has been referred to accepts the case within a reasonable time, the State Public Defender is authorized to prepare, as appropriate, pro se pleadings in the form of a complaint regarding the conditions of confinement at the facility where the child is confined with a motion for appointment of counsel and other applicable pleadings necessary for the child to act on the child's own behalf.

"Conditions of confinement" is defined by the act to mean any issue involving a constitutional right or other civil right related to a child's incarceration, including, but not limited to, civil actions cognizable under 42 U.S.C. 1983 for the deprivation of any rights, privileges, or immunities secured by statute or the U.S. Constitution.

A child's right to representation and services that are authorized by the act is not affected by the child, or another person on behalf of the child, previously having paid for similar representation or services or having waived legal representation.

The act grants the State Public Defender the right of reasonable access to any child committed to DHS, to any DHS Institution, and to any DHS record, as needed by the State Public Defender to implement the act's provisions.



The act also requires that DYS provide the State Public Defender the reasonable access authorized by the act to any child committed to DYS, to any DYS Institution, and to any DYS record in order to fulfill the DYS's constitutional obligation to provide juveniles who have been committed to DYS's care access to the courts.

The act prohibits the State Public Defender from undertaking the representation of a child in court based on a conditions of confinement claim arising from the legal assistance referral service. The act provides that the authority granted to the State Public Defender with regard to the operation of the legal assistance referral service does not authorize the State Public Defender to represent a child committed to DYS in general civil matters arising solely out of state law.

These provisions take effect July 1, 2013.





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## DEPARTMENT OF PUBLIC SAFETY

### Deputy registrars

- Allows only an individual or a nonprofit corporation, in addition to a county auditor or a clerk of a court of common pleas, to be designated as a deputy registrar, rather than "other persons" as in prior law, and makes conforming changes.
- Modifies the limitation on the operation of more than one office by a deputy registrar to allow the Registrar of Motor Vehicles to award a contract to a deputy registrar to operate more than one office if such operation is determined by the Registrar to be practical.
- Requires each deputy registrar, during the duration of the deputy registrar's contract, to occupy a primary residence in a location that is within a one-hour commute time from the deputy registrar's office or offices.
- Generally requires deputy registrar contracts entered into on or after June 29, 2014, to be for five years (rather than for two to three years as required under continuing law that governs contracts entered into prior to June 29, 2014), unless certain exceptions apply.
- Eliminates the requirement that every deputy registrar must display the toll-free telephone number for the Bureau of Motor Vehicles.

### Speed limits

- Establishes the following speed limits for all vehicles at all times:
  - 60 miles per hour on all portions of rural divided highways;
  - 65 miles per hour on all portions of rural expressways without traffic control signals; and
  - 70 miles per hour on all portions of rural freeways.

### Anatomical gift designation

- Provides that an organ donation designation on a person's driver's license, motorcycle operator's license or endorsement, commercial driver's license, or identification card, once authorized, remains in effect until it is revoked.
- Requires an application for a driver's license, motorcycle operator's license or endorsement, commercial driver's license, or identification card to include a



statement of the applicant's willingness to be an organ donor only if an applicant has not previously certified their willingness to be an organ donor.

### **Motorcycle parking**

- Permits the operators of not more than two motorcycles to back their motorcycles into a parking space that is located on the side of, and parallel to, a road or highway, irrespective of whether or not the space is metered.
- Permits motorcycles to face any direction when so parked in any such parking space.

### **License plates**

- Creates the "Truth, Justice, and the American Way" license plate and requires the contributions that persons pay when obtaining the license plate to be paid to the Siegel and Shuster Society, a nonprofit organization dedicated to commemorating and celebrating the creation of Superman in Cleveland.
- Creates the "Kiwanis Club" license plate and requires the contributions that persons pay when obtaining the license plate to be paid to the Ohio District Kiwanis Foundation of the Ohio District of Kiwanis International, to be used by that organization to pay the costs of its educational and humanitarian activities.
- Creates the "Massillon Tiger Football Booster Club" license plate and requires the club to use the contributions that persons pay when obtaining the license plate only to promote and support the football team of Washington High School of the Massillon City School District.
- Creates the "Ohio History" license plate and requires the Ohio Historical Society to use the contributions that persons pay when obtaining the license plate to provide the grants to historical organizations located in Ohio.
- Creates the Ohio Coal license plate.
- Delays, from July 1, 2013, to January 1, 2014, the effective date of the recently enacted R.C. 4503.192, which generally permits a person replacing license plates to retain the distinctive combination of letters and numerals on the current plates for a \$10 fee.
- Creates the eight-member License Plate Safety Task Force and requires the Task Force to study issues involving (1) license plate degradation over time, and (2) the dual plate requirement and its relationship to law enforcement.



## Other provisions

- Requires the Registrar to comply with the Financial Transaction Device Contracting Law and removes a provision of prior law that allowed the Registrar to contract with a third party to accept and process payments made using a financial transaction device.
- Requires clerks of the courts of common pleas to use money in the Automated Title Processing Fund to pay for ribbons, cartridges, or other devices necessary for the operation of watercraft and outboard motor and motor vehicle certificate of title processing equipment.
- Removes from the definition of "chauffeured limousine" a provision that required the vehicle to be operated for hire on an hourly basis; and removes a provision that required a prearranged chauffeured limousine contract to specify the amount charged at a fixed rate per hour or trip.
- Allows the operator of a chauffeured limousine to:
  - Provide transportation to passengers who arrange for the transportation through an intermediary, including a digital dispatching service; and
  - Establish the fare and method of fare calculation for such transportation so long as the method of fare calculation is provided to the passenger upon request.

## Deputy registrars

(R.C. 4503.03)

The act alters who may be appointed to the position of deputy registrar by eliminating the authority of the Registrar of Motor Vehicles to appoint "any person" as a deputy registrar and instead authorizing the appointment of only an "individual" or "nonprofit corporation." The act retains the Registrar's specific authority to appoint a county auditor or clerk of a court of common pleas as a deputy registrar.

The act allows the Registrar to award a contract to any deputy registrar to operate more than one office if it is determined to be practical, and retains a provision of continuing law that allows a nonprofit corporation formed for the purposes of providing automobile-related services to its members or the public and that provides such services from more than one location in the state to operate a deputy registrar office at any location. However, the act requires each deputy registrar, during the



duration of a contract for deputy registrar services, to occupy a primary residence in a location that is within a one-hour commute time from the deputy registrar's office or offices. Under prior law, a deputy registrar was prohibited from operating more than one deputy registrar's office, unless the deputy registrar fits within the nonprofit corporation exception discussed above; however, no residency requirements applied to deputy registrars.

Under the act, deputy registrar contracts entered into on or after June 29, 2014, must be for five years unless: (1) the contract is otherwise terminated, (2) the contract is an interim contract, or (3) the Registrar determines that a shorter term is appropriate for a particular deputy registrar. Additionally, the Registrar, with the approval of the Director of Public Safety, may award a one-year contract extension to any deputy registrar who has provided exemplary service based upon objective performance evaluations. Under continuing law that applies to all contracts entered into between July 1, 1996 and June 29, 2014, deputy registrar contracts must be for a term of at least two years but not more than three years, unless the contract is for an interim period of less than one year or is otherwise terminated.

The act also removes the requirement that every deputy registrar must display the toll-free telephone number for the Bureau of Motor Vehicles and makes organizational changes to the rules that must be adopted by the Registrar.

## **Speed limits**

(R.C. 4511.21)

The act establishes speed limits for all vehicles at all times on all portions of certain highways, expressways, and freeways, as follows:

- (1) A speed limit of 60 miles per hour on all rural divided highways;
- (2) A speed limit of 65 miles per hour on all rural expressways without traffic control signals; and
- (3) A speed limit of 70 miles per hour on all rural freeways.

The speed limits described in (1) and (2) apply only to state highways and expressways that are not part of the interstate highway system, while item (3) applies both to freeways that are part of the interstate system and to freeways that are part of the state highway system, are not part of the interstate system, but generally are built to the interstate freeway standards and specifications. Item (3) thus replaces the prior law that established a speed limit of 70 miles per hour at all times on all portions of

freeways that are part of the interstate system and are outside urbanized areas, as designated in federal law.

The speed limits contained in the act also eliminate the "split speed limit" of prior law. Under the split speed limit, operators of motor vehicles weighing 8,000 pounds or less empty weight and commercial buses had a speed limit on certain state freeways of 65 miles per hour, while operators of motor vehicles weighing more than 8,000 pounds empty weight and noncommercial buses had a speed limit of 55 miles per hour on those same state freeways. Under the act, all vehicles are subject to the same speed limit established for a particular freeway.

The act provides that, on September 29, 2013, the Director of Transportation, based upon an engineering study of any interstate freeway and any of the state highways, expressways, or freeways for which the act establishes a new speed limit, in consultation with the Director of Public Safety and, if applicable, the local authority having jurisdiction over the highway, expressway, or freeway that is being studied, may determine and declare that the speed limit established on the highway, expressway, or freeway either is reasonable and safe or is more or less than that which is reasonable and safe. If it is determined that the established speed limit for a highway, expressway, or freeway that is so studied is more or less than that which is reasonable and safe, the Director of Transportation, in consultation with the Director of Public Safety and, if applicable, the local authority having jurisdiction over the studied highway, expressway, or freeway, is required to determine and declare a reasonable and safe speed limit for that highway, expressway, or freeway.

The act also prohibits any person from operating a motor vehicle, trackless trolley, or streetcar in excess of any of the speed limits established by the act at any applicable location.

### **Anatomical gift designation**

(R.C. 2108.05, 4506.07, 4507.06, and 4507.51; Sections 110.30, 110.31, and 110.32)

Under continuing law, if a person wishes to certify the person's willingness to be an organ donor, the person may authorize a statement or symbol to be imprinted on the person's driver's license, motorcycle operator's license or endorsement, commercial driver's license, or identification card. The act stipulates that once a person has authorized such a statement or symbol to be imprinted, the authorization remains in effect until it is revoked. The person need not recertify the authorization upon renewal of the license or identification. The act also requires the application for any license or identification card listed above to include a statement concerning the applicant's



willingness to be an organ donor only if an applicant has not previously certified their willingness to be an organ donor.

Under prior law, all applications for a driver's license, motorcycle operator's license or endorsement, commercial driver's license, or identification card were required to include a statement of whether the applicant wished to certify willingness to be an organ donor, regardless of whether the applicant had previously authorized a statement or symbol to be imprinted on the applicant's license or identification card indicating such willingness.

### **Motorcycle parking**

(R.C. 4511.69)

The act permits the operators of not more than two motorcycles to back their motorcycles into a parking space that is located on the side of, and parallel to, a road or highway, irrespective of whether or not the space is metered. All such parked motorcycles may face any direction.

### **New special license plates**

The act creates five new special license plates, all of which are available to the general public. Four of the license plates require payment of a contribution of varying amounts upon issuance or renewal, which contributions are paid into the state treasury to the credit of the License Plate Contribution Fund. All of the new license plates require an annual \$10 additional BMV fee, which is paid into the state treasury to the credit of the Bureau of Motor Vehicles Fund and used by the BMV for its additional services in issuing the special license plates. All the new license plates may be issued for display on passenger cars, noncommercial motor vehicles, recreational vehicles, and any other vehicle of a class approved by the Registrar of Motor Vehicles. In addition, all the new license plates require payment of the regular license tax, any applicable local motor vehicle tax, and the appropriate special reserved license plate fee, if applicable.

The following table lists each new special license plate, whether a contribution and additional Bureau of Motor Vehicles fee is charged, and the use of any required contribution.



Special license plate	Contribution? Additional Bureau of Motor Vehicles fee?	Use of contribution
<b>Massillon Tiger Football Booster Club</b> license plate, designed by the Massillon Tiger Football Booster Club (R.C. 4501.21 and 4503.524)	\$25 contribution plus \$10 additional BMV fee.	The Massillon Tiger Football Booster Club must use the contributions only to promote and support the football team of Washington High School of the Massillon City School District.
<b>Kiwanis Club</b> license plate, designed by the Ohio District of Kiwanis International (R.C. 4501.21 and 4503.526)	\$25 contribution plus \$10 additional BMV fee.	Contributions paid to the Ohio District Kiwanis organization of the Ohio District of Kiwanis International.
<b>Truth, Justice, and the American Way</b> license plate, inscribed with the words "Truth, Justice, and the American Way" and a design, logo, or marking selected by the entity that owns the Superman name, pursuant to a license agreement with that entity (R.C. 4501.21 and 4503.732)	\$10 contribution plus \$10 additional BMV fee.	Contributions paid to the Siegel & Shuster Society, a nonprofit organization dedicated to commemorating and celebrating the creation of Superman in Cleveland.
<b>Ohio History</b> license plate, inscribed with words and markings designed by the Ohio Historical Society (R.C. 4501.21 and 4503.95)	\$20 contribution plus \$10 additional BMV fee.	Contributions paid to the Ohio Historical Society and used to provide grants to historical organizations located in Ohio. The Society must submit an annual report to the General Assembly regarding the grant program.
<b>Ohio Coal</b> license plate, designed by the Ohio Coal Association (R.C. 4503.96)	No required contribution. \$10 additional BMV fee.	Not applicable.

## License plate number retention – delayed effective date

(Sections 803.210 and 812.20)

The act delays the effective date of R.C. 4503.192 from July 1, 2013, to January 1, 2014. That section was enacted as part of the 2013-2015 transportation appropriations act.<sup>203</sup> It generally permits a person replacing motor vehicle license plates to retain the

<sup>203</sup> Am. Sub. H.B. 51 of the 130th General Assembly.





distinctive combination of letters and numerals on the person's current license plates for a \$10 fee.

### **License Plate Safety Task Force**

(Section 745.10)

The act creates the License Plate Safety Task Force, consisting of the following eight members: three members appointed by the President of the Senate, one member appointed by the Minority Leader of the Senate, three members appointed by the Speaker of the House, and one member appointed by the Minority Leader of the House. At least five members must represent law enforcement.

The Task Force is required to examine the extent of license plate degradation over time and the impediments to law enforcement efforts caused by illegible license plates resulting from degradation. The Task Force also must examine whether having dual license plates is beneficial to law enforcement officers and determine whether the state should continue its dual plate requirement. Not later than December 31, 2013, the Task Force must issue a report of its findings and recommendations to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House. At that time, the Task Force ceases to exist.

### **Registrar contracts for use of a financial transaction device**

(R.C. 4503.62)

The act removes a provision of prior law that allowed the Registrar, with the approval of the Director of Public Safety, to contract with a third party to accept and process vehicle registration payments made using a financial transaction device (generally a credit or debit card reader). The act also requires the Registrar to comply with the Financial Transaction Device Contracting Law,<sup>204</sup> which provides that certain state elected officials and entities must comply with certain procedures and use only specified financial institutions, issuers, or processors as provided by the resolution adopted by the State Board of Deposit.

Under prior law, the Registrar was permitted but not required to comply with the Financial Transaction Device Contracting Law, and with the approval of the Director of Public Safety, was permitted to contract with a third party to accept and process payments made using a financial transaction device.

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<sup>204</sup> R.C. 113.40, not in the act.



## **Certificate of title processing equipment**

(R.C. 1548.02, 4505.02, and 4505.09)

The act adds to the purposes of the Automated Title Processing Board by specifying that the Board must approve not only the procurement of automated title processing equipment but also ribbons, cartridges, or other devices necessary for the operation of that equipment. The act then requires clerks of the courts of common pleas to use money in the Automated Title Processing Fund to pay not only for ribbons but also cartridges or other devices necessary for the operation of watercraft and outboard motor certificate of title processing equipment. The act also requires the clerks to use money in the Fund to pay for ribbons, cartridges, or other devices necessary for the operation of motor vehicle certificate of title processing equipment. Continuing law requires the clerks to use money in the Fund to pay for ribbons for data and removable backup media for watercraft and outboard motor certificate of title processing equipment.

## **Chauffeured limousines**

(R.C. 4501.01 and 4511.85; Sections 110.30, 110.31, and 110.32)

Under prior law, a chauffeured limousine was defined as a motor vehicle designed to carry nine or fewer passengers and operated for hire "on an hourly basis" pursuant to a prearranged contract. A prearranged contract was defined as an agreement, made in advance of boarding, to provide transportation from a specific location at a "fixed rate per hour or trip."

The act removes the requirement that chauffeured limousines be operated for hire "on an hourly basis." The act also removes the requirement that a prearranged contract must specify a "fixed rate per hour or trip."

The act allows the operator of a chauffeured limousine to provide transportation to passengers who arrange for the transportation through an intermediary, specifically including a digital dispatching service. The act also allows, notwithstanding any law to the contrary, the operator of a chauffeured limousine to establish the fare and method of fare calculation for such transportation so long as the method of fare calculation is provided to the passenger upon request. Under prior law, the operator of a chauffeured limousine was only permitted to accept passengers on the basis of a prearranged contract, which was defined as an agreement, made in advance of boarding, to provide transportation from a specific location in a chauffeured limousine at a fixed rate per hour or trip.



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## PUBLIC UTILITIES COMMISSION

### Wind farm setback

- Changes, from 750 feet to 1,125 feet, the minimum setback distance for wind turbines of an economically significant wind farm (5-50 megawatts) beginning on September 29, 2013.
- Applies the minimum setback requirements established in Power Siting Board (PSB) rules, including the 1,125-foot minimum setback distance, also to wind farms that are major utility facilities (50 megawatts or more).
- Maintains the 750-foot distance for both types of wind farms (economically significant and major utility facilities) for any existing certificates and amendments thereto, and any existing certification applications found to be in compliance with PSB application requirements before September 29, 2013.

### Railroad audible warnings

- Changes the railroad audible-warning requirement to a horn-sounding requirement rather than a requirement to sound a whistle and ring a bell.
- Applies the horn-sounding requirement only to public highways and grade crossings rather than to private crossings and crossings at a turnpike, highway, street, or other traveled place.
- Establishes that the sounding of a locomotive horn at a private crossing or the failure to sound a locomotive horn at a private crossing is not a basis for a civil action against the railroad, a board of county commissioners, or any local authority, or against any of their agents or employees.
- Establishes a criminal penalty of a fourth degree misdemeanor for a violation of the act's horn-sounding requirement, and a third degree misdemeanor if a person is physically harmed, but provides an affirmative defense if an alternative audible warning system was activated.
- Repeals a provision that made it a fourth degree misdemeanor for a person to fail to sound a locomotive whistle when approaching and passing through a grade crossing or a third degree misdemeanor if a person was physically harmed because of the failure.
- Removes a provision that specified that railroad audible-warning requirements do not interfere with local ordinances.



## Recovery of environmental remediation costs

- Would have permitted the PUCO to authorize a natural gas company or gas company to recover environmental remediation costs that were (1) prudently incurred before 2025, and (2) related to real property that, at the time recovery was authorized, was being or was previously used for the provision of public utility service (VETOED).
- Would have required, if recovery were authorized, the company to, upon the sale of the real property, return to customers the difference between the sale price, minus reasonable sale expenses, and the property's fair market value prior to remediation (VETOED).
- Would have declared that certain rate-making provisions did not preclude recovery of the environmental remediation costs (VETOED).

## Wind farm setback

(R.C. 4906.20 and 4906.201)

The act increases the minimum setback distance for wind turbines of an economically significant wind farm from at least 750 feet to at least 1,125 feet beginning on September 29, 2013. Under continuing law, an economically significant wind farm is defined as wind turbines and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of at least 5 but less than 50 megawatts.<sup>205</sup> The act also applies the minimum setback requirements established in Power Siting Board (PSB) rules, including the 1,125-foot distance, to an electric generating plant that consists of wind turbines and associated facilities with a single interconnection to the electrical grid that is designed for, or capable of, operation at an aggregate capacity of *50 megawatts or more*. Under continuing law, an electric generating plant of this capacity is known as a major utility facility.<sup>206</sup> Neither a major utility facility<sup>207</sup> nor an economically significant wind farm may be constructed without a certificate from the PSB.

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<sup>205</sup> R.C. 4906.13, not in the act.

<sup>206</sup> R.C. 4906.01(B)(1)(a), not in the act.

<sup>207</sup> R.C. 4906.04, not in the act.



The act maintains the setback distance of at least 750 feet for both types of wind farms for "existing" certification applications that have been found by the Chairperson of the PSB to be in compliance with PSB application requirements before September 29, 2013. The act also states, for both types of wind farms, that the 750-foot distance applies for any existing certificates and "amendments thereto." But under prior law, the 750-foot setback applied only to economically significant wind farms (5-50 megawatts). No setback requirement was imposed on a major utility facility wind farm under the Revised Code. Also, the provision appears unnecessary as it applies to existing certificates for economically significant wind farms, which should already have setbacks consistent with the 750-foot requirement. Finally, the provision is unclear as to what is meant by "amendments thereto."

The standard for measuring the minimum footage setback distance, unchanged by the act, is the horizontal distance measured from the tip of the turbine's nearest blade at 90 degrees to the exterior of the nearest, habitable, residential structure, if any, located on adjacent property at the time of the application for PSB certification.

Under continuing law governing economically significant wind farms, the setback does not apply to the following:

- Cases in which all owners of property adjacent to the wind farm property waive application of the setback to that property according to a procedure established by PSB rule; and
- Cases in which the PSB determines that a setback greater than the minimum is necessary.

## **Railroad audible warnings**

(R.C. 4955.32, 4955.322, 4955.34, and 4999.04; conforming changes in R.C. 4955.321, 4955.44, and 4955.47)

### **Horn-sounding requirement**

The act requires the engineer or person in charge of the locomotive in the lead of a train, a lite locomotive consist, or an individual locomotive to sound the locomotive horn in accordance with federal law when approaching a public highway or a grade crossing. This requirement does not apply if an alternative audible warning system, approved by the Public Utilities Commission (PUCO) as provided for in continuing law, is activated. The act defines a "lite locomotive consist" as a consist of locomotives not attached to any piece of equipment or attached only to a caboose.



The audible-warning requirement that was replaced by these provisions required that when an engine is in motion and approaching a turnpike, highway, or street crossing or private crossing where the view of the crossing is obstructed by embankment, trees, curve, or other obstruction, upon the same line with the crossing, and in like manner where the railroad crosses any other traveled place, the engineer or person in charge of the engine must (1) sound the locomotive whistle at a distance of 80 to 100 rods from the crossing and (2) ring the engine's bell continuously until the engine passes the crossing. This requirement also did not apply if an alternative audible warning system, approved by PUCO, was activated. The act also removes a requirement that companies must attach to each locomotive engine on their railroads a bell and a steam or compressed-air whistle.

The act removes a provision that stated that the whistle-and-bell requirement does not interfere with the proper observance of an ordinance passed by the legislative authority of a municipal corporation regulating the management of railroads, locomotives, and steam whistles on locomotives within the municipal corporation.

The act modifies a provision of law to state that the establishment of an alternative audible warning system does not preclude the sounding of a locomotive horn in an emergency situation. Prior law had stated that the establishment of an alternative audible warning system does not preclude the sounding of a *whistle* in an emergency.

### **Crimes for failure to comply with audible-warning requirements**

The act repeals a provision of law that made it a fourth degree misdemeanor for a person to fail to sound a locomotive whistle at frequent intervals when approaching (at least 1,320 feet before) and passing through a grade crossing. The act likewise repeals a provision of law that made it a third degree misdemeanor to fail to sound a whistle in this manner if a person is physically harmed because of the failure.

The act makes it a fourth degree misdemeanor for a person to fail to comply with the act's horn-sounding requirement, and a third degree misdemeanor if the failure causes physical harm to any person. But, the act establishes an affirmative defense to these crimes if a PUCO-approved alternative audible warning system was activated.

### **Civil penalties for failure to comply with audible-warning requirements**

The act applies the former civil penalty of \$50 to \$100, previously imposed for a failure to comply with prior audible-warning requirements, to an engineer or person who fails to comply with the act's audible-warning requirements. Likewise, the company that employs the engineer or person, and the engineer or person, are liable in



damages to a person or company injured in person or property by a failure to comply with the act's audible-warning requirements.

### **Civil actions for horn sounding at private crossings**

The act establishes that the sounding of a locomotive horn at a private crossing or the failure to sound a locomotive horn at a private crossing is not a basis for a civil action against the railroad company that operated the locomotive, a board of county commissioners, or any local authority, or against their employees or agents.

### **Recovery of environmental remediation costs (VETOED)**

(R.C. 4909.157)

The Governor vetoed a provision that would have permitted the PUCO to authorize a natural gas company or gas company to recover environmental remediation costs that were (1) prudently incurred before January 1, 2025, and (2) related to real property that, at the time recovery was authorized, was being used or was previously used for the provision of public utility service. The Governor vetoed related provisions that would have allowed such recovery to be provided for through the establishment of a mechanism by the PUCO. The mechanism would have been required to set forth the specific terms of the recovery.

The Governor also vetoed a provision that would have declared that the following rate-making determinations (required under continuing law) do not preclude recovery of these environmental remediation costs:

- (1) The valuation of the utility's property used and useful in rendering the public utility service;
- (2) The cost to the utility of rendering the public utility service.

Finally, the Governor vetoed a provision that would have required the company, if the PUCO authorized recovery, to return to the company's customers, upon the sale of the real property, the difference between the sale price of the property (minus any reasonable expenses related to the sale) and the fair market value of the property prior to remediation.

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## STATE RACING COMMISSION

- Requires, instead of permits, the State Racing Commission to direct through rule that a percentage of a video lottery sales agent's commission be paid to the State Racing Commission for the benefit of breeding and racing in Ohio, unless video lottery sales agents and horsemen's associations enter into agreements regarding the percentage by certain dates.
- Specifies that the percentage (not less than 9% or more than 11% of the video lottery terminal income) must be a sliding scale based upon capital expenditures necessary to build the video lottery sales agent's facility.
- Clarifies the municipal corporations and townships that are eligible to receive annual \$500,000 payments under an agreement between the Governor and necessary parties.
- Removes the requirement that the agreement be made by December 11, 2012.
- States that payments from the Casino Operator Settlement Fund must be made to the municipal corporation or township in which more than 50% of the real property of a racetrack was located on June 11, 2012, or to a municipal corporation or township to which more than 50% of the real property of a racetrack is to relocate.
- Requires the Director of Budget and Management to make an eligibility determination so that not more than six municipal corporations or townships receive the payments.

### **Video lottery sales agent commission percentage to the Commission**

(R.C. 3769.087(C))

The act requires the State Racing Commission to direct through rule that a percentage of a video lottery sales agent's commission, as determined by the State Lottery Commission, for conducting video lottery terminal gaming on behalf of the state (currently set at 66.5%), be paid to the State Racing Commission for the benefit of breeding and racing in Ohio. This provision was permissive under prior law.

Continuing law specifies that the payment directed by rule must be not less than 9% or more than 11% of video lottery terminal income. The act adds that the percentage also must be a sliding scale based upon capital expenditures necessary to build the video lottery sales agent's facility. Under continuing law, video lottery terminal income





means credits played, minus approved video lottery terminal promotional gaming credits, minus video lottery prize awards.<sup>208</sup>

Continuing law specifies that a video lottery sales agent and the applicable horsemen's association may agree to a payment other than the one that otherwise would be prescribed by rule. The act specifies that any such agreement must be made by December 28, 2013, in the case of a video lottery sales agent who is operating as such on September 29, 2013, or within six months after the date on which operations begin in the case of a video lottery sales agent who begins operating as such after September 29, 2013.

## **Racetrack payments**

### **Payments to communities under agreement**

(Sections 605.33 and 605.34 amending Am. Sub. H.B. 386, 129th General Assembly, Section 9)

The act clarifies that the municipal corporations and townships eligible to receive annual \$500,000 payments under an agreement between the Governor and necessary parties are the municipal corporations or townships that are entitled to receive payments from the Casino Operator Settlement Fund (see below). An incorrect cross-reference made the identity of the eligible municipal corporations and townships uncertain.

The act also removes the requirement that the agreement be made by December 11, 2012 (that is, within six months of the provision's effective date in H.B. 386 of the 129th General Assembly, which was June 11, 2012).

### **Payments from Casino Operator Settlement Fund**

(Sections 610.15.10 and 610.15.11 amending H.B. 386, 129th General Assembly, Section 10)

Under the act, to the extent that sufficient cash is available, within three months after the receipt of moneys into the Casino Operator Settlement Fund, the Director of Budget and Management must pay \$1 million to the municipal corporation or township in which more than 50% of the real property of a commercial racetrack was located on June 11, 2012, or to a municipal corporation or township to which more than 50% of the real property of a commercial racetrack is to relocate, but excluding the previous municipal corporation or township of each moved or moving commercial racetrack,

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<sup>208</sup> R.C. 3770.21, not in the act; O.A.C. 3770:2-3-08.





and excluding a municipal corporation or township in a county with a population between 1,100,000 and 1,200,000 in the most recent federal decennial census. Additionally, within six months after the first payments are made, the Director must pay an additional \$1 million to each of these municipal corporations and townships. The act specifies that not more than six municipal corporations or townships are eligible for these payments. The determination of which six municipal corporations or townships are eligible to receive payments must be made solely by the Director of Budget and Management.

Former law did not specify that not more than six municipal corporations or townships were eligible for the payments and also did not specify that eligibility only applied to municipal corporations or townships in which more than 50% of the commercial racetrack real property is or will be located.



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## OHIO REAL ESTATE COMMISSION

- Exempts certain applicants for a real estate broker license, and applicants for a real estate salesperson license, from the requirement that the applicant complete classroom instruction in real estate appraisal, if the applicant holds a valid Ohio real estate appraiser license or certificate.
- Limits the transactions for which a real estate broker or salesperson must provide a written "brokerage policy on agency" to a seller or purchaser to the sale or lease of vacant land and certain sales and leases of residential units and premises.

### **Brokers and salespersons appraiser education**

(R.C. 4735.07, 4735.09, 4735.10, and 4735.142)

Under the act, a licensed real estate salesperson who is a new applicant for a real estate broker license is exempt from the requirement that the person complete classroom instruction in real estate appraisal if the applicant holds a valid Ohio real estate appraiser license or certificate. Continuing law requires a licensed real estate salesperson, licensed prior to August 1, 2001, who applies for a real estate broker license to complete 30 hours of such classroom instruction, and a licensed real estate salesperson, licensed on or after August 1, 2001, who applies for a real estate broker license to complete 20 hours of such classroom instruction, regardless of whether the applicant is an Ohio-licensed or -certified real estate appraiser. Similarly, if a person applying for a real estate salesperson license also holds a valid Ohio real estate appraiser license or certificate, the act exempts the person from a requirement that the person complete 20 hours of classroom instruction in real estate appraisal.

### **Consumer guide to agency relationships**

(R.C. 4735.56)

The act limits the transactions for which a brokerage must provide a written "brokerage policy on agency." Continuing law requires the policy to be provided for the leasing of residential premises if the rental or lease agreement is for a term of more than 18 months. "Residential premises" means a dwelling unit for residential use and occupancy and the structure of which it is a part, the facilities and appurtenances in it, and the grounds, areas, and facilities for the use of tenants generally or the use of which is promised the tenant.



The act limits the requirement of provision of a brokerage policy on agency to two other situations: (1) the sale or lease of vacant land and (2) the sale of a parcel of real estate containing one to four residential units.

Former law required a brokerage to provide the policy to all prospective sellers and purchasers of real estate, **except** for the leasing of residential premises as described above (the lease can be performed in 18 months or less) and (1) the referral of a prospective purchaser or seller to another licensee, (2) transactions involving the sale, lease, or exchange of foreign real estate, or (3) transactions involving the sale of a cemetery lot or a cemetery interment right.



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## OHIO BOARD OF REGENTS

### Cap on undergraduate tuition increases

- For fiscal years 2014 and 2015, limits the increases of in-state undergraduate instructional and general fees for:
  - (1) State universities and the Northeast Ohio Medical University to 2% or \$188, whichever is higher, over the previous year;
  - (2) Regional campuses to 2% or \$114, whichever is higher, over the previous year; and
  - (3) Community colleges, state community colleges, and technical colleges to \$100 over the previous year.

### Undergraduate tuition guarantee programs

- Authorizes the board of trustees of a state university to establish an undergraduate tuition guarantee program under which the university guarantees a cohort of students a set rate for general and instructional fees for four years.
- Requires the Chancellor to publish a report on the undergraduate tuition guarantee programs established under the act.
- Suspends the act's temporary tuition caps for a university that establishes an undergraduate tuition guarantee program.

### Strategic completion plans

- Requires the board of trustees of each state institution of higher education to adopt, by June 30, 2014, an institution-specific strategic completion plan designed to increase the number of degrees and certificates awarded to students and to submit a copy of it to the Chancellor.
- Requires a board of trustees to update its completion plan at least once every two years and submit a copy of the update to the Chancellor.

### Certificates of value and technical credit articulation

- Authorizes the Chancellor to designate "certificates of value" for certificate programs at adult career-technical education institutions and state institutions of higher education and requires the Chancellor to develop quality standards for those designations.



- Requires the Chancellor to establish a One-Year Option credit articulation system for technical center graduates in the state to receive college credit for a technical degree.

### **Northeast Ohio Medical University Partnership**

- Allows the Northeast Ohio Medical University to enter into a partnership with Cleveland State University to establish an academic campus at Cleveland State University to enable students enrolled under the partnership to receive at least 50% of their training in the Cleveland area.

### **Scholarship and grant reserve funds**

- Creates the Ohio College Opportunity Grant Program Reserve Fund in the state treasury.
- Creates the Choose Ohio First Scholarship Reserve Fund in the state treasury.
- Creates the War Orphans Scholarship Reserve Fund in the state treasury.
- Creates the National Guard Scholarship Donation Fund within the state treasury.
- Renames the Ohio War Orphans Scholarship Fund within the state treasury to the Ohio War Orphans Scholarship Donation Fund.

### **Alternative retirement plan investment entities**

- Includes as entities that may offer investment options under an alternative retirement plan (ARP) maintained by a public institution of higher education entities that have provided investment options for at least ten years under ARPs at Ohio public institutions of higher education.

### **Other provisions**

- Authorizes the Chancellor to contract with an entity to perform any or all of the Chancellor's duties related to the Distance Learning Clearinghouse.
- Permits the Chancellor to provide professional development and training on the use of the Distance Learning Clearinghouse.
- Requires the Chancellor to offer digital texts through the Distance Learning Clearinghouse.
- Changes some of the criteria by which the Chancellor uses in determining Ohio Co-Op/Internship Program awards to align with policies of the Governor's Office of Workforce Transformation.



- Authorizes a state university to admit resident individuals for enrollment who have graduated from high school after 2014 without completing the Ohio Core Curriculum, if they successfully complete topics or courses lacked from the Ohio Core Curriculum either at any post-secondary institution or at a summer program offered by the state university.
- Creates the Youth STEM Commercialization and Entrepreneurship Program to develop new entrepreneurs; to create jobs through the application of science, technology, engineering, and mathematics; and to innovate new products and services.
- Exempts from liability for breach of confidentiality a nonprofit private university or college for submitting student information to the Board of Regents or any other state agency under certain specified circumstances.
- Eliminates the requirement that the Chancellor submit an annual report to the Governor and the General Assembly on (1) the status of implementation of faculty improvement programs, (2) the number and types of biobased products purchased by state institutions of higher education, as well as the amount of money spent on these products, and (3) the academic and economic impact of the Ohio Innovation Partnership.
- Eliminates an obsolete provision of law that required the Chancellor to develop a plan for designating state institutions of higher education as charter universities.
- Requires the Chancellor to establish an efficiency advisory committee to generate optimal efficiency plans for campuses.
- Permits the President of Ohio University to create an advisory committee to review the comprehensive land use plans and any update of those plans prepared by the University, and to comment on and periodically review the progress on the implementation of those plans, for the property known as "The Ridges" (formerly the Athens Mental Health Center).
- Changes references to the Ohio Cooperative Extension to OSU Extension throughout the Revised Code, and defines "OSU Extension."



## **Cap on undergraduate tuition increases**

(Section 363.220)

For fiscal years 2014 and 2015 (the 2013-2014 and 2014-2015 academic years), the act requires the board of trustees of each state institution of higher education to limit increases of in-state undergraduate instructional and general fees as follows:

(1) For each state university and the Northeast Ohio Medical University, not more than 2% or \$188, whichever is higher, over what the institution charged the previous year;

(2) For each university regional campus, not more than 2% or \$114, whichever is higher, over what the institution charged the previous year; and

(3) For each community college, state community college, or technical college, not more than \$100 over what the institution charged the previous year.

As in previous biennia when the General Assembly capped tuition increases, the act's limits do not apply to increases required to comply with institutional covenants related to the institution's obligations or to meet unfunded legal mandates or legally binding prior obligations or commitments. Further, the Chancellor of the Board of Regents, with Controlling Board approval, may modify the limitations to respond to exceptional circumstances as the Chancellor identifies.

## **Undergraduate tuition guarantee programs**

(R.C. 3345.48 and Section 363.220)

The act authorizes the board of trustees of a state university to establish an undergraduate tuition guarantee program, which affords eligible students in the same cohort a guarantee to pay a fixed rate for general and instructional fees for four years, in exchange for the possibility of a one-time increase in those fees. The act allows a board of trustees to include room and board and any additional fees in the program. A "cohort" is a group of students who will complete their bachelor's degree at the same time, and may include transfer students and other selected undergraduate student academic programs as determined by the board of trustees of the state university. In order to participate in the program, a student must be a resident of the state who is enrolled full-time in a bachelor's degree program at a state university. The act also allows a board of trustees to establish an undergraduate tuition guarantee program for nonresident students.



If a university board of trustees decides to establish an undergraduate tuition guarantee program, the board must adopt rules for the program. Those rules must include at least (1) the number of credit hours required to earn an undergraduate degree in each major, (2) subject to approval by the Chancellor, a "benchmark" by which the board sets an increase in general and instructional fees (if applicable), (3) additional eligibility requirements for students to participate in the program, (4) student rights and privileges under the program, and (5) a requirement that the rules be published or posted in the university handbook, course catalog, and web site.

A board of trustees must also adopt a rule that guarantees that the general and instructional fees for each student in a cohort remain constant for four years so long as the student complies with the requirements of the program, except that the board may increase the guaranteed amount by up to 6% above what has been charged in the previous academic year one time for the *first* cohort of the tuition guarantee program. If the board of trustees determines that economic conditions or other circumstances require that the increase be higher than 6%, the board may submit a request to increase that amount to the Chancellor. The Chancellor, based on the information submitted by the board, must approve or disapprove the request.

Thereafter, the board may increase the guaranteed amount by the sum of the 60-month (five-year) rate of inflation as measured by the Consumer Price Index plus the amount of any General Assembly-imposed limit on the increase of in-state, undergraduate general and instructional fees (tuition increase cap) once per each cohort. If the General Assembly does not enact a tuition increase cap, then no limit under the guarantee will apply for a cohort that first enrolls in such an academic year.

The act also allows the board of trustees of a state university that participates in the tuition guarantee program to submit a request to the Chancellor for an increase of the amount it may charge a cohort higher than the amount specified under the act, if the board determines that the general and instructional fees charged under the tuition guarantee have fallen significantly lower than those of other state universities. The request must specify the percentage by which the board would like to increase the amount of fees charged. The Chancellor must approve or disapprove any such request.

Finally, a board of trustee's rules must include consequences to the university for students unable to complete a degree program within four years. Rules must specify that if a student could not complete the degree program in four years due to a lack of available classes or space in classes provided by the university, the university will provide the necessary course or courses for completion to the student free of charge. If a student could not complete the degree program in four years because of military service or other circumstances beyond the student's control, the university must provide the necessary course or courses to the student at the student's initial cohort rate. The board





determines what constitutes a circumstance beyond a student's control. If a student did not complete the program in four years for any other reason, as determined by the board, the university must provide the necessary course or courses at a rate determined using guidelines adopted by the board under rule for adjusting a student's annual charges.

A board of trustees must submit the rules adopted to implement the program to the Chancellor for approval before implementing a tuition guarantee program. The act specifies that the Chancellor may not "unreasonably withhold" approval of a program that conforms in principle with the parameters and guidelines of the requirements specified by the act.

Not later than September 29, 2018, the Chancellor must publish on the Board of Regents web site a report that lists the state universities that have adopted an undergraduate tuition guarantee program with the details of each program. The report must also include comparative data, including general and instructional fees, room and board, graduation rates, and retention rates from all state universities.

The act also specifically exempts state universities that establish an undergraduate tuition guarantee program from the tuition caps set by the act for the 2013-2014 and 2014-2015 academic years, as described above.

### **Strategic completion plans for institutions of higher education**

(New R.C. 3345.81)

The act requires the board of trustees of each state institution of higher education to adopt, by June 30, 2014, an institution-specific strategic completion plan designed to increase the number of degrees and certificates awarded to students. Each completion plan must be consistent with the mission and priorities of the specific institution and must include measureable completion goals. Additionally, the plan must align with Ohio's workforce development priorities.

The act requires each board of trustees to submit a copy of its plan to the Chancellor. The board also must update its plan at least once every two years and, submit a copy of the update to the Chancellor.

### **Certificates of value**

(R.C. 3333.342)

The act authorizes the Chancellor to issue the designation as a "certificate of value" to a certificate program at any adult career-technical education institution or



state institution of higher education. A certificate program is a series of one or more non-degree courses that focus on a particular area specifically designed for employment in that area. Under the act, a certificate of value expires six years after its designation date and may be revoked prior to its expiration date if the Chancellor determines that the certificate program no longer complies with the standards used for issuing a designation of "certificate of value" (see below). The revocation of a certificate of value becomes effective 180 days after the declaration of revocation.

Any institution that desires to be eligible to receive a designation of "certificate of value" must comply with all records and data requests that the Chancellor requires.

### **Certificate of value standards**

The act requires the Chancellor to develop quality standards for designating certificates of value to certificate programs at adult career-technical education institutions and state institutions of higher education. Those standards must include the following considerations: (1) the certificate program's quality, (2) the ability to transfer agreed-upon technical courses completed through an adult career-technical education institution to a state institution of higher education "without unnecessary duplication or institutional barriers," (3) the extent to which the certificate program encourages a student to obtain an associate's or bachelor's degree, (4) the extent to which the certificate program increases a student's likelihood to complete other certificate programs or an associate's or bachelor's degree, (5) the certificate program's ability to meet the expectations of the workplace and higher education, (6) the extent to which the certificate program is aligned with the strengths of the regional economy, (7) the extent to which the certificate program increases the amount of individuals who remain in or enter Ohio's workforce, and (8) the extent of a certificate program's relationship with private companies in Ohio to fill potential job growth.

### **One-Year Option credit articulation system**

(Section 363.120)

The act requires the Chancellor to establish a One-Year Option credit articulation system in which graduates of Ohio technical centers who complete a 900-hour program of study and obtain an industry-recognized credential approved by the Chancellor receive 30 college technical credit hours toward a technical degree upon enrollment in an institution of higher education. The system must be established by June 30, 2014.

The Chancellor must also report to the General Assembly, by that date, recommendations for a process to award proportional credit toward a technical degree for students who complete a program of study between 600 and 899 hours and obtain an industry-recognized credential approved by the Chancellor.



## **Northeast Ohio Medical University partnership**

(R.C. 3350.15)

The act permanently allows the Northeast Ohio Medical University (NEOMED) to enter into a partnership with Cleveland State University to establish the Northeast Ohio Medical University Academic Campus at Cleveland State University. The act specifies that the purpose of the campus is to enable students enrolled under the partnership to be based in Cleveland and to take 50% or more of the medical curriculum at Cleveland State University, local hospitals, and community- and neighborhood-based primary care clinics. It also states that Cleveland State University may not receive state capital appropriations to pay for facilities for the NEOMED academic campus.<sup>209</sup>

## **Higher education scholarship and grant reserve funds**

### **Ohio College Opportunity Grant Program Reserve Fund**

(R.C. 3333.124)

The act creates the Ohio College Opportunity Grant Program Reserve Fund in the state treasury. Under the act, the Chancellor is required to certify to the Director of Budget and Management by July 1 of each fiscal year the unencumbered balance of the GRF appropriations made in the immediately preceding fiscal year for purposes of the Ohio College Opportunity Grant Program. Upon receipt of the certification, the act permits the Director to transfer an amount not exceeding the certified amount from the GRF to the Ohio College Opportunity Grant Program Reserve Fund. Moneys in the Fund must be used to pay grant obligations in excess of the GRF appropriations made for that purpose. The act also permits the Director to transfer any unencumbered balance from the Fund to GRF.

### **Choose Ohio First Scholarship Reserve Fund**

(R.C. 3333.613)

The act creates the Choose Ohio First Scholarship Reserve Fund in the state treasury. Under the act, the Chancellor is required to certify to the Director by July 1 of each fiscal year the unencumbered balance of the GRF appropriations made in the immediately preceding fiscal year for purposes of the Choose Ohio First Scholarship Program. Upon receipt of the certification, the act permits the Director to transfer an

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<sup>209</sup> A similar temporary provision, applicable only to the 2011-2013 biennium, was enacted in H.B. 153 of the 129th General Assembly as temporary law.



amount not exceeding the certified amount from the GRF to the Choose Ohio First Scholarship Reserve Fund. Moneys in the Fund must be used to pay scholarship obligations in excess of the GRF appropriations made for that purpose. The act also permits the Director to transfer any unencumbered balance from the Fund to GRF.

### **War Orphans Scholarship Reserve Fund**

(R.C. 5910.08)

The act creates the War Orphans Scholarship Reserve Fund in the state treasury. Under the act, the Chancellor is required to certify to the Director by July 1 of each fiscal year the unencumbered balance of the GRF appropriations made in the immediately preceding fiscal year for purposes of the War Orphans Scholarship Program. Upon receipt of the certification, the act permits the Director to transfer an amount not exceeding the certified amount from the GRF to the War Orphans Scholarship Reserve Fund. Moneys in the Fund must be used to pay scholarship obligations in excess of the GRF appropriations made for that purpose. The act also permits the Director to transfer any unencumbered balance from the Fund to GRF.

### **National Guard Scholarship Donation Fund**

(R.C. 5919.34 and 5919.342)

The act creates the National Guard Scholarship Donation Fund within the state treasury for the purpose of operating the existing Ohio National Guard Scholarship Program. The act requires any gifts, bequests, grants, and contributions from public or private sources be deposited into the National Guard Scholarship Donation Fund instead of into the existing National Guard Scholarship Reserve Fund. Investment earnings of the fund are to be deposited into the fund. The act also requires amounts in the new fund to be counted when calculating whether amounts appropriated for the Ohio National Guard Scholarship Program and amounts in the National Guard Scholarship Reserve Fund are adequate to provide scholarships under the Program.

### **Ohio War Orphans Scholarship Donation Fund**

(R.C. 5910.02 and 5910.07)

The act renames the existing Ohio War Orphans Scholarship Fund within the state treasury to the Ohio War Orphans Scholarship Donation Fund.



## **Alternative retirement plan investment entities**

(R.C. 3305.03)

### **Designation**

The act includes as entities that may offer investment options under an alternative retirement plan (ARP) maintained by a public institution of higher education entities that have provided investment options for at least ten years under ARPs at Ohio public institutions of higher education. Previously, an entity was eligible to offer ARP investment options only if it offered such options at institutions of higher education in at least ten other states. In Ohio, ARPs are available to full-time employees of public institutions of higher education who elect to participate in an ARP rather than the public retirement system that would otherwise cover the employment.

### **Criteria**

Continuing law requires the Board of Regents to designate the entities that may offer ARP investment options. When designating an entity, the Board must identify, consider, and evaluate a number of criteria concerning the experience of the entity in other states. The act modifies one of the criteria by requiring the Board to identify, consider, and evaluate the experience of an entity in providing *in this state* or other states investment options under ARPs, optional retirement plans, or similar types of plans.

## **Distance Learning Clearinghouse**

(R.C. 3333.81, 3333.82, and 3333.84)

The act authorizes the Chancellor to contract with an entity to perform any or all of the Chancellor's duties related to the Distance Learning Clearinghouse, including administering and maintaining the clearinghouse, reviewing applications for courses, approving or disapproving course applications, negotiating changes in course proposals, and cataloging each approved course. The act's language is similar to a provision of former law that was removed in 2011. The act also specifically permits the Chancellor to provide professional development and training on the use of the Distance Learning Clearinghouse.

Finally, the act adds a requirement that the Chancellor offer digital texts through the clearinghouse, in addition to interactive distance learning courses and other courses delivered via computer-based methods as under continuing law. The act defines "digital texts" as a consumable book or book substitute that a student accesses through the use of a computer or other electronic medium or that is available through an Internet-based



provider of course content, or any other material that contributes to the learning process through electronic means.<sup>210</sup>

## **Background**

Through the Distance Learning Clearinghouse school districts, community schools, STEM schools, public and private colleges and universities, and other nonprofit and for-profit course providers may offer on-line or other distance learning courses for sharing with other school districts, community schools, STEM schools, public and private colleges and universities, and individuals. In operating the clearinghouse, the Chancellor or the entity with which the Chancellor contracts must use a "common statewide platform" to support the delivery of courses, but the provider is solely responsible for the course content. The Chancellor has maintained the clearinghouse as the "OhioLearns! Gateway," including an online searchable database of both primary-secondary and higher education courses offered through the program.

## **Ohio/Co-Op Internship Program**

(R.C. 3333.73)

The act changes some of the criteria for the Chancellor to consider in determining which submitted proposals will receive Ohio Co-Op/Internship Awards to align with policies of the Governor's Office of Workforce Transformation. First, under the act, the Chancellor must consider the extent to which a proposal supports the workforce policies of the Governor's Office of Workforce Transformation to meet the workforce needs of the state and to provide a student participating in the program with the skills needed for workplace success.

Under prior law the Chancellor was required to consider the extent to which a proposal is aligned with the Chancellor's report issued in 2007 on higher education and the state economy. The act removes this requirement.

Finally, the act requires the Chancellor to consider the extent to which a proposal is responsive to the needs of employers and aligns with the skills identified by employers as necessary to fill high-demand job openings, particularly job openings in targeted industry sectors identified by the Governor's Office of Workforce Transformation.

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<sup>210</sup> R.C. 3317.06(A)(2).



## Background

The purpose of the Ohio Co-Op Internship Program is "to promote and encourage cooperative education programs and internship programs at Ohio institutions of higher education . . . in order to support the growth of Ohio's businesses by providing businesses with Ohio's most talented students and providing Ohio graduates with job opportunities with Ohio's growing companies." The program must recruit both Ohio residents who have remained in the state and those who have left Ohio to attend out-of-state institutions. It must either, or both, (1) "support the creation and maintenance of high quality academic programs that utilize an intensive cooperative education or internship experience for students" or (2) "assign a number of scholarships to institutions to recruit Ohio residents as students in a high quality academic program." If scholarships are included in an award to an institution of higher education, they are to be awarded as grants to the institutions and then reflected on the students' tuition bills.<sup>211</sup>

## State university enrollment for non-Ohio Core high school graduates

(R.C. 3313.603(C) and 3345.06)

The act allows a state university to admit resident students who have graduated from high school after 2014 without completing the Ohio Core Curriculum if they successfully complete topics or courses that a student lacked from the Ohio Core Curriculum. The topics or courses must be completed at a post-secondary institution or at a summer program offered by the state university that accepts the student. Admission may also be contingent upon completion of such topics or courses.

## Background

Beginning with the 2014-2015 academic year, continuing law generally prohibits a state university, except Central State University, Shawnee State University, and Youngstown State University, from admitting a resident high school graduate who did not complete the Ohio Core Curriculum. The Ohio Core Curriculum requires students to complete 20 "units" of study in specified subject areas, including Algebra II, to qualify for a high school diploma. The law does provide specific exceptions to this prohibition, including exceptions for (1) students who earn at least 10 semester hours, or the equivalent, at a community college, state community college, university branch, technical college, or another post-secondary institution except a state university, in courses that are college-credit-bearing and may be applied toward the requirements for a degree, (2) students who met the high school graduation requirements by successfully

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<sup>211</sup> R.C. 3333.72 (second paragraph), not in the act.





completing an individualized education program (for students with disabilities), (3) home-instructed students or students who graduate from nonchartered nonpublic schools and who demonstrate mastery of the academic content and skills in reading, writing, and mathematics, and (4) students participating in the Post-Secondary Enrollment Options Program.

The act prescribes the additional exception described above.

## **Youth STEM Commercialization and Entrepreneurship Program**

(Section 363.333)

The act creates the Youth STEM Commercialization and Entrepreneurship Program with the purpose of (1) developing new entrepreneurs, (2) creating jobs through the practical application of science, technology, engineering, and mathematics (STEM including medicine and health fields), and (3) innovating new products and services. The Chancellor is required to administer the program with funds appropriated by the General Assembly (\$2 million in FY 2014 and \$3 million in FY 2015) and must collaborate with institutions of higher education and other STEM-related programs and associations to implement programmatic activities. The activities must include (1) conducting regional STEM forums for students and educators, (2) developing online content and courses on STEM commercialization and entrepreneurship, (3) creating a statewide STEM commercialization and entrepreneurship mentoring network, and (4) conducting a statewide STEM Commercialization and Entrepreneurship Plan competition for high school students.

## **Private university exempt from liability for certain breach of confidentiality**

(R.C. 3333.0412)

The act exempts from liability for breach of confidentiality a private university or college that submits student information to the Board of Regents or any other state agency, provided that the breach occurs as a result of (1) an action by the recipient, or (2) an action by a third party after the information has left the possession of the private university or college but has not been received by the Board or the other state agency.

## **Annual reports by the Chancellor**

(R.C. 3333.041)

The act eliminates the following three reports previously required by the Chancellor:

- (1) The status of implementation of faculty improvement programs;





- (2) The number and types of biobased products purchased by state institutions of higher education, as well as the amount of money spent on these products; and
- (3) The academic and economic impact of the Ohio Innovation Partnership.

While the Chancellor is no longer required to report on the Ohio Innovation Partnership, the act does maintain continuing law requiring the Chancellor to report on the assignment and strategy of the Choose Ohio First Scholarships, which are part of the larger Ohio Innovation Partnership.

### **Efficiency advisory committee**

(Section 363.550)

The act requires the Chancellor to establish an efficiency advisory committee to generate optimal efficiency plans for college and university campuses, identify shared services opportunities, and share best practices. The committee must also explore methods for reducing the costs for students for textbooks and other education resource materials. The committee must meet at the call of the Chancellor or the Chancellor's designee, which must be at least quarterly. Each state institution of higher education must designate an employee to serve as its efficiency officer responsible for the evaluation and improvement of operational efficiencies on campus. Each efficiency officer, then, must serve on the efficiency advisory committee.

By December 31 of each year, the committee must provide a report to the Office of Budget and Management, the Governor, and the General Assembly compiling the operational efficiency plans for all institutions of higher education and benchmarking efficiency gains realized over the preceding year and progress in implementing the prior year's efficiency plan. The report must also be made available to the public on the Board of Regents' web site.

### **Ohio University advisory committee**

(R.C. 3337.16)

The act authorizes the President of Ohio University to create an advisory committee to review the comprehensive land use plans and any updates of those plans prepared by the University, and to comment on and periodically review the progress on the implementation of those plans, for the property known as "The Ridges" (formerly the Athens Mental Health Center).<sup>212</sup>

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<sup>212</sup> This property was conveyed to the University by the state in 1988. The conveyance was authorized in Sub. H.B. 576 of the 117th General Assembly.



If the committee is created, it must consist of the following members:

(1) The President of Ohio University or the president's designee, who must serve as chairperson of the committee;

(2) The mayor of the City of Athens or the mayor's designee;

(3) One Athens County Commissioner appointed by the President of the University;

(4) One to three individuals appointed by the President of the University who reside in Athens county and have special knowledge and experience in land use planning, preservation, or economic development.

The act provides that vacancies on the committee must be filled in the same manner as the original appointments.

### **Charter university proposal**

(R.C. 3345.81 (repealed))

The act repeals a provision that required the Chancellor, by August 15, 2011, to develop a plan for designating public institutions of higher education as charter universities for consideration by the General Assembly. The Chancellor issued the report required by this provision.

### **OSU Extension**

(R.C. 1.611, 124.57, 307.07, 903.11, 905.06, 1511.02, 1511.022, 1711.07, 3335.35, 3335.36, 3335.37, 3335.38, 3345.05, 3717.08, 4123.32, and 5705.19)

The act changes references to the Ohio Cooperative Extension to OSU Extension throughout the Revised Code. In addition, the act defines "OSU Extension" as the Cooperative Extension Service established by the federal Smith-Lever Act and administered in Ohio by the Ohio State University. Former law did not define "Ohio Cooperative Extension."



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## DEPARTMENT OF REHABILITATION AND CORRECTION

### Office of Enterprise Development Advisory Board

- Creates the Office of Enterprise Development Advisory Board to advise and assist the Department of Rehabilitation and Correction (DRC) in implementing the DRC's job training and employment program.
- Eliminates the Advisory Council of Directors for Prison Labor that formerly provided some services that are similar to those provided by the Office of Enterprise Development Advisory Board.

### Classification of violations of the offense of assault

- Increases the penalty for assault from a fifth degree felony to a third degree felony if the assault occurs in or on the grounds of a state correctional institution or an institution of the Department of Youth Services (DYS), the victim of the offense is an employee of DRC or DYS, and the offense is committed by a person incarcerated in the state correctional institution or by a person institutionalized in the DYS institution pursuant to a commitment to DYS.
- Eliminates former law that increased the penalty for assault when the assault was committed against a probation department employee, visitor, or business visitor and the assault was committed in a DRC or DYS institution or against a DRC or DYS employee in a DRC or DYS institution by a person not incarcerated in such an institution.

### Creation of the Office of Enterprise Development Advisory Board

(R.C. 5145.162; Sections 610.20 and 610.21)

The act creates the Office of Enterprise Development Advisory Board to advise and assist the Department of Rehabilitation and Correction (DRC) with the creation of training programs and jobs for inmates and releasees through partnerships with private sector businesses. The act eliminates the Advisory Council of Directors for Prison Labor. Under former law, the Advisory Council provided advice and assistance to DRC when it adopted rules for the administration of DRC's program for the employment of prisoners, established prices for goods, products, services, or labor produced or supplied by prisoners, and otherwise established and administered DRC's program for the employment of prisoners.



The act provides that the Office of Enterprise Development Advisory Board consists of at least five appointed members and the Executive Director of the Office of Correctional Institution Inspection Committee. Under the act, the Executive Director serves as an ex officio member of the Advisory Board. The members are required to have experience in labor relations, marketing, business management, or business. The members and chairperson are appointed by the DRC Director. Members of the Advisory Board do not receive compensation but may be reimbursed for expenses actually and necessarily incurred in the performance of official duties of the Advisory Board. Those members who are state employees are reimbursed for expenses pursuant to travel rules promulgated by the Office of Budget and Management.

The Advisory Board is required to adopt procedures for the conduct of the Advisory Board's meetings. The Advisory Board must meet at least once every quarter and at the call of the Chairperson or the Director of DRC. The Advisory Board must obtain the concurrence of a quorum of its members to transact the Board's business. Sixty per cent of the Advisory Board's members constitutes a quorum. The act provides that the Advisory Board may have committees with persons who are not members of the Advisory Board but whose experience and expertise is relevant and useful to the work of the committee.

The act gives the Advisory Board the following duties:

- (1) Solicit business proposals offering job training, apprenticeship, education programs, and employment opportunities for inmates and releasees;
- (2) Provide information and input to the Office of Enterprise Development to support the job training and employment program of inmates and releasees and any additional, related duties that are requested by the Director;
- (3) Recommend to the Office any legislation, administrative rule, or department policy change that the Advisory Board believes is necessary to implement DRC's program;
- (4) Promote public awareness of the Office and the Office's employment program;
- (5) Familiarize itself and the public with avenues to access the Office on employment program concerns;
- (6) Advocate for the needs and concerns of the Office in local communities, counties, and the state;



(7) Play an active role in the Office's efforts to reduce recidivism in Ohio by doing all of the following:

(a) Providing input and making recommendations for the Office's consideration in monitoring employment program compliance and effectiveness;

(b) Making suggestions on the appropriate priorities for the Office's grant award criterion;

(c) Being a liaison between the Office and constituents of the Advisory Board's members;

(d) Working to develop constituent groups interested in employment program issues;

(8) Aid in the employment program development process by playing a leadership role in professional associations by discussing employment program issues.

The act requires DRC to initially screen each business proposal that the Advisory Board receives as a result of the Advisory Board's solicitation of the proposals described in (1), above. The purpose of the initial screening is to ensure that the proposal is a viable venture to pursue. If the proposal is a viable venture to pursue, DRC must submit the proposal to the Advisory Board for objective review against established guidelines. The Advisory Board is required to determine whether to recommend the implementation of the program to DRC.

### **Classification of violations of the offense of assault**

(R.C. 2903.13, 2923.125, and 2929.13; Section 815.10)

The act increases the penalty for assault from a fifth degree felony to a third degree felony if the assault occurs in or on the grounds of a state correctional institution or an institution of the Department of Youth Services (DYS), the victim of the offense is an employee of DRC or DYS, and the offense is committed by a person incarcerated in the state correctional institution or by a person institutionalized in the DYS institution pursuant to a commitment to DYS.

The act eliminates former law that made assault a fifth degree felony instead of a first degree misdemeanor when the assault occurred in or on the grounds of a state correctional institution or an institution of DYS and either (1) the victim of the offense was an employee of a probation department or was on the premises of the particular institution for business purposes or as a visitor, and the offense was committed by a person incarcerated in the state correctional institution, by a person institutionalized in



the DYS institution pursuant to a commitment to the DYS, by a parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a government agency or (2) the victim of the offense was an employee of DRC or DYS, and the offense was committed by a parolee, by an offender under transitional control, under a community control sanction, or on an escorted visit, by a person under post-release control, or by an offender under any other type of supervision by a governmental agency.



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## SECRETARY OF STATE

### Gifts to political entities for office facilities

- Expands the permitted recipients and uses of a gift, which is exempt from the limits on campaign contributions and expenditures, that any person may give to a political entity for the purpose of funding an office facility.
- Clarifies the definition of a "person" who may give such a gift.
- Allows a legislative campaign fund to receive such a gift, in addition to a state or county political party, as under continuing law.
- Exempts a gift made by a corporation for these purposes from the general prohibition against a corporation using its money in support of or opposition to a candidate.
- Permits such a gift to be used for the lease of an office facility; for real property taxes; for furniture, fixtures, equipment, and supplies to be used in an office facility; and for the operating costs, maintenance, and repair of an office facility, other than personnel costs, in addition to the construction, renovation, or purchase of an office facility, as under continuing law.
- Eliminates a prohibition against a corporation giving a monetary gift that exceeds 10% of the costs incurred for the office facility, and instead prohibits any person from giving a monetary gift that exceeds \$10,000 per calendar year, as adjusted for inflation.
- Applies all of the continuing administrative requirements for office facility gifts to legislative campaign funds.
- Modifies those administrative requirements to include references to the expanded permitted uses of an office facility gift.

### Source of political publication

- Eliminates the requirement that a candidate or legislative campaign fund include the residence or business address of the candidate or of the chairperson, treasurer, or secretary of the legislative campaign fund in its disclaimer on a political publication.
- Requires the disclaimer for a candidate, legislative campaign fund, or campaign committee only to include the words "paid for by" followed by the name of the entity.



## Miscellaneous Federal Grants Fund

- Creates the Miscellaneous Federal Grants Fund to be credited with grants the Secretary of State receives from federal sources for which continuing law does not designate a fund.
- Requires the Secretary of State to use the moneys credited to the fund for the purposes and activities required by the federal grant agreements.
- Specifies that all investment earnings of the fund are to be credited to the fund.

## Corporation Law

- Allows a corporation that is filing for voluntary dissolution, in order to meet the state tax responsibility portion of the filing, to provide evidence from the Department of Taxation showing that the Department has received an adequate guarantee for the payment of taxes due from the corporation.
- Eliminates the prior law ability of a voluntarily dissolving corporation, in order to meet the state tax responsibility portion of the filing, to provide an affidavit stating that the corporation does not have any outstanding tax liability.
- Requires an unlicensed foreign corporation to file a certificate from the Tax Commissioner that the corporation has paid all state taxes, rather than only franchise taxes and penalties as under prior law.
- Requires the Tax Commissioner to certify to the Secretary of State the failure of a for-profit corporation or a for-profit foreign corporation to file any required reports or returns or to pay any tax or fee within 90 days after the time prescribed by law for filing.
- Requires the Secretary of State to cancel the articles of incorporation or the certificate of authority of a corporation or foreign corporation upon receiving that certification and requires the Secretary of State to immediately notify that corporation or foreign corporation of the cancellation.
- Requires the Secretary of State to forward a certificate of the cancellation action to the county recorder of the county that is the principal place of the corporation's business within Ohio.
- Prohibits a person from exercising or attempting to exercise any powers, privileges, or franchises under the articles of incorporation or certificate of authority after the articles or certificate have been canceled and establishes a penalty for each day a person exercises powers, privileges, or franchises that are prohibited.





- Requires the Secretary of State to reinstate a corporation's articles of incorporation or license certificate if the corporation pays any additional required fees and penalties, files a certificate from the Tax Commissioner affirming compliance with tax law, pays a fee of \$25, and changes its name in certain circumstances.
- Permits a certificate of reinstatement to be filed in the recorder's office of any county in the state and requires the recorder to charge and collect a base fee of \$3 and a Low- and Moderate-Income Housing Trust Fund fee of \$3.
- Allows any officer, shareholder, creditor, or receiver of any reinstated corporation to take all steps required to effect reinstatement.
- Prohibits invalidation of an officer's, agent's, or employee's exercise or attempted exercise of any right, privilege, or franchise on behalf of a corporation whose articles of incorporation were canceled from between the time of cancellation and reinstatement if certain conditions are met.

### **Other provisions**

- Eliminates the forms for financing statements and financing statement amendments prescribed in former law and instead requires a filing office to accept forms promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.
- Eliminates provisions of the Campaign Finance Law that were permanently enjoined due to their unconstitutionality, which govern the expenditure of personal funds by candidates and permit the opponents of personal funds candidates to accept contributions in excess of the contribution limits.

### **Gifts to political entities for office facilities**

(R.C. 3517.01, 3517.101, 3517.104, 3517.992, and 3599.03)

#### **General provisions**

The act allows a legislative campaign fund (LCF) to accept a gift for an office facility from any person other than a public utility. (An LCF is a fund that is established as an auxiliary of a state political party and is associated with one of the houses of the General Assembly.) Under continuing law, state or county political parties also can accept such a gift. Under continuing law, office facility gifts are exempt from the limits on campaign contributions and expenditures, but they must be used for a facility that is



not used solely for the purpose of directly influencing the election of any individual candidate in any particular election for any office.

The act clarifies that any person, including an individual, partnership, unincorporated business organization or association, political action committee, political contributing entity, separate segregated fund, association, labor organization, corporation, or other organization or group of persons, other than a public utility as defined in the Public Utilities Commission Law, may give such a gift. And, the act clarifies that a corporation's office facility gift is exempt from the general prohibition against a corporation using its money in support of or opposition to a candidate. The previous statute allowed any person, including a corporation but not a public utility, to give such a gift.

Further, the act permits an eligible entity to use office facility gift for any of the following purposes:

- Leasing an office facility;
- Paying the real property taxes associated with an office facility;
- Furniture and fixtures to be installed in an office facility;
- Equipment and supplies to be used in an office facility, including telecommunications and computer hardware and software;
- The operating costs, maintenance, and repair of an office facility, other than personnel costs.

Under continuing law, such a gift may be used for the construction, renovation, or purchase of an office facility. The gift must be specifically designated and used to defray the permitted costs.

Finally, the act eliminates a prohibition against a corporation engaged in business in Ohio giving a monetary gift that exceeds 10% of the costs incurred for office facility purposes. Instead, under the act, no person may give a monetary gift for an office facility that exceeds \$10,000 per calendar year, as adjusted for inflation. The Secretary of State must adjust that limit for inflation in every odd-numbered year, in the same manner as campaign contribution limits are adjusted under continuing law.

### **Administrative requirements**

The act modifies the administrative requirements concerning office facility gifts to include references to the expanded permitted uses of such a gift. The act also specifies that all of those requirements apply to LCFs.



Under continuing law, an entity that receives an office facility gift must file an annual statement containing certain details with the Secretary of State. The entity must appoint a treasurer for that purpose.

An entity that receives monetary gifts for an office facility also must deposit those funds in a separate account. When an entity sells an office facility or its furniture, fixtures, equipment, or supplies, the entity must deposit in the account an amount that is the same percentage of the proceeds of the sale as the monetary gifts were of the total cost of those goods or services. The money in the account may be used only for permitted office facility purposes.

The act applies the continuing law penalties to an LCF that commits certain violations concerning an office facility gift. An entity that fails to file a required statement concerning an office facility gift must be fined not more than \$100 for each day of violation. And, an entity that knowingly fails to report, or knowingly misrepresents, an office facility gift must be fined not more than \$10,000. Finally, an entity that expends an office facility gift for a purpose other than the permitted purposes listed above must be fined not more than twice the amount of the improper expenditure.

### **Identification of source of political publication**

(R.C. 3517.20)

The act eliminates some of the information that a candidate or a legislative campaign fund must include in its disclaimer on a political publication. Under the act, such an entity must include only the words "paid for by" followed by the name of the entity. Prior law required a candidate also to include the candidate's residence or business address and required a legislative campaign fund also to include the residence or business address of the fund's chairperson, treasurer, or secretary.

The act also clarifies that a campaign committee's disclaimer must include only the words "paid for by" followed by the name of the committee. Under continuing law, a campaign committee must include only the committee's name in its political publications.

### **Miscellaneous Federal Grants Fund**

(R.C. 111.28)

The act creates the Miscellaneous Federal Grants Fund in the state treasury. The fund is to be credited with grants the Secretary of State receives from federal sources that are not otherwise designated for crediting to a particular fund. Continuing law



designates specific funds to receive moneys from the U.S. Election Assistance Commission and the U.S. Department of Health and Human Services.

The act requires the Secretary of State to use the moneys credited to the fund for the purposes and activities required by the applicable federal grant agreements. All investment earnings of the fund are to be credited to the fund.

## **Corporation law**

(R.C. 317.36, 1701.86, 1701.922, 1703.29, 5703.91, 5703.92, and 5703.93)

### **Foreign corporation licensure**

The act requires an unlicensed foreign corporation that should have obtained a license and that has not previously been licensed to do business in Ohio, or whose license has been surrendered, to file a certificate from the Tax Commissioner that the corporation has paid all state taxes and penalties before the Secretary of State issues the corporation a license certificate. Former law required such a certificate to only address franchise taxes and penalties. Continuing law requires such a foreign corporation to also file an application for a license certificate and pay a filing fee to the Secretary of State in order to receive licensure.

### **Canceled charters**

#### **Evidence required for dissolution**

Continuing law requires certain receipts, certificates, or other specified evidence to accompany a corporation's certificate of dissolution that is filed with the Secretary of State, or in lieu of the receipts, certificates, or other evidence, an affidavit of one or more persons executing the certificate or an officer of the corporation containing a statement of the date upon which the particular department, agency, or authority was advised in writing of the scheduled effective date of the dissolution and acknowledgement by the corporation of the applicability of provisions of the liability for unlawful loans, dividends, and distribution of assets laws.

Under law retained in part under the act, in addition to submitting other evidence required under continuing law, a voluntarily dissolving corporation must submit one of the following with its certificate of dissolution:

(1) A certificate or other evidence from the Department of Taxation showing that the corporation had paid all taxes administered and required to be paid to the Tax Commissioner that are or will be due on the date of the dissolution;



(2) An affidavit made by one or more of the persons executing the certificate of dissolution or of an officer of the corporation stating that the corporation did not have any outstanding tax liability for which evidence of payment was not provided.

The act eliminates (2) above as a means for satisfying this requirement and expands (1) above to allow the certificate or evidence from the Department to state the information described in (1) above or state that the Department has received an adequate guarantee for the payment of all such taxes. The act also eliminates the ability to substitute an affidavit notifying the appropriate agency and acknowledging liability, as outlined above, instead of submitting the certificate or other evidence from the Department.

### **Cancellation of articles of incorporation or certificate of authority of for-profit foreign corporations**

The act requires the Tax Commissioner to certify with the Secretary of State any corporation organized as a for-profit under Ohio law, or organized as a foreign corporation for-profit doing business in Ohio or owning or issuing a part or all of its capital or property in Ohio, wherever organized, that fails to file a required report or return or to pay any required tax or fee for 90 days after the time prescribed for filing or payment.

The act requires the Secretary of State, after receiving certification of the corporation's failure to file the report or return or to pay the tax or fee, to either (1) cancel, by appropriate entry, the articles of incorporation of the corporation upon the margin of the relevant record or (2) if the corporation is a foreign corporation, cancel, by proper entry, the certificate of authority to do business in Ohio of the foreign corporation. Subject to continuing law regarding the winding up or obtaining reinstatement of a corporation, upon cancellation of the articles or certificate of a corporation, all the powers, privileges, and franchises conferred on the corporation cease.

The act prohibits a person from exercising or attempting to exercise any powers, privileges, or franchises under canceled articles of incorporation or a certificate of authority for failure to file the report or return or to pay the tax or fee. The act establishes a penalty of \$100 for each day a violation occurs, up to a maximum of \$5,000.

According to the act, the Secretary of State, upon canceling a corporation's articles of incorporation or certificate of authority, must immediately notify the affected corporation of the cancellation action and must forward for filing a certificate of the action to the county recorder of the county in which the corporation's principal place of business in Ohio is located. The recorder is prohibited from charging a filing fee for the certificate.



## **Reinstatement of canceled articles of incorporation or license certificate of for-profit or foreign corporations**

A corporation whose articles of incorporation or license certificate to do or transact business in Ohio was canceled by the Secretary of State as described above is to be reinstated and entitled to exercise its rights, privileges, and franchises in Ohio, and the Secretary of State is to cancel the entry of cancellation to exercise the corporation's rights, privileges, and franchises, upon the corporation's compliance with the following: (1) payment to the Secretary of State of any additional required fees and penalties, (2) filing with the Secretary of State a certificate from the Tax Commissioner affirming that the corporation has complied with all the requirements of the tax laws as to all the taxes administered by the Tax Commissioner and has paid all taxes, fees, or penalties due for every year of delinquency, (3) payment to the Secretary of State an additional fee of \$25, and (4) in certain cases, changing its name (see below). Any officer, shareholder, creditor, or receiver of the corporation may at any time take all steps required by the reinstatement provisions to effect such reinstatement.

As a condition prerequisite to reinstatement of canceled articles or certificates, the Secretary of State must require an applicant for reinstatement to change its name if (1) the reinstatement is not made within one year from the date of the cancellation of its articles or license to do business and (2) it appears that the applicant's name is not distinguishable upon the record from the name of another corporation in the Secretary's record.

The act provides that a certificate of reinstatement may be filed in the recorder's office of any Ohio county. The recorder must charge and collect a base fee of \$3 for services and a Low- and Moderate-Income Housing Trust Fund fee of \$3.

Upon reinstatement of a corporation's articles of incorporation as described above, the rights, privileges, and franchises, including all real or personal property rights and credits and all contract and other rights, of the corporation existing at the time its articles of incorporation were canceled become fully vested in the corporation as if the articles had not been canceled and the corporation is again entitled to exercise those rights, privileges, and franchises authorized by the articles.

Also upon reinstatement (and notwithstanding the act's prohibition against a person exercising or attempting to exercise any power, privileges, or franchises under the articles of incorporation or certificate of authority of a corporation after the articles or certificate have been canceled), both of the following apply to the exercise or attempt to exercise any rights, privileges, or franchises on behalf of the corporation by an officer, agent, or employee of the corporation, after cancellation and prior to reinstatement of the articles of incorporation:



(1) The exercise or attempt to exercise any rights, privileges, or franchises on behalf of the corporation has the same force and effect that the exercise would have had if the corporation's articles had not been canceled;

(2) The corporation is liable exclusively for franchises on behalf of the corporation or association by an officer, agent, or employee of the corporation or association.

However, both (1) and (2) above are subject to the following conditions: (a) the exercise or attempt to exercise the right, privilege, or franchise was within the scope of the corporation's articles of incorporation that existed prior to cancellation and (b) the officer, agent, or employee had no knowledge that the corporation's articles had been canceled.

Additionally, the act specifies that the provisions of the act stating that all the powers, privileges, and franchises conferred on the corporation by its articles of incorporation or a certificate of authority cease upon cancellation of the articles or certificate cannot invalidate the exercise or attempt to exercise any right, privilege, or franchise on behalf of the corporation by an officer, agent, or employee of the corporation after cancellation and prior to reinstatement of its articles or certificate and such an exercise or attempted exercise does not constitute a failure to comply with continuing law prohibitions against the exercise of expired corporate powers if both (a) and (b) above are met.

## **Forms for UCC filing statements and amendments**

(R.C. 1309.521)

Under continuing law, to claim an interest in collateral for a loan under the Uniform Commercial Code (UCC), generally a person must file a financing statement with the Secretary of State's office or the appropriate county recorder's office (referred to as the filing office). The act eliminates the forms for financing statements and amendments to financing statements prescribed in former law that a filing office cannot refuse to accept unless an exception applies. Instead, under the act, a filing office cannot refuse to accept a written record in the form and format set forth in the official text of the 2010 amendments to Article 9 of the UCC promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws for financing statements or, for amendments, as set forth as form UCC3 and form UCC3Ad in the final official text of the 2010 amendments to Article 9 of the UCC promulgated by those entities. The most significant difference between these forms and the forms prescribed under former law is that the UCC forms have a place to indicate the filer's electronic mail address. The forms also are organized slightly differently.





## **Repeal of permanently enjoined provisions governing personal funds in campaigns**

(R.C. 3517.10, 3517.102, 3517.103, 3517.153, 3517.154, 3517.155, and 3517.992; R.C. 3517.1010 (repealed))

The act eliminates provisions of the Campaign Finance Law that (1) regulated the ability of candidates and their family members to expend their personal funds for campaign purposes and (2) allowed the opponents of personal funds candidates to accept contributions in excess of the contribution limits. These laws are not enforced because they have been ruled unconstitutional.<sup>213</sup>

Under the prior statute, when a candidate for statewide office or for the office of member of the General Assembly had received or expended, or expected to expend, more than a specified amount of personal funds during a primary or general election period, the candidate was required to file a personal funds notice. "Personal funds" included contributions by certain members of the candidate's family. When a candidate had filed a personal funds notice, the candidate's opponent could file a declaration of no limits, and the contribution limits no longer applied to the opponent.

Previous law also detailed procedures for an opponent to dispose of excess funds after the election period had ended and for a personal funds candidate to dispose of excess personal funds in order to avoid being classified as a personal funds candidate in future election periods.

The act repeals these provisions, all of which were unenforceable as they were the subject of a permanent injunction. Under continuing law, a candidate who spends personal funds for campaign purposes generally must deposit the funds in the candidate's campaign fund before expending them. And, while the act removes family contributions from the definition of "personal funds," the standard limits and reporting requirements continue to apply to contributions by a candidate's family.

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<sup>213</sup> *Buckley v. Valeo*, 424 U.S. 1 (1976); *Davis v. Federal Election Commission*, 554 U.S. 724 (2008); and *O'Brien v. Brunner*, Case No. 2:09-CV-733 (S.D. Ohio 2009).





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## **SOUTHERN OHIO AGRICULTURAL AND COMMUNITY DEVELOPMENT FOUNDATION**

- Abolishes the Southern Ohio Agricultural and Community Development Trust Fund as of July 1, 2014.

### **Southern Ohio Agricultural and Community Development Trust Fund**

(R.C. 183.16 and 183.33; R.C. 183.11 (repealed); Sections 389.10 and 812.10)

The act requires the Director of Budget and Management to transfer, on July 1, 2014, or as soon as possible thereafter, the cash balance from the Southern Ohio Agricultural and Community Development Trust Fund to the Operating Expenses Fund of the Southern Ohio Agricultural and Community Development Foundation. On that date and upon completion of the transfer, the fund is abolished.



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## DEPARTMENT OF TAXATION

### Income tax

- Reduces income tax rates in all brackets by 10% over three years.
- Creates a new income tax deduction for individuals receiving business income as a sole proprietor or through a pass-through entity whereby 50% of such income is deductible, with the deduction limited to \$125,000 (or \$62,500 for each spouse if spouses file separately), beginning with taxable years that begin in 2013.
- Authorizes a nonrefundable state earned income tax credit for low-income taxpayers equal to 5% of the taxpayer's federal earned income tax credit.
- Repeals the income tax deduction for wagering losses.
- Prohibits an individual income taxpayer from claiming a personal exemption or a personal exemption credit for a taxable year if another taxpayer may claim the individual as a dependent.
- Limits the \$20 personal exemption tax credit to taxpayers with an Ohio taxable income of less than \$30,000.
- Specifies that any investor in a pass-through entity on whose behalf the entity files a composite return and pays tax may file an individual return and claim the refundable credit for taxes the entity paid on the investor's behalf.
- Extends an income tax deduction for retired military personnel pay to retirees of the Commissioned Corps of the National Oceanic and Atmospheric Administration and the Commissioned Corps of the Public Health Service.
- Suspends the annual inflation indexing adjustment of income tax brackets and personal exemption amounts for taxable years beginning in 2013, 2014, and 2015, and reconciles a timing issue related to such adjustments.
- Requires nonresident taxpayers and pass-through entities petitioning the Tax Commissioner for alternative apportionment of Ohio-sourced income to submit the request with a return or amended return filed on or before the due date.
- Clarifies that taxpayers and pass-through entities may request another method to effectuate an equitable allocation and apportionment of business income in the state.



- Clarifies that nonresident taxpayers receive an income tax credit equal to the amount of tax otherwise due on the portion of adjusted gross income not allocable or apportionable to Ohio.

## **Sales and use taxes**

- Increases the state sales and use tax rate from 5.5% to 5.75% beginning September 1, 2013.
- Subjects to sales and use taxation the sale or use of electronically transferred digital audio or audiovisual products or digital books beginning January 1, 2014.
- Specifically exempts from sales and use taxation cable, video, and audio service and programming, and digital audio and audiovisual works bought or sold by a cable or video service provider or a federally regulated radio or television broadcaster.
- Eliminates the sales and use tax exemption for sales of magazine subscriptions beginning January 1, 2014.
- Would have exempted from sales and use taxation investment metal bullion and investment coins (VETOED).
- Would have prescribed new criteria for determining whether sellers are presumed to have "substantial nexus" with Ohio and therefore required to register with the Tax Commissioner and collect and remit use tax, including sellers that enter into an agreement with Ohio residents to refer potential customers to the seller (VETOED).
- Would have allowed a seller presumed to have substantial nexus with Ohio to rebut that presumption (VETOED).
- Would have required a person or that person's affiliates, before selling or leasing tangible personal property or services to a state agency, to register with the Commissioner and collect and remit use tax (VETOED).
- Expresses the intent of the General Assembly to enact conforming state legislation upon the enactment of federal "Marketplace Fairness" Internet sales and use tax legislation by Congress.
- Specifies that a "remote" seller is not legally required to collect use tax if the seller has \$1 million or less in annual sales for which the seller is not required to collect and remit any state's use tax.
- Creates the Remote Seller Administration Fund, made up of 0.5% of voluntary Ohio use tax collections by out-of-state sellers that currently are not legally required to



collect the tax ("remote sellers"), to offset the state's cost of administering taxes collected by remote sellers.

- Earmarks new Ohio use tax collections by remote sellers for deposit in the Income Tax Reduction Fund (in excess of collections from participants in the Streamlined Sales and Use Tax Agreement, refunds, and deposits to the Remote Seller Administration Fund).
- Specifies that Ohio sales tax does not apply to sales that are not within the taxing power of the state according to federal law, the U.S. Constitution, or the Ohio Constitution.
- Would have authorized a sales and use tax exemption for goods and services used in aerospace vehicle research and development (VETOED).
- Allows the Tax Credit Authority to enter into a single agreement authorizing a sales and use tax exemption for computer data center equipment purchased by multiple businesses operating at a single data center.
- Authorizes a business to join an existing computer data center equipment exemption agreement between the Tax Credit Authority and another business.
- Allows a business to receive the computer data center equipment exemption if the business leases a facility to a person that would have qualified as a "computer data center business" prior to the act.
- Provides that, in order to qualify for the computer data center equipment exemption, a business or group of businesses need only maintain an annual payroll at the data center of \$1.5 million, instead of the \$5 million required under prior law.
- Authorizes a sales and use tax exemption for purchases made by a nonprofit organization that leases a professional or minor league sports facility from Lucas County and that remits its net revenue from operating the facility to the county.

### **Other excise taxes**

- Extends through June 30, 2015, the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund.
- Increases the rate of the tobacco product excise tax imposed on "little cigars" from 17% to 37% of little cigars' wholesale price beginning on and after October 1, 2013.



- Allows the Tax Commissioner to deny the license application of a cigarette dealer, manufacturer, or importer if the applicant has not submitted tax returns, payments, or information due at the time of the license application.
- Requires that the motor fuel excise tax on liquid natural gas be measured in pounds, rather than gallons, and specifies a gallon-equivalent standard for pounds of liquid natural gas for the purpose of calculating the tax.
- Requires a motor fuel dealer that sells or discontinues the dealer's business to notify the Tax Commissioner that the business has been sold or discontinued and of the purchaser's contact information.
- Authorizes Cuyahoga County to renew county alcoholic beverage and cigarette taxes that are set to expire in 2015.

### **Commercial activity tax**

- Increases the "minimum" commercial activity tax (CAT) due on a taxpayer's first \$1 million in taxable gross receipts for taxpayers having more than \$1 million in such receipts.
- Excludes from the taxable gross receipts base of the CAT receipts of licensed agricultural commodity handlers from the sale of agricultural commodities.
- Eliminates the \$500,000 penalty on operators of distribution centers that improperly qualified its suppliers for the CAT exclusion for "qualified distribution center" (QDC) receipts, and instead requires the operator of such a QDC to pay the total supplier tax liability.
- Authorizes the Tax Commissioner to request from a distribution center that improperly qualified as QDC a list of all suppliers of the distribution center along with the corresponding costs of property that is used to determine the improper exclusion.
- Expressly prohibits municipal corporations from levying a tax that is the same as or similar to the CAT.
- Beginning July 1, 2014, replaces the CAT as it applies to receipts from the sale or exchange of motor fuel with a separate tax, the motor fuel receipts tax (MFRT), that is modeled on the CAT and that applies solely to such receipts.
- Provides that the MFRT is measured by the gross receipts that a supplier receives from the first transaction in which motor fuel is sold for delivery to a location in Ohio.

- Defines a supplier as a person that imports motor fuel for sale or distribution by the person within the state or that acquires motor fuel from a terminal or refinery rack and distributes that fuel within the state.
- Imposes a tax rate equal to 0.65% on a supplier's gross receipts and, similar to the CAT, requires suppliers to pay the tax on a quarterly basis.
- Requires suppliers to obtain a license from the Tax Commissioner and to renew the license annually.
- Prescribes several procedures and requirements for the MFRT that are similar to the CAT, including provisions related to assessments, refunds, penalties, joint liability, and the electronic filing of returns.
- Specifies that MFRT revenue, and CAT liability accruing before July 1, 2014, arising from the sale of motor fuel used on public highways may be credited first to the GRF to pay debt service on state-issued bonds whose proceeds the Ohio Public Works Commission (OPWC) awarded to fund local highway-related infrastructure projects, and the balance to the Highway Operating Fund.
- Excludes from the gross premiums of a mutual or stock insurance company for the purposes of the franchise tax workers' compensation insurance premium deposits exceeding the cost of the insurance if the excess is returned to policyholders.

## **Property taxes**

- Restricts the availability of the homestead exemption for homeowners who do not receive the exemption for tax year 2013 (or tax year 2014 for manufactured home taxpayers) to owners with an Ohio adjusted gross income of \$30,000 or less.
- Limits the application of the 2.5% and 10% real property tax rollbacks to levies approved before September 29, 2013, and to subsequent renewals of such levies.
- Allows a school district that levies an existing combined levy for current expenses and permanent improvements to replace or renew that levy solely for the purpose of funding general permanent improvements.
- Authorizes a school district to replace an existing combined levy for a term of years different from the term for which the original tax was levied.
- Specifies that all new combined levies must be levied for current expenses and general (not specific) permanent improvements.



- Authorizes school districts to levy a property tax exclusively for school safety and security purposes.
- Creates a tax exemption for real property used primarily for meetings and administration of long-standing fraternal organizations that provide financial support for charitable purposes.
- Extends by two years the deadlines by which the owner of a qualified energy project must submit a property tax exemption application, begin construction, and place into service an energy facility using renewable energy resources or advanced energy technology to qualify for an ongoing real and tangible personal property tax exemption.
- Allows a TIF resolution or ordinance authorizing a property tax exemption to specify that the exemption begins upon the occurrence of certain triggering conditions, rather than in a year stated in the resolution or ordinance.
- Provides that a TIF resolution or ordinance that grants an exemption for more than one individual parcel to specify that the exemption of different parcels begins in different tax years.
- Increases the maximum amount of income that may be generated by a veterans' organization's real property before the property becomes disqualified from property tax exemption, from \$10,000 to \$36,000, and specifies that only rental income counts towards the maximum income limit.
- Authorizes the transfer of a tax-delinquent cemetery to a county, municipal corporation, or a township if foreclosed through a continuing law expedited nonjudicial foreclosure procedure for disposing of abandoned lands.
- Prohibits the sale by public auction of any tax-delinquent cemeteries foreclosed through the expedited nonjudicial foreclosure procedure.

### **Local Government Fund and other revenue distributions**

- Clarifies the method of calculating the tax revenue credited to the General Revenue Fund for the purposes of determining Local Government Fund and Public Library Fund allocations.
- Requires that, for fiscal year 2014 and thereafter, distributions to each county from the Local Government Fund must be at least \$750,000 or the amount distributed to the county in FY 2013, whichever is less.



- Authorizes the Director of Budget and Management (OBM) to use revenue from the new motor fuel receipts-based tax or from the CAT revenue derived from receipts from the sale of motor fuel to compensate the GRF for GRF-sourced debt service on state-issued bonds whose proceeds the OPWC awarded to fund local infrastructure projects that are highway-related.
- Requires the OBM Director to transfer to the Highway Operating Fund CAT revenue derived from receipts from the sale of motor fuel remaining after the GRF is compensated for that debt service.
- Imposes a quarterly deadline on the Ohio State Racing Commission for distributing casino tax revenue deposited to the Ohio State Racing Commission Fund.
- Permits the Commission to retain up to 5% of the share of casino tax revenue transferred to the fund for operating expenses necessary for the administration of the fund.
- Requires that any payment the Tax Commissioner makes to a political subdivision or political party be made electronically.
- Changes the date by which the Tax Commissioner must certify to county auditors the estimated amount each county is to receive from the Public Library Fund.
- Postpones the due date for November tangible personal property tax "replacement payments" to school districts to the last day of the month.

### **Tax credits; administration and compliance**

- Would have increased the maximum historic rehabilitation tax credit that may be claimed by an owner or qualifying lessee from \$5 million to \$10 million (VETOED).
- Eliminates the requirement that the owner of a historic building who has entered into a pass-through agreement with a qualified lessee for purpose of the federal rehabilitation tax credit must attribute qualified rehabilitation expenditures to the qualified lessee.
- Extends the date by which a county and a business may enter into an agreement under which the business agrees to construct an "impact facility" and the county agrees to remit to the business up to 75% of the revenue from certain county sales taxes collected on retail sales made at the facility.
- Modifies two of the criteria a facility must meet to qualify as an "impact facility."



- Modifies the existing relocation prohibition to prohibit any relocation of full-time equivalent positions or any tangible personal property to the impact facility from another Ohio location.
- Would have allowed, for the purposes of the state New Markets Tax Credit, investments to be made in low-income community businesses that derive 15% or more of their annual revenue from renting or selling real estate (VETOED).
- Would have eliminated the requirement that a taxpayer receive a federal New Markets Tax Credit in order to qualify for the state New Markets Tax Credit (VETOED).
- Provides general authorization for the Tax Commissioner to issue an assessment for unpaid taxes, penalties, and interest against any person liable for the unpaid amount.
- Requires the Tax Commissioner to calculate interest charged after an assessment has been issued, but before the assessment has been certified to the Attorney General for collection, based on tax liability only and not on penalty or pre-assessment interest.
- Requires the Tax Commissioner to deliver a tax notice to a person by ordinary mail, instead of by certified mail or personal or delivery service, if the person does not timely access the notice electronically.
- Requires annual taxpayers of the CAT, like quarterly taxpayers, to pay the tax electronically and, if required by the Tax Commissioner, file electronic returns.
- Prescribes minimum penalties for the failure to submit an electronic CAT return or payment, equal to \$25 for each of the first two violations and \$50 for each subsequent violation, that apply if the continuing law penalties of 5% or 10% of the tax due, respectively, do not exceed those amounts.
- Expressly authorizes the Tax Commissioner to adopt rules governing the electronic payment of, and filing of returns for, the CAT, financial institutions tax, horse-racing tax, and the new motor fuel receipts tax.
- Requires severance tax payments to be remitted electronically and authorizes the Tax Commissioner to require severance tax returns to be filed electronically.
- Specifies that payment for severance tax refunds be derived from the proceeds of the same severance tax against which the refund is claimed.



- Authorizes the Department of Natural Resources to publicly disclose otherwise confidential tax information furnished by the Department of Taxation in order to enforce oil and gas regulatory laws.
- Relieves the Tax Commissioner from issuing any tax refund if the amount of the refund is \$1 or less, and relieves taxpayers from paying a tax if the total amount due with the taxpayer's return is \$1 or less.
- Provides a single rule for the accrual of interest on income tax refunds, and removes two provisions of prior law that provided separate rules for the accrual of interest on refunds arising from overpayments under certain circumstances.
- Eliminates the Discovery Project Fund, which financed the Department of Taxation's implementation and operation of the Tax Discovery Data System, which is devoted to identifying noncompliant taxpayers and analyzing revenue.
- Eliminates the requirement that tax refunds be paid from sales tax receipts if current receipts from another tax do not exceed refunds required to be paid against that tax.
- Includes estate taxes among other taxes for which refunds are paid from the Tax Refund Fund and derived from the receipts of the same tax.
- Renames the fund receiving income tax refund "check-off" funds the "Income Tax Contribution Fund."
- Specifies that the "first" 2% of motor fuel tax revenue generated each month is credited to the Highway Operating Fund only after enough revenue is transferred to the Tax Refund Fund to cover motor fuel tax refunds.
- Changes the date for crediting the first 2% of motor fuel tax revenue to the Highway Operating Fund from the first to the last day of each month.
- Allows the Tax Commissioner to require horse-racing tax returns and payments be made electronically.
- Creates two new administrative funds for the collection and distribution of horse-racing tax revenue.
- Requires the Tax Commissioner to distribute horse-racing tax revenue on a monthly basis, rather than on a weekly basis for state funds or immediately upon receipt in the case of local governments.

## Wireless 9-1-1 charges

- Makes the following changes, as of January 1, 2014:
  - Requires wireless service providers, wireless resellers, and prepaid wireless sellers to keep records of collected wireless 9-1-1 charges for four years, and to allow the Tax Commissioner to inspect those records.
  - Establishes a four-year statute of limitations, with exceptions, on assessments for noncompliance with wireless 9-1-1 charge remittance requirements.
  - Applies the interest on an assessment for unremitted wireless 9-1-1 charges to only the portion of the assessment that consists of wireless 9-1-1 charges due.
  - Removes provisions specifying how the interest on an assessment and assessments are to be remitted.
  - Requires wireless 9-1-1 charges to be subject to the federal short-term interest rate from the day that they are due until they are remitted or until the collector is assessed, whichever occurs first.
  - Permits, in some cases, the Tax Commissioner to issue refunds for illegal or erroneous payments, charging, and billing of wireless 9-1-1 charges.
  - Requires monthly disbursements of wireless 9-1-1 charges (and interest) to be made to counties in the same amounts as the counties' disbursements in the corresponding calendar months in 2013, and provides for proportionate reductions if funds available are insufficient.
  - Repeals a provision that required the Treasurer to disburse money from the Wireless 9-1-1 Government Assistance Fund solely upon order of the Tax Commissioner according to policies established by the Statewide Emergency Services Internet Protocol Network Steering Committee.
- Permits the Tax Commissioner to impose the following penalties:
  - A late-filing penalty, for a failure to file a monthly return showing the amount of wireless 9-1-1 charges due, of the greater of \$50 or 5% of the amount due.
  - A late-payment penalty, for a failure to remit the amount due on time, of the greater of \$50 or 5% of the amount due.



- An assessment penalty of the greater of \$100 or 35% of the amount of wireless 9-1-1 charges due "after the [T]ax [C]ommissioner notifies the person of an audit, an examination, a delinquency, assessment, or other notice that additional wireless 9-1-1 charges are due."
- An electronic penalty, for a failure to remit a return electronically or pay an amount due electronically, of the lesser of (a) the greater of \$100 or 10% of the amount not remitted electronically or (b) \$5,000.
- Repeals a provision that required the Treasurer to disburse money from the Next Generation 9-1-1 Fund solely upon order of the Tax Commissioner according to policies established by the Statewide Emergency Services Internet Protocol Steering Committee.

## **Income tax**

The act reduces income tax rates, creates a new deduction for business income, authorizes a nonrefundable earned income tax credit, eliminates prior law's deduction for wagering losses, bars the same person from claiming more than one personal income tax exemption or credit, limits the \$20 exemption credit to lower-income taxpayers, revises filing requirements for some pass-through entity investors, corrects the timing of inflation indexing adjustments, and suspends the making of such adjustments to tax brackets and exemption amounts for three years.

The income tax is levied on individuals, estates, and some trusts. The tax base for individuals is federal adjusted gross income after several deductions and a few additions; for estates and trusts, the base is federal taxable income after several additions and deductions. An \$88 credit is granted for individuals filing a return (joint or individual) showing tax due, after personal and dependent exemptions, of \$10,000 or less; the effect of the credit is to exempt such filers from the income tax. The tax applies to residents, and to nonresidents who have income that is attributable to Ohio under statutory attribution rules. For residents who have income taxable by another state with an income tax, a credit is available to offset the tax paid to other states; for nonresidents who have income attributable to Ohio and another state, a credit is allowed to the extent the income is not attributable to Ohio.

## **Rate reductions**

(R.C. 5747.02(A); Section 803.80)

The act phases in a 10% reduction in income tax rates for all income tax brackets over three years. Under the phase-in, 2012 tax rates are reduced by 8.5% for taxable years that begin in 2013, 9% for taxable years that begin in 2014, and 10% for taxable years that begin in 2015 or thereafter.

For taxable years beginning in 2012, the income tax is levied at rates ranging from 0.587% for taxable income up to \$5,200 to 5.925% for taxable income above \$208,500. There are nine income brackets with increasingly greater rates assigned to higher income brackets.

## **Business income deduction**

(R.C. 5747.01(A)(31), 5747.21, 5747.22, and 5748.01; Section 803.80)

The act creates a new state income tax deduction for individuals receiving business income as a sole proprietor or as an owner of a pass-through entity. The deduction equals 50% of business income included in a taxpayer's federal adjusted gross income and not otherwise deducted in computing Ohio taxable income, and to the extent apportioned to Ohio. The amount of the deduction is limited to \$125,000 per taxpayer per year, except for spouses who file separately and who each report business income; in that case, each spouse's separate deduction is limited to \$62,500. The deduction may first be applied to taxable years that begin in 2013. The deduction is not available to estates or trusts subject to the income tax, and is not available to pass-through entities as such.

The deduction does not affect the school district income tax base. Any taxpayer making the deduction for state income tax purposes must add the deducted amount back into the taxpayer's school district taxable income if the school district's income tax base is based on state taxable income.

Under ongoing law, "business income" is income from the regular conduct of a trade or business, including gains or losses, and includes gains or losses from liquidating a business or from selling goodwill.

## **Nonrefundable earned income tax credit**

(R.C. 5747.08, 5747.71, and 5747.98; Section 803.80)

The act authorizes a state earned income tax credit for low-income taxpayers who receive a federal earned income tax credit. The amount of the credit equals 5% of



the federal earned income tax credit allowed on a federal return filed for 2013 or thereafter. The credit is nonrefundable, which means that the amount of a taxpayer's credit may not exceed the taxpayer's tax liability for the year. In addition, if the Ohio adjusted gross income of the taxpayer or, if filing jointly, the taxpayer and the taxpayer's spouse, exceeds \$20,000, the credit may not exceed 50% of the tax liability for that year after deducting all other credits except for the joint filing credit.

### **Federal earned income tax credit**

The federal earned income tax credit is a refundable credit available to certain low-income taxpayers.<sup>214</sup> The credit equals a percentage of the taxpayer's earned income, which includes wages, tips, net earnings from self-employment, or other compensation. The credit is available to any taxpayer who is (or whose spouse is) between 25 and 64 years of age, lives primarily in the United States, and is not claimed as a dependent by any other taxpayer. An enhanced credit is available to the parents of one or more qualifying children. A qualifying child is a child who is under the age of 19 or, if the child is a student, under the age of 24. Permanently and totally disabled children of any age are also considered qualifying children.

To qualify for the federal credit, the taxpayer's earned income and adjusted gross income must also fall below a specified threshold. For 2012, those thresholds were \$13,980 for taxpayers without qualifying children (\$19,190 if married filing jointly), \$36,920 for taxpayers with one qualifying child (\$42,130 if married filing jointly), \$41,952 for taxpayers with two qualifying children (\$47,162 if married filing jointly), and \$45,060 for taxpayers with three or more qualifying children (\$50,270 if married filing jointly).

For 2012, the maximum federal earned income credit for a person or couple without qualifying children was \$475, with one qualifying child was \$3,169, with two qualifying children was \$5,236, and with three or more qualifying children was \$5,891.

### **Wagering loss deduction**

(R.C. 5747.01(A)(29); Section 803.80)

The act eliminates the income tax deduction for wagering losses. Under prior law, the deduction was allowed for any loss from wagering transactions that is allowed as an itemized wagering losses deduction under Internal Revenue Code sec. 165. That section permits losses to be deducted to the extent of the gains from such transactions.

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<sup>214</sup> 26 U.S.C. 32.



The elimination of the deduction applies to taxable years ending on or after January 1, 2013. Prior law authorized taxpayers to claim the deduction beginning in "tax year 2013," presumably referring to taxable years beginning in or after 2013.<sup>215</sup> Therefore, because the act's elimination of the deduction takes effect in 2013, the deduction will not be available to taxpayers for any year.

### **Limits on personal exemptions and \$20 credit**

(R.C. 5747.022 and 5747.025; Section 803.80)

Continuing law allows an income tax taxpayer to claim a personal exemption for the taxpayer, the taxpayer's spouse (if filing a joint return), and the taxpayer's dependents. Under prior law, each taxpayer could also claim a \$20 credit for every personal exemption claimed (e.g., a taxpayer who claims three personal exemptions could claim a credit equal to \$60). The act limits the allowance of this \$20 credit to taxpayers with an Ohio adjusted gross income, less the personal exemptions, of less than \$30,000. Consequently, a taxpayer who claims three personal exemptions, but whose Ohio taxable income is \$30,000 or more, may not claim the \$20 credit with respect to any of the exemptions claimed.

The act also eliminates a situation, allowed under prior law, in which individuals who are claimed as a dependent on another taxpayer's return may also claim a personal exemption and exemption credit for themselves on their own tax return. The act eliminates this option, and instead specifies that, beginning with taxable years beginning in or after 2014, only one taxpayer – the taxpayer who may claim an individual as a dependent – may receive the personal exemption and exemption credit for that individual.

### **Composite returns of pass-through entities**

(R.C. 5747.08(D); Section 803.80)

The act specifies that any investor in a pass-through entity on whose behalf the entity files a composite return and pays tax may file an individual return and claim the refundable credit for taxes the entity paid on the investor's behalf. This apparently includes nonresident investors with no other Ohio-source income who are not permitted to file an individual return if the entity includes them in a composite return. The provision applies to taxable years beginning in or after 2013.

Under continuing law, investors who are Ohio residents or who are nonresidents with other Ohio-source income, and on whose behalf the pass-through entity files a

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<sup>215</sup> See Section 4 of H.B. 519 of the 128th General Assembly.





composite return (IT 4708), may file an individual return and claim the credit. Prior law restricted nonresident investors with no other Ohio-source income from doing so unless the Tax Commissioner allowed. When a composite return is filed, all the income of investors included in the return is taxed at the highest marginal tax rate and the investors are not allowed the personal and dependent exemptions or the \$20 exemption credit; the only credits available to them are business-related credits (which do not include the nonresident credit). Also, net operating loss carryforwards are not reflected in the composite return, as they are on an individual investor's return. By filing an individual return, an investor is able to claim the personal and dependent exemptions (or \$20 credit), claim any nonbusiness credits otherwise available to the investor, reflect NOL carryforwards in Ohio taxable income, and pay tax on the basis of a lower net effective tax rate because not all the investor's taxable income is taxed at the highest rate as it is in the composite return. When the individual return is filed, the investor also may claim a refundable credit for the investor's share of the tax the entity paid with the composite return which yields a refund to the extent the investor's share of the composite tax exceeds the investor's tax computed on an individualized basis.

### **NOAA and PHS commissioned corps retirement pay deduction**

(R.C. 5747.01(A)(26) and (GG); Section 803.80)

Continuing law permits a taxpayer to deduct from adjusted gross income amounts received as retired military personnel pay for service in the U.S. Army, Navy, Air Force, Coast Guard, or Marine Corps, their respective reserve components, or the National Guard. A surviving spouse or former spouse of such a taxpayer receiving benefits under the survivor benefit plan on account of the taxpayer's death also may deduct those benefits.

The act extends the deduction to retirees of the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) and to retirees of the Commissioned Corps of the Public Health Service (PHS) by permitting retirees of all the "uniformed services" to claim the deduction. Surviving spouses and former spouses covered by a survivor benefit plan of such retirees also qualify for the deduction.

In the act, "uniformed services" has the same meaning as in federal law: the Armed Forces, NOAA Commissioned Corps, and PHS Commissioned Corps. Under federal law, "Armed Forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

The act appears to contain two conflicting application dates for this deduction. One provision allows taxpayers qualifying for the deduction to claim it for taxable years





beginning on or after January 1, 2014, and another allows qualifying taxpayers to claim the deduction for taxable years beginning on or after January 1, 2013.<sup>216</sup>

### **Inflation indexing adjustment**

(R.C. 5747.02 and 5747.025; Section 803.80)

Continuing law requires the Tax Commissioner to adjust the income tax brackets and personal exemption amounts for inflation on an annual basis. The act suspends these adjustments for taxable years beginning in 2013, 2014, or 2015. Consequently, the 2012 income tax brackets and exemption amounts will apply through 2015 (although the tax rates corresponding with those brackets will be reduced as described above).

The act also reconciles a timing issue related to the annual inflation indexing adjustments. Under prior law, the Tax Commissioner was required to adjust the tax brackets in July, but was not required to compute the adjustment factor (the percentage by which the federal gross domestic product deflator increased during a calendar year), or to adjust personal exemption amounts, until September. The act instead requires the Tax Commissioner to adjust both items, and to calculate the adjustment factor, in August.

### **Requests for alternative apportionment of income**

(R.C. 5747.21; Section 803.80)

Under continuing law, nonresidents who have Ohio-source income may claim a tax credit equal to the Ohio tax on any income that is not allocated or apportioned to Ohio under statutory guidelines. Generally, business income is apportioned to Ohio on the basis of three factors: (1) property used in business in Ohio, (2) payroll paid in Ohio, and (3) sales made in Ohio. Each of these factors is used as an indication, for tax purposes, of a taxpayer's business activity in Ohio as compared to business activity everywhere. The factors are weighted such that property used in Ohio and payroll paid in Ohio each account for 20% of the taxpayer's business activity in Ohio and sales made by the taxpayer in Ohio accounts for the remaining 60% of the taxpayer's activity. Nonbusiness income generally is allocated to Ohio on the basis of where the property or activity giving rise to the income is located.

The Tax Commissioner may adopt rules providing for alternative methods of computing business and nonbusiness income applicable to all taxpayers and pass-through entities, to classes of taxpayers and pass-through entities, or only to taxpayers and pass-through entities within a certain industry. Furthermore, nonresident taxpayers

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<sup>216</sup> Sections 803.80(A) and (B).



and pass-through entities are permitted to petition the Tax Commissioner for alternative apportionment if the method of apportionment prescribed by law or by rule does not fairly represent the extent of Ohio business activity of the taxpayer or pass-through entity.

The act requires nonresident taxpayers and pass-through entities petitioning the Tax Commissioner for alternative apportionment to submit the request with a return or amended return filed by the due date. Prior law did not expressly mandate that the return or amended return be filed by the due date. The act also clarifies that taxpayers and pass-through entities may request another method to effectuate an equitable apportionment of business in the state. Prior law referenced only equitable allocation.

### **Nonresident credit computation**

(R.C. 5747.05(A); Section 803.80)

The act clarifies the law governing how nonresidents compute the nonresident income tax credit. Under prior law, the credit equaled the Ohio tax on the portion of the nonresident's income not *allocable* to Ohio under the statutes that allocate nonbusiness and wage income and apportion business income between Ohio and elsewhere. The act clarifies that the credit is computed on the basis of both allocable and apportionable income.

Under continuing law, the nonresident credit is allowed for nonresident individuals who have income assignable to Ohio under the allocation and apportionment statutes. Under these statutes, income from carrying on a business ("business income") is apportioned under a formula that assigns 60% of the income according to the proportion of sales are made in Ohio, 20% according to the proportion of property in Ohio, and 20% according to the proportion of payroll (with adjustments if any factor is absent). Any of a nonresident's other income ("nonbusiness income," such as a gain from selling an asset used in business operations when the business is not regularly selling such an asset as part of its business) is allocated under a different set of rules that generally assign all income either to Ohio or elsewhere according to where the asset is located or used. Nonresidents are required to report all of their federal adjusted gross income from wherever it may be sourced and compute Ohio tax as do residents, but they receive a credit equal to the Ohio tax that otherwise is due on the portion of their income that is not assigned to Ohio.



## **Sales and use taxes**

### **Rate increase**

(R.C. 5739.02, 5739.10, and 5741.02; Section 803.190)

Prior law imposed a sales and use tax rate of 5.5% on all retail sales or storage, use, or consumption of tangible personal property and taxable services in Ohio (continuing law authorizes counties and transit authorities to impose additional "piggyback" sales and use taxes). The act increases the state sales and use tax rate to 5.75% for retail sales and tangible personal property or taxable services stored, used, or consumed on or after September 1, 2013.

### **Sales of digital products**

(R.C. 5739.01(B)(12) and (QQQ); Section 803.190)

Beginning on and after January 1, 2014, the act expands the sales and use tax base to include the sale or use of electronically transferred digital audio or audiovisual products and digital books, regardless of whether continuing payment is required. "Digital audio" products include ringtones and other sound files downloaded onto an electronic device.

### **Cable, video service, and broadcasting exemption**

(R.C. 5739.02(B)(53))

The act specifically exempts from sales and use taxation all of the following when bought or sold by a cable service provider, video service provider, or radio or television broadcast station regulated by the federal government:

- (1) Cable service or programming;
- (2) Video service or programming;
- (3) Audio service or programming;
- (4) Electronically transferred digital audio or audiovisual products.

The act's specific exemption of such programming services and products overlaps with existing exemptions for such services and products by excluding them from the definition of otherwise taxable "telecommunications services." Continuing law subjects "telecommunications service" to sales and use taxation, but explicitly excludes video and audio programming, cable service, and electronically delivered digital products.



## **Sales of magazine subscriptions**

(R.C. 5739.02(B)(4); Section 803.190)

The act eliminates a sales and use tax exemption for the sale or use of magazine subscriptions. Consequently, the sale or use of such subscriptions will be subject to sales and use taxation beginning January 1, 2014. Two related exemptions, for sales of newspapers and of magazines distributed as controlled circulation publications, are retained under the act. A magazine is distributed as a "controlled circulation publication" if the magazine is free to the recipient, has at least 24 pages, consists of at least 25% editorial content, is issued at regular intervals four or more times a year, and is not owned or controlled by an entity that distributes the magazine as a means to advance the entity's business interests.

## **Sales of investment metals and coins (VETOED)**

(R.C. 5739.02(B)(54); Section 803.190)

The Governor vetoed a provision that would have exempted from sales and use taxation the sale or use of investment metal bullion and investment coins. Investment metal bullion was defined to be any elementary precious metal that has been put through a process of smelting or refining and which was in such a state or condition that its value depended upon its content and not upon its form. Examples of investment metal bullion included gold, silver, platinum, and palladium. Investment coins were defined to be money and legal tender manufactured under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value. The exemption would have applied beginning on and after October 1, 2013.

## **"Substantial nexus" standards (VETOED)**

(R.C. 5741.01 and 5741.17; Section 803.190)

Under continuing law, state and local sales tax applies to every retail sale conducted in Ohio. State and local use tax applies to sales of tangible personal property or taxable services made outside Ohio in which the property or service is used or stored in Ohio and on which sales tax was not collected. Sales and use taxes are levied at the same rate. Under U.S. Supreme Court precedent, only sellers that have a "physical presence" with a state may be required to collect sales or use tax from a customer in that state.<sup>217</sup> Otherwise, a state cannot require a seller to collect and remit use tax. In

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<sup>217</sup> *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) (finding that a catalog seller that delivered products to North Dakota customers by an out-of-state common carrier outside the state did not have a physical presence with North Dakota and was not required to collect and remit the state's sales tax).



instances where use tax is not collected by the seller, continuing Ohio law requires that the consumer pay use tax directly to the state.

Continuing law codifies the physical presence requirement by requiring sellers with a "substantial nexus" with Ohio to collect and remit use tax from Ohio customers and provides several explicit examples of circumstances under which an out-of-state seller has a substantial nexus with Ohio.

The Governor vetoed a provision that prescribed new criteria for determining whether sellers are presumed to have "substantial nexus" with Ohio and would therefore be required to register with the Tax Commissioner to collect and remit use tax. A seller would have been presumed to have substantial nexus with Ohio in any of the following circumstances:

(1) The seller used a place of business in Ohio operated by the seller or another person, other than a common carrier. Continuing law includes such a seller if the place of business is operated by the seller, a franchisee, a member of an affiliated group, or an employee or agent of the seller.

(2) The seller regularly used employees or other agents and persons to conduct the seller's business or that used similar trademarks or trade names as the seller, or that sold a similar line of products under a business with the same industry classification as the seller. Continuing law includes only a seller that regularly employs or engages individuals in Ohio to conduct the seller's business.

(3) The seller used any person, other than a common carrier, to receive or process orders, promote, advertise, or facilitate customer sales, perform maintenance, delivery, and installation services for the seller's Ohio customers, or facilitate delivery by allowing Ohio customers to pick up property sold by the seller. Continuing law includes a seller who uses a person in Ohio to receive or process the seller's orders.

(4) The seller entered into an agreement to pay one or more Ohio residents to refer potential customers to the seller if gross sales to customers referred to the seller by all such residents exceed \$10,000 during the preceding 12 months. The customer could have been referred by a link on a web site, an in-person oral presentation, or through telemarketing. This nexus relationship has been referred to as "click-through nexus."

Under the vetoed provision, a seller would have been presumed to have substantial nexus with Ohio if, as under continuing law, the seller made regular deliveries of tangible personal property to Ohio other than by a common carrier, the seller was a member of an affiliated group of entities at least one other member of which has substantial nexus with Ohio, or the seller rented, leased, or offered on



approval tangible personal property to Ohio customers. In addition, the act would have eliminated the following bases in continuing law that would cause a seller to have substantial nexus with Ohio:

(1) The seller is registered to do business in Ohio. Continuing law includes such sellers, except sellers registering with the Streamlined Sales and Use Tax central registration system.

(2) The seller has any other contact with Ohio that forms the basis of substantial nexus as allowed under the U.S. Constitution's Commerce Clause. Continuing law includes such sellers.

### **Substantial nexus presumption**

Continuing law provides several explicit examples of when a remote seller has substantial nexus with Ohio. The Governor vetoed a provision that would have transformed the examples to rebuttable presumptions. A seller that had substantial nexus with Ohio, except for a seller that had click-through nexus, could have rebutted that presumption by demonstrating that the activities conducted by a person on the seller's behalf were not significantly associated with the seller's ability to establish or maintain an Ohio market for the seller's sales.

For a seller presumed to have click-through nexus with Ohio, the presumption could have been rebutted by submitting proof that each Ohio resident the seller engaged to refer potential customers on the seller's behalf did not engage in activity significantly associated with the seller's ability to establish or maintain an Ohio market for the seller's sales during the preceding 12 months. The proof could have consisted of sworn written statements from each resident stating that the resident did not engage in solicitation in Ohio on behalf of the seller in the preceding 12 months, provided the statements were obtained and provided in good faith.

### **Out-of-state seller doing business with the state**

The Governor vetoed a provision that would have required an out-of-state seller and the seller's affiliates, before the seller sold or leased tangible personal property or services to a state agency, to register with the Tax Commissioner to collect and remit use tax, even if that seller would not otherwise have substantial nexus with Ohio.

### **"Marketplace Fairness Act of 2013"**

(Section 757.50)

The act expresses the intent of the General Assembly to enact conforming state legislation upon the enactment of federal "Marketplace Fairness" legislation (or other



similar legislation) by Congress. H.R. 684 and S. 336, which were introduced in 2013 in the U.S. House of Representatives and Senate, respectively, would authorize qualifying states to compel online and catalog retailers to collect sales or use tax at the time of a transaction regardless of whether the retailer has a "substantial nexus" with the state.

The authority created under the federal bill would extend only to states that are members of the Streamlined Sales and Use Tax Agreement or that meet a statutorily prescribed alternative standard for sales and use tax simplicity. Ohio is an associate member of the Streamlined Sales and Use Tax Agreement, meaning that the state has achieved substantial compliance with the terms of the Agreement taken as a whole, but not necessarily each provision, measured qualitatively. As such, Ohio does not qualify as a "member state" under the federal legislation. It appears that legislative action by the General Assembly would be necessary for Ohio to qualify under the "alternative standard." (On July 9, 2013, the Governor issued an executive order directing the Tax Commissioner to apply for full membership in the agreement. Executive Order 2013-09K.) However, since the federal "Marketplace Fairness" legislation is currently pending in Congress and is not law, it is not yet clear what that action would eventually entail.

The act also specifies that the intent of the conforming legislation is not to create a nexus between Ohio and remote sellers for any tax other than those imposed under Chapters 5739. and 5741. of the Revised Code (sales and use tax). The federal "Marketplace Fairness" legislation explicitly states that it does not "create any nexus between a person and a State or locality."

The act does not exempt any person from collecting use tax that is required to do so under continuing law. The provisions pertaining to remote small sellers appear to anticipate the application of the "Marketplace Fairness" legislation if it is enacted in its current form. Specifically, the act codifies the small seller exception found in subsection (c) of that legislation into Ohio sales and use tax law.

### **Remote Seller Administration Fund**

(R.C. 5741.032)

The act creates the Remote Seller Administration Fund to offset the Department of Taxation's cost of administering taxes collected and remitted by remote sellers. The fund is made up of 0.5% of Ohio use tax collections by out-of-state sellers that currently are not legally required to collect the tax (i.e., "remote sellers"). The Treasurer of State must transfer this amount to the Fund before July 31 each year.





## Use tax collections by remote sellers for Income Tax Reduction Fund

(R.C. 5741.03)

The act earmarks new Ohio use tax collections by remote sellers for deposit in the Income Tax Reduction Fund. The deposit is required semiannually by January 1 and by July 1 each year. The "new" remote seller use tax collections are the collections remitted by remote sellers in excess of (1) remittances by sellers that collect use taxes under the Streamlined Sales and Use Tax Agreement and (2) refunds issued to remote sellers. The new revenue would be added to the surplus revenue for which an income tax rate reduction may be determined. Under continuing law, the amount of the tax rate reduction is based on the amount of "surplus revenue" that is available after the balance in the Budget Stabilization Fund equals 5% of annual General Revenue Fund expenditures and certain inter-year fund carryovers and reserves are made.

Under law largely unchanged by the act, all other use tax collections must be deposited to the state General Revenue Fund, with a portion of such revenue earmarked for the Local Government Fund and Public Library Fund.

### Remote small sellers

(R.C. 5741.01(Q) to (S) and 5741.17)

The act specifies that a seller is not legally required to collect Ohio use tax if the seller has \$1 million or less in annual sales for which the seller is not required to collect and remit any state's use tax (which the act defines as "remote small sellers"). For the purpose of calculating gross annual receipts of a remote small seller, all related persons must be aggregated, and persons with one or more owner relationships must be aggregated if those relationships were designed for the purpose of qualifying as a remote small seller. (Relationships would be determined under certain federal income tax provisions that describe relationships between family members, trust fiduciaries and beneficiaries, and persons holding majority ownership or control in other persons.) The purchaser's liability for any use tax that a seller has not collected and remitted to the state is not affected.

Under continuing law, use tax applies to sales made outside Ohio to a purchaser for use in Ohio. The location where a sale is made is generally deemed to be where the order is received by the seller. Out-of-state sellers lacking a "substantial nexus" with Ohio – i.e., lacking one of several specified forms of physical presence in Ohio (see "**Substantial nexus standards**," above) – are not required under state or federal law to collect use tax for the state, but some may voluntarily collect the tax and remit it to the state. (See R.C. 5741.17.)





## **Sales tax exemption for sales not taxable under federal law or the Ohio Constitution**

(R.C. 5739.02(B)(10))

The act specifies that Ohio sales and use taxes do not apply to sales that are not within the taxing power of the state according to federal law, the U.S. Constitution, or the Ohio Constitution. Prior law referred only to the U.S. Constitution. The effect, if any, is not clear, because federal and state constitutional provisions, and federal laws, prohibitions or limitations on the state's power to tax apply even in the absence of this provision.

## **Sales and use tax exemption for items used in aerospace vehicle research (VETOED)**

(R.C. 5739.02(B)(49); Section 803.190)

The Governor vetoed a provision that would have authorized a sales and use tax exemption for goods and services used in aerospace vehicle research and development. The act would have defined an "aerospace vehicle" as any manned and unmanned airplane, helicopter, missile, rocket, space vehicle, or similar aviation device. To qualify for the exemption, the purchased services or items would have had to have been used in the research or development of such vehicles, human performance equipment and technology associated with operating such vehicles, or the parts and components of such vehicles. Exempt items would have included, among other items, materials, parts, equipment, software, tools, and fuel.

## **Computer data center equipment sales and use tax exemption**

(R.C. 122.175)

Continuing law authorizes a sales and use tax exemption for purchases of certain personal property that will be used at an eligible computer data center. Under law retained in part by the act, a business qualifies for the exemption if the business agrees (1) to invest at least \$100 million in the computer data center or in equipment for use at the center and (2) to maintain an annual payroll of at least \$5 million at the center for the entire term of the agreement. To receive the exemption, the business must submit an application and enter into an agreement with the Tax Credit Authority authorizing the exemption.

### **Eligibility for the exemption**

The act makes several changes to the requirements for receiving the computer data center equipment exemption. First, the act allows multiple businesses that operate



at the same computer data center to submit a single exemption application. For the purposes of meeting the capital investment and annual payroll requirements, the total investment and payroll of all of the participating businesses are combined, instead of a single business having to meet those requirements.

Second, the act lowers the annual payroll requirement, from \$5 million to \$1.5 million, and provides that the recipient or recipients of the exemption are not required to meet this lower threshold until the third year of the exemption agreement.

Third, the act allows a person to receive the exemption if the person leases a computer data center to other businesses that operate at the center. Under prior law, a business qualified for the exemption only if the business itself provided "electronic information services," which involves providing access to computer equipment for the purpose of acquiring, examining, or placing data.

### **Exemption application**

Under law largely unchanged by the act, the Tax Credit Authority may enter into an agreement authorizing such a sales and use tax exemption only if it determines all of the following: (1) the business' capital investment in the proposed computer data center will increase payroll and the amount of Ohio income taxes that will be withheld from the compensation paid to employees of the center, (2) the business has the ability to complete the proposed capital investment, (3) the business intends to and has the ability to maintain operations at the eligible computer data center for the term of the agreement, and (4) receiving the exemption is a major factor in the business' decision to begin, continue, or complete the capital investment.

The act specifies that, if multiple businesses apply to enter into a single exemption agreement, only the business that submits the application is required to meet the requirements described in (2), (3), and (4) above. The requirement described in (1) applies to the combined capital investment made by all of the businesses.

### **Agreement with Tax Credit Authority**

Continuing law requires that an agreement for a computer data center equipment sales and use tax exemption describe the proposed data center project, state the percentage of the approved exemption and length of time the exemption will apply, and include other provisions related to annual reporting, a limit on employment relocations, and a requirement that the business waive any limitations periods applicable to tax assessments payable if the business does not comply with the agreement. The act specifies that, if multiple businesses enter into a single exemption agreement, these requirements must apply to all businesses subject to the agreement.



Under prior law, a business that entered into an exemption agreement was required to maintain operations at the eligible computer data center for the term of the agreement. The act clarifies that, if an agreement covers multiple businesses, this requirement applies only to the business that submitted the exemption application. In addition, the act modifies the requirement to allow such a business to cease operations at the computer data center for up to 18 months. In such a case, the exemption agreement is not void, but no business may claim the sales and use tax exemption allowed under the agreement during the period the applicant business ceased operations.

#### **Addition of businesses to existing agreement**

The act allows a business to be made a party to an existing exemption agreement between the Tax Credit Authority and another business. In such a case, the business is entitled to the exemption authorized in the existing agreement and bound by all requirements specified in law and the agreement.

#### **Agreement compliance**

Under continuing law, the Tax Credit Authority may terminate an agreement if a business does not meet the capital investment and annual payroll requirements specified in the agreement. In such instances, the Authority may require the business to pay all or a portion of the sales and use taxes that would have been owed on equipment exempted under the agreement.

The act provides that, if a terminated agreement covered multiple businesses, the Tax Credit Authority may require each of the businesses to pay a portion of the taxes that would have been owed. When determining the amount of unpaid taxes to charge each business, the Authority may consider the level of each business' responsibility for the noncompliance.

#### **Direct payment permit**

The act specifies that, if multiple businesses enter into a single exemption agreement, the Tax Commissioner must provide direct payment permits to each of the businesses. Under continuing law, the Tax Commissioner must grant a direct payment permit to a business that enters into an agreement for a computer data center equipment sales or use tax exemption. This permit allows the business to pay directly to the Department of Taxation any sales and use taxes due on computer data center equipment (if the business has a partial exemption) or other nonexempt goods or services purchased for use at an eligible computer data center.



## **Sales and use tax exemption for sales to a nonprofit sports facility operator**

(R.C. 5739.02(B)(52); Section 803.230)

The act authorizes a sales and use tax exemption for purchases made by a nonprofit corporation that satisfies all of the following criteria:

(1) The nonprofit corporation leases a sports facility used by a professional athletic team or minor league affiliate from an "eligible county." An "eligible county" is a county that had a population of between 400,000 and 800,000 according to the 2000 federal census and that borders another state. (Lucas County is the only county that satisfies these criteria.)

(2) The lease requires that substantially all of the net revenue from the nonprofit corporation's operations at the facility be paid to the county at least once per year.

(3) Upon dissolution of the corporation, all of the corporation's net assets are distributable to the county's board of commissioners.

The exemption applies both to sales that occurred before September 29, 2013 (the act's 90-day effective date) and to sales that occur on or after that date. The act does not expressly state whether a refund must be issued for prior sales or how that refund would be administered.

## **Other excise taxes**

### **Wine tax diversion to Ohio Grape Industries Fund**

(R.C. 4301.43)

The act extends through June 30, 2015, the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund. Continuing law imposes a tax on the distribution of wine, vermouth, and sparkling and carbonated wine and champagne at rates ranging from 30¢ per gallon to \$1.48 per gallon. From the taxes paid, a portion is credited to the Fund for the encouragement of the state's grape and wine industry, and the remainder is credited to the General Revenue Fund (GRF). Under prior law, the amount credited to the Ohio Grape Industries Fund was scheduled to decrease from 3¢ to 1¢ per gallon on July 1, 2013.



## **Tobacco product tax rate on little cigars**

(R.C. 5743.01, 5743.51, 5743.62, and 5743.63; Section 803.193)

Under continuing law, an excise tax is levied on the sale, distribution, or use of tobacco products other than cigarettes at a rate of 17% of the product's wholesale price. All revenue from the tax is credited to the General Revenue Fund.

The act increases the rate levied on a specific type of tobacco product – "little cigars" – to 37% of wholesale price beginning on and after October 1, 2013. A "little cigar" is a smoking roll made of tobacco that does not satisfy the excise tax law's definition of a cigarette, that contains an integrated cellulose acetate filter or other filter, and that is not wrapped in natural leaf tobacco.

## **Cigarette license approval**

(R.C. 5743.15)

Under continuing law, cigarette manufacturers, dealers, and importers must obtain a license to operate in the state. Before issuing such a license, the Tax Commissioner must verify that the applicant is in compliance with Ohio's tax laws. The act specifically requires the Tax Commissioner to confirm that the applicant has filed any tax returns, paid any outstanding taxes or fees, and submitted any required information that, to the Tax Commissioner's knowledge, are due at the time of application.

## **Motor fuel excise tax on liquid natural gas**

(R.C. 5735.012 and 5735.013; Section 803.180)

Ohio levies an excise tax on all motor vehicle fuel used, distributed, or sold within Ohio and used to generate power for the operation of motor vehicles. The rate of the tax is 28¢ per gallon.

Under prior law, the tax on liquid natural gas, like all other forms of motor fuel, was measured in gallons. The act instead requires that the tax on liquid natural gas be measured in pounds. In order to apply the per-gallon tax rate to liquid natural gas, the act establishes a gallon-equivalent standard equal to either (1) the diesel gallon-equivalent standard for liquid natural gas adopted by the National Conference on Weights and Measures or (2) if no such standard has been adopted, 6.06 pounds of liquid natural gas. The new measurement standard applies on and after January 1, 2014.



## **Notice of fuel dealer sale or closing**

(R.C. 5735.34)

Continuing law requires a motor fuel dealer that sells or discontinues the dealer's entire business to file a final motor fuel excise tax return within 15 days after the sale or discontinuance. The act additionally requires the dealer, within that time period, to notify the Tax Commissioner in writing that the dealer's business has been sold or discontinued and, if the business was sold, of the contact information of the purchaser.

## **Cuyahoga County alcoholic beverage and cigarette tax levy authority**

(R.C. 307.673, 307.696, 307.697, 4301.421, 5743.024, and 5743.323; Section 803.280)

The act authorizes Cuyahoga County to renew county alcoholic beverage and cigarette taxes that are set to expire in 2015. The county levies a spirituous liquor tax of \$3 per gallon and an alcoholic beverage tax of 32¢ per gallon of wine and mixed beverages, 24¢ per gallon of cider, and 16¢ per gallon of beer. The county also levies a cigarette tax of 34.5¢ per pack, but only 4.5¢ of that tax is set to expire in 2015.

Under the act, the county may propose to renew the expiring taxes for up to 20 years by adopting a resolution to do so on or before September 1, 2015. Before taking effect, the taxes must be approved by county voters. Continuing law requires that revenue from the taxes be used to operate and service the debt of sports facilities owned by the county or a development corporation. The act specifies that tax revenue may also be used to repair or make improvements to such sports facilities.

### **Application of spirituous liquor tax**

Under continuing law, Cuyahoga County's spirituous liquor tax applies to sales made at retail by the Division of Liquor Control and to sales made to liquor permit holders who purchase the liquor for resale. The act clarifies that the tax will also apply to any sales made pursuant to the existing agreement that transferred liquor distribution and merchandising rights to JobsOhio.

### **Effective date**

The act applies to proceedings that were initiated by the county to renew the alcoholic beverage or cigarette taxes before September 29, 2013 (the act's 90-day effective date), so long as those proceedings are consistent with the terms of the act.

## **Commercial activity tax (CAT)**

The CAT is an annual excise tax imposed on businesses for the privilege of doing business in Ohio that is based on a business' taxable gross receipts. Taxable gross



receipts are derived from a company's "gross receipts," which is defined broadly to include all amounts realized that contribute to the production of gross income. There are over 35 other categories of receipts that are at least partly excluded from the gross receipts base from which taxable gross receipts is derived.

**Minimum tax amount**

(R.C. 5751.03, 5751.031, and 5751.051; Section 803.90)

The act increases the commercial activity tax (CAT) due on a taxpayer's first \$1 million in taxable gross receipts for taxpayers that have more than \$1 million in taxable gross receipts. Under continuing law, persons with less than \$150,000 in taxable gross receipts are excluded from paying the CAT. All other CAT taxpayers pay a minimum tax on the first \$1 million in taxable gross receipts plus 0.26% of receipts in excess of \$1 million.

Prior law set the minimum tax at \$150 for all taxpayers with more than \$150,000 in taxable gross receipts. The act imposes varying minimum tax amounts based on the total annual taxable gross receipts of the taxpayer. The following table summarizes the minimum tax imposed by the act:

<b>Taxable gross receipts of taxpayer</b>	<b>Minimum tax on first \$1 million</b>
\$150,000 to \$1 million	\$150
\$1 million to \$2 million	\$800
\$2 million to \$4 million	\$2,100
More than \$4 million	\$2,600

The act also specifies that the minimum tax due from first-time CAT taxpayers that timely register is one-half of the minimum tax otherwise due. Under prior law, the minimum tax due for such taxpayers was \$75.

**CAT exclusion for grain sold by grain handlers**

(R.C. 5751.01(F)(2)(ii); Section 803.90)

The act excludes from the taxable gross receipts base of the CAT the receipts of agricultural commodity handlers licensed by the Department of Agriculture from the sale of agricultural commodities. The exclusion may be applied to original returns filed on or after January 1, 2014.

Under continuing law, agricultural commodities include grains such as barley, corn, oats, rye, grain sorghum, soybeans, wheat, sunflower, or speltz, or any other crop





designated by the Director of Agriculture, excluding grains or other crops used for seed. Generally, an agricultural commodity handler is a person that purchases agricultural commodities from producers in excess of 30,000 bushels annually or operates a facility for the receiving, storing, shipping, or conditioning of agricultural commodities. Agricultural cooperatives, which may operate as agricultural commodity handlers, are already exempted from the CAT as nonprofit corporations. (See R.C. 5751.01(E)(8) and Ohio Adm. Code 5703-29-10.)

### **Penalties for improperly excluded qualified distribution center receipts**

(R.C. 5751.01(F)(2)(z); Section 803.90)

The act replaces the \$500,000 penalty enacted earlier in 2013 by S.B. 28 of the 130th General Assembly on operators of distribution centers that improperly qualify as a qualified distribution center (QDC). Instead of the \$500,000 penalty, the operator of such a QDC would be liable for the "ineligible operator's supplier tax liability," which equals the CAT that would have been owed by the suppliers of the distribution center had the distribution center not been improperly issued a QDC certificate. The penalty is substantially similar to the penalty imposed under the law prior to S.B. 28 of the 130th General Assembly. The difference is that, prior to S.B. 28, the law required ineligible QDC operators to pay all tax, interest, and penalties on the improperly excluded receipts of the QDC's suppliers. Under the act, the ineligible operator's supplier tax liability explicitly excludes any interest or penalties on the amount that would have been owed by the suppliers.

The act authorizes the Commissioner to request from a distribution center that is improperly issued a qualifying certificate a list of all suppliers of the distribution center along with the corresponding costs of qualified property for the qualifying year at issue. The purpose of the list is to assist the Commissioner in calculating the ineligible operator's supplier tax liability. The operator of such a distribution center is required to provide such information within 60 days of the Commissioner's request.

#### **Existing QDC exclusion**

Continuing law excludes from the CAT base a percentage of receipts suppliers of a QDC derive from property they ship to the QDC. A QDC includes a warehouse or other similar facility in Ohio that has obtained a certificate from the Tax Commissioner indicating that the facility's suppliers qualify for the exemption. To qualify as a QDC, all persons operating the center must have had more than 50% of the cost of the property shipped from the center to locations outside Ohio, using CAT situsing rules under continuing law, for a 12-month period and must have had cumulative costs from its suppliers of at least \$500 million for that period. To qualify for the associated CAT exclusion, a supplier must deliver property to the QDC certificate holder solely for





further shipping by the center to another location inside or outside Ohio. The property may be stored or repackaged into smaller or larger bundles, but may not be subjected to further manufacturing or process at the distribution center. For 2013, there are seven QDC certificate holders.

The QDC operator must submit an annual fee of \$100,000 for each year the QDC is issued a qualifying certificate. Under prior law, the Commissioner could assess this annual fee in the same manner as taxes, penalties, and interest due under the CAT could be assessed. The act eliminates the Commissioner's authority to assess the fee in this manner.

The act's changes to the QDC exclusion apply to original returns filed on or after January 1, 2014.

### **Prohibition against municipal commercial activity tax**

(R.C. 715.13)

The act specifies that municipal corporations may not levy a tax that is "the same as or similar to" the CAT. Continuing law prohibits municipal corporations from levying most of the kinds of taxes the state levies. 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.

### **Motor fuel receipts tax**

(R.C. 113.061, 715.013, 5703.052, 5703.053, 5703.059, 5703.19, 5703.50, 5703.70, 5736.01 to 5736.14, 5736.99, 5751.01, 5751.02, 5751.051, and 5751.20; Sections 395.10 and 803.90)

Beginning July 1, 2014, the act replaces the CAT as it applies to receipts from the sale or exchange of motor fuel with a separate tax – the "motor fuel receipts tax" (MFRT). The MFRT is modeled on the CAT, but is based solely on receipts from one sale or exchange of motor fuel.

Under prior law, the CAT applied to receipts from most transactions involving the sale or exchange of motor fuel. Certain receipts from exchanges between licensed motor fuel dealers were excluded from the CAT base; in addition, a taxpayer could deduct state and federal excise taxes paid on motor fuel.

Unlike the CAT, which may apply to multiple transactions involving the same motor fuel, the MFRT is designed to apply to only one transaction in the motor fuel distribution chain – the first transaction in which motor fuel is sold for delivery to a location in the state. The rate of the MFRT is 0.65% of a taxpayer's receipts.



## **Taxpayers**

The MFRT is imposed on "suppliers." A supplier is any person that:

- (1) Sells, transfers, or otherwise distributes motor fuel from a terminal or refinery "rack" to a point outside of a "distribution system," if the person distributes that motor fuel within Ohio;
- (2) Imports motor fuel for sale, transfer, or other distribution by the person to a point outside of a distribution system in Ohio.

A "rack" is a mechanism that transfers motor fuel from a refinery, terminal, or marine vessel into a truck, supply tank, railroad car, or other point outside of a distribution system. A "distribution system" is a bulk transfer or terminal system that consists of refineries, terminals, marine vessels that transport motor fuel to a refinery or terminal, and pipelines; motor fuel that is not in any of those locations is outside of a distribution system.

## **Tax base**

The MFRT is measured by the gross receipts that a supplier receives from the first transaction in which motor fuel is sold for delivery to a location in Ohio. As with the CAT, "gross receipts" generally includes all amounts received from the transaction, without deduction for the cost of the goods sold or the supplier's expenses.

The act excludes four specific items from the MFRT base, which were also excluded from the CAT base with respect to motor fuel under previous law:

- (1) Receipts from the sale of motor fuel exported to another state;
- (2) An amount equal to the state and federal excise taxes paid by a supplier on any motor fuel that contributed to the supplier's gross receipts;
- (3) Bad debts on the basis of which the supplier paid the MFRT in a previous tax period;
- (4) Receipts from the sale of an account receivable, to the extent that the gross receipts from the transaction that gave rise to the account receivable are already included in the supplier's gross receipts.

## **Tax rate**

The MFRT rate equals 0.65% of a supplier's gross receipts. The rate is higher than the CAT rate of 0.26%; however, the structure of the MFRT is designed to require the



taxation of motor fuel only once as it is distributed throughout the state, whereas the CAT may apply to multiple transactions occurring in the state. The higher rate is expected to apply to a lower amount of gross receipts.

### **Allocation of tax revenue**

The act segregates MFRT revenue attributable to sales of motor fuel used for propelling vehicles on public highways and waterways from other gross receipts and requires the Director of Budget and Management to credit the revenue attributable to those receipts to a separate fund. In general, receipts in that fund – the Motor Fuel Receipts Tax Public Highways Fund – must be used solely to maintain the state highway system, fund traffic law enforcement, and cover the costs of hospitalization of indigent persons injured in motor vehicle accidents on public highways.

Under the act, all revenue from the MFRT is initially deposited in the Motor Fuel Receipts Tax Fund. On or before the last day of March, June, September, and December of each year, the OBM Director, after deducting an amount from the Motor Fuel Receipts Tax Fund to cover the Department's administrative costs and refunds of tax overpayments, must transfer an amount to the Motor Fuel Receipts Tax Public Highways Fund that is equal in proportion to the proportion of total MFRT revenue that is attributable to motor fuel used for propelling vehicles on public highways and waterways. Any revenue remaining after that transfer is credited to the General Revenue Fund.

### **Allocation of motor-fuel related CAT revenue**

On December 7, 2012, the Ohio Supreme Court held that spending motor fuel-related CAT revenue on nonhighway purposes violates the constitutional provision prohibiting money derived from excises relating to motor vehicle fuel from being spent on nonhighway purposes (Ohio Constitution, Article XII, Section 5a).<sup>218</sup> Under prior law, all revenue from the CAT was credited to the GRF and to two other funds to provide tangible personal property tax replacement payments to some local governments and school districts. The Court enjoined CAT motor fuel revenue from being spent for those purposes after December 7, 2012.

To address the disposition of motor fuel-related CAT taxes imposed since the Supreme Court's decision, the General Assembly enacted H.B. 51 of the 130th General Assembly. That act requires the Department of Taxation to determine the amount of such taxes that were remitted between December 7, 2012, and June 30, 2013. The OBM Director must transfer the certified amount from the GRF to the Commercial Activity

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<sup>218</sup> *Beaver Excavating Co. v. Testa*, 134 Ohio St.3d 565 (2012).



Tax Motor Fuel Receipts Fund, which H.B. 51 created. After June 30, 2013, H.B. 51 provides for quarterly transfers of motor fuel-related CAT revenue to the Commercial Activity Tax Motor Fuel Receipts Fund.

The act requires the continued transfer of motor fuel-related CAT revenue from tax periods ending before July 1, 2014, to be transferred to the Commercial Activity Tax Motor Fuel Receipts Fund. Thereafter, receipts from the MFRT are distributed in accordance with the Supreme Court's decision as provided above.

#### **Use of tax revenue for Ohio Public Works Commission bond payments**

Under the act, tax revenue allocated to either the Commercial Activity Tax Motor Fuel Receipts Fund or the Motor Fuel Receipts Tax Public Highways Fund may first be used to compensate the GRF for debt service paid from the GRF for state-issued bonds whose proceeds are used by the Ohio Public Works Commission (OPWC) to fund local highway-related infrastructure projects.

For each fiscal year beginning with fiscal year 2013, the act requires the OPWC Director to certify the amount of debt service paid from the GRF for bonds issued to finance or assist in the financing of local subdivision public infrastructure capital improvement projects that were used for highway purposes – i.e. the construction or repair of public highways and bridges. The infrastructure bonds are or have been issued under Sections 2k, 2m, and 2p of Article VIII, Ohio Constitution.<sup>219</sup> The OPWC is required to categorize the amount of such debt service according to the section of the Ohio Constitution under which the particular bond was issued.

The act authorizes the OBM Director, on or before the last day of each fiscal year, to transfer the amount so certified from the Commercial Activity Tax Motor Fuel Receipts Fund or Motor Fuel Receipts Tax Public Highways Fund to the GRF, presumably to reimburse the GRF for GRF money that had been used to service such bonds.<sup>220</sup> (The transfer for fiscal year 2014 will be made solely from the Commercial Activity Tax Motor Fuel Receipts Fund; transfers for subsequent fiscal years may be

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<sup>219</sup> Section 5a requires revenue from taxes relating to motor vehicle fuels to be used solely for highway purposes. Since the OPWC uses proceeds from Section 2k, 2m, and 2p bonds to fund some infrastructure projects that are not highway-related, such as water and sewer system improvements, presumably only the portion of bonds that fund infrastructure projects related to highways may be serviced by CAT motor fuel revenue.

<sup>220</sup> The act authorizes the OBM Director to use CAT motor fuel revenue to service Section 2p bonds. However, Section 2p expressly prohibits Section 5a revenue from being used to service bonds issued under the authority of that section: "Moneys referred to in Section 5a of Article XII of the Ohio Constitution may not be . . . used for the payment of debt service on those obligations." Section 2p(C), Article VIII, Ohio Constitution.

made from either Fund, to the extent that any revenue remains in the Commercial Activity Tax Motor Fuel Receipts Fund.)

The OBM Director must, by the end of each fiscal year, credit any money remaining in the Commercial Activity Tax Motor Fuel Receipts Fund or Motor Fuel Receipts Tax Public Highways Fund after making the GRF transfers described above to the Highway Operating Fund. Under continuing law, money in the Highway Operating Fund supports the operations of the Department of Transportation and may be used solely for highway purposes.

### **Tax returns and payment**

Each supplier subject to the MFRT must file quarterly returns. Similar to the CAT, returns are due on the tenth day of May, August, November, and February. Each return must state the supplier's gross receipts and indicate the portion of those gross receipts, if any, that are attributable to motor fuel used to propel vehicles on public highways.

As with the CAT, suppliers must pay the MFRT electronically and, if required by the Tax Commissioner, file electronic returns. The Commissioner may excuse a supplier from the electronic payment or filing requirement for good cause.

### **Licensing**

Under the act, a person may not engage in business activities that subject the person to the MFRT without a supplier's license. To obtain the license, a supplier must apply to the Tax Commissioner on or before March 1, 2014, or thirty days after the supplier becomes subject to the tax, whichever is earlier. After obtaining a license, the supplier must renew the license annually. Renewal applications are due March 1 of each year.

If a supplier is engaged only in the importation of motor fuel that the supplier itself will sell or distribute, the fee for each initial or renewal application is \$300. The application fee for all other suppliers is \$1,000. However, if a supplier files an initial license application after September 1 of any year, the fee is reduced by one-half.

The Tax Commissioner may deny a license application if (1) the applicant has previously had a license cancelled for cause by the Commissioner, (2) the Commissioner believes that the application was not filed in good faith or was filed as a subterfuge in an attempt to procure a license for another person, or (3) the applicant has violated any provision of the MFRT law. If the Commissioner denies an applicant's license, the applicant is entitled to a refund of the application fee.



The Commissioner may revoke a supplier's license if the supplier files a false return, fails to file a return, or fails to pay the tax. The Commissioner must notify the supplier of the revocation by certified mail. In addition, if a person engages in activities that subject the person to the MFRT without holding a supplier's license, the person is subject to a penalty of up to \$1,000 or up to 180 days of imprisonment.

If a supplier is no longer subject to the tax, the supplier may request the cancellation of the supplier's license. In such a case, the supplier must first pay any tax, penalty, and interest due at the time of the cancellation.

### **Administration and enforcement**

The act includes provisions for the administration and enforcement of the MFRT that are substantially the same as similar provisions under the CAT. Those provisions cover the following topics:

- Penalties for failure to report or pay the tax as required by law.
- Tax refunds and the application of a taxpayer's refund to offset a debt the taxpayer owes to the state.
- Interest on unpaid taxes and refund payments.
- Assessments to collect unpaid tax, penalty, or interest.
- Procedures for tax payment by taxpayers that discontinue operations in the state.
- The cancellation of the authority of a noncompliant taxpayer to continue doing business in Ohio, including through a quo warranto action.
- Records retention and inspection.

### **Officer and employee liability**

Under the act, the employees or officers of a supplier can be held personally liable for the supplier's failure to file returns or pay the MFRT if the officer is responsible for the supplier's fiscal responsibilities or if the employee is responsible for, or has control or supervision of, the filing of returns or the payment of taxes. The dissolution or bankruptcy of the supplier does not discharge such liability.



## **Tax avoidance provision**

The act prohibits any person from avoiding the MFRT by receiving motor fuel outside of the state and transferring the motor fuel into the state within one year. In such a case, the person is considered to have received the fuel in this state and must include as gross receipts the value of the motor fuel transferred into the state within the one year. This analogous to an anti-avoidance provision of the CAT (see R.C. 5751.013).

## **Tax on mutual and stock insurance company premium deposits**

(R.C. 5729.04; Section 803.260)

Under continuing law, foreign and domestic insurance companies, including mutual or stock insurance companies, are subject to a franchise tax based on the company's gross premiums, subject to certain exclusions. A mutual insurance company is an insurance company owned by its policyholders. A stock insurance company is an insurance company owned by investors who have purchased company stock; profits of the company are generally distributed to the investors without necessarily benefiting the policyholders.

Beginning with calendar year 2013, the act authorizes a mutual or stock insurance company to exclude from its taxable gross premiums any workers' compensation insurance premium deposits, if (1) the company distributes a portion of the premiums it collects during a policy year back to its policyholders, (2) the deposits exceed the net cost of the insurance to the insured, and (3) the excess is returned ratably to the company's policyholders at the end of the policy year. A similar exclusion applies under continuing law to premium deposits received for fire and allied lines insurance and inland marine insurance provided by mutual and stock insurance companies.

## **Property taxes**

### **Homestead exemption income limit**

(R.C. 323.151, 323.152(A), 323.153, 4503.064, 4503.065, and 4503.066)

The homestead exemption is a property tax credit equal to the taxes that would be charged on up to \$25,000 of the true value of the property of qualified homeowners. ("True value" is the appraised fair market value.) The credit essentially exempts \$25,000 of the value of a homestead from taxation. It also applies to manufactured and mobile homes regardless of whether they are taxed as real property or taxed under the manufactured homes tax (except that manufactured and mobile homes are assessed at 40% of cost or market value and are depreciated). The amount of the tax reduction for a





homestead depends on the local tax rate: the higher the tax rate, the greater the tax reduction.<sup>221</sup>

Under continuing law, the homestead exemption is available only to homeowners who are 65 years of age or older, or permanently and totally disabled, or at least 59 years old and the surviving spouse of an individual who previously received the exemption.<sup>222</sup> The act further restricts the availability of the exemption to owners who have an Ohio adjusted gross income of \$30,000 or less, as computed for state income tax purposes. The income limit will be increased each year that the gross domestic product deflator increases by the percentage increase in the deflator, rounded to the nearest multiple of \$100. The act authorizes the Tax Commissioner and county auditors to examine an applicant's tax or financial records to determine eligibility.

The homestead exemption, as it existed under prior law, is preserved for all elderly or disabled homeowners who received the exemption for tax year 2013 (or tax year 2014 for homeowners who live in a manufactured home taxed under the manufactured home tax). Persons who qualify for the exemption for tax year 2013 (or 2014 for manufactured home taxpayers) but who do not file on time, but who file a late application on time as allowed under continuing law, also may receive the homestead exemption regardless of income.

### **Property tax rollback limitations**

(R.C. 319.302 and 323.152(B))

The act limits the application of the 2.5% and 10% real property tax rollbacks by specifying that the rollbacks may not be applied to reduce the taxes due on new or

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<sup>221</sup> In computing the tax reduction for real property, the 10% and 2.5% rollbacks are accounted for by adjusting the reduction so that it reflects the amount of taxes actually charged against \$25,000 in true value considering that the taxes charged are only 87.5% of the amount that would be charged if the rollbacks did not apply. Since the act also limits application of the rollbacks to levies approved at an election held before September 29, 2013, and renewals of such levies, the amount of the homestead reduction in future years will be somewhat greater than the taxes actually charged against any homestead where new or replacement levies not covered by the rollbacks are imposed.

<sup>222</sup> The homestead exemption is authorized under the Ohio Constitution as an express exception to the Constitution's "uniform rule," which requires all real property to be taxed uniformly according to its value. The constitutional authorization empowers the General Assembly to pass laws "to reduce taxes by providing for a reduction in value of the homestead of permanently and totally disabled residents, residents sixty-five years of age and older, and residents sixty years of age or older who are surviving spouses of deceased residents who were sixty-five years of age or older or permanently and totally disabled and receiving a reduction in the value of their homestead at the time of death, provided the surviving spouse continues to reside in a qualifying homestead, and providing for income and other qualifications to obtain such reduction." Article XII, Section 2, Ohio Constitution.





replacement levies approved at elections held on or after September 29, 2013 (the act's 90-day effective date). The limitation applies regardless of the tax year to which the levy would first apply, meaning that the reductions will not apply to levies approved at the November 2013 election for tax year 2013, 2014, or any later tax year, or to levies approved at any later election. The rollbacks continue to apply to all levies approved at an election held before September 29, 2013, and to subsequent renewals of those levies.

Under continuing law, the 2.5% rollback applies to all owner-occupied homesteads and the 10% rollback applies to all real property not intended primarily for use in business activity. The state is required to reimburse local governments and schools for the revenue lost due to the rollbacks.

### **School district combined levies for current expenses and improvements**

(R.C. 5705.192, 5705.217, 5705.218, and 5705.25)

Continuing law allows a school district to levy a property tax for both current expenses and permanent improvements through a single ballot question. The tax may be levied for a term of up to five years or, if the levy is for current expenses and "general" permanent improvements, for a continuing period of time. The resolution proposing the combined levy must apportion the tax rate between the two purposes, although the apportionment need not be the same for each year the tax is levied.

Under prior law, the permanent improvement component of a combined levy could be used for specific permanent improvements, general permanent improvements, or both. The act instead specifies that all new combined levies must be levied only for current expenses and general permanent improvements. A specific permanent improvement is an improvement or group of improvements that the school district may include in a single bond issue, while a general permanent improvement is an improvement to which that limitation does not apply.

### **Renewal or replacement of combined levies**

Continuing law allows a school district to renew or replace a combined levy for the same purposes and the same term for which the original tax was levied. The act gives districts the additional option of renewing or replacing an existing combined levy solely for the purpose of funding general permanent improvements. The act also authorizes school districts to replace the levy for a term of years different than the term for which it was originally levied.



## **Property tax levy for school safety**

(R.C. 5705.21(A); Section 803.300)

The act authorizes school districts to levy a property tax exclusively for school safety and security purposes. The levy must comply with the same requirements that apply to general school district levies in excess of the 10-mill limitation. Proceedings undertaken by a board of education to propose a levy for school safety and security purposes are valid, even if they were initiated before September 29, 2013 (the effective date of the provision), so long as the proceedings are consistent with the terms of the act.

Under continuing law, school district boards of education may propose a levy in excess of the 10-mill limitation for any of the following purposes: (1) current expenses, (2) general permanent improvements, (3) specific improvements or a class of improvements that may be included in a single bond issue, (4) the support of a public library, (5) parks and recreational purposes, (6) the construction and operation of a community center, (7) the operation of a cultural center, (8) education technology, or (9) if the district is a municipal school district, for the current operating expenses of both the district and "partnering" community schools. The resolution to levy the tax must be limited to only one of these purposes. If voters approve the levy, revenue from the tax must be used solely for that purpose.

There is a five-year limit on the term of such levies unless the levy is for current expenses or general improvements. The five-year limit applies to the newly authorized school safety levy. The levy may be renewed or replaced as may any other school district levy.

## **Qualified energy project tax exemption**

(R.C. 5727.75)

The act extends by two years the deadlines by which the owner or lessee of a qualified energy project must submit a property tax exemption application, submit a construction commencement application, begin construction, and place into service an energy facility using renewable energy resources (wind, solar, biomass, etc.) or advanced energy technology (clean coal, advanced nuclear, or cogeneration) to qualify for an ongoing real and tangible personal property tax exemption.

With respect to an energy facility using renewable energy resources, prior law required the owner or lessee to submit an exemption application to the Director of Development Services (DSA), to submit a construction commencement application to the Power Siting Board (or, for smaller projects, to any other state or local agency



having jurisdiction), and to commence construction before 2014. The law also required the owner or lessee to place the energy facility into service before 2015. The act extends each of these deadlines by two years.

With respect to an energy facility using advanced energy technology, prior law required the owner or lessee to submit an exemption application to the DSA Director before 2016 and to place the energy facility into service before 2019. The act extends each of these deadlines by two years.

### **Tax increment financing exemption timing**

(R.C. 5709.40, 5709.73, and 5709.78; Section 803.310)

Under continuing law, a tax increment financing (TIF) resolution or ordinance granting a property tax exemption may specify any year as the first year of the tax exemption, so long as that year begins after the effective date of the resolution or ordinance. To illustrate, if a TIF resolution takes effect at any time in 2013, the first year that any assessed value may be exempted is 2014.

The act adds that, in lieu of stating a specific starting year, a TIF resolution or ordinance may specify that a tax exemption begins in the year in which one of the following triggering conditions occurs: (1) the value of the exempt improvement exceeds a certain amount or (2) one or more of the exempt improvements are completed. The act also allows a TIF resolution or ordinance that grants an exemption for more than one individual parcel to specify that the exemption of different parcels begins in different tax years. In either case, as under prior law, the exemption may not take effect before the effective date of the resolution or ordinance.

The act specifies that this new authority applies to exemption applications that are pending on September 29, 2013, or that are filed thereafter. The new authority does not apply to the exemption of improvements in an incentive district TIF.

### **Income limit on veterans' organization property tax exemption**

(R.C. 5709.17(B); Section 803.170)

Prior law exempted property held or occupied by a veterans' organization from property taxation if the organization was exempt from federal income taxation under section 501(c)(19) or (23) of the Internal Revenue Code and if the property was not held for the production of net rental or "other income" in excess of \$10,000.<sup>223</sup> The act

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<sup>223</sup> 26 U.S.C. 501(c)(19) and (23) provide tax-exempt status to an organization if at least 75% of its members are past or present members of the Armed Forces, among other qualifying criteria.



increases this income limit to \$36,000 and removes the reference to "other income." Consequently, only net income arising directly from renting the property to others counts towards the income limit. The income limit increase applies to tax year 2013 and thereafter.

### **Property tax exemption for fraternal organizations**

(R.C. 5709.17; Section 803.170)

The act creates a tax exemption for real property held or occupied by fraternal organizations that provide financial support for charitable purposes and have been operating in Ohio for at least 100 years. To qualify for the exemption, the fraternal organization must also qualify for exemption from federal income tax under section 501(c)(5), 501(c)(8), or 501(c)(10) of the Internal Revenue Code. Such federal exemptions apply to labor, agricultural, or horticultural organizations; fraternal beneficiary societies, orders, or associations operating under the lodge system for the exclusive benefit of the members of a fraternity itself or operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of the society, order, or association or their dependents; and domestic fraternal societies, orders, or associations operating under the lodge system, the net earnings of which are devoted exclusively to religious, charitable, scientific, literary, educational, and fraternal purposes.

The exempted property must be used primarily for the meetings and administration of the fraternal organization. Property is disqualified for the exemption for a tax year if it is held to produce net rental income in excess of \$36,000 in the tax year.

The exemption begins to apply for tax year 2013.

### **Transfer of tax-delinquent cemeteries**

(R.C. 1721.10)

Continuing law authorizes a county Board of Revision, on its own initiative or on the complaint of a tax lien holder, to foreclose the lien of the state or the lien holder against tax-delinquent, unoccupied real property ("abandoned land"). The board is required to order disposition of foreclosed abandoned land by public auction. If the land does not sell at a public auction, a community development organization, school district, municipal corporation, county, or township may request that the property be transferred to the requesting corporation or political subdivision. Under prior law, a cemetery, except for certain private cemeteries, could not be transferred or sold to



satisfy a judgment or tax lien, and could thus not be foreclosed and transferred by a Board of Revision using the foreclosure process described above.

The act authorizes a county Board of Revision to transfer a tax-delinquent cemetery to a county, municipal corporation, or township using continuing law's expedited nonjudicial foreclosure process. However, the act prohibits such a foreclosed cemetery from being offered for sale at a public auction, as is required for other abandoned lands.

## **Local Government Fund and other revenue distributions**

### **Local Government Fund and Public Library Fund allocations**

(R.C. 131.51 and 5747.501; Sections 757.10 and 812.20)

Continuing law requires that monthly allocations to the Local Government Fund (LGF) and the Public Library Fund (PLF) be made from any or all GRF tax sources. Beginning with FY 2014, the percentage of GRF tax revenue allocated to the LGF and the PLF is whatever percentage of those revenues are required to freeze the allocation at each fund's respective FY 2013 level (including the amount of the minimum distributions to county undivided LGF's receiving guaranteed minimum distributions). For example, if the total FY 2013 LGF allocation is 1.7% of the total FY 2013 GRF revenue, 1.7% of monthly FY 2014 GRF revenue is to be credited each month of FY 2014 to the LGF (see R.C. 131.51).

The act clarifies that the preceding month's GRF revenue allocations to the LGF and the PLF are not deducted in calculating the amount of tax revenue credited to the GRF during the preceding month for the purposes of determining the monthly allocation to the LGF and the PLF. The act does not change the percentage of GRF revenue allocated to either the LGF or the PLF.

### **Minimum distributions to county LGFs**

Continuing law provides that LGF funds are distributed to the county undivided LGFs of every county. Local governments in each county agree on how money in the county LGF is allocated among the various political subdivisions within each county. (In the several counties where an allocation formula has not been agreed on, a default statutory formula determines the allocation.) The amounts disbursed are to be used for the current operating expenses of the subdivisions. In addition, more than 500 municipal corporations receive direct distributions from the LGF. Such distributions are made to a municipal corporation's general fund.



During FY 2013, LGF and PLF distributions were reduced by 50% compared to FY 2011 amounts for almost all counties and for all municipal corporations receiving direct distributions. But the proportionate share of the reduced LGF received by these counties and municipal corporations was held at the FY 2011 level. A few counties that received relatively little in LGF distributions in FY 2011 were guaranteed a minimum distribution: if the county LGF was less than \$750,000, that county's distribution was not reduced; if the 50% reduction would reduce a county's LGF below \$750,000, the county received \$750,000.

The act permanently extends the FY 2013 minimum distribution for county LGFs that received the minimum in FY 2013. If necessary, the proportionate shares of other counties may be adjusted to produce the funds needed to meet the minimum distribution requirement. The minimum distribution levels do not apply to direct municipal corporation distributions. Counties not receiving a minimum guaranteed distribution would receive their respective proportionate shares of the LGF (based on FY 2011 shares and accounting for any adjustments because of minimum distributions), as would municipal corporations receiving direct distributions. For the July 2013 distribution, each county undivided LGF and each municipal corporation receiving direct LGF distributions will receive the same amount as it received in July 2012.

### **Quarterly distributions of Ohio State Racing Commission Fund revenue**

(R.C. 5753.03; Section 812.20)

The act imposes a quarterly deadline on the Ohio State Racing Commission for distributing casino tax revenue deposited to the Ohio State Racing Commission Fund. Continuing law imposes a 33% tax on gross casino revenue. Article XV, Section 6 of the Ohio Constitution includes specific directives as to how the proceeds of the casino tax must be distributed. One such directive is that the Ohio State Racing Commission Fund must receive 3% of casino tax revenue "to support purses, breeding programs, and operations at all existing commercial horse racetracks permitted as of January 1, 2009."

Prior law did not expressly require the Ohio State Racing Commission to distribute the money in the Ohio State Racing Commission Fund directly to the qualifying commercial horse race tracks nor did it impose a deadline for when such a distribution must occur. However, the continuing practice of the Commission is to distribute the revenue directly to the qualifying commercial horse race tracks according to a formula developed by the Commission. The act codifies a requirement that all revenue in the fund be distributed at the end of each quarterly period. The Commission retains discretion as to the formula utilized for distribution of the revenue.



The act also specifies that the Ohio State Racing Commission may retain up to 5% of the share of casino tax revenue transferred to the Ohio State Racing Commission Fund for operating expenses necessary for the administration of the fund. Prior law did not expressly authorize or limit the use of casino tax revenue for this purpose.

### **Electronic payments to local governments and political parties**

(R.C. 5703.76)

The act requires that any payment the Tax Commissioner makes to a political subdivision or political party be made electronically. Under continuing law, the Commissioner makes various payments to local governments, including distributions of county sales tax revenue, payments from the LGF, and reimbursements for the 10% rollback, 2.5% rollback, and homestead exemption. The Commissioner makes payments to political parties from the Ohio Political Party Fund, which is comprised of \$1 donations that some individuals make to the Fund on their income tax returns.

### **Public Library Fund certification date**

(R.C. 5747.47)

Under continuing law, the Tax Commissioner is required to annually certify to county auditors the estimated amount each county is to receive from the Public Library Fund in the following year. The act changes the date by which the Commissioner must make this certification from July 20 to July 25.

### **Due date for tangible personal property tax replacement payments to school districts**

(R.C. 5751.21(C)(12) and (E)(1))

The act postpones the due date for November tangible personal property tax "replacement payments" to school districts from November 20 to November 30. From 2005 to 2011, state law phased out taxes levied by school districts and other local taxing units on business personal property. To compensate the taxing units for the resulting property tax losses, state law established a schedule of "replacement" payments. The replacement payments are reduced each year on a schedule scaled according to the taxing unit's reliance on the reimbursements as a percentage of the taxing unit's total budget. Under continuing law, replacement payments for both fixed-rate and fixed-sum levies are due twice annually in May and November. The May replacement payments are due on May 31.





## **Tax credits; administration and compliance**

### **Historic Building Rehabilitation Tax Credit (PARTIALLY VETOED)**

The act eliminates a requirement with respect to the attribution of qualified rehabilitation expenditures paid or incurred by an owner of a historic building who leases the building to a qualified lessee. The Governor vetoed a provision that would have increased the maximum historic rehabilitation tax credit that may be claimed in a year against the income tax, the financial institutions tax, and the insurance premiums taxes.

Continuing law establishes the historic building rehabilitation tax credit, which is a refundable credit equal to 25% of the qualified expenditures made for rehabilitating a building of historical significance in accordance with preservation criteria as determined by the State Historic Preservation Officer. A person seeking the credit is required to apply to the DSA Director, who evaluates the application and may approve a credit by issuing a tax credit certificate.

#### **Annual credit limit (VETOED)**

(R.C. 5725.34, 5726.52, 5729.17, and 5747.76)

The act would have increased the maximum historic rehabilitation tax credit that may be claimed by an owner or qualifying lessee of a historic building against the income tax, the financial institutions tax, and the insurance premiums taxes, from \$5 million to \$10 million. Continuing law allows a refund of up to \$3 million if the credit exceeds the tax otherwise due for any year and permits any balance in excess of the credit claimed to be carried forward for up to five years.

#### **Attribution of qualified rehabilitation expenditures**

(R.C. 149.311(B))

Under continuing law, either the owner (holding a fee simple interest in the historic building) or a "qualified lessee" (subject to a lease agreement for the historic building and eligible for the federal rehabilitation tax credit as a lessee) may apply for a rehabilitation tax credit. Under prior law, if the owner of a historic building enters into a pass-through agreement with a qualified lessee for purposes of the federal rehabilitation tax credit, the qualified rehabilitation expenditures paid or incurred by the owner after April 4, 2007, were attributed to the qualified lessee.

The act eliminates this attribution requirement but permits expenses incurred by the owner after April 4, 2007, to be attributed to the qualified lessee for the purpose of the state historic rehabilitation tax credit.





## **Sales and use tax subsidy for retail "impact facilities"**

(R.C. 333.01, 333.02, 333.03, 333.04, and 333.05)

The act modifies several provisions of ongoing law authorizing counties and businesses to enter into an agreement under which the business agrees to construct an "impact facility" in the county and the county agrees to remit to the business up to 75% of the revenue from certain county sales taxes collected on retail sales made at the facility. Under continuing law, an "impact facility" is a facility that meets five criteria, including that at least 150 new jobs will be maintained at the facility.

The act extends, from June 1, 2007, to June 1, 2015, the date by which such impact facility agreements may be entered into. The act also modifies two of the criteria a facility must meet to qualify as an impact facility. Under prior law, at least \$50 million had to be invested in the land, building, infrastructure, and equipment at the facility over a two-year period, and at least 50% of the expected customers of the facility had to live within 100 miles of the facility. The act lowers the investment requirement to \$30 million and decreases the area in which at least 50% of the facility's expected customers must live to 50 miles.

The act modifies the prohibition against relocating property or employment positions to prohibit any relocation of full-time equivalent positions or any tangible personal property to the impact facility from another Ohio location. Under the act, if the prohibition is violated, remittances to the business are terminated regardless of whether the board of county commissioners consents to the relocation. Prior law prohibited relocation of more than ten full-time equivalent positions or more than \$2 million in "taxable assets" without the consent of the board of county commissioners. (A full-time equivalent position equals the number of employee-hours in a week divided by 40; "taxable assets" is not defined, but presumably the term refers to tangible personal property.)

## **New Markets Tax Credit (VETOED)**

(R.C. 5725.33, 5726.54, 5729.16, and 5733.58)

The Governor vetoed provisions that would have made several changes to the New Markets Tax Credit. Continuing law authorizes a nonrefundable New Markets Tax Credit against the insurance premiums taxes and the financial institutions tax for entities that purchase and hold securities to finance investments in "qualified active low-income community businesses" located in Ohio. The credit is based largely on the federal New Markets Tax Credit (26 U.S.C. 45D).



The act would have eliminated the requirement that a qualified active low-income community business derive less than 15% of its annual revenue from the rental or sale of real property, which would have made the state law definition of "qualified active low-income community business" identical to the federal definition. The act would also have eliminated the requirement that the investor qualify for the federal credit in order to receive the Ohio credit.

A detailed description of the vetoed provisions is available on pages 638 through 640 of LSC's analysis of the Senate version of H.B. 59. The analysis is available online at [www.lsc.state.oh.us/analyses130/h0059-ps-130.pdf](http://www.lsc.state.oh.us/analyses130/h0059-ps-130.pdf).

### **General authority to issue tax assessments**

(R.C. 5703.90, 5726.20, and 5751.014)

The act provides general authorization for the Tax Commissioner to issue an assessment for unpaid taxes, penalties, and interest against any person liable for the unpaid amount. This authority expressly extends to assessments against persons that are jointly and severally liable for a commercial activity tax or financial institutions tax liability; the partners in a partnership; and the directors, shareholders, and officers of a corporation that has dissolved or had its articles of incorporation cancelled. The Tax Commissioner must issue the assessment in accordance with the same requirements and procedures applicable to assessments for the tax for which the person is liable.

### **Calculation of post-assessment interest**

(R.C. 3734.907(E), 3769.088(C), 4305.131(C), 5726.20(D)(3), 5727.26(C), 5727.89(C), 5728.10(C), 5733.11(C), 5735.12(C), 5739.13(C), 5743.081(C), 5743.56(E), 5745.12(C), 5747.13(C), 5749.07(C), 5751.09(C)(3), and 5753.07(A)(5))

Continuing law authorizes the Tax Commissioner to make assessments against taxpayers for failure to pay various fees and taxes and the penalties and interest thereon. Unless the taxpayer files a petition for reassessment within 60 days after notice of the assessment is served, the amount due on the assessment becomes final and is due and payable from the taxpayer to the Treasurer of State. Under prior law, any portion of the assessment not paid within 60 days after the assessment was issued, including interest and penalty, bore interest at the statutory rate for unpaid taxes (3%) until the assessment was paid in its entirety.

The act requires the Tax Commissioner to calculate interest charged after an assessment has been issued based on tax liability only; penalties and pre-assessment interest are not included. If an assessment is certified to the Attorney General for



collection, the interest calculation reverts to ongoing law and the entire unpaid portion of the assessment is included.

### **Service of tax notices and orders**

(R.C. 5703.37)

Continuing law authorizes the Tax Commissioner, with the recipient's consent, to serve a tax notice or order upon a person through secure electronic means. When the Commissioner serves the notice or order, the Commissioner must inform the person, electronically or by mail, that the person may access the notice or order. Under prior law, if a person did not access the electronic notice or order within ten business days after the Commissioner served the notice or order, the Commissioner was required to serve the notice or order by certified mail, personal service, or delivery service.

The act instead requires the Tax Commissioner to make a second attempt to inform the recipient that the notice or order is available. If the person does not access the notice or order within ten days after the second attempt, the Commissioner then must deliver the notice or order by ordinary mail.

### **Electronic payment and filing requirements**

(R.C. 113.061, 5703.059, and 5751.07)

Under continuing law, quarterly taxpayers of the CAT must pay the tax electronically and, if the Tax Commissioner requires, file electronic returns. The act extends this requirement to annual taxpayers. Annual taxpayers are those whose taxable gross receipts are \$1 million or less; all other taxpayers must file and pay the tax quarterly.

In addition, the act expressly authorizes the Tax Commissioner to adopt rules governing the electronic payment of, and the filing of returns for, the CAT, the financial institutions tax (FIT), the state horse-racing taxes, and the new MFRT created by the act. The electronic payments must also comply with any applicable Treasurer of State regulations that govern such payments.

### **CAT electronic filing penalties**

Under prior law, when a taxpayer failed to submit an electronic CAT payment or return, the Tax Commissioner was authorized to assess a penalty equal to 5% of the tax due for each of the first two violations and 10% of the tax due for each subsequent violation. The act modifies these penalties to require that the taxpayer pay the greater of \$25 or 5% of the tax due for each of the first two violations and \$50 or 10% of the tax due for each subsequent violation.



## **Electronic filing and payment of severance tax, related penalties, and refunds**

(R.C. 113.061 and 5749.06; Section 803.120)

The act makes several changes related to the reporting and payment of severance taxes. Under continuing law, a severer is required to file returns four times per year on a quarterly basis. The four calendar quarters run from January-March, April-June, July-September, and October-December. The Tax Commissioner may prescribe a different schedule for a taxpayer. Severers are required to file returns for each quarter by the 45th day after the last day in each quarter.

The act imposes a specific penalty for the failure to file or to timely file a complete return or to pay the full amount of tax due, up to the greater of \$50 or 10% of the tax due for the quarter. Continuing law allows the Commissioner to extend the due date of filing a return for good cause. The act limits the duration of any extension to 30 days.

Additionally, beginning January 1, 2014, the act requires severance tax payments to be remitted electronically and authorizes the Tax Commissioner to require severance tax returns to be filed electronically, either through the Ohio Business Gateway or another means prescribed by the Tax Commissioner. The Tax Commissioner may excuse a severer from the obligation to remit payments electronically for good cause. If a severer fails to remit payments electronically or, if required, to file returns electronically, the Tax Commissioner may impose a penalty on the severer equal to the greater of \$25 or 5% of the amount due for the first two failures, or the greater of \$50 or 10% of the amount due for every subsequent failure. Any penalty the Tax Commissioner imposes under the act may be collected in the manner of an assessment, together with applicable penalties and interest, or may be waived by the Tax Commissioner.

### **Severance tax refunds**

Continuing law requires that any severance tax refunds must be certified and paid from the Tax Refund Fund. Prior law did not specify how severance tax revenue is credited to that fund. Beginning October 1, 2013, the act specifies that all severance tax revenue is initially credited to the Severance Tax Receipts Fund, which is created by the act. The OBM Director must transfer from that fund to the Tax Refund Fund an amount equal to any refund certified by the Tax Commissioner to provide for the payment of that refund. Any amount so transferred must be derived from receipts of the same natural resource severance tax from which the refund arose.

After making this transfer, but not later than the 15th day of the month after the end of each calendar quarter, the Tax Commissioner must certify to the Director the



amount remaining in the Severance Tax Receipts Fund, grouped according to the amount attributable to each natural resource subject to a severance tax, so the Director can credit remaining severance tax revenue to the respective funds as otherwise required by law.

### **Disclosure of severance tax information**

(R.C. 5749.17; Section 803.120(A))

Prior law prohibited any otherwise confidential tax information provided to the Department of Natural Resources (DNR) from the Department of Taxation from being publicly disclosed, except that DNR could share the information with the Attorney General for unspecified law enforcement purposes. The act allows DNR, beginning October 1, 2013, to disclose otherwise confidential information submitted by the Department of Taxation specifically for the purpose of enforcing oil and gas regulatory laws.

### **Tax payments and refunds: \$1 minimum**

(R.C. 5703.75, 5747.08, 5747.10, and 5747.11)

The act introduces a \$1 minimum payment floor for all taxes administered by the Department of Taxation. Under the act, taxpayers are not required to pay any such tax if the total amount due with the taxpayer's return is \$1 or less. Similarly, the Tax Commissioner is not required to issue a tax refund to any taxpayer if the amount of the refund is \$1 or less. Under prior law, these \$1 minimums applied only to the income tax and the pass-through entity withholding taxes.

### **Accrual of interest on income tax refunds**

(R.C. 5747.11)

Under continuing law, interest accrues 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 act removes a separate, apparently 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 act also removes a provision of prior law that provided that interest resulting from an illegal or erroneous assessment accrued from the date the taxpayer paid the illegal or erroneous assessment until the date the refund is paid. Instead, the



act provides that interest accrues on such amounts according to the same rule that applies to other overpayments as described above.

### **Elimination of the Tax Discovery Project Fund**

(R.C. 5703.82)

The act eliminates the Discovery Project Fund, which was created to finance the Department of Taxation's implementation and operation of the Tax Discovery Data System. The Tax Discovery Data System assists the Department in revenue analysis, discovering noncompliant taxpayers, and collecting taxes from those taxpayers.

Prior law required the Tax Commissioner to request funds quarterly from the GRF to pay the costs of operating and administering the system.

Under the act, the Department remains responsible for administering the system.

### **Tax refund payments and estate tax refunds**

(R.C. 5703.052)

Under continuing law, refunds for many taxes and fees administered by the Tax Commissioner or Superintendent of Insurance, including sales and use taxes, income tax, CAT, insurance taxes, FIT, alcoholic beverage and cigarette taxes, casino revenue tax, and public utility excise taxes are paid from the Tax Refund Fund. After the Tax Commissioner or Superintendent certifies a refund to the Treasurer of State, the Treasurer is required to credit the amount certified to the fund. The amount credited to the Tax Refund Fund must be derived from current receipts of the same tax or fee.

Under prior law, if current receipts of a particular tax or fee were not sufficient to enable the Treasurer to fully credit the fund, then the Treasurer was required to transfer the amount from the current receipts of the sales tax. The act eliminates the requirement that refunds be paid from sales tax receipts in the event receipts from the refunded tax do not exceed the amount of the required refund.

Additionally, the act includes estate taxes among the other taxes for which refunds are paid from the Tax Refund Fund and derived from the receipts of the same tax. Although the estate tax is no longer in effect for individuals dying on or after January 1, 2013, refunds may continue to be due for payments for prior years.



## **Rename fund receiving income tax contributions**

(R.C. 5747.113)

The act renames the "Litter Control and Natural Resource Tax Administration Fund" the "Income Tax Contribution Fund." Under continuing law, this fund is credited with a portion of the money received by four existing income tax contribution (commonly referred to as refund "check-off") funds to pay the Department of Taxation's costs of administering the income tax contribution system. Under the system, a taxpayer may voluntarily contribute a portion of the taxpayer's refund to benefit up to four separate purposes – natural areas and preserves, nongame and endangered wildlife, military injury relief, or the Ohio Historical Society.

## **Motor fuel tax refunds and revenue distribution**

(Section 605.10)

Under prior law, the Treasurer of State would have been required to credit the "first" 2% of revenue generated from motor fuel tax each month to the Highway Operating Fund on the first day of every month beginning in July 2013.<sup>224</sup>

The act specifies that the crediting is to occur only after enough revenue is transferred to the Tax Refund Fund to cover motor fuel tax refunds. The act also changes the date the crediting is to occur from the first to the last day of each month.

## **Payment and collection of state horse-racing taxes**

(R.C. 113.061, 3769.08, 3769.087, 3769.088, 3769.089, 3769.10, 3769.101, 3769.102, 3769.103, 3769.26, 3769.28, and 5703.059; Section 803.290)

The act makes several administrative changes to the state horse-racing taxes, which are taxes levied on the total amount wagered on horse and harness racing (pari-mutuel wagering taxes) and on "exotic wagering," i.e., all bets other than win, place, and show, in the state.

## **Tax payment forms and dates**

The act allows the Tax Commissioner to prescribe the method for filing returns and paying the horse-racing taxes. Among other options, the Commissioner may require taxpayers to submit returns or tax payments through the Ohio Business Gateway or by another electronic means. Under prior law, taxpayers could pay the taxes only by check, draft, or money order.

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<sup>224</sup> Section 755.30 of Am. Sub. H.B. 51 of the 130th General Assembly.





Under the act, if a taxpayer is required to file returns or pay taxes electronically but fails to do so, the Tax Commissioner may impose a penalty equal to the greater of \$50 or 10% of the taxes that were not paid electronically. This penalty is in addition to an existing penalty for the failure to file a return or pay taxes equal to 15% of the unpaid taxes.

Continuing law requires taxpayers to remit state pari-mutuel wagering taxes and exotic wagering taxes at the close of each racing day. The act clarifies that, if a race occurs on a day on which banks are not open, the taxpayer may remit the taxes by noon of the next day that banks are open.

### **Tax revenue collection and distribution**

Under continuing law, revenue from the state pari-mutuel and exotic wagering taxes is distributed to the Ohio PASSPORT Fund (which pays for home health care and other senior citizen services), the Ohio State Racing Commission's Operating Fund, the Ohio Fairs Fund, the Ohio Standardbred Development Fund, the Quarter Horse Development Fund, and county agricultural societies. Revenue from an "additional" pari-mutuel wagering tax is distributed to the municipal corporation or township in which the racing event takes place.

The act creates two new funds, into which all horse-racing tax revenue is funneled before it is distributed to the various funds or subdivisions described above. Under the act, all revenue from the state pari-mutuel and exotic wagering taxes is credited to the Horse-Racing Tax Revenue Fund, and all revenue from the additional pari-mutuel wagering tax is credited to the Horse-Racing Tax Municipality Fund. From these respective funds, the revenue is then distributed in the same proportions required under continuing law.

The act also requires that the Tax Commissioner distribute money from the new funds on a monthly basis. Prior law required the Tax Commissioner to distribute state pari-mutuel and exotic wagering tax revenue on a weekly basis, while revenue from the additional pari-mutuel wagering tax was required to be distributed "immediately" upon collection.

### **Effective date**

The act's changes to the horse-racing taxes take effect on October 1, 2013. The Tax Commissioner may adopt rules as necessary to implement the changes.





## Wireless 9-1-1 charges

### Records of wireless 9-1-1 charges, bills, and sales

(R.C. 128.45)

Beginning January 1, 2014, the act requires each wireless service provider and reseller to keep complete and accurate records of bills for wireless service, together with a record of the wireless 9-1-1 charges collected, and to keep all related invoices and other pertinent documents. Likewise, the act requires each seller of a prepaid wireless calling service to keep complete and accurate records of retail sales of prepaid wireless calling services, together with a record of the wireless 9-1-1 charges collected, and to keep all related invoices and other pertinent documents.

These records, invoices, and documents must be open during business hours to the inspection of the Tax Commissioner. They must be preserved for four years unless the Tax Commissioner, in writing, consents to their destruction within that period, or orders that they be kept longer.

### Assessments for noncompliance with wireless 9-1-1-charge remittance

#### Statute of limitations on assessments

(R.C. 128.46(B) and (E)(2) and 128.462(A))

The act establishes a four-year statute of limitations, with exceptions, on assessments for noncompliance with remittance requirements, beginning January 1, 2014. Specifically, it prohibits an assessment from being made or issued against a wireless service provider, wireless reseller, or seller of a prepaid wireless calling service for any wireless 9-1-1 charge more than four years after the return date for the period in which the sale or purchase was made, or more than four years after the return for the period is filed, whichever is later. Under continuing law, returns must be filed by the 23rd of each month, showing the full amount of wireless 9-1-1 charges due for the previous month.

The act states that the four-year limitation does *not* bar an assessment when (1) the provider, reseller, or seller fails to file a return, (2) the provider, reseller, or seller and the Tax Commissioner waive the limitation in writing; or (3) the Tax Commissioner has substantial evidence that wireless 9-1-1 charges were collected but not returned to the state.



## **Prohibition on issuing assessments when collection or payment is not required**

(R.C. 128.462(B))

The act prohibits assessments for any period during which there was in full force and effect a rule of the Tax Commissioner under or by virtue of which the collection or payment of wireless 9-1-1 charges was not required. The act states that this provision does *not* bar an assessment when the Tax Commissioner has substantial evidence that wireless 9-1-1 charges were collected but not returned to the state.

## **Interest on assessments**

(R.C. 128.46)

The act applies the interest on an assessment, charged by the Tax Commissioner beginning in 2014, to only the portion of the assessment that consists of wireless 9-1-1 charges due. Under continuing law, interest may be charged on an assessment when it is 60 days past due. The Tax Commissioner may also make assessments to collect unpaid interest on assessments.

The act also removes provisions specifying how assessments and interest on assessments are to be remitted to the Tax Commissioner. Prior law appeared to require that assessments for unpaid interest and any interest due must be remitted in the same manner as the wireless 9-1-1 charges.

Finally, the act removes redundant language regarding the issuance of assessments for collecting interest and the rate and remittance of interest.

## **Interest on wireless 9-1-1 charges**

(R.C. 128.461)

The act requires that, beginning January 1, 2014, any wireless 9-1-1 charge required to be remitted be subject to the same interest rate that applies to most unpaid state tax liabilities,<sup>225</sup> calculated from the date the wireless 9-1-1 charge was due to the date the wireless 9-1-1 charge is remitted or the date of assessment, whichever occurs first.

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<sup>225</sup> R.C. 5703.47, not in the act.



## Penalties related to wireless 9-1-1 charge remittance

(R.C. 128.46(B) and 128.99(C) to (G))

The act establishes four new penalties related to remittance of wireless 9-1-1 charges:

Penalty	Subject to penalty	Requirement violated
"Late-filing penalty" of not more than the greater of \$50 or 5% of the amount required to be remitted	Wireless service provider, wireless reseller, or seller of a prepaid wireless calling service	Make and file, by the due date or extended due date granted by the Tax Commissioner, a monthly return, in the form prescribed by the Tax Commissioner, showing the amount of wireless 9-1-1 charges due for the preceding month
"Late-payment penalty" of not more than the greater of \$50 or 5% of the wireless 9-1-1 charge required to be remitted for the reporting period minus any partial remittance made on or before the due date, including any extensions granted	Wireless service provider, wireless reseller, or seller of a prepaid wireless calling service	Remit the full amount due, as shown on the return (except for the authorized collection fee)
"Assessment penalty" of not more than the greater of \$100 or 35% of the wireless 9-1-1 charges due	Person	Not clear; imposed "after the [T]ax [C]ommissioner notifies the person of an audit, an examination, a delinquency, assessment, or other notice that additional wireless 9-1-1 charges are due"
"Electronic penalty" of not more than the lesser of: <ul style="list-style-type: none"> <li>• the greater of \$100 or 10% of the amount required to be, but not, remitted electronically; or</li> <li>• \$5,000</li> </ul>	Wireless service provider, wireless reseller, or seller of a prepaid wireless calling service	File the monthly return electronically using the Ohio Business Gateway, the Ohio Telefile System, or any other electronic means prescribed by the Tax Commissioner; or remit the amount due electronically in a manner approved by the Tax Commissioner

The act specifies that each of these penalties is in addition to any of the others. It also states that the Tax Commissioner may abate all or any portion of any of these penalties.



## Refunds of wireless 9-1-1 charges

(R.C. 128.47, 128.54, 128.55, and 5703.052)

The act establishes refund procedures for illegal or erroneous payments, charging, and billing of wireless 9-1-1 charges, beginning January 1, 2014, to be administered by the Tax Commissioner. Refunds are required to be issued in the following scenarios:

Scenario		Who may receive a refund
(1)	<ul style="list-style-type: none"> <li>Subscriber or consumer made an illegal or erroneous payment;</li> <li>Amount is remitted; and</li> <li>Provider, reseller, or seller refunded the full amount to the subscriber or consumer</li> </ul>	Wireless service provider, wireless reseller, or seller of a prepaid wireless calling service
(2)	<ul style="list-style-type: none"> <li>Provider, reseller, or seller illegally or erroneously billed a subscriber or charged a consumer for a wireless 9-1-1 charge;</li> <li>Amount is <i>not</i> collected; and</li> <li>Amount <i>is</i> remitted</li> </ul>	Wireless service provider, reseller, or seller of a prepaid wireless calling service
(3)	<ul style="list-style-type: none"> <li>Subscriber or consumer made an illegal or erroneous payment;</li> <li>The provider, reseller, or seller has <i>not</i> received a refund from the Tax Commissioner; and</li> <li>The consumer or subscriber has <i>not</i> received a refund from the provider, reseller, or seller</li> </ul>	Wireless subscriber or consumer of a prepaid wireless calling service

Regarding the third scenario, the Tax Commissioner may require the subscriber or consumer to obtain from the provider, reseller, or seller a written statement confirming that no refund was received and that the provider, reseller, or seller has not applied for a refund. The Tax Commissioner may also require the provider, reseller, or seller to provide this statement.

Anyone eligible to receive a refund may apply to the Tax Commissioner for a refund on an application form prescribed by the Tax Commissioner. The application must be made not later than four years after the date of the illegal or erroneous payment of the wireless 9-1-1 charge by the subscriber or consumer. This provision does not appear to apply to the second scenario, in which a wireless 9-1-1 charge is billed or charged, but no payment is made.



If the provider, reseller, or seller waives the four-year statute of limitations on assessments established by the act (see "**Statute of limitations on assessments**"), the refund-application period is to be extended for the same period as the waiver.

On the filing of a refund application, the Tax Commissioner is required to determine the amount of refund to which the applicant is entitled. If the amount is not less than that claimed, the Tax Commissioner must certify the determined amount to the Director of OBM and the Treasurer of State for payment from the Tax Refund Fund. If the amount is less than that claimed, the Tax Commissioner is directed to proceed in accordance with continuing law governing refunds for other payments. The act requires the Director of OBM to transfer to the Tax Refund Fund, from the Wireless 9-1-1 Government Assistance Fund, amounts equal to the refunds certified by the Tax Commissioner.

Under continuing law, the Wireless 9-1-1 Government Assistance Fund is used primarily for monthly county disbursements for wireless enhanced 9-1-1 services. It is funded by remitted wireless 9-1-1 charges. The transfers from the Wireless 9-1-1 Government Assistance Fund to the Tax Refund Fund are to be made as funds are available. In a provision of the act governing the monthly county disbursements, the Tax Commissioner is required to transfer *any excess* remaining in the Wireless 9-1-1 Government Assistance Fund to the Next Generation 9-1-1 Fund (see "**Disbursements from the Wireless 9-1-1 Government Assistance Fund**"). This seems to be required on a monthly basis.

The act requires that the wireless 9-1-1 refunds include interest, calculated with the same interest rate that applies to refunds of state taxes.<sup>226</sup>

The act modifies continuing law governing the Tax Refund Fund to provide for the inclusion of wireless 9-1-1 charge refunds.

## **Disbursements to counties**

### **Disbursements from the Wireless 9-1-1 Government Assistance Fund**

(R.C. 128.021, 128.54(A)(2)(a) and (B), and 128.55(B)(1))

The act modifies the manner in which monthly disbursements must be made to counties from the Wireless 9-1-1 Government Assistance Fund by the Tax Commissioner. These disbursement duties, under continuing law, are not granted to the Tax Commissioner until January 1, 2014. Prior law had required that these disbursements be made according to a proportionate share as determined according to

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<sup>226</sup> R.C. 5703.47 and 5739.132, not in the act.



former 9-1-1 law as it existed prior to December 20, 2012. The act requires instead that as long as there are sufficient funds in the Wireless 9-1-1 Government Assistance Fund, each county treasurer is to receive, on a monthly basis, the same amount distributed to that county in the corresponding month in 2013. If funds are insufficient for these amounts, each county's share is to be reduced in proportion to the amounts received in the corresponding month in 2013, up to the point where the funds are exhausted.

Provided funds are sufficient to make the disbursements without proportionate reductions, the act requires the Tax Commissioner to transfer any excess remaining in the Wireless 9-1-1 Government Assistance Fund, after the disbursements are made, to the Next Generation 9-1-1 Fund. It seems that these transfers are required on a monthly basis. In a separate section of the Revised Code, the act repeals a provision that delayed, until January 1, 2014, the Tax Commissioner's duty to make these transfers.

The act also specifies that disbursements are to be made from the Wireless 9-1-1 Government Assistance Fund plus any accrued interest on the fund.

Finally, the act repeals a provision that required the Treasurer of State to disburse money from the Wireless 9-1-1 Government Assistance Fund solely upon order of the Tax Commissioner according to policies established by the Statewide Emergency Services Internet Protocol Network Steering Committee under continuing law. This continuing law requires the Steering Committee to adopt rules establishing technical and operational standards for public safety answering points eligible to receive disbursements. Compliance is not required until two years after the rules are adopted.

#### **Disbursements from the Next Generation 9-1-1 Fund**

(R.C. 128.022, 128.54(B), and 128.55(B)(2))

The act repeals a provision that required the Treasurer of State to disburse money from the Next Generation 9-1-1 Fund solely upon order of the Tax Commissioner according to policies established by the Steering Committee under the continuing law discussed above (see "**Disbursements from the Wireless 9-1-1 Government Assistance Fund**"). But there remains a very similar provision of continuing law that requires the *Tax Commissioner* to disburse moneys from the Next Generation 9-1-1 Fund in accordance with *guidelines* established by the Steering Committee under continuing law. These guidelines are to be established specifically for the Tax Commissioner to use when disbursing money from the Next Generation 9-1-1 Fund. The guidelines are required to be consistent with the technical and operational standards discussed above (see "**Disbursements from the Wireless 9-1-1 Government Assistance Fund**").



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## TREASURER OF STATE

- Modifies the interest rate of loans made under the Housing Linked Deposit Program.
- Adds a definition of "loan" for purposes of the Small Business Linked Deposit Program, the Agricultural Linked Deposit Program, and the Housing Linked Deposit Program.
- Changes the filing date for the Treasurer of State's annual report of the transactions and proceedings of the Treasurer of State's office to December 31.
- Authorizes the Treasurer of State to include in the annual continuing education program for treasurers, education regarding the collection of taxes and in any other subject area that the Treasurer of State determines is reasonably related to treasurers' duties.
- Adds to the list of investments for which a treasurer is exempt from the annual continuing education program, any treasurer who deposits interim moneys in a public depository that is authorized to re-deposit the interim moneys into deposit accounts, under certain conditions.

### **Housing Linked Deposit Program interest rate**

(R.C. 135.81 and 135.85)

The act specifies that, under the Housing Linked Deposit Program, loans must be made at a fixed interest rate of up to 300 basis points below the present borrowing rate, rather than at a rate of 300 basis points below the present borrowing rate, as required under prior law.

### **Linked deposit programs**

(R.C. 135.61, 135.71, and 135.81)

The act adds a definition of "loan" to the laws governing the Small Business Linked Deposit Program, the Agricultural Linked Deposit Program, and the Housing Linked Deposit Program. For these programs, "loan" is defined as "a contractual agreement under which an eligible lending institution agrees to lend money in the form of an upfront lump sum, a line of credit, or any other reasonable arrangement approved by the treasurer of state."



## Treasurer of State annual report

(R.C. 149.01)

The act changes the filing date for the Treasurer of State's annual report of the transactions and proceedings of the Treasurer of State's office to December 31. Continuing law requires certain state officers to annually make a report of the transactions and proceedings of the officer's office or department for the fiscal year, and to file the report on August 1. The act changes the filing date of the report, for the Treasurer of State only, to December 31.

## Continuing education for treasurers

(R.C. 135.22)

The act authorizes the Treasurer of State to include in the annual continuing education program for treasurers, education regarding the collection of taxes and any other subject area that the Treasurer of State determines is reasonably related to the duties of a treasurer. Subject areas covered under continuing law are investments, cash management, and ethics.

Under continuing law, a treasurer is any officer exercising the functions of a treasurer<sup>227</sup> or any person whose duties include making investment decisions with respect to the investment or deposit of interim moneys, but does not include a county treasurer or the Treasurer of State. A treasurer is required annually to complete the continuing education program, unless the treasurer qualifies for an exemption because the treasurer invests or deposits public moneys only in investments specified by law.

The act adds to the list of investments for which a treasurer is exempted from continuing law's annual continuing education program, any treasurer who deposits interim moneys in a public depository that is authorized to re-deposit the interim moneys into deposit accounts in federally insured banks, savings banks, or savings and loan associations, under certain conditions.<sup>228</sup>

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<sup>227</sup> R.C. 135.01, not in the act.

<sup>228</sup> R.C. 135.145, not in the act.





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## DEPARTMENT OF TRANSPORTATION

- Deems three or fewer aluminum coils to be a nondivisible load for purposes of obtaining a permit to operate a vehicle in excess of legal maximum size, weight, or load restrictions.
- Requires the Director of Transportation to adopt aluminum coil permit rules that are substantially similar to requirements for a steel coil permit.
- Specifies that it is not a violation of an approved route established in the terms of an overweight or oversize vehicle permit if a route change is ordered by an authorized agent of the permit issuing authority (Department of Transportation or a local authority).
- Authorizes a Transportation Improvement District (TID) to enter into an agreement and undertake a project located in a contiguous county and authorizes a board of county commissioners to enter into such an agreement with a contiguous TID under certain circumstances.
- Requires the Director of Transportation to establish a county bridge program to assist counties with monetary or other resources for bridge maintenance.
- Directs to the Highway Operating Fund proceeds from: (1) the lease or sale of transportation facilities, (2) commercial advertising at roadside rest areas (proceeds of which previously went to the Roadside Rest Area Improvement Fund), and (3) public private partnership agreements.

### Aluminum coil permit

(R.C. 4513.34)

The act deems three or fewer aluminum coils, being transported by a vehicle, a nondivisible load for purposes of obtaining a permit to operate a vehicle in excess of legal maximum size, weight, or load restrictions. The act then requires the Director of Transportation to adopt rules establishing requirements for an aluminum coil permit that are substantially similar to the requirements for a steel coil permit under Chapter 5501:2-1 of the Administrative Code. As with a steel coil permit, an aluminum coil permit generally would allow for the transportation of three or fewer aluminum coils between two specific points and along a prescribed route while exceeding the 80,000 pound vehicle weight limit, so long as the maximum vehicle weight does not exceed 120,000 pounds. Permits could be issued for a single trip, as a continuing permit



(allowing unlimited movement of one vehicle from an approved facility along an approved route to another specified point for a period of 90 days), or as an annual trip permit (allowing unlimited movement of one vehicle from an approved facility along an approved route to another specified point for a period of 365 days).

### **Overweight and oversize vehicle permit violations**

(R.C. 4513.34)

The act specifies that it is not a violation of an approved route established in the terms of an overweight or oversize vehicle permit if a route change is ordered by an authorized agent of the permit issuing authority (Department of Transportation or a local authority). This specification is in addition to a provision of continuing law stating that it is not an approved route permit violation if law enforcement orders a route change.

### **Transportation improvement district projects outside district**

(R.C. 5540.03 and 5540.18)

Generally, the act establishes procedures for a mutual agreement allowing a transportation improvement district (TID) to exercise its powers outside the county that created it. The act first authorizes a TID to enter into an agreement with a contiguous board of county commissioners (other than the board of county commissioners that created the TID), for the TID to exercise all or any portion of its powers with respect to a project that is located wholly or partially within the county that is party to the agreement. Next, the act expressly authorizes a board of county commissioners to enter into an agreement with a contiguous TID that the board of county commissioners did not create for the TID to undertake a project that is located wholly or partially within that county provided that, the board of county commissioners of the county that created the TID also must enter into the agreement. Lastly, the act prohibits a TID from undertaking a project in a county that did not create the TID excepting: (1) projects undertaken by a mutual agreement as described above, (2) a project being undertaken by two or more TIDs, or (3) as otherwise provided by law.

### **Department of Transportation county bridge program**

(Section 755.10)

The act requires the Director of Transportation to establish a county bridge program to assist counties with the maintenance of bridges. The Director must establish the program before December 28, 2013 (within 90 days of the provision's effective date). The program may provide monetary and other resources, and must address



infrastructure needs related to county-maintained bridges, including bridge embankments, drainage bridge repair, and other related conditions. The Director may consult with affected political subdivisions in assessing needs and in developing the program. Upon establishing the program, the Director must notify affected political subdivisions in an appropriate manner of its availability.

### **Highway Operating Fund designations**

(R.C. 5501.311, 5501.312, 5501.73, and 5515.08)

The act directs to the Highway Operating Fund proceeds from the lease or sale of transportation facilities, commercial advertising at roadside rest areas, and public private partnership agreements. Law generally retained by the act directs that the proceeds from the sale or lease of a transportation facility to a telecommunications service provider or a utility service provider be credited to the Highway Operating Fund; however, prior law did not otherwise specify the funds into which proceeds from the lease or sale of transportation facilities or proceeds from public private partnership agreements should be directed. Proceeds from commercial advertising at roadside rest areas previously were directed into the Roadside Rest Area Improvement Fund, which no longer exists under the act.



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## DEPARTMENT OF VETERANS SERVICES

- Requires a veterans organization that receives state funding to submit its annual report to the Director of Veterans Services by July 30.
- Prohibits the Director of Budget and Management from releasing funds to a veterans organization until the Director of Veterans Services has advised the Director that a satisfactory report has been submitted by the organization.
- Requires the Director of Veterans Services to furnish a copy of all satisfactory reports to the chairpersons of the finance committees of the Senate and House of Representatives.

### Director of Veterans Services

(R.C. 126.211 and 5902.02)

The act specifies that annual reports, which under continuing law must be submitted by veterans organizations that receive funding from the state, must be submitted not later than July 30 each year. The act requires the Director of Veterans Services to review the reports with 30 days of receipt, and to inform the veterans organizations of any deficiencies that exist in the organization's report and that funding will not be released until the deficiencies have been corrected and a satisfactory report submitted. The Director must advise the Director of Budget and Management when a satisfactory report has been submitted. The act prohibits the Director of Budget and Management from releasing funds to a veterans organization until the Director of Veterans Services has advised the Director of Budget and Management that a satisfactory report has been submitted by the organization.

The act also requires the Director of Veterans Services to furnish a copy of all satisfactory reports to the chairpersons of the finance committees of the Senate and House of Representatives.



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## BUREAU OF WORKERS' COMPENSATION

- Allows the Administrator of Workers' Compensation, with the advice and consent of the Bureau of Workers' Compensation (BWC) Board of Directors, to adopt rules to provide for a system of prospective payment of workers' compensation premiums.
- Requires, if the Administrator establishes a prospective payment system, all private sector employers and all public employers other than state agencies and state universities and colleges to pay premiums in accordance with the requirements for that system.
- Requires, if the Administrator adopts rules to establish a prospective payment system, the rules to include requirements to convert to that system; requirements for payroll reports and payment due dates; penalties for late payroll reconciliation payments, payroll estimates, and payroll reconciliation reports; and penalties for inaccurate payroll estimates.
- Statutorily allows BWC to enter into a contract with a managed care organization (MCO) to provide medical management and cost containment services in the Health Partnership Program.
- Requires a contract with an MCO to include incentives that may be awarded based on the MCO's compliance and performance and penalties, including contract termination, that may be imposed based on the MCO's failure to reasonably comply with or perform terms of the contract.
- Permits a contract entered into with an MCO to include provisions limiting, restricting, or regulating any marketing or advertising by the MCO, or by any individual or entity that is affiliated with or acting on behalf of the MCO, under the Health Partnership Program.
- Lists reasons for which an MCO may be decertified.
- Requires the Administrator to adopt rules establishing the criteria a private sector employer must satisfy to have specified requirements, which the Administrator may waive under continuing law, potentially enabling the employer to self-insure workers' compensation claims.
- Allows the Administrator to include in the waiver rules a requirement that the employer must pay a security in accordance with continuing law requirements in addition to the employer's contribution to the Self-Insuring Employers' Guaranty Fund.

## **Prospective payment of workers' compensation premiums**

(R.C. 4123.322, 4123.35, and 4123.41)

Continuing law requires the Administrator, with the advice and consent of the Bureau of Workers' Compensation (BWC) Board of Directors, to adopt specific rules with respect to the collection, maintenance, and disbursement of the State Insurance Fund. Among the rules the Administrator must adopt is a rule providing for premium payments by each employer that are due on or before the end of the employer's coverage period.<sup>229</sup> Because these payments are made at the end of the period for which corresponding workers' compensation coverage is granted, they are often referred to as "retrospective payments" or "payments in arrears."

The act allows the Administrator, with the Board's advice and consent, to adopt rules to provide for a system of prospective payment of workers' compensation premiums notwithstanding the continuing law requirements described above. If the Administrator elects to establish a prospective payment system, the act requires the Administrator to include in those rules several specific provisions. If the Administrator adopts rules to implement the system, private sector employers, publicly owned utilities, and public employers other than state agencies or state universities or colleges, must pay premiums fixed for the employment or occupation of the employer, determined by the classifications, rules, and rates made and published by the Administrator and based upon estimates and reconciliations required by rules the Administrator adopts.

### **Rules – payroll estimates**

Under the rules adopted under the act, a private sector employer must file payroll estimates with BWC on or before June 30 of each year for the upcoming year (under continuing law, every employer must file a payroll report with BWC each January). A public employer, other than a state agency or a public university or college, under the rules must file payroll estimates with BWC on or before January 1 of each year for the upcoming year. The Administrator may establish alternative due dates for these payroll estimates.

The rules must also provide that upon initial application for coverage, a private sector employer must file with the application an estimate of the employer's payroll for the unexpired period from the date of the application to the period ending on the following June 30. A public employer, other than a state agency or state university or college, must file the estimate from the date of the application to the period ending on

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<sup>229</sup> R.C. 4123.32, amended by the act for other purposes.



the following December 31. Alternative dates may be established by the Administrator. Employers must then pay an amount that the Administrator determines by rule in order to establish coverage under a written binder (temporary coverage while the application is being processed) for the employer.

### **Reconciliation**

The rules also must require that every employer complete periodic payroll reports of actual expenditures for previous coverage periods for reconciliation with the estimated payroll reports.

The act requires, for purposes of reconciliation, an employer to make timely payment of any premium owed when the employer's actual payroll expenditures exceed estimated payroll. If estimated payroll exceeds actual payroll, the employer will receive a premium credit.

### **Penalties**

The rules adopted by the Administrator must establish the assessment of penalties for payroll estimates, payroll reconciliation reports, and reconciliation premium payments that are not timely filed or paid. Additionally, the act allows the Administrator to assess additional penalties on a reconciliation premium if the employer's actual payroll substantially exceeds the employer's estimated payroll.

### **Transition**

The rules adopted by the Administrator must also establish a transition period, during which time BWC must determine all of the following:

- The adequacy of employers' existing premium security deposits;
- The establishment of provisions for additional premium payments during the transition;
- The provision of a credit of employers' existing premium security deposits toward the first premium due from an employer under the prospective payment rules;
- The establishment of penalties for late payment or failure to comply with the rules.

## Health Partnership Program

(R.C. 4121.44 and 4121.441, with a conforming change in R.C. 4123.93)

### Managed care organization contracts

(R.C. 4121.44 and 4121.441)

The Health Partnership Program (HPP) is the medical management portion of Ohio's workers' compensation system. Under continuing law, BWC certifies managed care organizations (MCO; also referred to as vendors and external vendors in the Workers' Compensation Law) to provide medical management and cost containment services in the HPP. The act statutorily permits BWC, to implement the HPP, as under continuing law, and to ensure the efficiency and effectiveness of the public services provided through the HPP, as added by the act, to enter into a contract with any MCO that is certified by the BWC, pursuant to continuing law, to provide medical management and cost containment services in the HPP. The act expands the Administrator's rule-making authority with respect to implementing the HPP to include regulating contracts with MCOs pursuant to the Workers' Compensation Law.

A contract entered into pursuant to the act must include both of the following:

- (1) Incentives that may be awarded by the Administrator, at the Administrator's discretion, based on the MCO's compliance and performance;
- (2) Penalties that may be imposed by the Administrator, at the Administrator's discretion, based on the MCO's failure to reasonably comply with or perform terms of the contract, which may include termination of the contract.

Under the act, notwithstanding a prohibition contained in Ohio's Administrative Procedure Act, a contract entered into pursuant to the act, and rules adopted to implement the HPP, may include provisions limiting, restricting, or regulating any marketing or advertising by the MCO, or by any individual or entity that is affiliated with or acting on behalf of the MCO, under the HPP. Under Ohio's Administrative Procedure Act an agency is prohibited from making rules that would limit or restrict the right of any person to advertise in compliance with law.

The act prohibits an MCO from receiving compensation under the HPP unless the MCO has entered into a contract with the BWC pursuant to the act.

The act also makes consistent the terminology used to refer to MCOs under the Workers' Compensation Law, eliminating references to "vendor" or "external vendor."





## **MCO decertification**

(R.C. 4121.44(G) and 4121.441(A))

The act statutorily permits the Administrator to decertify a MCO if the MCO does any of the following:

- Fails to maintain any of the requirements set forth continuing law to obtain certification;
- Fails to reasonably comply with or to perform in accordance with the terms of a contract entered into under the act;
- Violates a rule adopted under continuing law with respect to HPP implementation.

The Administrator must provide each MCO that is being decertified with written notice of the pending decertification and an opportunity for a hearing pursuant to rules adopted by the Administrator. Under rules adopted by the Administrator, the Administrator already provides a notice and conducts a hearing in accordance with the Administrative Procedure Act.

The act eliminates the requirement that the Administrator adopt rules to establish criteria for BWC to utilize in penalizing or decertifying a health care provider from participating in the HPP and rules establishing standards and criteria for BWC to utilize in penalizing or decertifying an MCO.

## **Self-insurance eligibility**

(R.C. 4123.35(B))

In Ohio, an employer may cover the employer's workers' compensation obligations in one of two ways: (1) by paying premiums into the State Insurance Fund (see "**Prospective payment of workers' compensation premiums**," above), or (2) by being granted the privilege to pay claims directly, referred to as self-insurance. Continuing law lists requirements that a private sector employer must satisfy to be allowed to self-insure. Under continuing law, the following requirements may be waived by the Administrator:

(1) The employer employs a minimum of 500 employees in Ohio;

(2) The employer has operated in Ohio for a minimum of two years or has purchased, acquired, or otherwise succeeded to the operation of a business, or any part thereof, situated in Ohio that has operated for at least two years in Ohio;



(3) The employer's financial records, documents, and data must be certified by a certified public accountant.

With respect to (3) above, continuing law requires the Administrator must adopt rules to establish criteria that an employer must meet in order for the Administrator to waive the requirement. The act requires the Administrator also to adopt rules to establish criteria that an employer must meet in order for the Administrator to waive the requirements under (1) and (2) above. Similar to the continuing law authority for waiving the requirement under (3) above, the act allows the Administrator to include in the waiver rules adopted under the act a requirement that the employer must pay a security in accordance with continuing law requirements in addition to the employer's contribution to the Self-Insuring Employers' Guaranty Fund.



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## RETIREMENT SYSTEMS

- Requires that copies of certain financial reports and actuarial valuations of the five state retirement systems be submitted to the Director of Budget and Management in addition to the Ohio Retirement Study Council and the retirement committees of the General Assembly.
- Requires that the annual financial reports and actuarial valuations be submitted immediately upon their availability.
- Modifies procedures for, and establishes limits on, membership determinations in the Public Employees Retirement System for individuals who have provided personal services to a public employer.
- Requires the five state retirement systems, to pay the Ohio Retirement Study Council's expenses by electronic funds transfer or other electronic payment method or device.

### **Distribution of retirement system financial reports**

(R.C. 145.22, 742.14, 3307.51, 3309.21, and 5505.12)

Under the act, certain financial reports prepared annually or triennially for the five state retirement systems must be distributed by their respective boards to the Director of Budget and Management in addition to the Ohio Retirement Study Council and the retirement committees of the General Assembly as is required under ongoing law. One of the reports provides an actuarial valuation of the pension assets, liabilities, and funding requirements of each of the systems; the other, a full accounting of the revenues and costs relating to the provision of benefits.

The act also requires that the reports be distributed immediately upon their availability.

### **PERS membership determinations**

(R.C. 145.037 and 145.038)

The act makes a number of changes to the law governing membership determination requests in the Public Employees Retirement System (PERS) for individuals providing personal services to a public employer.



In the law governing PERS, the definition of "public employee" generally determines who is subject to compulsory PERS membership. "Public employee" includes almost all state and local government employees who are not members of one of Ohio's other four state retirement systems or the Cincinnati Retirement System. In all cases of doubt, the PERS Board is to determine who is a public employee. Its decision is final.

S.B. 343 of the 129th General Assembly created a procedure under which individuals who provided personal services to a public employer on or before January 7, 2013, but were not included in PERS may request a determination of whether they are public employees and should be in PERS. As part of this procedure, each employer was to send a notice of the right to seek a determination to each individual providing personal services who was not classified as a public employee. Individuals who provided services to a public employer beginning on or after January 7, 2013, could also request determinations but under different provisions.

H.B. 67 of the 130th General Assembly delayed the date of the employer notification requirement and employee membership determination requests authorized or required by S.B. 343.

The act eliminates the employer notification requirement for service on or before January 7, 2013, and modifies other provisions.

### **Service on or before January 7, 2013**

The act eliminates (1) the provision requiring the PERS Board to notify each public employer of the right of an individual who had provided personal services to a determination of whether the individual was a public employee and (2) the provision requiring the employer to send a notice of the right to seek a determination to each individual providing personal services who was not classified as a public employee. Instead, the act requires the Board, not later than November 28, 2013, to have published in at least eight newspapers of general circulation in Ohio notice of the right of individuals to seek determinations. The Board must also post the notice on the PERS web site.

Law unchanged by the act provides that regardless of whether an individual receives notice, a request for a determination must generally be made by August 7, 2014. The act specifies that the PERS Board is to deny a request received after September 29, 2013, if it determines that the individual has had at least ten years of PERS contributing service since last performing the services that are the subject of the request.



### **Service on or after January 7, 2013**

The act eliminates a provision that permitted an individual to request a determination later than five years after services began if the individual's employer did not obtain, or failed to retain, a written acknowledgement that the individual was not a public employee. It retains the provision that permits an individual to request a determination after the five-year deadline if the individual was incapacitated at that time.

Continuing law provides that not later than 30 days after services begin, an employer must require an individual it does not classify as a public employee to acknowledge, in writing on a form provided by PERS, that the individual has been informed that the employer does not consider the individual a public employee and no contributions will be made to PERS. Prior law required the employer to retain the acknowledgement, but did not specify a time period. The act requires the employer to retain the acknowledgement for five years after the date the services begin and to transmit it to the public entity responsible for submitting reports of required contributions to PERS (rather than to PERS). The public entity must transmit a copy of the acknowledgment to PERS.

#### **Business entity**

Under continuing law, the right to request a determination does not apply to an individual employed by a business entity under contract with a public employer to provide personal services to the employer. ("Business entity" is defined for this purpose as an entity engaged in business that has five or more employees.) The act requires a contract between a public employer and a business entity to state that all individuals employed by the business entity who provide personal services to the public employer are not public employees for purposes of PERS membership.

#### **Not a public employee**

Law unchanged by the act provides that on receipt of a request for a determination, the PERS Board must determine whether the individual is a public employee with regard to the services in question. The act specifies that if the Board determines that the individual is not a public employee, the employee being considered is not a public employee (rather than the employee being considered as an independent contractor) with regard to the services in question.



## Payment of Ohio Retirement Study Council expenses

(R.C. 171.05)

The act requires PERS and the State Teachers Retirement System, School Employees Retirement System, State Highway Patrol Retirement System, and Ohio Police and Fire Pension Fund to pay the expenses of the Ohio Retirement Study Council by electronic funds transfer or any other method or device of electronic payment. Prior law required the retirement systems to pay the Council's expenses, but did not specify the method of payment.



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## LOCAL GOVERNMENT

### Open Meetings

- Allows a public body subject to the Open Meetings Law to hold an executive (i.e., closed) session to consider the terms of an application for economic development assistance to be provided or administered by a local government.

### Municipal watershed management

- Would have prohibited a municipal corporation that has established and implemented a watershed management program with regard to reservoirs from including in the program any prohibition against maintenance of property that constitutes a buffer around such a reservoir by the owner of contiguous property (VETOED).
- Would have prohibited a municipal corporation from including in its watershed management program, with regard to its reservoirs for drinking water, a prohibition against mowing grass, weeds, or other vegetation by an owner of property that is contiguous to reservoir buffer property (VETOED).
- Would have provided that no peace officer or other official could issue a citation to any individual who entered municipal reservoir property for the sole purpose of mowing in an effort to beautify the property (VETOED).

### County recorder funding for technology needs

- Changes the name of the special fund used by the county recorder for equipment needs to the "county recorder's technology fund."
- Revises the proposal procedure by which, and the purposes for which, a county recorder may request funding from the board of county commissioners for imaging and other technological equipment needs.
- Changes from mandatory to permissive the board's authority to approve funding requests for reserving funds for future imaging and technology needs.
- Increases from \$7 to \$8 the total maximum dollar amount of specific filing fees that the county recorder may request for funding technology needs.
- Reduces the amount of fees the county recorder receives for technology needs for recording and indexing the first two pages of certain instruments if the technology fund has been established; of the \$28 fee charged for recording and indexing the first two pages of the instrument, \$14 must be deposited into the technology fund and



\$14 must be deposited into the county general fund, rather than depositing the entire \$28 fee in the technology fund as required by prior law.

- Requires that if no technology fund has been established, the \$28 fee charged for recording and indexing the first two pages of certain instruments must be deposited into the county general fund.
- Extends to January 1, 2019, the term of a funding proposal in effect on September 29, 2013 (the act's 90-day effective date), regardless of the number of years specified in the approved proposal.
- Establishes a four-year window during which a county recorder may request each year that an amount not to exceed \$3 be placed into the technology fund, and requires the board of county commissioners to approve the amount requested, if the amount, when added to any amount previously approved under a proposal in effect on September 29, 2013, does not exceed the \$8 cap.
- Limits the use of the county recorder's technology fund when paying expenses for personnel, to those personnel directly related to imaging and other technological equipment.
- Allows the board of county commissioners, as it deems necessary, to transfer moneys from the county recorder's technology fund if the county is under a fiscal caution, fiscal watch, or fiscal emergency.
- Requires that the cost a county recorder must incur for training programs and continuing education be paid from the county recorder's technology fund if one has been established.

### **Regarding registered land**

- Authorizes county recorders who maintain registered land records by nonpaper means to use an electronic facsimile of the recorder's signature and seal on a certificate of title or on a duplicate of it.
- Requires a county recorder to record the court order canceling a certificate of title and surrendering a registration certificate in the recorder's unregistered land official records, rather than recording all previously filed deeds and mortgages conveying the registered land for which the registration certificate is being surrendered.

### **County hospital trustees**

- Requires county hospital trustees to be representative of the areas served by the hospital.





- Removes a criterion that prohibits more than one half of the members of a board of county hospital trustees from being independents or from being members of any one political party.
- Authorizes the board of county commissioners to provide a stipend for service on the board of county hospital trustees.
- Requires a board of county hospital trustees to hold meetings at least quarterly, rather than once a month.
- Authorizes boards of county hospital trustees to adopt annual leasing policies provided through a joint purchasing arrangement sponsored by a nonprofit organization, for certain services, supplies, and equipment.
- Exempts from competitive bidding, with a unanimous vote of the board of county hospital trustees, emergency purchases that are under \$100,000 or when there is actual physical damage to structures or equipment.
- Requires a board of county hospital trustees, whenever a contract of purchase, lease, or construction is exempt from competitive bidding, to solicit at least three informal estimates when the estimated cost is \$50,000 or more, but less than \$100,000.
- Permits the board of county hospital trustees to delegate its management and control of the county hospital to the hospital administrator through a written delegation.
- Requires the board of county hospital trustees to provide for management and control of the county hospital, in addition to providing for government of, and admission to, the hospital.

### **Lake Facilities Authorities**

- Authorizes one or more boards of county commissioners to create a Lake Facilities Authority (LFA), a body politic and corporate, for the purpose of remediating watersheds impacted by elevated levels of microcystin.
- Creates an LFA board of directors consisting of the county commissioners of each county with territory in the "impacted lake district" – i.e., the territory of all townships and municipal corporations with territory in the impacted watershed.
- Requires the creation of an advisory council for each LFA consisting of an appointee of each political subdivision with territory in the impacted lake district, to consult with the board of directors.



- Authorizes a board of county commissioners to levy a sales tax to provide revenue to an LFA.
- Authorizes an LFA to levy a property tax with voter approval for current expenses, debt charges, permanent improvements, and parks and recreation, not to exceed one mill.
- Authorizes an LFA to levy a lodging tax with voter approval, the rate of which may not cause the aggregate rate of lodging taxes in the impacted lake district to exceed 5%.
- Authorizes an LFA to issue general obligation securities for the remediation of an impacted watershed and related permanent improvements, not to exceed one-tenth per cent of the total value of property in the impacted lake district.
- Authorizes an LFA to issue revenue bonds and anticipation bonds and notes.
- Prohibits the creation of any new special district that would overlap with an LFA district (e.g., a conservancy district) if the new district would have powers or duties that are the same as the LFA's.
- Prohibits any taxing authority from levying a property tax in the territory of an LFA if the purpose of the tax is substantially similar to the purpose of a tax that the LFA is authorized to levy.
- Authorizes the Director of Natural Resources to transfer real property to an LFA to promote wetland mitigation banking, wildlife, or sporting activities, and authorizes the Division of Wildlife to enter into agreements with an LFA to establish wetland or natural areas to benefit wildlife or sporting activities.
- Requires competitive bidding for LFA construction projects in excess of \$25,000 except under certain circumstances.
- Permits, but does not require, an LFA to apply prevailing wage requirements to public improvements it undertakes or contracts for.

### **Disposition of body at local government expense**

- Permits a political subdivision to provide a metal grave marker, instead of a stone or concrete marker, when the political subdivision buries a body or cremated remains that are unclaimed or that an indigent person has claimed.



- Defines an indigent person as a person whose income does not exceed 150% of the federal poverty line, for purposes of the continuing requirement that a political subdivision pay to bury or cremate a body that an indigent person has claimed.

### **Recovery of township-owned cemetery**

- Permits the company, association, or religious society that most recently owned and operated a cemetery now owned by a board of township trustees to petition a probate court to restore ownership of the cemetery to the petitioner.
- Requires the court, if the petitioner meets all applicable requirements, to transfer to the petitioner ownership of the cemetery and all necessary records and documents.
- Requires that the petitioner have the financial resources necessary to operate and maintain the cemetery, that the petitioner be in compliance with all applicable laws and rules concerning cemeteries, and that the petitioner owe no delinquent taxes.

### **Community reinvestment areas**

- Specifies the types of amendments that, if made to a community reinvestment area (CRA) ordinance or resolution adopted before July 22, 1994, causes the CRA to lose its grandfathered status exempt from various limitations and requirements that apply to CRAs created after that date.

### **New community authorities**

- Requires the organizational board of commissioners of a new community district that is located entirely within the boundaries of a municipal corporation to be the legislative authority of that municipal corporation.
- Permits the organizational board of commissioners of any new community authority (NCA) to adopt an alternative method of selecting or electing successor members of a board of trustees.
- Limits the authority of a board of trustees of an NCA organized before March 22, 2012, which adopts an alternative method of subsequent selection for the board of trustees, to collect community development charges and issue bonds or notes to the amount permitted for a board of trustees whose members are not resident-elected.

### **Tax levy for fairs and other purposes**

- Allows a board of county commissioners to place on a ballot a tax levy in excess of ten mills for the purpose of operating expenses of an agricultural fair that is operated by a county or independent agricultural society.



- Allows a board of county commissioners to place on a ballot a tax levy in excess of ten mills for any combination of agricultural fairs, soil and water conservation district program funding, and the OSU Extension Fund.

### **Township use of joint economic development zone income tax revenue**

- Authorizes municipal corporations and townships that enter into a joint economic development zone contract to use income tax revenue collected under the contract for the general purposes of a township that is subject to the contract.

### **Allocation of lodging tax revenues by convention facilities authorities**

- Authorizes the convention facilities authority in Muskingum County to allocate a portion of lodging tax revenue (not exceeding 15% of the total revenue from the tax in the preceding year) to county and municipal tourism facilities and programs and to county fair purposes.
- Requires that lodging tax revenue distributed by a county to a convention and visitors' bureau in existence on September 29, 2013, be used solely for tourism sales, marketing and promotion, and their associated costs.
- Limits the amount of county lodging tax revenue that a convention and visitors' bureau may retain for administrative purposes.

### **Use of oil and gas money for local park maintenance and acquisition**

- Requires royalties and other moneys from the sale or lease of mineral rights regarding parks within township or metropolitan park districts or land within municipal parks to be deposited into special funds and used for park maintenance and acquisition of new park lands.

### **Township use of tax increment financing revenue**

- Authorizes townships that have, at any time, adopted a resolution exempting real property from taxation using a TIF (tax increment financing) to borrow unencumbered money in the TIF fund to pay for current public safety expenses.

### **Township use of motor fuel tax revenue**

- Allows a township to use its distribution of motor fuel tax revenue to service bonds issued to pay for the purchase of road machinery and equipment, the planning, construction, and maintenance of buildings that house such equipment, and other highway improvement projects.



## Other provisions

- Permits a superintendent serving multiple county DD boards to appoint a designee to participate on a county's family and children first council.
- Requires the public children services agency (PCSA) of Butler County to establish and maintain a regional training center for training PCSA caseworkers and supervisors and related functions; eliminates the Hamilton County PCSA's duty to establish and maintain such a center; and specifies that the center established by the Butler County PCSA replaces the center previously established by the Hamilton County PCSA.
- Adds to the definition of "county expenses" that may be paid to a county office by use of a financial transaction device, payment of money confiscated during the commitment of an individual to a county jail, of bail, of money for a prisoner's inmate account, and of money for goods and services for an individual incarcerated by a county sheriff.
- Specifies, when the Treasurer of State is holding an obligation purchased from a county, township, or municipal corporation, that the county auditor, upon demand of the Treasurer, must withhold from settlement payments or advance payments of money to which the county, township, or municipal corporation is entitled, an amount sufficient to pay debt service charges on the obligation.
- Authorizes a nonchartered city to sell real estate no longer needed for city purposes to a board of county commissioners without complying with state law that otherwise requires advertising and competitive bidding.
- Clarifies the number of members that are eligible to be elected when the legislative authority of a nonchartered village adopts nonstaggered terms of office for its membership.
- Allows a board of county commissioners, a county auditor, and a county treasurer each to enter into a contract with a county land reutilization corporation to provide employees to provide services to the corporation, who remain employees of the county for the duration of the service.
- Requires that the township member of the board of directors of a county land reutilization corporation be chosen by a majority of the boards of township trustees of townships having a population of at least 10,000 in the unincorporated area of the township.



## **Open Meetings exception for economic development applications**

(R.C. 121.22(G))

Under continuing law, the Open Meetings Law permits members of a public body to hold an executive (i.e., closed) session for the sole purpose of considering one of seven permissible matters, such as the employment, dismissal, or discipline of public employees or matters that are required to be kept confidential under federal law. The act adds an eighth purpose for which a public body may hold an executive session, namely to consider certain confidential information related to an application for economic development assistance to be provided or administered by a local government. Such applications may include, for example, applications related to tax increment financing (TIF) incentives or incentives related to an enterprise zone, community reinvestment area, or joint economic development district.

The act's exception applies only to the consideration of confidential information directly related to such applications – specifically, an applicant's marketing plans, business strategy, production techniques, trade secrets, or personal financial statements – or to negotiations with other political subdivisions regarding such applications. A unanimous quorum of the public body must vote, by roll call, that holding the executive session is necessary to protect the applicant's interests or the possible investment or expenditure of public funds in connections with the economic development project. By contrast, the approval of only a majority of a quorum of a public body is required to hold executive sessions on other matters under continuing law.

## **Municipal watershed management program (VETOED)**

(R.C. 743.50(A))

The Governor vetoed a provision that would have prohibited a municipal corporation that has established and implemented a watershed management program with regard to reservoirs for drinking water from including in the program any prohibition against maintenance of property that constitutes a buffer around a body of water that is part of the reservoir by an owner of property that is contiguous to the buffer.

## **Prohibition against trespassing charges (VETOED)**

(R.C. 743.50(B) and (C))

The Governor vetoed a provision that would have prohibited a municipal corporation that has established and implemented a watershed management program with regard to reservoirs for drinking water from including in the program any



prohibition against mowing grass, weeds, or other vegetation on municipal property that constitutes a buffer around a body of water that is part of the reservoir by owners of property contiguous to the buffer. No peace officer or other official with authority to cite trespassers on the municipal property would have been able to issue a civil or criminal citation to any individual who entered municipal property buffering a reservoir for the sole purpose of mowing grass, weeds, or other vegetation in an effort to beautify the municipal property that is contiguous to property owned by the individual.

## **County recorder funding for technology needs**

(R.C. 305.23(C), 317.06(B), 317.32(A), and 317.321)

### **Prior law funding of equipment needs**

Prior law authorized the county recorder to submit to the board of county commissioners a proposal for funds for the acquisition or maintenance of micrographic or other equipment or for contract services, or a proposal to reserve funds for the office's future equipment needs. The proposal could have requested that an amount not to exceed \$7 of the following fees be placed in the county treasury in a special fund designated as "general fund moneys to supplement the equipment needs of the county recorder": (1) the fees collected for filing or recording certain instruments, if the photocopy or any similar process is employed,<sup>230</sup> (2) the fee for filing a financing statement to perfect a security interest or an agricultural lien,<sup>231</sup> and (3) various fees for recording an assortment of instruments regarding registered land.<sup>232</sup> Former law also required that a \$28 fee for recording and indexing the first two pages of a transfer, conveyance, or assignment of tangible or intangible personal property, or rights or interests therein, and an \$8 fee for each subsequent page of that instrument if the photocopy or any similar process is employed, be deposited into the county treasury to the credit of the special fund designated as "general fund moneys to supplement the equipment needs of the county recorder."

A proposal could have been for a term not to exceed five years. The board of county commissioners could have approved, rejected, or modified a proposal for the acquisition or maintenance of micrographic or other equipment or for contract services,

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<sup>230</sup> A base fee of \$14 and a Housing Trust Fund fee of \$14 continue to be charged for the first two pages, and a base fee of \$4 and a Housing Trust Fund fee of \$4 continue to be charged for each subsequent page.

<sup>231</sup> A fee of \$20 continues to be charged for responding to a request for information about a financing statement naming a particular debtor, or a \$5 fee if the request is less particular.

<sup>232</sup> The fees continue to be range from \$5 to \$30.





but was required to approve a proposal to reserve funds for the office's future equipment needs. Any funding approved by the board was placed in the county treasury and designated as general fund moneys to supplement the equipment needs of the county recorder.

### **Funding of technology needs under the act**

The act changes the name of the special fund designated as "general fund moneys to supplement the equipment needs of the county recorder," to the "county recorder's technology fund."

Under the act, a county recorder may submit to the board of county commissioners a proposal for funding any of the following:

(1) The acquisition and maintenance of imaging and other technological equipment, and contract services therefor;

(2) To reserve funds for the office's future technology needs if the county recorder has no immediate plans for the acquisition of imaging and other technological equipment or contract services, or to use the county recorder's technology fund as a dedicated revenue source to repay debt to purchase any imaging and other technological equipment before the accumulation of adequate resources to purchase the equipment with cash;

(3) For other expenses associated with the acquisition and maintenance of imaging and other technological equipment and contract services.

The act limits the use of the technology fund for the purpose described in (3), above, when used for associated expenses for personnel, by strictly confining the use of the fund to personnel directly related to imaging and other technological equipment. Any compensation increases for those personnel cannot exceed the average of the annual aggregate percentage increase or decrease in the compensation fixed by the board of county commissioners for their employees and the county's officers. Use of the fund for compensation bonuses, or for recognizing outstanding employee performance, is prohibited.

### **Proposals for funding**

The act revises the information that must be in a funding proposal. A proposal for the purposes of (1), above, must include a description or summary of the imaging and other technological equipment that the county recorder proposes to acquire and maintain, and the nature of contract services that the county recorder proposes to use. A proposal for the purposes of (2), above, must explain the general future technology





needs of the office for imaging and other technological equipment, or for revenue to repay debt. A proposal for the purposes of (3), above, must identify the other expenses associated with the acquisition and maintenance of imaging and other technological equipment and contract services that the recorder proposes to pay with moneys in the technology fund.

The act changes from mandatory to permissive the board of county commissioners' authority to approve funding proposals for reserving funds for future imaging and technology needs. Under prior law, the board had to approve a proposal to reserve funds for the county recorder's future equipment needs.

### **Amount of fees requested**

The act increases from an amount not to exceed \$7 to an amount not to exceed \$8 the amount of the fees described above that the county recorder may request be placed in the county treasury to the credit of the county recorder's technology fund. The act decreases the amount of fees collected for recording and indexing the first two pages of an instrument that transfers, conveys, or assigns tangible or intangible personal property that is deposited in the technology fund. If the county recorder's technology fund has been established, of the \$28 fee charged for recording and indexing the first two pages of the instrument, \$14 must be deposited into the county treasury to the credit of the technology fund and \$14 must be deposited into the county general fund, instead of the entire \$28 going into the fund for the county recorder's technology needs, as required by prior law. If no technology fund has been established, the act requires that the entire \$28 fee be deposited into the county general fund.

### **Operation of the proposals**

The act also revises how the funding proposals operate, as follows:

(1) A proposal that has been approved by the board of county commissioners before, and that is in effect on September 29, 2013, continues in effect until January 1, 2019, regardless of the number of years of funding specified in the approved proposal. (Under prior law, a proposal was valid for up to five years, as designated in the approved proposal.)

(2) A proposal submitted between October 1, 2013, and October 1, 2017, may request that an amount that does not exceed \$3 be credited to the county recorder's technology fund, in addition to the amount approved by the board of county commissioners in a proposal approved before, and in effect on, September 29, 2013. If the total of the amount approved in the previous proposal and the amount approved in a proposal submitted during that four-year window does not exceed the \$8 cap, the board must approve the proposal and notify the county recorder of its approval. A



proposal may be submitted each year during that four-year window for funding in the following fiscal year.

(3) If the total amount of fees provided for in (1) above, (2) above, and in any proposal submitted after September 29, 2013, is less than \$8, a proposal requesting additional fees may be submitted to the board of county commissioners under the regular proposal procedure whereby the board approves, rejects, or modifies the proposal for a number of years not to exceed five, as long as the total amount of the fees that are to be credited to the county recorder's technology fund under all active proposals does not exceed \$8.

When the board of county commissioners approves a proposal, the county recorder's technology fund is established in the county treasury, and, beginning on the following first day of January, the fees approved must be deposited in that fund.

### **Use of the fund for other purposes**

If a county is under a fiscal caution, fiscal watch, or fiscal emergency declared by the Auditor of State, the board of county commissioners, notwithstanding tax levy laws that dictate how county funds are to be transferred, may transfer from the county recorder's technology fund any moneys the board deems necessary.

The act also requires that if a county has established a county recorder's technology fund, the costs the county recorder must incur for training programs and continuing education must be paid from the technology fund, including registration fees, lodging and meal expenses, and travel expenses. Under prior law, the board of county commissioners approved a reasonable amount requested by the county recorder for these costs, from money appropriated to the county recorder.

### **Recording registered land**

(R.C. 5309.68 and 5309.86)

The act allows county recorders who maintain registered land records by nonpaper means to reproduce, by electronic facsimile, the signature and seal of the county recorder or the recorder's authorized deputy or clerk on a certificate of title or on a duplicate of a certificate of title. County recorders are allowed under continuing law to maintain registered land records by use of photographic, magnetic, electronic, or certain other processes, means, or displays. The act provides that any prior memorial, notation, or cancellation of such a memorial or notation on a certificate of title or duplicate of a certificate of title must note only the name of the prior recorder and need not be signed by the county recorder or the recorder's authorized deputy or clerk.



Continuing law allows a person owning real estate, the title of which is registered, to request withdrawal of the real estate from registration by presenting to the county recorder an affidavit of intention to withdraw. The county recorder records the affidavit and, upon the order of the court, cancels the certificate of record. The act requires a county recorder to record the court order in the recorder's unregistered land official records, rather than recording all previously filed deeds and mortgages that conveyed the registered land for which the registration certificate is being surrendered.

## **County hospital trustees**

(R.C. 339.02, 339.05, 339.06, and 339.07)

The act expressly requires county hospital trustees to be representative of the areas served by the hospital.

The act also removes criteria that prohibit more than one half of the members of a board of county hospital trustees from being independents or from being members of any one political party.

The act authorizes, but does not require, the board of county commissioners to provide a stipend for service on the board of county hospital trustees. Under prior law, county hospital trustees served without compensation. Continuing law, not amended by the act, allows the trustees to be paid for the necessary and reasonable expenses incurred in the performance of their duties.

The act requires a board of county hospital trustees to hold meetings at least quarterly. Prior law required meetings to be held at least once a month.

A board of county hospital trustees is authorized annually to adopt bidding procedures and purchasing policies for services provided through a joint purchasing arrangement sponsored by a nonprofit organization, and for supplies and equipment that are routinely used in operation of the hospital and that cost above the amount at which purchases must be competitively bid. The act expands and restructures this provision by authorizing the annual adoption of purchasing or leasing policies provided through the joint purchasing arrangement sponsored by a nonprofit organization, for services, supplies, and equipment, that are routinely used in the operation of the hospital and that cost above the amount at which purchases must be competitively bid. If the board of county hospital trustees adopts these procedures and policies, and if the board of county commissioners approves them, the board of county hospital trustees may follow those procedures and policies rather than the competitive bidding procedures that otherwise would apply.



Under the act, a board of county hospital trustees is exempt from competitive bidding if the board, by a unanimous vote, determines that a real and present emergency exists and the estimated cost is less than \$100,000 or there is actual physical damage to structures or equipment. The board must enter the determination of emergency and the reasons for it in the minutes of its proceedings. (For purposes of this provision, a vote is unanimous if all members of the board of county hospital trustees are present, or when not all members are present, so long as the number of members present constitutes a quorum (one half plus one).)

Whenever a contract of purchase, lease, or construction is exempted from competitive bidding because the estimated cost is less than \$100,000, but is \$50,000 or more, the board must solicit informal estimates before the contract is awarded from not fewer than three persons who could perform the contract. The board must maintain a record of the informal estimates, including the name of each person from whom an informal estimate was solicited, for the longer of at least one year after the contract is awarded or an amount of time required by the federal government.

The act authorizes the board of county hospital trustees to delegate its management and control of the county hospital to the hospital administrator through a written delegation. The act also specifies that the board must establish rules for the hospital's management and control, in addition to rules for the hospital's government and for the admission of persons.

## **Lake Facilities Authority**

(R.C. 353.01 to 353.16, 5705.55, and 5739.026 with conforming changes in R.C. 133.01, 135.80, 309.09, 5705.01, and 5705.19)

### **Authorization and creation**

(R.C. 353.01 and 353.02)

The act authorizes one or more boards of county commissioners of one or more counties that contain property in an "impacted watershed" to create by resolution a Lake Facilities Authority (LFA or Joint LFA) to rehabilitate, improve, or promote the watershed. The resolution must contain a finding that the watershed is an "impacted watershed." An impacted watershed is one that contains territory in a state park that has averaged at least 400,000 visitors per year for the four calendar years immediately preceding the year in which the resolution is adopted and contains a natural or man-made lake of at least one-half square mile that, within the last two years, has experienced levels of microcystin toxins in excess of 80 parts per billion, as measured by the Ohio Environmental Protection Agency (EPA).



Within 60 days after the creation of an LFA, the county engineer of each county with territory in the impacted watershed is required to prepare a survey denoting the impacted watershed's boundaries in the county. (The territory of a watershed is determined by the U.S. Geological Survey.) The cost of the survey may be paid by the LFA if requested by all county engineers conducting the survey. Each participating county may advance funds to the LFA for that purpose.

Once an LFA is created, no special district with powers or duties similar to the LFA's may be created if the district would include territory in the "impacted lake district," which is defined to mean the territory of all townships and municipal corporations with any territory in the impacted watershed.

### **Governance and regulation**

(R.C. 353.02 and 353.04)

An LFA is governed by a board of directors consisting of the county commissioners of each county with territory in the impacted lake district. Its fiscal officer and legal advisor are the county auditor and county prosecutor, respectively, of the county with the greatest amount of territory in the impacted watershed. The county prosecutor of the county with the greatest amount of territory in the impacted watershed is the legal advisor of the LFA and is required to prosecute and defend all suits and actions the LFA directs or to which the LFA is a party. The county auditor of the county with the greatest amount of territory in the impacted watershed is the fiscal officer of the LFA.

The LFA board is subject to open meetings and public records laws. The board may hold closed meetings and protect confidential information under the same circumstances as authorized for a community improvement corporation under R.C. 1724.11 (generally, financial or proprietary information submitted by a business in relation to the relocation or expansion of the business is confidential). Laws regarding sovereign immunity for public employees apply to the LFA.

The board is required to consult with an advisory council, consisting of one appointee from each political subdivision with territory in the impacted lake district. The board must provide notice of the LFA's existence and the process for the appointment of an advisory council to each such political subdivision within 60 days after the LFA's creation.

Each year, the board is required to prepare an annual report of its activities and make it available to the public.



## General powers

(R.C. 353.01 and 353.03)

In addition to the authority to incur and pay the costs of activities that remediate, rehabilitate, enhance, foster, aid, improve, provide, or promote an impacted watershed, the act grants the following general powers to an LFA. The LFA may:

- Acquire, improve, or sell real and personal property;
- Request that the Department of Natural Resources (DNR), Department of Agriculture, or EPA adopt and enforce reasonable rules governing impacted watersheds;
- Employ managers, administrative officers, agents, engineers, architects, attorneys, contractors, sub-contractors, and employees, and require bonds to be given by any such persons and by officers of the authority for the faithful performance of their duties;
- Sue and be sued;
- Make and enter into contracts and agreements and execute instruments (see below);
- Accept aid or contributions;
- Apply for and accept grants, loans, or commitments of guarantee or insurance, including any guarantees of its bonds and notes;
- Procure insurance;
- Maintain funds or reserves as it considers necessary for the efficient performance of its duties;
- Enforce any covenants running with the land, of which the LFA is the beneficiary;
- Issue general obligation bonds or notes for the remediation of an impacted watershed if approved by the electors residing in the impacted lake district, not to exceed one mill per dollar of taxable value (0.1%) of all property within the impacted lake district;
- Issue revenue bonds beyond the limit of bonded indebtedness provided by law (see below);



- Advise and provide input to political subdivisions within the impacted lake district with respect to zoning and land use planning within the impacted lake district;
- Enter into agreements for the management, ownership, possession, or control of lands to be used for wetland mitigation banking;
- Adopt rules to carry out any of the above powers.

### **Construction contracts; prevailing wage**

(R.C. 353.03(F))

With respect to contracts for the construction of buildings, structures, or other improvements exceeding \$25,000, the LFA is required to use a competitive bidding process and to select the lowest responsive and responsible bidder, who must be determined in accordance with a general law governing the factors to be applied in determining responsive and responsible bids (R.C. 9.312). In certain circumstances, the board may decline to use the competitive bidding process:

- There exists a real and present emergency that threatens damage to property or injury to persons of the LFA or other persons.
- A commonly recognized industry or other standard or specification does not exist and cannot objectively be articulated for the improvement.
- The contract is for any energy conservation measure.
- With respect to material to be incorporated into the improvement, only a single source or supplier exists.
- A single bid is received.

With respect to any construction contract, the LFA may choose to subject the project to prevailing wage requirements.

### **LFA revenue sources**

In addition to authorizing the issuance of general obligation bonds (see above), the act authorizes an LFA to generate revenue by means of a sales tax, property tax, lodging tax, revenue bonds, and anticipation bonds and notes.





**Sales tax**

(R.C. 5739.026)

A county is authorized to levy any unused sales tax authority or re-designate the purpose of a sales and use tax it currently levies to provide funds to an LFA.

**Property tax**

(R.C. 353.05 and 5705.55)

The LFA board of directors, by vote of two-thirds of all its members, may propose the levy of a property tax in the impacted lake district. The tax must be approved by impacted lake district electors. The tax may be levied for current expenses, permanent improvements, debt charges, or park and recreation purposes. The tax rate may not exceed one mill per dollar of taxable value (0.10%). The levy's duration may not exceed five years unless the tax is levied for debt purposes, in which case it must be levied for the duration of the bond indebtedness. The resolution proposing the tax must be certified by the LFA to the county board of elections at least 90 days before the election. Ongoing law regarding the submission of a property tax to voters applies to the LFA tax.

If an LFA levies a property tax for a tax year, no other taxing authority may levy a tax on property in the impacted lake district in the same year if the purpose of the levy is substantially the same as the purpose for which the LFA was created.

**LFA lodging tax**

(R.C. 353.06)

The resolution creating the LFA may authorize it to levy a lodging tax in the impacted lake district with voter approval. The tax would apply to all transactions by which lodging in a hotel is furnished to transient guests. The tax may be levied to pay the cost of permanent improvements, to pay debt charges on LFA tax anticipation bonds, or for LFA current expenses. The rate of the tax, when added to the aggregate rate of all other lodging taxes applicable in the impacted lake district, may not cause the total aggregate rate to exceed 5%.

**Anticipation bonds and notes**

(R.C. 353.08)

The act authorizes an LFA that levies a property tax or lodging tax to anticipate the proceeds of the tax by issuing anticipation bonds. In anticipation of the bond proceeds, the LFA also may issue anticipation notes. The notes are required to mature





not later than 20 years after their issuance, and the bonds are required to mature not later than 40 years after issuance. Bond proceeds are to be pledged to the payment of the notes, and proceeds from the tax are to be pledged to the payment of the bonds. The act states that the anticipation bonds and notes satisfy the Ohio Constitution's "sinking fund" requirement that prohibits debt issuance unless a tax is levied sufficient to meet ongoing debt charges.

### **LFA revenue bonds**

(R.C. 353.09 to 353.16)

The act authorizes an LFA to issue revenue bonds in such amounts as the LFA considers necessary. The bonds are to be paid out of the revenues of the LFA that are pledged for such payment. The LFA may retire revenue bonds with revenue refunding bonds. Revenue bonds issued in the form of a note must mature within five years after issuance, and bonds must mature not later than 45 years from the date of issuance. The bonds may be sold at a public auction or through a private sale. The bonds and notes do not constitute a debt, or a pledge of the full faith and credit, of the state or any political subdivision.

### **Wetland mitigation banking**

(R.C. 353.07)

The act authorizes the Director of Natural Resources to transfer real property owned by the state to an LFA for the purpose of promoting wetland banking, wildlife, or sporting activities. Also, the Division of Wildlife within the Department of Natural Resources may enter into an agreement with an LFA to establish wetland or natural areas to benefit wildlife or sporting activities.

### **Disposition of body at local government expense**

(R.C. 9.15)

Under the act, when a political subdivision buries a body or cremated remains that are unclaimed or that an indigent person has claimed, that subdivision may provide a metal grave marker, instead of a stone or concrete marker as required under continuing law.

Further, for the purposes of the law that requires a political subdivision to pay to bury or cremate a body that an indigent person has claimed, the act defines an indigent person as a person whose income does not exceed 150% of the federal poverty line. The statute previously did not define "indigent."



Continuing law requires that when a body is unclaimed or is claimed by an indigent person, the township or municipality in which the deceased had a legal residence at the time of death must pay to bury or cremate the body and provide a grave marker. However, the county in which the body was found must cover those costs if the deceased had no legal residence in the state, had an unknown residence, was an inmate of a correctional institution in the county, or was a patient or resident of a benevolent institution in the county.

## **Recovery of township-owned cemetery**

(R.C. 517.271)

Under the act, after a board of township trustees takes ownership of a cemetery, the company, association, or religious society that most recently owned and operated the cemetery may petition the county probate court to restore ownership of the cemetery to the petitioner. In order to grant the petitioner's request, the court must determine that:

(1) The petitioner has the financial resources necessary to operate and maintain the cemetery;

(2) The petitioner is in compliance with all applicable laws and administrative rules concerning the owners and operators of cemeteries, including registration with the Division of Real Estate in the Department of Commerce; and

(3) The petitioner owes no delinquent taxes.

If the court finds that the petitioner has met all those conditions, the court must transfer the ownership of the cemetery to the petitioner and must order the board of township trustees to give the petitioner all necessary records and documents concerning the cemetery, including records of the board's sale of any lots.

Prior law prohibited a board of township trustees from conveying a cemetery to another entity without first discontinuing the cemetery and removing the remains and grave markers.

Continuing law requires a board of township trustees to accept ownership of and maintain any cemetery that is located outside a municipality and that is not currently under the ownership or care of a private entity. As a result, when a private entity loses its title to a cemetery because of legal proceedings or other circumstances, the board may become responsible for the cemetery.



## Rules application for grandfathered community reinvestment areas

(R.C. 3735.661; Section 757.60)

Under continuing law, a community reinvestment area (CRA) is a geographic area designated by a municipal corporation or county in which real property improvements are exempted from taxation. The act retroactively specifies the types of amendments that, if made to a CRA ordinance or resolution adopted before July 22, 1994, cause the CRA to have to comply with statutory limitations and requirements that took effect on that date as enacted by S.B. 19 of the 120th General Assembly.

S.B. 19 changed the requirements for a CRA ordinance or resolution adopted on or after July 22, 1994, including, for example, adding additional procedural requirements, authorizing the grant of less than 100% exemptions, and giving more power to school boards to object to the terms of tax exemptions. S.B. 19 applied to grandfathered CRA ordinances and resolutions, but only after the grandfathered CRA ordinance or resolution had been amended beyond two amendments. S.B. 19 did not specify the substance of amendments that would or would not be considered an amendment that would cause the CRA to become subject to S.B. 19's requirements beyond providing that any amendment that extended the term of the grandfathered CRA could not extend the term in excess of five years.<sup>233</sup>

The act specifies that only amendments that do or did any of the following serve to trigger a requirement that a grandfathered CRA ordinance or resolution comply with S.B. 19:

- (1) Expands the size of a CRA;
- (2) Increases the exempt percentage of assessed value of CRA property (but see below);
- (3) Increases the term of a tax exemption;
- (4) Extends the duration of a CRA; or
- (5) Changes eligibility requirements for receiving tax exemptions.

Conversely, only amendments that do or did any of the following would not trigger a requirement that a grandfathered CRA ordinance or resolution comply with S.B. 19's additional requirements:

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<sup>233</sup> See Section 3 of Am. Sub. S.B. 19 of the 120th General Assembly.



- (1) Decreases the size of a CRA;
- (2) Decreases the exempt percentage of assessed value of CRA property (but see below);
- (3) Decreases the term of a tax exemption;
- (4) Shortens the time after which an exemption may be terminated;
- (5) Recognizes or confirms the continued existence of a CRA or tax exemption;
- (6) Clarifies defects or ambiguities; or
- (7) Makes procedural or administrative changes.

The act states that the purpose of specifying the foregoing is to clarify the intent of the General Assembly at the time of the enactment of S.B. 19. The act applies retroactively to amendments to a grandfathered CRA ordinance or resolution adopted before or after September 29, 2013 (the act's 90-day effective date).

### **Exempt percentage of assessed value**

The act additionally specifies that it does not authorize a municipal corporation or county to decrease or increase the percentage of assessed value of grandfathered CRA property to be tax-exempt. Under continuing law, municipal corporations and counties were and are allowed to exempt only 100% of the increased assessed value of improved real property located in a grandfathered CRA.

### **New community authorities**

(R.C. 349.01 and 349.04)

Continuing law provides that new community districts may be established by developers by petition to an organizational board of commissioners. If the board approves the petition, a New Community Authority (NCA) is established to develop land in the district, provide services in the district, and to raise revenue by levying community charges in the district.

The act provides that the organizational board of commissioners for a new community district that is located entirely within the boundaries of a municipal corporation is the legislative authority of that municipal corporation.

Continuing law provides that NCAs are governed by a board of trustees initially composed of a local government representative and citizen members (all appointed by



the organizational board of commissioners) and representatives of the developer in a number equal to the citizen members. In general, the appointed citizen members, representatives of the developer, and representative of local government are replaced by elected citizen members in accordance with continuing statutory law.

In the case of an NCA for which a petition is filed within three years after March 22, 2012, the organizational board of commissioners, by resolution, can adopt an alternative method of selecting or electing successor members of the board of trustees. The act first removes the three-years-after-March 22, 2012, limitation, thus making alternative methods of selecting or electing trustees available to all NCAs. But, if an alternative method of selection is adopted for an NCA organized prior to March 22, 2012, the act specifies that the board of trustees of that NCA is limited in the collection of community development charges and in the issuance of bonds or notes to the amount or to the extent otherwise permitted for a board of trustees whose members are not elected by the residents of the NCA.

### **Tax levy for fairs and other purposes**

(R.C. 5705.19)

The act authorizes a board of county commissioners to place on the ballot a tax levy in excess of ten mills for operating expenses of an agricultural fair that is operated by a county or independent agricultural society. It retains continuing law that allows a board of county commissioners to place on the ballot a tax levy in excess of ten mills for the purpose of purchasing, maintaining, or improving real estate on which to hold a fair.

The act also allows a board of county commissioners to place on the ballot a tax levy in excess of ten mills for any combination of agricultural fairs, soil and water conservation district program funding, and the OSU Extension Fund.

### **Township use of joint economic development zone income tax revenue**

(R.C. 715.691)

The act authorizes municipal corporations and townships that enter into a joint economic development zone (JEDZ) contract to use income tax revenue collected pursuant to the contract for the general purposes of a township that is subject to the contract.

Under continuing law, municipal corporations and townships may enter into a contractual agreement establishing a JEDZ and authorizing a board of directors to levy an income tax within the JEDZ that applies to persons working in the zone and



businesses operating there. The income tax must be approved by the majority of electors within the JEDZ (unless a majority of electors petition otherwise) and the rate must be less than or equal to the highest rate being levied by a municipal corporation that is a party to the JEDZ contract.

Prior law required that all proceeds of the income tax be utilized only for the purpose of the JEDZ or for the purposes of the municipal corporations that are parties to the JEDZ.

### **Allocation of lodging tax revenues by convention facilities authorities**

(R.C. 351.021)

The act expands the purposes for which a convention facilities authority (CFA) may allocate lodging tax revenue if the CFA is located in a county with a population between 80,000 and 90,000 according to the 2010 Census (i.e., Muskingum County).

Continuing law authorizes counties to create CFAs with the authority to administer convention, entertainment, or sports facilities located within their respective territories. Under certain circumstances, a CFA is authorized to levy a lodging tax of up to 4%. In lieu of, or in addition to, this tax, an authority may levy a lodging tax of up to 0.9% in an overlapping municipal corporation that levies a city lodging tax. The authority to levy such a tax has been extended several times on a limited basis to CFAs in qualifying counties over relatively short periods of time.

Under law partly changed by the act, CFAs that levy a lodging tax are required to use the revenue to pay the cost of one or more convention facilities, the principal, interest, and premium on bonds issued by the CFA to pay those costs, the operating and maintenance costs of convention facilities, and the operating costs of the CFA. The act empowers the Muskingum County CFA to allocate a portion of lodging tax revenue (not exceeding 15% of the total revenue from the tax in the preceding year) to county and municipal tourism facilities and programs, the improvement and maintenance of county fairgrounds, and any other purpose connected with the use of a county fairground.

### **Convention and visitors' bureau use of lodging tax revenue**

(R.C. 5739.09(J))

The act requires that lodging tax revenue distributed by a county to a convention and visitors' bureau in existence as of September 29, 2013 must be used solely for tourism sales, marketing and promotion, and their associated costs. Such expenses are defined to include operational and administrative costs of the bureau, sales and



marketing, and maintenance of the physical bureau structure. Lodging tax revenue previously pledged to the payment of debt service charges on bonds, notes, securities, or lease agreements are exempted from this requirement.

Under prior law, lodging tax revenue distributed to a convention and visitors' bureau could be used for any purpose that promotes, advertises, and markets the region (including financing the construction and operation of a convention center).

### **Use of oil and gas money for local park maintenance and acquisition**

(R.C. 511.261, 755.06, and 1545.23)

The act requires royalties and other moneys resulting from the sale or lease of mineral rights regarding a park within a township or metropolitan park district or land within a municipal park to be deposited into a special fund that must be created by the board of park commissioners or municipal legislative authority, as applicable, and used only for park maintenance and acquisition of new park lands.

### **Township use of TIF revenue for public safety expenses**

(R.C. 5709.75(E))

The act authorizes townships that have, at any time, adopted a resolution exempting real property from taxation using tax increment financing (TIF) to use unencumbered money in the TIF fund to pay for current public safety expenses. Continuing law requires the township to reimburse the fund by the time the TIF exemptions expire. (TIF exemptions may last up to 30 years.) The township must also be a party to a "hold harmless" or "service" agreement wherein the board of trustees agrees to compensate a school district for 100% of the tax revenue the district would have received from the tax-exempt improvements to parcels designated in the resolution.

Under prior law, the authority of a township to utilize unencumbered TIF funds for public safety expenses applied only to TIFs wherein the township exempted real property from taxation before January 1, 1995. In all other TIFs, money in a TIF fund (which originates from payments in lieu of taxes by property owners) could be used to pay for public infrastructure and, in some cases, to compensate school districts or other taxing units.

### **Township use of motor fuel tax revenue**

(R.C. 5735.27; Section 803.240)

Under continuing law, a portion of the revenue from the state motor fuel tax is distributed to townships to fund transportation-related projects. Townships may use





this revenue to (1) plan, construct, and maintain public roads within the township, (2) pay debt service on obligations incurred through the State Infrastructure Bank, (3) install railroad crossing signals, (4) purchase road machinery and equipment, and (5) plan, construct, and maintain buildings that house road machinery and equipment.

The act adds that a township may use motor fuel tax revenue to pay debt service on bonds issued to finance the purchase of road machinery and equipment, the planning, construction, and maintenance of buildings that house such machinery and equipment, and any highway improvement project for which the township is authorized to issue bonds. The act specifies that this new authority may apply to bonds authorized or issued before September 29, 2013.

### **County family and children first council membership**

(R.C. 121.37)

Each county family and children first council is comprised of certain mandatory members, as well as other representatives invited by the board of county commissioners. One of the mandatory members is the superintendent of the county developmental disabilities (DD) board.<sup>234</sup> A superintendent of a county DD board may serve as the superintendent of more than one county DD board pursuant to an agreement entered into between county DD boards. When a superintendent serves as the superintendent for multiple counties, the act permits the superintendent to appoint a designee to participate on the county council.

### **Regional Training Center – Butler County PCSA**

(R.C. 5103.42)

Under preexisting law, unchanged by the act except as described in the next paragraph, prior to the beginning of the fiscal biennium that first followed October 5, 2000, the public children services agencies (PCSAs) of Athens, Cuyahoga, Franklin, Greene, Guernsey, Hamilton, Lucas, and Summit counties were each required to establish and maintain a regional training center. At any time after the beginning of the specified biennium, the Department of Job and Family Services (ODJFS), on the recommendation of the Ohio Child Welfare Training Program Steering Committee, may direct a PCSA to establish and maintain a training center to replace a center established by a PCSA under the requirement described above. There may be no more and no less than eight centers in existence at any time.

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<sup>234</sup> R.C. 5126.0219, not in the act.





The act requires the Butler County PCSA, prior to the beginning of the fiscal biennium that first follows September 29, 2013, to establish and maintain a regional training center for training caseworkers and supervisors of PCSAs and related functions. It eliminates the duty of the Hamilton County PCSA to establish and maintain such a center and specifies that the center established by the Butler County PCSA replaces the center previously established by the Hamilton County PCSA.

### **County expenses eligible for payment by financial transaction devices**

(R.C. 301.28)

The act adds to the definition of "county expenses" that may be paid to a county office by use of a financial transaction device, payment of money confiscated during the commitment of an individual to a county jail, of bail, of money for a prisoner's inmate account, and of money for goods and services obtained by or for the use of an individual incarcerated by a county sheriff. Continuing law not changed by the act allows, but does not require, a board of county commissioners to adopt a resolution authorizing county officials and their offices (which includes the county sheriff) designated in the resolution to accept payments of "county expenses" by using a financial transaction device. The resolution must specify the county expenses that may be paid for through the use of such a device.

### **Withholding funds to pay debt service charges**

(R.C. 321.35)

Under the act, when the Treasurer of State is holding an obligation purchased from a county, township, or municipal corporation, the county auditor, upon demand of the Treasurer, must withhold from settlement payments of proceeds from any special tax levy or from advance payments of money in the county treasury to which the county, township, or municipal corporation is entitled, an amount sufficient to pay debt service charges on the obligation and any of the fee for the agreement to purchase the obligation. Continuing law authorizes political subdivisions to issue obligations that mature in one year, and the Treasurer of State may enter into agreements to invest state interim funds in those obligations.<sup>235</sup> The county auditor is already authorized to withhold school district funds for these purposes.

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<sup>235</sup> R.C. 135.143, not in the act.



## **Sale of city real property to board of county commissioners**

(R.C. 721.01, 721.03, and 721.29)

The act authorizes the legislative authority of a nonchartered city to sell real estate belonging to the city, that is no longer needed for city purposes, to a board of county commissioners without complying with a law that otherwise requires advertising and competitive bidding. The sale must be made upon such lawful terms as are agreed upon between the city and the board, but no sale may be made unless the contract for the sale is authorized by an ordinance that has been approved by a two-thirds vote of the members of the city's legislative authority, and by the board or officer having supervision or management of the real estate. Under case law, this provision appears also to apply to a chartered city if its charter fails to address procedures for conveying real estate, but that presumption is inconclusive.<sup>236</sup>

## **Legislative authority of nonchartered village – nonstaggered terms**

(R.C. 731.091)

The act clarifies the number of members that are eligible to be elected when the legislative authority of a nonchartered village adopts nonstaggered terms of office. Under continuing law, the members of the legislative authority of a nonchartered village are elected to staggered terms of office of four years. But the legislative authority of a nonchartered village may adopt an ordinance or resolution to eliminate staggered terms. Members then are to be elected to nonstaggered terms beginning at the next regular municipal election occurring not less than 90 days after the ordinance or resolution is certified to the board of elections. The act clarifies this law as follows:

(1) If the legislative authority has six members, the act specifies that the number of members eligible for election at the next regular municipal election are to be elected to two-year nonstaggered terms. Then, at all subsequent municipal elections, all members are to be elected to four-year nonstaggered terms. The result is six members serving four-year nonstaggered terms.

(2) If the legislative authority has five members, the act specifies that if members are first being elected after the reduction to five members, then one less than the number of members that otherwise would be eligible for election at the next regular municipal election are to be elected to two-year nonstaggered terms. If, however, the number of members eligible for election at the next regular municipal election previously has been reduced to five, then the number of members eligible for election at

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<sup>236</sup> See *Great Plains Exploration, LLC v. City of Willoughby*, 2006 Ohio 7009 (11th App. Dist. 2006).



that regular municipal election are to be elected to two-year nonstaggered terms. In either case, all members are to be elected at subsequent municipal elections to four-year nonstaggered terms. The result is five members serving four-year nonstaggered terms.

Prior law assumed that three members of the legislative authority of a nonchartered village were elected at each regular municipal election. This does not appear to be the case, however, which is why the act instead refers generally to "the number of members eligible for election." It appears that sometimes as few as two or as many as four members are to be elected.

This provision takes effect on June 30, 2013.

### **County providing employees to county land reutilization corporations**

(R.C. 307.07, 319.10, 321.49, and 1724.02)

Under continuing law, a county land reutilization corporation is a nonprofit corporation organized for the following purposes:

(1) Facilitating the reclamation, rehabilitation, and reutilization of vacant, abandoned, tax-foreclosed, or other real property within the county for whose benefit the corporation is being organized;

(2) Efficiently holding and managing vacant, abandoned, or tax-foreclosed real property pending the property's reclamation, rehabilitation, and reutilization;

(3) Assisting governmental entities and other nonprofit or for-profit persons to assemble, clear, and clear the title of the above types of property in a coordinated manner;

(4) Promoting economic and housing development in the county or region.

Under the act, the board of county commissioners, the county auditor, and the county treasurer each may enter into a contract with a county land reutilization corporation to provide employees to provide services to the corporation. A county employee who provides services to a county land reutilization corporation under such a contract is not considered an employee of the corporation during the provision of services, but remains an employee of the county.



## **Township member of county land reutilization board**

(R.C. 1724.03)

The act requires that the township member of the board of directors of a county land reutilization corporation be chosen by a majority of the boards of township trustees of townships having a population of at least 10,000 in the unincorporated area of the township, according to the most recent federal decennial census. Under continuing law, the board of directors of a county land reutilization corporation is composed of five, seven, or nine members, including one representative of a township with a population of at least 10,000 in the unincorporated area of the township, if at least two such townships exist in the county.



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## MISCELLANEOUS

### Trafficking in persons and promoting prostitution

- Extends the period within which a prosecution for trafficking in persons must be commenced from six years to 20 years after the offense is committed.
- Eliminates as an element of the offense of promoting prostitution that the transportation of a person for sexual activity be across the boundary of Ohio or any county of Ohio.
- Prohibits, as an element of the offense of promoting prostitution, establishing, maintaining, operating, managing, supervising, controlling, or having an interest in any enterprise the purpose of which is to facilitate engagement in sexual activity for hire.

### Bonds of statewide elected officials

- Modifies the bonding requirements that apply to the Attorney General, Secretary of State, Treasurer of State, and Auditor of State.

### Retention of investment interest

- Provides that the investment earnings on the cash balance of the following funds are to be credited to the respective fund: the Job Ready Site Development Bond Service Fund, the Mental Health Facilities Improvement Fund, the Parks and Recreation Improvement Fund, the Facilities Establishment Fund, and the Coal Research and Development Fund.

### Screening tool for high-risk youth

- Requires the Office of Health Transformation to convene a team comprised of various state departments to evaluate the feasibility of implementing a trauma screening tool for high-risk youth, and permits the Department of Youth Services to receive funds for piloting the recommended tool in detention centers.

### Age requirements for various board and council members

- Reduces, from 60 to 50, the minimum age requirement for certain members of the Ohio Advisory Council for the Aging, the Chemical Dependency Professionals Board, the State Board of Optometry, and the Insurance Agent Education Advisory Council.



## **Brain Injury Program**

- Transfers the Brain Injury Program to the Ohio State University College of Medicine from the Rehabilitation Services Commission.

## **Manufactured Homes Commission**

- Makes a corrective change to a cross reference in the Manufactured Homes Commission Law.

## **State Facility Utilization and Consolidation Task Force**

- Creates the State Facility Utilization and Consolidation Task Force to create an inventory of state-owned real property and related assets, to evaluate whether the real property and assets are being put to productive use, and to make recommendations based on its evaluation not later than September 29, 2014.

## **Endorsement or certification of autism treatment providers**

- Requires specified state agencies to work with the Ohio Center for Autism and Low Incidence or another qualified entity to create a certification or endorsement process for individuals providing evidence-based interventions to serve or support an individual with an autism spectrum disorder.
- Requires legislative recommendations to be submitted to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives not later than October 31, 2013.

## **Ohio Council for Interstate Adult Offender Supervision**

- Increases membership of the Ohio Council for Interstate Adult Offender Supervision from seven to 12 or more by giving the Chief Justice and Governor two additional appointments each, the Attorney General one appointment, and the Director of Rehabilitation and Correction additional appointments as necessary.

## **Authority to convey real estate**

- Extends the authorization to convey certain real estate that is under the jurisdiction of the Department of Youth Services to November 1, 2015.

## **Public records correction**

- Corrects a cross-reference exception regarding joint self-insurance pool administrators in the law that requires governmental entities and nonprofit organizations to prepare complete financial records of moneys expended under



service contracts with other governmental units, because the records and contracts are public records.

## Trafficking in persons and promoting prostitution

(R.C. 2901.13 and 2907.22)

### Statute of limitations for trafficking in persons

Continuing law provides that, generally speaking, a prosecution for a felony offense is barred unless it is commenced within six years after the offense is committed. For certain offenses including voluntary manslaughter, involuntary manslaughter, kidnapping, rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, compelling prostitution, and aggravated arson, a prosecution is barred unless it is commenced within 20 years after the offense is committed. The act provides that trafficking in persons is subject to this 20-year period of limitation, instead of the six-year period of limitation for this offense under prior law.<sup>237</sup>

### Promoting prostitution

Under continuing law, a person is prohibited, in part, from knowingly establishing, maintaining, operating, managing, supervising, controlling, or having an interest in a brothel. Prior law prohibited a person from knowingly transporting another, or causing another to be transported across the boundary of Ohio or of any county in Ohio, in order to facilitate the other person's engaging in sexual activity for hire. Whoever violates either prohibition is guilty of "promoting prostitution," a third or fourth degree felony depending upon the circumstances of the offense.

The act modifies the offense of promoting prostitution by also prohibiting a person from knowingly establishing, maintaining, operating, managing, supervising, controlling, or having an interest in any other enterprise a purpose of which is to facilitate engagement in sexual activity for hire. It also removes from the prohibition above the requirement that the transporting of another be *across the boundary of Ohio or of any county in Ohio*.

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<sup>237</sup> R.C. 2905.32, not in the act.



## **Bonds of statewide elected officials**

(R.C. 109.06, 111.02, 113.02, and 117.03)

The act modifies the bonding requirements that apply to the Attorney General, Secretary of State, Treasurer of State, and Auditor of State to assure their faithful discharge of the duties of their respective offices.

In this regard, the act removes the requirement that the Attorney General's and Secretary of State's bond have "two or more sureties," and the requirement that the Treasurer of State's bond have "sureties," thus requiring only one surety on each of these bonds. (The Auditor of State's bond requires only "a surety" under continuing law.) The act specifies with regard to all the officers that the one surety must be authorized to do business in Ohio.

Finally, the act removes the requirement that the Attorney General's, Treasurer of State's, and Auditor of State's bond be approved by the Governor. Similarly, the act removes the requirement that the Secretary of State's bond be approved by the Governor, Auditor of State, and Attorney General.

## **Retention of investment interest in funds**

(R.C. 151.11, 154.20, 154.22, 166.03, and 1555.15)

The act provides that the investment earnings on the cash balance in each of the following funds are to be credited to the respective fund:

- (1) Job Ready Site Development Bond Service Fund;
- (2) Mental Health Facilities Improvement Fund;
- (3) Parks and Recreation Improvement Fund;
- (4) Facilities Establishment Fund;
- (5) Coal Research and Development Fund.

## **Screening tool for high-risk youth**

(Section 501.10)

Under the act, the Office of Health Transformation is to convene a team comprised of the Departments of Youth Services, Medicaid, Job and Family Services, Health, and Mental Health and Addiction Services. The team is required to evaluate the feasibility of implementing a trauma screening tool for high-risk youth and issue a





report that includes (1) the recommended trauma screening tool to be used to evaluate high-risk youth, (2) training in the administration of the recommended tool, (3) screening protocols, (4) the persons to whom the recommended tool should apply, and (5) the implications for treatment. The report is to be completed by December 1, 2013, and distributed to the Governor. The act permits the Department of Youth Services to receive funds for piloting the recommended tool in detention centers.

### **Age requirements for various board and council members**

(R.C. 173.03, 3905.483, 4725.03, and 4758.10)

The act reduces, from 60 to 50, the minimum age required under prior law for the following Board and Council members:

- The majority of members of the Ohio Advisory Council for the Aging;
- One of the consumer representatives on the Insurance Agent Education Advisory Council;
- The public member of the State Board of Optometry;
- One of the public members of the Chemical Dependency Professionals Board.

### **Brain Injury Program**

(R.C. 3304.23 (3335.60) and 3304.231 (3335.61))

The act transfers the Brain Injury Program and the Brain Injury Advisory Committee from the Rehabilitation Services Commission to the Ohio State University College of Medicine. Under the act, the staff of the Program must complete a report on the incidence of brain injury in Ohio not later than September 29, 2015, and every two years thereafter.

Not fewer than 10 nor more than 12 of the members of the Advisory Committee are appointees. The act requires that these appointments be made by the dean of the OSU College of Medicine. The act also reduces the number of members on the Advisory Committee from not fewer than 20 nor more than 22, to not fewer than 19 nor more than 21. This membership change results from the merger of the Department of Alcohol and Drug Addiction Services and the Department of Mental Health into the Department of Mental Health and Addiction Services, whose Director or designee serves on the Advisory Committee. Additionally, the Medicaid Director or designee and the Executive Director of the Opportunities for Ohioans with Disabilities Agency or



designee replace the Director of Job and Family Services and the Administrator of the Rehabilitation Services Commission, respectively.

## **Manufactured Homes Commission**

(R.C. 4781.28)

The act makes a corrective change to a cross reference in the Manufactured Homes Commission Law.

## **State Facility Utilization and Consolidation Task Force**

(Section 753.30)

The act creates the State Facility Utilization and Consolidation Task Force and charges the Task Force with creating an inventory of state-owned real property and of assets related to the real property, studying the current utilization of the real property and related assets, determining which real properties and related assets are not being productively used, determining which real properties and related assets that are not being productively used could be productively used, and determining which real properties and related assets that are not being productively used could be productively used if consolidated.

The act requires the Task Force, based on its study, to provide the Governor, the President of the Senate, and the Speaker of the House of Representatives, not later than September 29, 2014, with a report expressing the Task Force's recommendations for the sale, productive use, or consolidation of state-owned real property and assets.

Upon completing delivery of its report, the Task Force ceases to exist.

The Task Force is to consist of the following members:

- Two members of the House of Representatives appointed by the Speaker;
- Two members of the Senate appointed by the President of the Senate;
- One individual appointed by the Governor;
- The Director of Administrative Services or the Director's designee; and
- The Director of Budget and Management or the Director's designee.

A vacancy on the Task Force is to be filled by the appointing authority.



The Task Force must select a chairperson and vice-chairperson from among its members.

The members of the Task Force are not entitled to compensation for serving on the Task Force. Members of the Task Force may continue to receive the compensation and benefits accruing from their regular offices or employments. A member of the Task Force is entitled to reimbursement of actual and necessary expenses incurred because of service on the Task Force.

The Task Force must first meet by October 29, 2013, at the call of the Governor. Thereafter, the Task Force must meet at the call of its chairperson as necessary to carry out its duties.

The Director of Administrative Services must provide the Task Force with meeting space and with professional, technical, and clerical staff as is necessary for the Task Force successfully and efficiently to fulfill its duties.

### **Endorsement or certification of autism treatment providers**

(Section 747.40)

The act requires the Departments of Developmental Disabilities, Mental Health and Addiction Services, Health, and Education; the Ohio Board of Regents; and any other appropriate state agency to work with the Ohio Center for Autism and Low Incidence or another qualified entity to create a certification or endorsement process for individuals providing evidence-based interventions to serve or support an individual with an autism spectrum disorder. The process created cannot conflict with or duplicate any current state licensure processes and must include clinical therapeutic interventionists. The act requires the goal of the process created to be to build the capacity of individuals qualified to serve or support individuals with autism spectrum disorders. The act requires legislative recommendations to be submitted to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives not later than October 31, 2013.

### **Ohio Council for Interstate Adult Offender Supervision**

(R.C. 5149.22)

The act increases the membership of the Ohio Council for Interstate Adult Offender Supervision from seven to 12 or more. The act requires the Chief Justice to appoint three members instead of one and requires that two of the three be members of the judiciary. It increases the number of gubernatorial appointees from three to five and directs that, in addition to a crime victim's organization representative and a member of



the executive branch, as provided in ongoing law, the appointees include a prosecuting attorney, a member of the State Public Defender's Office and a chief probation officer. The act requires the Attorney General to appoint one member, who must be from the Bureau of Criminal Identification and Investigation, and authorizes the Director of Rehabilitation and Correction to appoint as many additional members as the Director considers necessary to fulfill the mission of the Interstate Compact for Adult Offender Supervision.

### **Authority to convey DYS real estate extended**

(Sections 605.20 and 605.21, amending H.B. 153, 129th General Assembly, Section 753.30)

H.B. 153 of the 129th General Assembly authorized the real estate of facilities under the management and control of the Department of Youth Services that were closed before January 1, 2012, to be conveyed not later than September 29, 2013. This act extends the conveyance authority until November 1, 2015.

### **Public records cross-reference correction**

(R.C. 149.431)

The act corrects a cross-reference in R.C. 149.431, a law that requires governmental entities or agencies and nonprofit corporations or associations that enter into service contracts with other governmental units to prepare complete financial records of money spent under the contracts, because the records and contracts are public records. The law now refers to R.C. 2744.081, which requires a joint self-insurance pool administrator to prepare a report of aggregate amounts reserved in, and aggregate disbursements made from, the pool, rather than preparing the financial records of money spent, and provides that the report is a public record, instead of the financial records. Prior law referred to R.C. 2744.08, which had no application to R.C. 149.431.



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## NOTE ON EFFECTIVE DATES

(Sections 812.10 to 812.40)

Article II, Section 1d of the Ohio Constitution states that "appropriations for the current expenses of the state government and state institutions" and "[l]aws providing for tax levies" go into immediate effect and are not subject to the referendum. The act includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a section 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 act 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.

## EXPIRATION CLAUSE

(Section 809.10)

The act includes an expiration clause that traditionally is part of a budget bill. The expiration clause states that an item that composes the whole or part of an *uncodified* section contained in the act (other than an amending, enacting, or repealing clause) has no effect after June 30, 2015, unless its context clearly indicates otherwise.

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## HISTORY

ACTION	DATE
Introduced	02-12-13
Reported, H. Finance & Appropriations	04-17-13
Passed House (61-35)	04-18-13
Reported, S. Finance	06-05-13
Passed Senate (23-10)	06-06-13
House refused to concur in Senate amendments (0-95)	06-12-13
Senate requested conference committee	06-12-13
House acceded to request for conference committee	06-12-13
House agreed to conference committee report (53-44)	06-27-13
Senate agreed to conference committee report (21-11)	06-27-13

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