



Ohio Legislative Service Commission

Bill Analysis

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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

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This 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 applicable pay ranges in the exempt employee salary schedule that the Executive Director of the Accountancy Board must be paid from.

Pay range for the Executive Director

(R.C. 4701.03)

The bill removes the language specifying the applicable pay ranges in the exempt employee salary schedule that the Executive Director of the Accountancy Board must be paid from. Continuing law requires that the Board pay the Executive Director in accordance with the exempt employee salary schedule.



DEPARTMENT OF ADMINISTRATIVE SERVICES

Public employees health care program

- Requires that 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 or the former School Employees Health Care Board.
- Requires all policies or contracts for health care benefits that are issued or renewed after the expiration of any applicable collective bargaining agreement to contain all established best practices at the time of renewal.
- Allows a political subdivision, upon consulting with the Department, to adopt a delivery system of benefits that is not in accordance with the Department's adopted best practices if it is considered by the Department to be most financially advantageous to the political subdivision.
- Requires the Department 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 Administrative Services to convene a Public Health Care Advisory Committee.

Alternative fuel

- Eliminates the following: the annual fleet reporting requirement made by higher education institutions to the Department, the Credit Banking and Selling Program of the Department, and the position of State Alternative Fuel Officer currently located within the Department.
- Transfers control of the State Biodiesel Revolving Fund from the Department to the Development Services Agency.
- Eliminates quarterly and annual reporting on alternative fuel usage by state agencies.

Local Government Information Exchange Grant Program

- Establishes the Local Government Information Exchange Grant Program in the Department of Administrative Services, and requires the Director of Administrative Services to adopt rules to administer the program.



- Authorizes the Director to disburse a grant of \$10,000 to each local government that meets eligibility criteria the Director is to specify by rule.

Public exigency power

- Eliminates the power of the Director to declare a public exigency, which power the Director currently shares with the Executive Director of the Ohio Facilities Construction Commission (OFCC).
- Eliminates the ability of the Director to ask OFCC, 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 OFCC, 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.

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 must establish job classification plans are those in the service of the state.
- 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 to the Payroll Deduction Fund.
- Provides that the Life Insurance Investment Fund 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, providing 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 the Department to deposit money collected for operating expenses of facilities owned or maintained by the Department into the new fund or into the Building Management Fund where it is currently deposited.
- Replaces the current-law phrase "skilled trade services" with "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 to 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.
- Allows the House of Representatives to notify the Department of Administrative Services that it opts out of Department purchases for House office space related to maintenance, care, and repair purchases.
- If the House opts out, permits the House to enter into a contract for the purchase of any such services as is permitted under continuing law.
- Requires the Department to pay the costs of House-made purchases and prohibits the Department from charging service fees related to the purchases.

Public employees health care program

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

Best practices

Under the bill, 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 or the former School Employees Health Care Board. A "public employer" is a political subdivision, public school district, or state institution of higher education. All policies or contracts for health care benefits that are



issued or renewed after the expiration of any applicable collective bargaining agreement must contain all best practices at the time of renewal.

Continuing law permits a political subdivision, upon consulting with the Department, to adopt a delivery system of benefits that is not in accordance with the Department's adopted best practices if it is considered by the Department to be most financially advantageous to the political subdivision.

Requirements of Department

The bill requires the Department 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 bill in identifying the elements for its successful implementation; and
- (8) Promote cost containment measures aligned with patient, plan, and provider management strategies in developing and managing health care plans.

A provision carried forward from current law requires the Department to 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 employees health care

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



The bill allows the Director of Administrative Services to convene a Public Health Care Advisory Committee and specifies that members of the committee serve without compensation. Under current law, the Committee is created under the Department. Current law also requires the Committee 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. The bill removes these provisions.

Provisions removed by bill

The bill *removes* provisions that require the Department to design health care plans for use by public employers that are separate from plans for state agencies. In more detail, the bill *removes* provisions that:

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

(2) Permit the Department, 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 the Department, 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 the Department, 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 the Department until the Department 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 the Department to include disease management and consumer education programs;



(8) Require the Department to adopt and release a set of best practices for health care plans;

(9) Require plans administered by health plan sponsors to make readily available to the public all cost and design elements of the plan;

(10) Require the Department to set employee and employer health care plan premiums for the designed plans;

(11) Require the Department to promote cooperation among all affected organizations, and to include cost containment measures aligned with patient, plan, and provider management strategies in developing and managing health care plans;

(12) Require the Department 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 the Department for the development and implementation of a successful program for the acquisition of employee health care plans by pooling purchasing power; and

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

Annual fleet reporting by state higher education institutions

(R.C. 125.832)

The bill eliminates the requirement that state institutions of higher education submit annual reports to the Department of Administrative Services concerning their motor vehicle fleets. Specifically, current law requires each state higher education institution to report annually to the Department (1) the methods it uses to track the motor vehicles it acquires and manages, (2) whether or not it uses a fuel card program to purchase fuel for, or to pay for the maintenance of, the motor vehicles, and (3) whether or not it makes bulk purchases of fuel for the motor vehicles.

Alternative fuel usage; Credit Banking and Selling Program

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

The bill eliminates the following: (1) the Credit Banking and Selling Program of the Department of Administrative Services, (2) the position of State Alternative Fuel Resource Officer within the Department, and (3) the requirement of quarterly and



annual reporting on alternative fuel usage by state agencies. The bill also transfers control of the state Biodiesel Revolving Fund from the Department to the Development Services Agency.

The Credit Banking and Selling Program is 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 is within the Department, monitors federal activity for any federal action that affects Ohio in its use of motor vehicles that are capable of using an alternative fuel. The officer also is available to explain to state departments and agencies the laws that apply 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 relate to motor vehicles that are capable of using an alternative fuel.

The Department must 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, the Department must issue an annual report containing all this data for the previous calendar year.

Local Government Information Exchange Grant Program

(R.C. 149.60)

The bill establishes the Local Government Information Exchange Grant Program in the Department of Administrative Services, and requires the program to be administered by the Director of Administrative Services. The director must adopt rules under the Administrative Procedure Act as are necessary to administer the program. The rules must include all of the following:

- (1) Grant eligibility criteria;
- (2) A requirement that exchange-related electronic data be posted on the Internet in an open format in such a manner that the data is searchable and downloadable through the Internet by the public;



(3) Specifications for consistent formatting of, and specifications for accounting and technology standards for, information provided by participating local governments for inclusion in the exchange; and

(4) Specifications for data that must be included by participating local governments in the information they provide, which must include budgetary data, revenues, expenditures, staffing information, and employee compensation.

The bill requires the Director to disburse a grant of \$10,000 to each local government that meets the grant eligibility criteria established by the director. Grants must be awarded to local governments in the order in which the local governments have met the grant eligibility criteria. The total amount of grants awarded must not exceed the amount that can be funded with appropriations made by the general assembly for this purpose.

The bill also requires that the Director, not later than July 1, 2014, prepare and issue to members of the General Assembly a demonstration report that does all of the following:

(1) Demonstrates how the information exchange may provide local governments with insights regarding efficiency and productivity;

(2) Demonstrates how 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; and

(3) Demonstrates how information exchange data may create opportunities for private sector and research institutions to provide value-added products or services that may be commercialized or create jobs, and thereby contribute to the state economy.

Public exigency power

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

The bill eliminates the power of the Director of Administrative Services to declare a public exigency. The Director currently shares this power with the Executive Director of the Ohio Facilities Construction Commission (OFCC). Further, the bill eliminates the ability of the Director to ask OFCC to enter into public contracts without competitive bidding or selection in order to respond to a public exigency. Finally, the bill transfers from the Director to Executive Director of OFCC 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.

Maximum pay range of state departments' unclassified employees

(R.C. 124.11; R.C. 124.152, not in the bill)

The bill 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 bill, the maximum compensation for these positions is the maximum compensation specified in pay range 47.

The departments to which this compensation change applies are the Departments of Administrative Services, Aging, Agriculture, Alcohol and Drug Addiction Services, Commerce, Developmental Disabilities, Education, Health, Insurance, Job and Family Services, Mental Health, 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; and the Public Utilities Commission of Ohio.

Job classification plans for state employees

(R.C. 124.14)

Under the bill, the Director 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 current law, the Director establishes job classification plans for all positions, offices, and employments "the salaries of which are paid in whole or in part by the state."

Compensatory time and pay policy approvals

(R.C. 124.18)

The bill clarifies that the Director of Administrative Services' 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."¹

Payroll Withholding Fund

(R.C. 125.21)

The bill renames the existing Payroll Withholding Fund within the state treasury to the Payroll Deduction Fund. The purpose of this Fund is to consolidate all deductions from the salaries or wages of all officials and employees made in any month in order to make the appropriate payments for the intended purpose of the deductions or to make a refund where it is determined that deductions were made in error.

Life Insurance Investment Fund

(R.C. 125.212)

The bill (1) removes the requirement that the existing Life Insurance Investment Fund include amounts from the renamed Payroll Deduction Fund (see "**Payroll Withholding Fund**," above), and (2) adds that the Fund include money from state agencies. The Fund, which is used to pay the costs of the state's life insurance benefit program, also includes amounts from life insurance premium refunds received by the state and other receipts related to the state's life insurance benefit program.

Building Improvement Fund

(R.C. 125.27 and 127.14)

The bill 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 currently exists for numerous other funds.

The bill 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 the Department of Administrative Services. As part of the transfer, the Director of OBM was required, if requested by the Department, to make necessary budget changes,

¹ R.C. 124.01, not in the bill.



including creating new funds.² Thus, the Building Improvement Fund was born. In codifying the fund, the bill 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 bill creates the fund in the State Treasury and specifies that it retains its interest.

Building Operation Fund

(R.C. 125.28(C))

The bill creates the Building Operation Fund within the state treasury and allows the Department of Administrative Services to deposit money collected for operating expenses of facilities owned or maintained by the Department into the new fund or into the Building Management Fund where it is currently deposited.

Minor construction project management services

(R.C. 125.28(B))

The bill replaces the current-law phrase "skilled trade services" with "minor construction project management services" and allows the Director of Administrative Services 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 the Department.

Minor Construction Project Management Fund

(R.C. 125.28(C))

The bill renames the Skilled Trades Fund in the state treasury to the Minor Construction Project Management Fund and provides that money collected for minor construction project management services (see "**Minor construction project management services**," above) be deposited into the renamed fund.

² Section 515.40 of Am. Sub. H.B. 153 (not in the bill).

Exempt employee consent to certain duties

(Section 701.10)

The bill 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.

House of Representatives office maintenance

(R.C. 123.01; R.C. 125.02 and 125.04, not in the bill)

The bill states that unless the House of Representatives notifies the Department of Administrative Services that the House opts out, purchases for the maintenance, care, custodial care, utility costs, and repair of office space used by the House are subject to the control and jurisdiction of the Department. If the House opts out, the House can enter into a contract for the purchase of any such services as is permitted under continuing law provisions that allow the House to establish contracts for supplies and services. The bill requires the Department to pay the costs of the purchases made by the House and prohibits the Department from charging the House service fees related to the purchase. Under current law, the Department has the authority to exercise general custodial care of all real property of the state.



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 individuals who are under final consideration for employment with the regional program or employed by the regional program.
- Specifies that the requirements applicable to database reviews and criminal records checks regarding community-based long-term care services covered by Department of Aging (ODA) administered programs apply to:
 - (1) A person applying for employment with (or referred by an employment service to);
 - (2) A community-based long-term care provider; and
 - (3) 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.
- Makes the database review and criminal records check requirements applicable 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 making the database review and criminal records check requirements applicable 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.
- 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 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.
- Specifies that the Excluded Parties List System, which is to be reviewed as part of a database review regarding certain types of employment, is available at the federal web site known as the System for Award Management.

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 a 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 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 PASSPORT administrative agency operations that includes a pay-for-performance component.
- Specifies that the spending for PASSPORT administrative agencies' 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

- Beginning July 1, 2013, requires nursing homes to participate in at least one quality improvement project listed by ODA each year.
- Beginning July 1, 2015, requires nursing homes to participate in advance care planning and generally prohibits the use of overhead paging.
- Requires ODA to implement a nursing home quality initiative to improve person-centered care that nursing homes provide and make available a list of quality improvement projects under the initiative on which ODA and nursing home representatives agree.

Board of Executives of Long-term Services and Supports

- Renames the Board of Examiners of Nursing Home Administrators to the Board of Executives of Long-Term Services and Supports and transfers the Board from the Department of Health to ODA.
- Increases, from 9 to 11, the number of Board members and modifies the eligibility requirements for Board members.
- 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 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.
- Permits the ODA Director, in consultation with the Medicaid Director, to expand the Program for All-inclusive Care for the Elderly (PACE) to new regions of Ohio under certain circumstances.
- 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 Ombudsman³ 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 Department of Aging (ODA) rules.

Regional long-term care ombudsman programs

The bill 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 bill, regional programs have responsibilities regarding the database reviews and criminal records checks that are currently assigned to the State Long-Term Care Ombudsman. For example, the State Long-Term Care Ombudsman, or the Ombudsman's designee, is required by current 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 bill, 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

³ Due to a legislative directive in 1995 requiring that Revised Code sections be gender neutralized as they are amended, some references to "ombudsman" in the Revised Code have been changed to "ombudsperson." For consistency, since the bill restores the use of the term "ombudsman" in reference to programs operated by the Department of Aging, that term is used throughout this analysis.

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 bill 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

Current law requires the ODA Director to adopt rules specifying circumstances under which the State Long-Term Care Ombudsman program may employ an individual who is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for, a disqualifying offense but meets personal character standards. The bill requires that the ODA Director instead 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 employee 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, Area Agency on Aging (AAA), and PASSPORT Administrative Agency (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)

Current 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 bill) 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, current 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. Current law does not specify what a direct-care position is. The bill 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.

Criminal records checks applied to AAAs, PAAs, and subcontractors

The bill 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) AAAs, (2) PAAs, and (3) subcontractors.⁴ 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 be, in addition, a home health agency, waiver agency, or both. Continuing law provides that

⁴ The ODA Director is to define "subcontractor" in rules.

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.

It is possible for a community-based long-term care subcontractor to be, in addition, a home health agency or waiver agency. The bill 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 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 bill 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 bill, however, to obtain the report of a criminal records check conducted for an individual under final consideration for a direct-care position with a 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 bill 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

Current law requires the ODA Director to adopt rules specifying circumstances under which a community-based long-term care agency (provider) may employ an individual who is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for, a disqualifying offense but meets personal character standards. The bill 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 employee 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 bill 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 state-funded components of the PASSPORT and assisted living programs have limited eligibility. In the case of the assisted living program, eligibility is limited to 90 days. The PASSPORT program provides home and community-based services as an alternative to nursing facility placement for eligible individuals who are aged and disabled. The assisted living program provides assisted living services to eligible individuals.

The rules ODA is to adopt 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.

The bill provides that 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 Ohio's 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 bill, 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 bill 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 (the main operating appropriations act for 2011-2013) required the Department of Medicaid (ODM) to seek federal permission to create a unified long-term services and support Medicaid waiver program to provide home and community-based services to eligible individuals of any age who require the level of care provided by nursing facilities. H.B. 153 also provided that, should the waiver component be created, ODA and ODM are to determine whether the Choices program should continue to operate as a separate Medicaid waiver component or be terminated.

The bill 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, 173.54, 173.541, and 173.544)

The Assisted Living Program is a program administered by ODA that provides assisted living services to eligible individuals living in residential care facilities. The program has a Medicaid-funded component and a state-funded component. ODA administers both components. The Medicaid-funded component is administered pursuant to an interagency agreement between ODA and the Department of Medicaid (ODM).

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 current law, whether an individual needs an intermediate level of care is determined in accordance with an ODM rule. The bill establishes in statute an assessment process for determining whether an individual needs an intermediate level of care.

The bill'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.

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 bill 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)

Current law requires a Medicaid recipient who applies or intends to move to a nursing facility to receive 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 bill requires ODM to enter into an interagency agreement with ODA under which ODA performs the assessment.

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 bill permits ODA to design and utilize a payment method for PASSPORT administrative agency operations that include 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 bill 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 program be at 105% of the level provided in fiscal year 2013.

Payment rates for PASSPORT services

(Section 323.263)

The bill requires that the Medicaid payment rates for services provided under the PASSPORT program, other than adult day-care services, during fiscal years 2014 and 2015 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.

Nursing home licensure requirements

(R.C. 173.60 and 3721.072)

The bill 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 each year in at least one project improving person-centered care that the nursing home selects from a list ODA is to make available (see "**ODA nursing home quality initiative**," below).

(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 (the use of audible announcements via an electronic sound amplification and distribution system throughout part or all of a nursing home) except when a nursing home permits the use of overhead paging for matters of urgent public safety or urgent clinical operations and in accordance with the preferences of the nursing home's residents.

ODA nursing home quality initiative

(R.C. 173.60)

For the purpose of improving person-centered care provided by nursing homes, the bill 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 strategies and positive resident outcomes, as well as other assistance designed to improve the quality of nursing home services. ODA 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**," above).

ODA may include in the list quality improvement projects offered by any of the following: (1) ODA, (2) a 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) other state agencies, (4) the Ohio Person-Centered Care Coalition in the Office of the State Long-Term Care Ombudsman Program, or (5) any other academic, research, or health care entity identified by ODA.

ODA is required to consult with representatives of nursing homes when developing the list. Projects on which ODA and the representatives agree are to be included on the list.

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 bill renames the Board of Examiners of Nursing Home Administrators to the Board of Executives of Long-Term Services and Supports and transfers the Board from the Department of Health to ODA. The bill defines "long-term services and supports settings" to mean 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.

The bill makes further changes to the Board's membership and duties, explained in more detail below.

Board membership changes

(R.C. 4751.03)

The bill modifies the number and qualifications of Board members. Under the bill, the Board is to consist of the following 11 members, all appointed by the Governor:

- Four members who are nursing 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 the Department of Health, designated by the Director of Health, 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 bill 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 the Department of Health and Ombudsman.

The bill retains current law provisions governing the Board's administration, including quorum requirements, election of a chairperson and vice-chairperson, removal of members by the Governor, and meeting requirements. Additionally, the bill preserves the current law provision that Board members are to serve three-year terms, and that no member is permitted to serve more than two consecutive full terms. The bill also retains a requirement of current law that all Board members must be U.S. citizens and residents of Ohio.

Under current law, the Board consists of nine members, all appointed by the Governor. Eight members of the Board are representative of the professionals and institutions concerned with care and treatment of chronically ill or infirm aged patients and one member is a public member, at least 60 years of age. Further, current law requires that four members of the Board must be nursing home administrators, owners of nursing homes, or an officer of a corporation owning a nursing home. Current law also requires that less than a majority of the Board members may represent a single profession or institutional category. Under current law, a person appointed as a noninstitutional member is prohibited from having or acquiring any direct financial interest in a nursing home.

Board member transition

(Section 515.40)

The bill 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 (current Board) on the bill's effective date 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 current 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.

Within 90 days after the bill's effective date, the Governor is required to appoint to the new Board the member representing the academic community, the consumer member, and the members representing the Department of Health and 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); see also R.C. 124.15(J), not in the bill)

The bill updates a provision of current 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 Director of Health 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.

Board administration and assistance

(R.C. 4751.03(H))

The bill 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 bill eliminates the obligation of the Department of Health to provide administrative, technical, or other services to the Board.

Deposit of license and registration fees; creation of fund

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

The bill 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 bill. 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 current law, license and registration fees are deposited into the state's General Operations Fund.

Education, training, and credentialing opportunities

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

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

The bill 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 bill, 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 bill 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 bill provides that the Board has a responsibility to cooperate with and inform ODA fully of all financial transactions.

Further, the bill 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 bill sets out terms providing for the transition from the current 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 current Board and their transfer to the new Board;

- The transition of unfinished business that was commenced but not completed by the current Board or the current Board's secretary to the new Board or the new Board's Secretary;
- The continuation of the current Board's rules, orders, and determinations under the new Board;
- Subject to laws governing layoffs of state employees, the transition of employees of the current Board who provide administrative, technical, or other services to the current 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 current Board in any statute, contract, or other instrument and deeming the references applicable to the new Board;
- The effect of the transition on pending court or agency actions or procedures and required substitution of the new Board in the old Board's place for such actions or procedures.

Long-term care facility bed fee

(R.C. 173.26)

The bill changes the number of beds used to determine a long-term care facility's annual fee from the number of beds maintained by the facility for use by residents during any part of the previous year to the number of beds the facility was licensed or otherwise authorized to maintain during any part of that year. The fee of six dollars per bed is paid to ODA to be used to operate regional long-term care ombudsman programs.

The bed fee is paid by several types of long-term care facilities, including residential care facilities, nursing homes, and homes for the aging. A residential care facility is a home that provides accommodations to up to 17 individuals, at least three of whom need supervision and personal care services. A nursing home is a home that provides skilled nursing care, as well as accommodations and personal care services. A home for the aging is a home that provides services as a residential care facility and as a nursing home. The bill eliminates the requirement that homes for the aging pay the annual fee.



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 bill 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 being eliminated addresses 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 are received before and after receiving nursing facility services, and (3) a categorical analysis of the acuity levels of the recipients of the services.

Expansion of the Program for All-inclusive Care for the Elderly (PACE)

(Section 323.120)

To effectively administer and manage growth within the Program for All-inclusive Care for the Elderly (PACE), the bill permits the ODA Director, in consultation with the ODM Director, to expand PACE to regions of Ohio that are not being served by the program. PACE, or the Program of All-Inclusive Care for the Elderly, is a managed care system that provides participants with coverage of *all* of needed health care, including care in both institutional and community settings. It is funded by both Medicaid and Medicare.⁵

The PACE expansion may occur only if the following apply: (1) funding is available for the expansion, (2) the Directors mutually determine that PACE is a cost-effective alternative to nursing home care, and (3) the U.S. Centers for Medicare and Medicaid Services agrees to share with Ohio any savings to Medicare resulting from an expansion of PACE. In implementing an expansion, the ODA Director cannot decrease the number of PACE participants in the original PACE sites to a number that is below the number of individuals in those areas who were participants in the program on July 1, 2011.

⁵ Ohio Department of Aging, *About PACE* (last visited February 14, 2013) available at: <http://aging.ohio.gov/services/PACE/>. The two PACE providers in Ohio are TriHealth Senior Link and McGregor PACE Center for Senior Independence. The service area for the PACE agreement with TriHealth Senior Link is Hamilton County and certain zip codes in Warren, Butler, and Clermont counties. Cuyahoga County is the service area for the PACE agreement with McGregor PACE.



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, 173.60, 173.99, 3721.027, 3721.12, 3721.16, 4751.03, 5119.22, and 5165.69)

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



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 so long as the use of the land remains predominantly agricultural.
- Requires one representative on the existing 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 as under current law.

Concentrated animal feeding facilities

- Establishes a general prohibition in the Concentrated Animal Feeding Facilities (CAFF) Law against violations of specified requirements governing 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 required by specified provisions of the CAFF Law, rules adopted under that Law, and orders and terms or conditions of permits issued under that Law or rules adopted under it 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 current 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.

Apiaries

- Credits money that is collected from registration fees and fines under the Apiaries Law to the existing Plant Pest Program Fund rather than the GRF as in current law.



- 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 current law.

Auctioneers

- Exempts from the licensure requirements established in the Auctioneers Law 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.

Other provisions

- 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, 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.
- Requires the Director to use a portion of the money collected from high volume breeder license application fees and credited to the High Volume Breeder Kennel Control License Fund to reimburse the county in which a high volume breeder is located or will be located rather than requiring the Treasurer of State to transfer the applicable amount to a county as in current law.

Agricultural easements; Farmland Preservation Advisory Board

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

The bill 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 existing 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 a municipal corporation, county, township, soil and water conservation district, or charitable organization cannot fund the purchase of an easement on its own, it may apply for a matching grant from the Director. The Director must use money from the Agricultural Easement Purchase Fund and the Clean Ohio Agricultural Easement Fund exclusively to purchase agricultural easements in the name of the state and to provide matching grants to charitable organizations, municipal corporations, counties, townships, and soil and water conservation districts for the purchase of such easements.

Under Ohio law, an agricultural easement is a property right or interest in land that is held for the public purpose of retaining the use of land predominantly in agriculture; that imposes limitations on the use or development of the land that are appropriate at the time of creation of the easement to achieve that purpose; that is in the form of articles of dedication, easement, covenant, restriction, or condition; and that includes appropriate provisions for the holder to enter the property subject to the easement at reasonable times to ensure compliance with its provisions.

The bill alters the membership of the existing 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 as under current law. The member that is currently serving on the Board representing the national nonprofit organization 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 bill.

Concentrated animal feeding facilities

(R.C. 903.30 and 903.99)

The bill establishes a general prohibition in the Concentrated Animal Feeding Facilities Law against violations of specified requirements governing national pollutant discharge elimination system (NPDES) permits and the NPDES provisions of permits to operate issued under that Law. It also establishes a second general prohibition against violations or failures to perform duties required by specified provisions of that Law, rules adopted by the Director of Agriculture 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 bill 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 existing criminal penalties for violations of specified provisions of the Concentrated Animal Feeding Facilities 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 bill 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 existing Criminal Code, a person 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. Thus, by removing the stipulation that there be a *substantial* lapse from due care, the bill lowers the threshold for what constitutes negligence for the above purpose. 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 bill specifies that each day of violation constitutes a separate offense.

Current law instead establishes penalties for violations of specific prohibitions in the Concentrated Animal Feeding Facilities Law. First, a person that does either of the following is guilty of a third degree misdemeanor on a first offense, a second degree misdemeanor on a second offense, and a first degree misdemeanor on a third or subsequent offense:

(1) Modifies an existing or constructs a new concentrated animal feeding facility (CAFF) without first obtaining a permit to install issued by the Director; or



(2) Owns or operates a CAFF without a permit to operate issued by the Director.

Each ten-day period that the offense continues constitutes a separate offense.

Second, a person that does any of the following must be fined not more than \$25,000:

(1) Violates the terms and conditions of a permit to install or a permit to operate;

(2) Discharges pollutants from a concentrated animal feeding operation into waters of the state without first obtaining a national pollutant discharge elimination system (NPDES) permit issued by the Director;

(3) Discharges storm water resulting from an animal feeding facility without first obtaining a NPDES permit issued by the Director in accordance with rules adopted by the Director when such a permit is required by the federal Water Pollution Control Act;

(4) Violates any effluent limitation established by the Director in rules;

(5) Violates any other provision of a NPDES permit issued by the Director; or

(6) Violates the NPDES provisions of a permit to operate.

Each day of violation constitutes a separate offense.

Finally, a person that knowingly does either of the following must be fined not more than \$25,000:

(1) Makes any false statement, representation, or certification in an application for a NPDES permit or in any form, notice, or report required to be submitted to the Director pursuant to terms and conditions established in a NPDES permit issued by the Director; or

(2) Renders inaccurate any monitoring method or device that is required under the terms and conditions of a NPDES permit issued by the Director.

Each day of violation constitutes a separate offense.

Apiaries

(R.C. 909.15 and 927.54)

The bill credits money that is collected from registration fees and fines under the Apiaries Law to the existing Plant Pest Program Fund rather than the General Revenue Fund as in current law. 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 current law.

Auctioneers

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

The bill adds the following exemptions to the existing exemptions from the prohibition against acting as an auction firm, auctioneer, or apprentice auctioneer within Ohio without a license issued by the Department of Agriculture:

(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 bill also makes technical changes in the Auctioneers' Law to clarify that it applies to limited liability companies.

Agricultural commodity marketing programs

(R.C. 924.06)

The bill 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 the requirement in existing law that if a marketing program was established before April 10, 1985, one of the following results of a referendum must occur in order for the Director to approve an amendment to the program:

(1) At least 66 and $\frac{2}{3}$ % of the producers who vote in the referendum must 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 vote in the referendum must vote in favor of the amendment and represent at least 66 and $\frac{2}{3}$ % of the volume of the affected commodity that was so produced.

High Volume Breeder Kennel Control License Fund

(R.C. 956.07 and 956.18)

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



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 emissions of air contaminants into the ambient air through the use of an alternative fuel or a renewable energy resource.

Air quality facilities

(R.C. 3706.01)

The bill expands the types of air quality facilities that may be acquired or financed by the Ohio Air Quality Development Authority. Under the bill, 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.

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 to 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.



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

(R.C. 2329.192)

The bill 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, and 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, and 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 bill defines "state lien" as a lien upon real estate, including lands and tenements, of persons indebted to the state for debt, taxes, or in any other 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)

Ongoing law 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 bill 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. These reports are public records.

The bill 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 under R.C. 149.43, and that the Attorney General will provide a copy of any of the reports to the President or the Speaker upon request.

AUDITOR OF STATE

- Eliminates the special exception that authorized the Auditor of State not to prepare 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.

Joint Committee on Agency Rule Review hearing notifications

(R.C. 111.15 and 117.20)

The bill eliminates the special exception that authorized the Auditor of State not to prepare 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 bill 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 current law, the notices proposed rules must be sent by mail.



BARBER BOARD

- Extends the time period in which the holder of a 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 to six years from three years under current law.

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 bill 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 current law to six years under the bill.

BROADCAST EDUCATIONAL MEDIA COMMISSION

- Renames and reconstitutes the eTech Ohio Commission (eTech) as the Broadcast Educational Media Commission (BEMC).
- Transfers all of the state's educational broadcasting services from eTech to BEMC. Of the duties not transferred to BEMC, some are transferred to the Chancellor of the Board of Regents and to the Department of Education, while other duties are eliminated.
- Allows for the continuation of some eTech employees with BEMC, as well as the transfer of some eTech employees to the Department or to the Chancellor in order to administer those activities transferred to the Department or to the Chancellor.
- Terminates all terms of members of the former eTech Ohio Commission on June 30, 2013. Members of the newly constituted Broadcast Educational Media Commission begin their terms of office on July 1, 2013.
- Eliminates statutory provisions for the state technology plan, the Interactive Distance Learning Pilot Project, the Education Technology Trust Fund, and the Information Technology Service Fund.

Broadcast Educational Media Commission

The bill renames and reconstitutes the eTech Ohio Commission (eTech) as the Broadcast Educational Media Commission (BEMC) and transfers all duties related to the state's educational broadcasting services from eTech to BEMC.

Background

The eTech Ohio Commission was created in 2005 by a merger of the Ohio SchoolNet Commission and the Ohio Educational Telecommunications Network Commission. It is a state agency that provides financial and technical assistance to school districts, other educational entities, public television and radio stations, and radio reading services for the acquisition and use of educational technology and for the development of educational materials. The Commission consists of 13 members, nine of whom are voting members and four of whom are nonvoting legislative members. The voting members include six representatives of the public, the Superintendent of Public Instruction (or a designee), the Chancellor of the Board of Regents (or a designee), and the state chief information officer (or a designee). Of the six public members, four are appointed by the Governor (with the advice and consent of the Senate) and one each is



appointed by the Speaker of the House and the President of the Senate. The Commission appoints an executive director and other employees to carry out its functions. Its employees are unclassified civil servants and are, generally, exempt from collective bargaining. Some employees, who transferred from one of the Commission's predecessor agencies may be entitled to collectively bargain if they were included in a bargaining unit with the predecessor agency.

Reconstitution of eTech as the Broadcast Educational Media Commission

(R.C. 3353.01, 3353.02, 3353.04, 3353.06, 3353.07, and 3353.09; conforming changes in R.C. 105.41, 125.05, 3313.603, 3314.074, 3317.06, 3317.50, 3317.51, 3319.22, 3319.235; Sections 263.470, 363.570, and 515.50 through 515.53; Section 4 of S.B. 171 of the 129th General Assembly, amended in Sections 610.20 and 610.21)

The bill renames and reconstitutes the eTech Ohio Commission as the Broadcast Educational Media Commission effective July 1, 2013. On that date, all duties and rules of the 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 that are 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.

Elimination of duties

(R.C. 3353.02(G), 3353.04(A), and 3353.06(B); Section 515.53)

Under the bill, five specific duties of eTech are eliminated and, therefore, do not continue as duties of the newly constituted BEMC. The eliminated duties include (1) making grants for the provision of 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 such grants, (3) ensuring that products that are produced by an entity that receives financial assistance from the Commission, and are intended for use in primary and secondary schools, are aligned with statewide academic standards, (4) using moneys accredited to the Affiliates Services Fund for professional development programs and services, and (5) establishing advisory committees to provide guidance to the Commission regarding educational technology issues and needs.

In addition to the duties described above, the bill specifies that any duties that do not relate 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 515.50-515.52)

The bill transfers certain duties of the former eTech Ohio Commission to either the Chancellor of the Board of Regents 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.

Under the bill, duties specifically transferred to the Chancellor include (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, which the Chancellor must use to finance technology grants to state-chartered elementary and secondary schools, and (3) the administration of the Distance Learning Fund, which the Chancellor must use to finance technology grants to eligible school districts.⁶

Under the bill, duties specifically transferred to the Department include (1) the purchase of software supplies and services for specified school districts at a reduced price, (2) the redistribution of software and hardware supplies that were originally leased by the former Ohio SchoolNet Commission or the former eTech Commission and are returned by a permanently closed community school, and (3) as a consulting entity to the Chancellor, 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.

Continuation and transfer of employees

(Sections 515.50 to 515.52)

Under the bill, all employees of the former eTech Ohio Commission that were assigned to activities related to the state's educational broadcasting services (including educational television, radio, or radio reading services) continue with the newly constituted BEMC and retain their positions and benefits. In addition, some eTech employees may be transferred to either the Department of Education or the Chancellor of the Board of Regents in order to administer those activities transferred to the Department or to the Chancellor in the reconstitution.

⁶ However, Section 363.570 of the bill 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.

The bill specifies that all of the above employee transfers and continuations are subject to the normal layoff provisions. Furthermore, the bill retains a provision of current law that specifies that any employee who was included in a bargaining unit with one of eTech's predecessors, retains all previous collective bargaining rights.

Membership of the Commission

(R.C. 3353.02)

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

The membership structure of BEMC remains largely the same as the previous membership structure of eTech. However, the bill makes two changes to membership structure. First, it specifies that the six voting members of the public that serve on the Commission 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. Second, the bill 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 current law pertaining to eTech. The remainder of the membership structure of BEMC remains identical to that of the eTech Ohio Commission.

State technology plan

(Repealed R.C. 3353.09)

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

The bill eliminates the requirement for the plan.

Interactive Distance Learning Pilot Project

(Repealed R.C. 3353.20)

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



The bill eliminates this requirement.

Education Technology Trust Fund; Information Technology Service Fund

(Repealed R.C. 183.28 and 3353.15)

The bill 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 the eTech Ohio Commission from educational entities for the provision of information technology services.



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 Rehabilitation Services Commission, 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 nongeneral revenue fund 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 general revenue fund appropriations proposed for that fiscal year; *and*
 - (3) Is being made for the first time from the general revenue fund.

Other provisions

- 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.
- Permits the Director, 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 (OIA) changes

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

The bill makes several changes to the Office of Internal Auditing within the Office of Budget and Management. In addition to changes outlined below, the bill 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 bill adds the following agencies to the list of state agencies for which the OIA must conduct internal auditing programs:

- Rehabilitation Services Commission;
- Public Utilities Commission of Ohio;
- Adjutant General;
- Ohio Lottery Commission.

The bill 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 bill 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 bill 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. The bill retains the current law requirement that the OIA include audits of systems and controls pertaining to accounting and administration.

Confidentiality of internal audit documents

(R.C. 126.48)

The bill 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.

Under current law, any preliminary or final report of an internal audit's findings and recommendations and all work papers of the audit are confidential and not public records until the final report is submitted to the State Audit Committee, the Governor, and the director of the agency being audited.

Publishing the Chief Internal Auditor report

(R.C. 126.47)

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

State Audit Committee

(R.C. 126.46 and 126.47)

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

Committee membership

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

The bill – 5 members	Current law – 5 members
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 bill 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 current law, the Committee is required to ensure that internal audits conducted by the OIA conform to the Institute of Internal Auditors' International Standards for the Professional Practice of Internal Auditing.

Additionally, the bill 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 bill retains the review and comment requirement with regards to the agency's preparation of the state comprehensive annual financial report.

State Lottery Commission internal audit plan

(R.C. 3770.06)

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

The bill 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 bill eliminates the authority of the Auditor to prescribe the form and content of the report.

State appropriation limitation

(R.C. 107.033)

The bill revises the manner in which the state appropriation limitation (SAL) is determined. Under the bill, the SAL for a fiscal year is to be increased by the amount of a nongeneral revenue fund 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 general revenue fund appropriations proposed for that fiscal year; *and*



(3) Is being made for the first time from the general revenue fund.

Authority to use electronic funds transfers

(R.C. 126.07 and 126.35)

The bill permits the Director of Budget and Management to process electronic funds transfers (EFTs) for certain payments from the state treasury. Under current law, the Director is required to draw warrants to make such payments.

Additionally, the bill 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 current law, the Director may review and audit a voucher and related documentation regarding a request for payment from a state agency prior to drawing a warrant only.

Elimination of reimbursement for additional costs related to direct deposits

(R.C. 126.35)

The bill 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 bill also eliminates the authority of the Director to add the reimbursed amount to the processing charge paid by state agencies.

Transfers of interest to the General Revenue Fund (GRF)

(Section 512.10)

The bill permits the Director of Budget and Management, through June 30, 2015, to transfer interest earned by any state fund to the General Revenue Fund (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 bill 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 bill permits the Director of Budget and Management to issue guidelines to any agency applying for federal money made available to the state for fiscal stabilization and recovery purposes and to prescribe the process by which agencies are to comply with any reporting requirements established by the federal government.

Prohibition on transfers to the Income Tax Reduction Fund

(Section 512.70)

The bill prohibits transfers to the Income Tax Reduction Fund prior to July 1, 2015, notwithstanding current law to the contrary. Under current law, the Director of Budget and Management, by July 31 of each year, is required to transfer from the GRF certain amounts to (1) first, the Budget Stabilization Fund and (2) then, to the Income Tax Reduction Fund.⁷

⁷ R.C. 131.44, not in the bill.



CASINO CONTROL COMMISSION

Casino Law license transfers

- States that a casino operator license is transferable, subject to approval by the Ohio Casino Control Commission.
- Specifies that any change in or transfer of control of a casino operator requires the filing of an application for transferring the casino operator license and submission of an application fee.
- Removes a provision that states that a change in or transfer of control to an immediate family member is not considered a significant change.
- In determining whether to approve a transfer, requires the Commission to consider all factors in the Casino Law that pertain to granting a casino operator license.
- Except as described above, specifically prohibits any license issued under the Casino Law from being transferred, and requires a new license for a new majority ownership interest in or a change in or transfer of control of a licensee.
- States that any such ownership interest in or change in or transfer of control requires the filing of a new license application and payment of applicable fees, including an increase in the fees to cover actual review and investigation costs relating to an applicant.
- Requires an application for a new license to be made under oath on forms prescribed by the Commission.
- Requires an applicant for a new license to prove their suitability for licensure by clear and convincing evidence and the Commission to consider all of the factors established in the Casino Law that pertain to the granting of such a license.
- Removes a provision that states that an initial license is not considered transferred, and a new license is not required, when an initial licensee that is licensed before June 1, 2013, meets certain factors.

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 a report verifying moneys in the Fund were used in accordance with relevant law.

Casino Law license transfers

(R.C. 3772.03, 3772.091, and 3772.092)

The bill amends the law related to the transfer of licenses under the Casino Law. Under the bill, a casino operator license issued under the Casino Law is transferable, subject to approval by the Ohio Casino Control Commission. A new majority interest in or change in or transfer of control of a casino operator requires Commission approval. And, before any such transfer may be approved, the applicant must file an application for the transfer with, and submit an application fee to, the Commission.

An application for transferring a casino operator license must be made under oath on forms prescribed by the Commission, and must contain the information required by the Casino Law and rules related to applications for casino operator licenses. In determining whether to approve the transfer, the applicant must prove their suitability for licensure by clear and convincing evidence and the Commission must consider all the factors established in the Casino Law that pertain to the granting of a casino operator license.

The fee to obtain an application for transferring a casino operator license must be the same as is required to obtain an application under the Casino Law, which is \$1,500,000 per application, and which can be increased to the extent that the actual review and investigation costs relating to the applicant exceed that fee. The application fee is nonrefundable and must be deposited into the Casino Control Commission Fund.

Under ongoing law, the Commission can reopen a licensing investigation at any time. The bill removes a provision that states that a change in or transfer of control to an immediate family member is not considered a significant change.



The bill specifies that except as provided above, no license issued under the Casino Law is transferable and a new majority ownership interest in or a change in or transfer of control of a licensee requires a new license. Any such ownership interest in or change in or transfer of control requires the filing of the applicable application for a new license and submission of the applicable application and license fees with the Commission before the new license can be issued.

An application for the applicable new license must be made under oath on forms prescribed by the Commission, and must contain the information required by the Casino Law and rules. The applicable application and license fees must be in the amounts prescribed in current law for the applicable license, and may be increased to the extent that the actual costs relating to review and investigation of the applicant exceed the fee. The application fee is nonrefundable and must be deposited into the Casino Control Commission Fund.

The bill requires, in the determination of whether to approve the application for a new license, the applicant to prove their suitability for licensure by clear and convincing evidence and the Commission to consider all of the factors established in the Casino Law that pertain to the granting of such a license. The Commission can reopen a licensing investigation at any time.

Under current law, no license issued under the Casino Law, including a casino operator license, is transferable. Generally, new majority ownership interest or control of a licensee requires a new license. Before any such change or transfer of control is approved, a *significant* change in or transfer of control requires the filing of an application for a new license and submission of a license fee with the Commission. A change in or transfer of control to an immediate family member is not considered a *significant* change.

Additionally, the bill removes current law provisions that provided that an initial license must not be considered transferred, and a new license must not be required, when an initial licensee that is licensed before June 1, 2013, does or has done both of the following:

(1) Obtained a majority ownership interest in, or a change in or transfer of control of, another initial licensee for the same casino facility; and

(2) Was investigated under the Casino Law as a parent, affiliate, subsidiary, key employee, or partner, or joint venturer with, another initial licensee that has held for the same casino facility a majority ownership interest in or control of the initial license when the initial license was issued and when such an initial licensee obtains a majority ownership interest in or a change in or transfer of control.



Casino Control Commission Enforcement Fund

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

The bill 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 bill 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 bill 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 according to 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.



STATE CHIROPRACTIC BOARD

- Authorizes chiropractors to assess, and clear for return to play, youth athletes removed from play for exhibiting concussion and head injury symptoms.

Chiropractors authorized to assess and clear concussed athletes

(R.C. 3313.539 and 3707.511)

The bill authorizes chiropractors to assess (and clear for return to play) student and other youth athletes removed from play for exhibiting concussion and head injury symptoms. Current law imposes certain requirements on coaches, referees, and other officials involved in interscholastic or other youth athletics. They must (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 (1) either a physician (or other licensed health care provider authorized by the school district or youth sports organization) assesses the athlete and (2) the physician (or provider) provides written clearance for the athlete's return to play.



CIVIL RIGHTS COMMISSION

- 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.

Civil Rights Commission

(R.C. 4112.02)

The bill 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 bill resolves this potential discrepancy by expressly stating in the civil rights law the policy described above.



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 political subdivisions that seek to take action with regard to underground storage tanks when the tanks' owners or operators cannot be identified or cannot pay the costs of the action.
- Requires that the loans under the Program be financed exclusively through penalties and repaid loan amounts.
- 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.

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 and 3737.883; conforming changes in R.C. 3737.88 and 3737.884 (renumbered from 3737.883))

Program overview and explanation of "corrective actions"

The bill 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 political subdivisions seeking to take action with regard to underground storage tanks if the tanks' owners or operators⁸ cannot be identified or cannot pay the costs of taking action. 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.⁹ Under the Program, the Fire Marshal is required to issue an interest-free loan to a political subdivision that meets the bill's application requirements and plans to spend from its own funds an amount equal to at least 5% of the requested loan amount.

The bill expressly permits political subdivisions to take the actions for which the loans may be requested. Specifically, it permits a political subdivision to do any of the following for an underground storage tank within the subdivision's territorial boundaries, provided the tank owner or operator is unidentifiable or was determined by the Fire Marshal as being unable to pay the costs of the action:

- Initiate, continue, or properly complete the 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 bill permits the subdivision to take any action necessary to protect human health and the environment in the event of a release of petroleum into the environment. This includes any action necessary to monitor, assess, and evaluate the release. For a suspected release, "corrective action"

⁸ R.C. 3737.87(N), not in the bill.

⁹ R.C. 3737.87(L), (O), and (P), not in the bill.



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.¹⁰ Despite the bill's grant of authority, continuing law grants the Fire Marshal exclusive jurisdiction, in most cases, to regulate the storage, treatment, and disposal of petroleum-contaminated soil generated from corrective actions. Therefore, the bill's grant of authority may be limited by this exclusive jurisdiction.

Definition of "political subdivision"

The bill defines a "political subdivision" as a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. 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.¹¹ The bill 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.¹²

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 bill 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 current law. The Fire Marshall must make the loans exclusively from those repaid amounts and from penalties collected for violations of current law governing

¹⁰ R.C. 3737.87(B), not in the bill.

¹¹ R.C. 2744.01(F), not in the bill.

¹² R.C. 1724.01(A)(1), not in the bill.

underground storage tanks, including rules and orders of the Fire Marshal.¹³ The bill 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 bill 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 the action for which the loan was issued, 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 bill 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 bill requires the Fire Marshal to consult with the Director of Development Services before issuing any loan under the Program.

The bill 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.

¹³ R.C. 3737.882(C), not in the bill.

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.¹⁴

Video-service disconnections

(R.C. 1332.26)

Terminology

The bill makes some changes to current 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)

¹⁴ R.C. 3737.87(P)(1) to (9), not in the bill.



cable service in certain unincorporated areas of townships prior to October 1, 1979, unless a franchise was subsequently issued to the company.¹⁵

Changes to requirements

The bill permits video-service disconnection without notice if disconnection is necessary to prevent the use of video service through fraud. Disconnection without notice is currently permitted for these three other reasons: (1) the subscriber requests it, (2) it is necessary to prevent theft of video service, and (3) it is necessary to reduce or prevent signal leakage. Normally, ten days' written notice of disconnection is required. The bill 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. Current law permits disconnection "for failure of the subscriber to pay its video service bill." Also, video service providers under the bill are required to establish billing due dates of at least 14 days after bills are issued. There are no due-date requirements in current law.

Enforcement

The enforcement provisions that apply to the current customer-service requirements also apply to the requirements made and changed by the bill. 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 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 \$10,000.¹⁶

Bedding and stuffed toys – reporting requirements

(R.C. 3713.06)

The bill reduces the number of reports that a bedding and stuffed toy manufacturer or importer must submit annually to the Superintendent of Industrial Compliance. Current law requires 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

¹⁵ R.C. 1332.21(J) and (M) and 1332.24(A)(1), not in the bill.

¹⁶ R.C. 1332.24(B) and (C), not in the bill.



manufactured in Ohio once every six months. The bill requires a registered toy manufacturer or importer to submit the report once every year.

Historical Boilers Licensing Board vacancies

(R.C. 4104.33)

The bill 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. Current law requires mid-term vacancies to be filled in the manner provided for during initial appointments, which gives the Governor, the President of the Senate, and the Speaker of the House appointment authority.

Prevailing wage threshold index

(R.C. 4115.034; R.C. 4115.03, not in the bill)

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 of Commerce. Current law requires the Director to adjust the threshold level based on the Implicit Price Deflator for Construction established by the federal government, with a maximum adjustment of 3% of the threshold level in existence at the time of the adjustment. The federal government no longer establishes that index. The bill 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.

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 existing specified 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 invest 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).

School grants and loans from Local Government Innovation Fund

- Prohibits grants from being awarded from the Local Government Innovation Fund to primary and secondary school-related political subdivisions beginning July 1, 2013.
- Prohibits loans from being awarded from the Local Government Innovation Fund to primary and secondary school-related political subdivisions beginning July 1, 2014.

Legislative Study Committee on Clean Ohio and Brownfield Funding

- Creates the Legislative Study Committee on Clean Ohio and Brownfield Funding to study how to provide long-term funding for the Clean Ohio brownfield revitalization, conservation, agricultural easements, and recreational trails programs.
- Requires the Committee to submit a report of its findings and its funding recommendations to the Governor and leadership of the General Assembly not later



than March 1, 2014, and states that the Committee ceases to exist upon the report's submission.

Other provisions

- 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.
- Requires the Director of Development Services to utilize the Edison Center Network in issuing grants for research and development or technology transfer efforts under the Thomas Alva Edison grant program.
- 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 and the Exempt Facility Inspection Fund.
- Abolishes six dormant funds codified in the Revised Code that are related to Development Services Agency activities.

Alternative Fuel Transportation Program

(R.C. 122.075)

The bill 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 existing 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 bill 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 bill 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 current law requirement of 20% of the total net cost, of the purchase and installation of an alternative fuel refueling or distribution facility or terminal.

Industrial Technology and Enterprise Advisory Council

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

The bill 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 of Development Services regarding, other industrial technology and enterprise development assistance.

Technology Investment Tax Credit Program

(R.C. 5733.01, 5733.06, 5733.98, and 5747.98; 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 bill eliminates the Technology Investment Tax Credit Program. The Program was established to benefit Ohio taxpayers who invest 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 can be issued under the Program is \$45 million of tax credits. The bill specifies that an investor who is issued a tax credit prior to the repeal of the Program may continue to claim the credit as if the law had not changed.



Office of Community Services name change

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

The bill renames the Office of Community Services within the Development Services Agency as the Community Services Division. All of the current 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 responsibilities of the renamed Division.

Community Services Division program assistance confidentiality

(R.C. 122.681)

The bill 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 Community Services Division program for any purpose that is not directly related to the administration of the program. The bill also prohibits knowingly permitting or participating in the use of such information.

Release of a recipient's information

Under the bill, the Division, and any entity that receives funds from the Division 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:

Entity to Which Individual Assistance Recipients' Information Must Be Released	Purpose for Receiving Information
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 bill 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 bill does not limit such authorized releases or specify to whom they may be made. However, the bill 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.¹⁷ Under the bill, 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 bill. However, the bill permits the Agency to adopt rules that define who may serve in this capacity for an individual assistance recipient.

School grants and loans from Local Government Innovation Fund

(R.C. 189.04 and 189.06; Section 812.20)

The bill disqualifies political subdivisions that are eligible to receive funding from the Straight A Program (described elsewhere in this analysis) from Local Government Innovation Fund grants beginning July 1, 2013. Ineligible political subdivisions include city, local, exempted village, and joint vocational school districts, educational service centers, community schools, STEM schools, college-preparatory boarding schools, and education consortia. The bill also disqualifies such entities from Local Government Innovation Fund loans beginning July 1, 2014.

Under continuing law, the Local Government Innovation Fund provides funding to political subdivisions, which may apply for a loan or grant to fund the purchase of equipment, facilities, or systems or for implementation costs associated with local government innovation or process improvement projects. The Fund is administered by the Local Government Innovation Council, which establishes criteria for evaluating proposals and makes awards of grants and loans to political subdivisions. Not more

¹⁷ R.C. 1347.08.

than \$100,000 in loans and \$100,000 in grants may be awarded to a subdivision for each project.

Legislative Study Committee on Clean Ohio and Brownfield Funding

(Section 701.20)

The bill creates the Legislative Study Committee on Clean Ohio and Brownfield Funding to study how to provide long-term funding for the Clean Ohio brownfield revitalization, conservation, agricultural easements, and recreational trails programs. It requires the Committee to submit a report of its findings and funding recommendations to the Governor and leadership of the General Assembly by March 1, 2014.

The Committee consists of twelve members, six members of the House of Representatives, three appointed by the Speaker and three appointed by the Minority Leader, and six members of the Senate, three appointed by the President and three appointed by the Minority Leader. Appointments must be made not later than 30 days after the provision's effective date.

The Committee is required to elect two co-chairpersons, one of whom must be a member of the House and one a member of the Senate. Additionally, one co-chairperson must represent the majority political party and one the minority political party. Members serve without additional compensation beyond their compensation as legislators, but may be reimbursed for actual and necessary expenses incurred in the conduct of Committee business.

The bill requires the Committee to hold its first meeting not later than 45 days after the provision's effective date and to meet at least once a month thereafter. The Legislative Service Commission is to provide the Committee with research support, and Commission employees must attend all Committee meetings. The Committee ceases to exist after submission of its report.

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 current law, on or before January 1 of each year, beginning in 2013, a taxpayer that has entered into such an agreement is required to report to the Development Services Agency the number of home-based employees and other employees employed by the taxpayer in Ohio. For years after 2014, the bill requires the employee report to be filed on or before March 1 instead of January 1.



Thomas Alva Edison grant program to use the Edison Center Network

(R.C. 122.33)

The bill requires that the Director of Development Services utilize the Edison Center Network in carrying out the goals and objectives of the Thomas Alva Edison grant program. The bill 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 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 bill adds, to the purposes for which the Director of Development Services 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 the relocation of facilities

(R.C. 166.04)

The bill changes the local government notification requirement that applies when certain financial assistance is requested from the Development Services Agency for the purpose of relocating a facility currently being operated in another county, municipal corporation, or township. Under existing law, if a person applies for a loan, loan guarantee, or other assistance under R.C. Chapter 166. to relocate such a facility, the Director of Development Services must 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 bill, 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 bill 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 bill 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. 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 the provision's effective date 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 and Exempt Facility Inspection Fund

(R.C. 5709.212; R.C. 166.22 (repealed); Section 257.110)

The bill abolishes two funds that are codified in the Revised Code: the Rapid Outreach Loan Fund and the Exempt Facility Inspection Fund. The Director of Budget and Management is to make cash balance transfers on July 1, 2013, or as soon as possible thereafter, as follows: (1) from the Rapid Outreach Loan Fund to the Facilities Establishment Fund, and (2) from the Exempt Facility Inspection Fund to the Advanced



Energy Fund. After the effective date of the repeal of each of the funds and upon completion of the transfer of each fund's cash balance, the funds are abolished.

Currently, the Rapid Outreach Loan Fund is used for certain eligible projects that result in job preservation or creation. The Exempt Facility Inspection Fund is used by the Development Services Agency to issue opinions regarding applications from an energy conversion facility, solid waste energy conversion facility, or thermal efficiency improvement facility seeking to obtain an exempt facility certificate (which exempts the facility from certain property taxes).

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 bill eliminates the following funds codified in the Revised Code that it declares are dormant:

- **Energy Projects Fund** – used for energy projects and to pay the costs incurred in administering the energy projects;
- **Shovel Ready Sites Fund** – used to provide grants for certain port authority or development entity projects;
- **Clean Ohio Revitalization Revolving Loan Fund** – used to make loans for projects approved by the Clean Ohio Council;
- **Diesel Emissions Grant Fund** – 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** – used for any Agency operating purposes or programs providing business support or business assistance, including grants, loans, or administrative expenses;
- **Logistics and Distribution Infrastructure Taxable Bond Fund** – used for the allowable costs of eligible logistics and distribution projects.

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.

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 regional council or board 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 the mentally retarded

- Relocates and reorganizes the law governing Medicaid coverage of intermediate care facility for the mentally retarded (ICF/MR) services as part of the process of ODODD assuming many duties of the Ohio Department of Medicaid (ODM) regarding those services.
- Modifies, effective July 1, 2014, Medicaid payments for capital costs of ICFs/MR by (1) halving the efficiency incentive payments to ICFs/MR with more than eight beds, (2) eliminating nonextensive renovation payments to ICFs/MR with more than eight beds, and (3) eliminating return on equity payments to all ICFs/MR.

- Reduces, beginning with fiscal year 2015, the efficiency incentive that is part of the Medicaid payment rate for the indirect care costs of ICFs/MR with more than eight beds.
- Permits ODODD, subject to ODM's approval, to pay a qualifying ICF/MR a Medicaid rate add-on for outlier ICF/MR services provided on or after July 1, 2014, 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.
- Provides for the ODODD Director to establish in rules a flat Medicaid payment rate for ICF/MR services provided on or after July 1, 2014, to low resource utilization residents.
- For fiscal year 2014, requires ODODD to determine modified rates and capped rates for existing ICFs/MR and provides for an existing ICF/MR to be paid a Medicaid rate that is the average of its modified and capped rates, unless the mean of such rates for all existing ICFs/MR is other than \$282.84, in which case the ICF/MR's rate is to be adjusted by a percentage that equals the percentage by which the mean rate is greater or less than \$282.84.
- For fiscal year 2015, requires ODODD to determine modified rates and capped rates for existing ICFs/MR and provides for an existing ICF/MR to be paid a rate that is the average of its modified and capped rates, unless the mean of such rates for all existing ICFs/MR is other than \$282.77, in which case the ICF/MR's rate is to be adjusted by a percentage that equals the percentage by which the mean rate is greater or less than \$282.77.
- Permits an ICF/MR that downsizes or partially converts to providing home and community-based services to file a Medicaid cost report if the ICF/MR 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 and at least five fewer ICF/MR beds than it has on the day before.
- Provides for the cost report to cover the period that begins with the day the ICF/MR downsizes or partially converts and ends on the first day of the month immediately following the first three full months of operation as a downsized ICF/MR or partially converted ICF/MR.
- Provides for the cost report to be used to determine the ICF/MR'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 following the month the ICF/MR downsizes or partially converts; and
 - (2) Ending on the first day of the fiscal year for which it begins to be paid a rate determined using a cost report filed in accordance with regular filing procedures.
- Requires ODODD and a workgroup to evaluate revisions to the formula used to determine Medicaid payment rates for ICF/MR services.
 - Requires the ODODD Director to pay the nonfederal share of a claim for ICF/MR 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/MR that used to be included in the Medicaid-certified capacity of another ICF/MR certified before June 1, 2003;
 - (3) The services are provided by an ICF/MR 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/MR at \$18.24 for fiscal year 2014 and \$18.17 for fiscal year 2015 and thereafter.

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, 5126.05, 5126.051, and 5226.01; Sections 259.90 and 259.100)

Employment First policy

The bill adds to current 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 unless proven otherwise through an individualized assessment process. 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 bill 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 (ODM), Ohio Department of Job and Family Services (ODJFS), 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 bill 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 bill 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 (county DD board)

Each county board of developmental disabilities (county DD board) is required by the bill to do all 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;

(3) Establish a list of services, from least to most integrated, that improve community employment outcomes.

The bill modifies current 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. Current law provides that those services are optional and are in addition to sheltered employment and work activities.



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 bill to file with ODODD an annual cost report detailing the council's or board's income and expenditures.¹⁸ 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.

¹⁸ 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.



County DD board vacancy

(R.C. 5126.026 and 5126.021, not in the bill)

Under the bill, 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 terms, the appointing authority can request a waiver from the ODODD Director to allow that member to serve an additional four-year term subsequent to serving three consecutive four-year terms. The bill requires the ODODD Director to determine if the extenuating circumstances associated with the board warrant the granting of such a waiver.

Under general continuing law, a county DD board consists of seven members with five members being appointed by the board of county commissioners of the county and two members being appointed by the senior probate judge of the county. A county DD board member can be reappointed if the appointing authority ascertains, through written communication with the board, that the member being considered for reappointment meets the requirements for board members. However, a member who has served during each of three consecutive terms must not be reappointed for a subsequent term until two years after ceasing to be a member of the board, except that a member who has served for ten years or less within three consecutive terms can be reappointed for a subsequent term before becoming ineligible for reappointment for two years.

Intermediate care facilities for the mentally retarded (ICFs/MR)

(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 ICF/MR services. State law includes many provisions regarding Medicaid's coverage of ICF/MR services but does not expressly include ICF/MR services as part of Medicaid. The bill 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 provider that has a valid provider agreement to provide the services.

(3) Federal financial participation is available for the services.

Administration of Medicaid coverage of ICF/MR 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 requires that ODM (ODJFS at the time H.B. 153 was enacted) 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/MR services. The bill relocates and reorganizes the law governing Medicaid coverage of ICF/MR services as part of the process of ODODD assuming many of ODM's duties regarding ICF/MR 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 bill renumbers or otherwise relocates the authorizing statute. The citations are to be updated as the Director amends the rules for other purposes.

Not all of ODM's responsibilities regarding Medicaid's coverage of ICF/MR 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/MR.¹⁹ And, the bill specifies that the ODODD Director is to adopt rules governing Medicaid's coverage to the extent authorized by rules adopted by the ODM Director.²⁰

As part of the process of ODODD assuming this responsibility, the bill eliminates certain laws that cease to be applicable.

First, the bill repeals a law that makes ODODD responsible for the nonfederal share of only certain ICF/MR Medicaid claims. Under that law, ODODD is responsible for the nonfederal share of Medicaid claims submitted for ICF/MR services if (1) the services are provided on or after July 1, 2003, (2) the ICF/MR receives initial certification by the Ohio Department of Health (ODH) Director as an ICF/MR on or after June 1, 2003, (3) the ICF/MR, or a portion of the ICF/MR, is licensed by the ODODD Director as a residential facility, and (4) there is a valid Medicaid provider agreement for the ICF/MR. ODODD is not responsible for Medicaid claims submitted for an ICF/MR if a

¹⁹ 42 C.F.R. 431.107(b).

²⁰ 42 C.F.R. 431.10(e)(1)(ii).

residential facility license was obtained or modified for the ICF/MR without obtaining approval of a plan for the proposed residential facility. This law provides, however, that the provisions discussed above apply only to the extent, if any, provided in the contract between ODODD and ODM regarding the transfer of the powers and duties regarding ICF/MR services.

The second law that is eliminated permits ODODD to notify ODM of a reduction in the licensed capacity of a residential facility that is an ICF/MR. 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 residential facility is involuntarily committed to a state-operated ICF/MR. On receiving the notice about the reduction, ODM is permitted by the law being eliminated to transfer to ODODD the savings in the 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/MR.

ICFs/MR's Medicaid rates for capital costs

(R.C. 5124.17, 5124.21, and 5124.28; Section 812.60)

Capital costs are part of an ICF/MR's costs that are used in determining the ICF/MR's total Medicaid payment rate. Under current law, there are four components to an ICF/MR'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 bill modifies, effective July 1, 2014, the Medicaid payments for the capital costs of ICFs/MR by (1) halving the efficiency incentive payments to ICFs/MR with more than eight beds, (2) eliminating nonextensive renovation payments to ICFs/MR with more than eight beds, and (3) eliminating return on equity payments to all ICFs/MR.

Efficiency incentive

Current law provides that an ICF/MR's efficiency incentive is to equal 50% of the difference between its costs of ownership and a limit on costs of ownership payments. The efficiency incentive for an ICF/MR with eight or fewer beds may not exceed a particular cap which is adjusted for inflation annually. The bill provides that, beginning July 1, 2014, the efficiency incentive for an ICF/MR 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.

Nonextensive renovations

Current law uses inconsistent terminology regarding the part of an ICF/MR's Medicaid payment for renovations. Continuing law defines "capital costs" as costs of ownership and costs of nonextensive renovation. However, the provision of current law that governs the amount of an ICF/MR's Medicaid payment for nonextensive renovations uses the terms "renovation" and "nonextensive renovations." This may cause confusion as to whether the provision applies to both renovations and nonextensive renovations or only nonextensive renovations. To avoid that confusion, the bill uses only the term "nonextensive renovation."

Current law establishes two conditions for an ICF/MR to qualify for a Medicaid payment for nonextensive renovations. First, at least five years must have elapsed since the ICF/MR's date of licensure or date of an extensive renovation of the portion of the ICF/MR 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/MR 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 bill adds a third condition for an ICF/MR to qualify for a Medicaid payment for nonextensive renovations: it must have eight or fewer beds. This means that, beginning July 1, 2014 ICFs/MR with eight or more beds will no longer qualify for Medicaid payments for nonextensive renovations.

ICFs/MR's efficiency incentives for indirect care costs

(R.C. 5124.21)

Indirect care costs are part of an ICF/MR's costs that are used in determining the ICF/MR's total Medicaid payment rate. A Medicaid payment rate for indirect care costs is determined for each ICF/MR individually and a maximum payment rate for indirect care costs is determined for each peer group of ICFs/MR. An ICF/MR'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 bill reduces, beginning with fiscal year 2015, the efficiency incentive that is included in determining the individual Medicaid payment rate for the indirect care costs of an ICF/MR with more than eight beds.

Under current law, the efficiency incentive for an ICF/MR with more than eight beds is, for a fiscal year ending in an even-numbered calendar year, 7.1% of the maximum rate established for the ICF/MR's peer group. Its efficiency incentive for a



fiscal year ending in an odd-numbered calendar year is the amount calculated for the preceding fiscal year. For fiscal years 2015-2016 and each fiscal year thereafter ending in an even-numbered calendar year, the bill provides for the efficiency incentive for an ICF/MR with more than eight beds, to be 3.55% of the maximum rate established for the ICF/MR's peer group. The efficiency incentive for fiscal year 2017 and each fiscal year thereafter that ends in an odd-numbered calendar year continues to be the amount calculated for the immediately preceding fiscal year.

Return on equity payments

Current law requires ODODD to pay ICFs/MR a return on their net equity as part of their Medicaid payments for capital costs. A return on net equity payment is 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/MR's return on net equity may exceed one dollar per patient day. In calculating an ICF/MR's rate for return on net equity, ODODD must use the greater of the ICF/MR'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%.

The bill eliminates, effective July 1, 2014, the requirement that ODODD pay ICFs/MR a return on their net equity.

Medicaid rate add-on for outlier ICF/MR services

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

The bill permits ODODD, subject to ODM's approval, to pay a Medicaid rate add-on to an ICF/MR for outlier ICF/MR services the ICF/MR provides to qualifying ventilator-dependent residents on or after July 1, 2014, if the ICF/MR applies to ODODD to receive the rate add-on and ODODD approves the application. ODODD may approve an ICF/MR's application if all of the following apply:

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

(2) The ICF/MR executes with ODM an addendum to its Medicaid provider agreement regarding the outlier ICF/MR services;

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



An ICF/MR that is approved to provide outlier ICF/MR 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/MR services from an ICF/MR, a resident of the ICF/MR 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 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, with ODM. 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.

Medicaid rates for low resource utilization residents

(R.C. 5124.152 (primary) and 5124.01)

The bill provides for the Medicaid payment rate for ICF/MR services provided on or after July 1, 2014, to low resource utilization residents to be a flat rate rather than the regular Medicaid payment rate for ICF/MR services. The ODODD Director is to set the flat rate in rules. "Low resource utilization resident" is defined as a Medicaid recipient residing in an ICF/MR who is placed in the typical adaptive needs and nonsignificant behaviors classification pursuant to the resident assessment instrument and grouper methodology that is used as part of the process of determining ICF/MR's Medicaid rates for direct care costs.

Fiscal year 2014 Medicaid rates for ICF/MR services

(Section 259.200)

The bill provides for an existing ICF/MR's Medicaid reimbursement rate for fiscal year 2014 to be the average of its modified and capped rates unless the mean of such rates for all existing ICFs/MR is other than \$282.84, in which case the ICF/MR's rate is to be adjusted by a percentage that equals the percentage by which the mean rate is greater or less than \$282.84. An ICF/MR is considered to be an existing ICF/MR if (1) the provider of the ICF/MR has a valid Medicaid provider agreement for the ICF/MR on June 30, 2013, and a valid Medicaid provider agreement for the ICF/MR during fiscal year 2014 or (2) the ICF/MR undergoes a change of operator that takes effect during fiscal year 2014, the exiting operator has a valid Medicaid provider agreement for the ICF/MR 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/MR during fiscal year 2014.

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

(1) In place of the inflation adjustment otherwise made in determining the ICF/MR's rate for other protected costs, its other protected costs, excluding the franchise permit fee component of those costs, from calendar year 2012 is to be multiplied by 1.0123.

(2) In place of the maximum cost per case-mix unit otherwise established for the ICF/MR's peer group, its maximum costs per case-mix unit is to be \$108.21 if it has more than eight beds or \$102.21 if it has eight or fewer beds.

(3) In place of the inflation adjustment otherwise calculated in determining the ICF/MR's rate for direct care costs, an inflation adjustment of 1.0123 is to be used.

(4) In place of the maximum rate for the indirect care costs of the ICF/MR'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/MR's rate for indirect care costs, an inflation adjustment of 1.0123 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/MR's efficiency incentive for capital costs is to be reduced by 50%.

An ICF/MR's capped rate is to be its rate as determined in accordance with Revised Code provisions governing the Medicaid reimbursement rates for ICFs/MR reduced by the percentage by which the mean of such rates for all ICFs/MR, weighted by May 2013 Medicaid days and calculated as of July 1, 2013, exceeds \$282.84.

ODODD is required by the bill to reduce the amount it pays ICFs/MR for fiscal year 2013 if the U.S. Centers for Medicare and Medicaid Services requires that the ICF/MR franchise permit fee be reduced or eliminated. The amount of the reduction is to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.



Fiscal year 2015 Medicaid rates for ICF/MR services

(Section 259.210)

The bill provides for an existing ICF/MR's Medicaid reimbursement rate for fiscal year 2015 to be the average of its modified and capped rates unless the mean of such rates for all existing ICFs/MR is other than \$282.77, in which case the ICF/MR's rate is to be adjusted by a percentage that equals the percentage by which the mean rate is greater or less than \$282.77. An ICF/MR is considered to be an existing ICF/MR if (1) the provider of the ICF/MR has a valid Medicaid provider agreement for the ICF/MR on June 30, 2014, and a valid Medicaid provider agreement for the ICF/MR during fiscal year 2015 or (2) the ICF/MR undergoes a change of operator that takes effect during fiscal year 2015, the exiting operator has a valid Medicaid provider agreement for the ICF/MR 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/MR during fiscal year 2015.

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

(1) In place of the inflation adjustment otherwise made in determining the ICF/MR's rate for other protected costs, its other protected costs, excluding the franchise permit fee component of those costs, from calendar year 2013 is to be multiplied by 1.0123.

(2) In place of the maximum cost per case-mix unit otherwise established for the ICF/MR's peer group, its maximum costs per case-mix unit is to be \$108.21 if it has more than eight beds or \$102.21 if it has eight or fewer beds.

(3) In place of the inflation adjustment otherwise calculated in determining the ICF/MR's rate for direct care costs, an inflation adjustment of 1.0123 is to be used.

(4) In place of the maximum rate for the indirect care costs of the ICF/MR'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/MR's rate for indirect care costs, an inflation adjustment of 1.0123 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/MR's efficiency incentive for capital costs is to be reduced by 50%.

An ICF/MR's capped rate is to be its rate as determined in accordance with Revised Code provisions governing the Medicaid reimbursement rates for ICFs/MR reduced by the percentage by which the mean of such rates for all ICFs/MR, weighted by May 2014 Medicaid days and calculated as of July 1, 2014, exceeds \$282.77.

ODODD is required by the bill to reduce the amount it pays ICFs/MR for fiscal year 2015 if the U.S. Centers for Medicare and Medicaid Services requires that the ICF/MR franchise permit fee be reduced or eliminated. The amount of the reduction is to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

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/MR 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/MR.

An annual cost report is to cover the calendar year or portion of the calendar year during which an ICF/MR 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/MR.

There are exceptions to the requirement discussed above. A new ICF/MR 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/MR 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/MR that opens, and an ICF/MR 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. ODODD's authority to extend a 14-day extension to file an annual cost report does not expressly apply to a cost report for a new ICF/MR or an ICF/MR that undergoes a change of provider that is an arm's length transaction. The bill expressly applies the 14-day extension authority to such cost reports.

Cost reports for downsized and partially converted ICFs/MR

The bill permits an ICF/MR that becomes a downsized ICF/MR or partially converted ICF/MR to file with ODODD a cost report sooner than it otherwise would if it meets two conditions. An ICF/MR becomes a downsized ICF/MR by permanently reducing its Medicaid-certified capacity pursuant to a plan approved by ODODD. An ICF/MR becomes a partially converted ICF/MR by converting some, but not all, of its beds to providing home and community-based services under the Individual Options (IO) Medicaid waiver.

To be able to file a cost report sooner than it otherwise would, an ICF/MR must have both of the following on the day it becomes a downsized ICF/MR or partially converted ICF/MR:

(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/MR or partially converted ICF/MR;

(2) At least five fewer beds certified as ICF/MR beds than it has on the day immediately preceding the day it becomes a downsized ICF/MR or partially converted ICF/MR.

The cost report of a downsized ICF/MR or partially converted ICF/MR is to cover the period that begins with the day that it becomes a downsized ICF/MR or partially converted ICF/MR and ends on the first day of the month immediately following the first three full months of operation as a downsized ICF/MR or partially converted ICF/MR. 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/MR 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 determine the ICF/MR's Medicaid payment rate using that cost report. The bill specifies the period for which the ICF/MR is to be paid a rate based on the cost report. The period is to begin on the day that the ICF/MR becomes a downsized ICF/MR or partially converted ICF/MR if that day is the first day of a month. Otherwise, the period is to begin on the first day of the month immediately following the month that the ICF/MR becomes a downsized ICF/MR or partially converted ICF/MR. The period is to end on the first day of the fiscal year for which the ICF/MR begins to be paid a rate determined using its next annual cost report. It is to file its next annual cost report at the regular time for filing annual cost reports if

the ICF/MR became a downsized ICF/MR or partially converted ICF/MR on or before the first day of October. An annual cost report is to cover the portion of the first calendar year that the ICF/MR operated as a downsized ICF/MR or partially converted ICF/MR. If the ICF/MR becomes a downsized ICF/MR or partially converted ICF/MR after the first day of October of a calendar year, it 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.

Evaluation of Medicaid payment rate formula for ICFs/MR

(Section 259.230)

H.B. 153 of the 129th General Assembly required ODM (ODJFS at the time H.B. 153 was enacted) and ODODD to study issues regarding Medicaid payment rates for ICF/MR services. A workgroup was created to assist with the study. The bill 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/MR services. In conducting the evaluation, ODODD and the workgroup must (1) focus primarily on the service needs of individuals with complex challenges that ICFs/MR are able to meet and (2) pursue the goal of reducing the Medicaid-certified capacity of individual ICFs/MR and the total number of ICF/MR beds in the state for the purpose of increasing the service choices and community integration of individuals eligible for ICF/MR services.

Use of county subsidies to pay nonfederal share of ICF/MR services

(Section 259.240)

The bill requires the ODODD Director to pay the nonfederal share of a claim for ICF/MR services using funds otherwise appropriated for subsidies to county DD boards if (1) Medicaid covers the ICF/MR services, (2) the ICF/MR services are provided to a Medicaid recipient who is eligible for the ICF/MR services and the recipient does not occupy a bed in the ICF/MR that used to be included in the Medicaid-certified capacity of another ICF/MR certified by the ODH Director before June 1, 2003, (3) the ICF/MR services are provided by an ICF/MR whose Medicaid certification by the ODH Director was initiated or supported by a county DD board, and (4) the provider of the ICF/MR services has a valid Medicaid provider agreement for the services for the time that the services are provided.

ICF/MR franchise permit fee

(R.C. 5168.60)

Continuing law imposes an annual assessment on ICFs/MR. 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 bill revises the rate at which the ICF/MR franchise permit fee is assessed. The rate is currently \$18.32 per bed per day. Under the bill, the rate is \$18.24 for fiscal year 2014 and \$18.17 for fiscal year 2015 and thereafter.

Home and community-based services

Medicaid rates for certain Individual Options (IO) services

(Section 259.250)

H.B. 153 of the 129th General Assembly required ODODD to increase the rate paid to a provider under the 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 bill 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,²¹ 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.

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 current law, the fees are deposited into two funds: the ODODD Administration and Oversight Fund and the ODJFS Administration and Oversight Fund. ODODD and ODJFS are required to enter into an interagency agreement to specify which portion of the fees is to be deposited into each fund respectively.

The bill 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 bill 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

²¹ A converted facility is an ICF/MR, or former ICF/MR, that converted some or all of its beds to providing home and community-based services under the IO waiver.

share for home and community-based services provided to an individual who the board determines is eligible for board services.²² (ODODD was similarly required to establish the methodology for fiscal years 2012 and 2013.)

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 bill continues a temporary provision of H.B. 153 of the 129th General Assembly that 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 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.

Innovative pilot projects

(Section 259.180)

For fiscal years 2014 and 2015, the bill continues a temporary provision of H.B. 153 of the 129th General Assembly that 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 bill, 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, and ARC of Ohio.

²² R.C. 5126.0510.

DEPARTMENT OF EDUCATION

I. School Financing

State school funding

- 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 \$5,732, for fiscal year 2014, and \$5,789, for fiscal year 2015.
- Requires each school district to certify its average daily membership (student count) on a monthly basis.
- Specifies that a district's computed state operating funding be based on the annualized average of the monthly average daily membership counts.
- 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 current law.
- Prohibits a school district, community school, or STEM school from categorically excluding a student from its reported number of economically disadvantaged students based on anything other than family income.
- Authorizes the Superintendent of Public Instruction to make payments of school operating funds in amounts substantially equal to those made in the prior year until the bill's school funding provisions take effect (90 days).
- Creates the Straight A Program to provide grants to school districts; educational service centers; community schools; STEM schools; college-preparatory boarding schools; individual school buildings; and education consortia for projects that aim to achieve increased student achievement and progress, improved productivity, and sustainable cost reduction of operations.

Special education funding

- Adds "preschool child who is developmentally delayed" to the disabilities included in existing law in category two of special education services.



- Aligns the special education categories and multiples used to calculate scholarships under the Jon Peterson Special Needs Scholarship Program with the categories and multiples used throughout the school funding formula.
- Specifies a formula for additional state aid for preschool special education children for city, local, and exempted village school districts.

Funding for limited English proficient students

- Specifies dollar amounts for each of three categories of limited English proficient students.

Gifted unit funding

- Requires the Department of Education to allocate gifted coordinator and gifted intervention specialist units to each city, local, and exempted village school district and make payments based on the units allocated.
- 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.

Career-technical education funding

- Revises the career-technical education program categories that exist in current law and creates three additional categories.
- Revises the multiples in current law for categories one and two of career-technical education and creates new multiples for categories three, four, and five.
- Establishes a process for approval by a career-technical planning district's lead district of each member district's or school's career-technical education program prior to receiving career-technical education funding.
- Specifies that a comprehensive single-district career-technical planning district or a school district that is not a party to a career-technical educational compact 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.
- 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.

- Maintains unit funding for career-technical education at state institutions.

Transportation funding

- Eliminates certain adjustments of transportation payments provided for under current law, but maintains the existing transportation base payment for each city, local, and exempted village school district.
- Requires the Department of Education, 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).
- Specifies that the Department of Education must require school districts and schools to account for the expenditure of state operating funds for services to each subgroup.
- Requires that, if the Department determines that a district or school has not reached satisfactory achievement and progress for a subgroup, 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 current law regarding the funding and payment system for educational service center (ESC) supervisory services and, instead makes payments to ESCs subject to their agreements with their client school districts.
- 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.



- Expressly permits an ESC to apply for federal, state, and private grants.
- Establishes a procedure 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 school district is paid to the new ESC rather than to the prior ESC.
- Permits the board of education of a school district, governing authority of a community school, governing body of a STEM school, or governing body of a municipal or other political subdivision to elect, at the end of a fiscal year, to have unexpended funds that were paid to an educational service center (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

- Creates the Ready to Learn Program to fund early childhood education services for 2,200 preschool-aged children whose family income is no more than 200% of the federal poverty guidelines, with at least three eligible children funded in each county.
- 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 mobile instructional applications that cost less than \$10 distributed to students are to be

considered "consumable," without the expectation of the return of those applications.

- 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 the student is included in the student count reported to the Department of Education as less than one full-time equivalent student.
- Establishes a temporary task force to review and make recommendations on open enrollment by December 31, 2013.
- Requires the Department to conduct a study to determine the amount and method of funding, and the costs of statewide support for gifted students and to issue a report of its findings to the General Assembly not later than March 31, 2014.
- 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.
- Establishes the Preparing Students for Education Success Grant Program to provide grants to nonprofit charitable corporations that meet certain requirements and convey a credible plan to use grant money for the establishment of new after-school programs that serve youth and generally improve educational outcomes.
- Repeals provisions that authorize the Superintendent of Public Instruction to issue loans from the Lottery Profits Education Fund to qualifying school districts (subject to Controlling Board approval) and to administer those loans.
- Removes reference to a previously repealed provision of law, which pertained to the authorization of the issuance of certain securities by a district board of education, from an existing provision authorizing the deduction of a district's debt service from its state operating funds.

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.
- Revises current law regarding Department of Education's oversight and approval of community school sponsors to (1) require the Department to place the sponsors in probationary status if they are found to be noncompliant with applicable laws and



administrative rules, and (2) permit the Department to limit a sponsor's ability to sponsor additional schools.

- Specifies that the Department's authority to approve, disapprove, or revoke 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.
- Allows an Internet- or computer-based community school ("e-school") that is in operation on the bill's effective date and that serves at least grades one through eight to divide into two schools by grade level, as long as the school's sponsor approves the division and the school exercises that option during the 2013-2014 or 2014-2015 school year.
- Specifies that the authority for an e-school to operate as two schools granted under the bill continues through the life of the schools.
- Includes the rating of "exceeds standards," in addition to "meets standards" under current 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 of Education, 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 of current law requiring 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

- 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) a recently enacted allowance of calamity days for community schools and (2) a recently enacted option for districts and schools to make up some calamity days via online lessons or paper "Blizzard Bags."
- 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 the 90-day effective date of bill's minimum school year provisions, but that any collective bargaining agreement or renewal executed after that date must comply with those provisions.

IV. Scholarship Programs

- 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.
- 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.
- 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.
- 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 bill'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.
- Increases maximum amount of a scholarship awarded under the Cleveland Scholarship Program from \$5,000 to \$5,700 beginning in fiscal year 2014.
- Modifies a provision requiring the Department of Education to conduct a formative evaluation of the Jon Peterson Special Needs Scholarship Program and to report the findings to the General Assembly by eliminating certain requirements of the study and by removing provisions that allowed the Department to contract with qualified researchers to perform the study and to accept grants to fund the study.

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.
- Requires community schools, STEM schools, and college-preparatory boarding schools to report financial information in the same manner as school districts.
- Requires the Department of Education to post financial reports of each school district and school building in a prominent location on its web site and to notify each school when the reports are made available.
- 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.
- Allows the Department to contract with an independent organization to develop and host the performance management section of its web site.

VI. Student Transportation

- Effective July 1, 2014, eliminates current law provisions for a payment in lieu of transportation to a student's parent, where a school district board determines it is impractical to transport the student by school conveyance and, instead, permits a student's parent, or the student if at least 18 years old, to apply for and receive a transportation subsidy instead of receiving transportation from a school district.
- Prohibits a school district from using public transit busses as a means to transport students in grades kindergarten through five to and from school.
- 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 with 2014-2015 school year, 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

Post-Secondary Enrollment Options Program

- Qualifies home-instructed students to participate in the Post-Secondary Enrollment Options Program (PSEO).
- Requires that payments made to a participating college in which home-instructed students enrolled in college courses through PSEO to 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.
- Narrows eligibility for state reimbursement under PSEO to cover only college courses that either are included in, or are equivalent to courses included in, a transfer module or the Transfer Assurance Guide.

- Requires that students be qualified to participate in PSEO based solely on the participating college's established admission standards.

Dual enrollment programs

- Specifically includes Early College High Schools in the list of programs that qualify as "dual enrollment."

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.
- Prohibits a school district, interscholastic conference, or organization that regulates interscholastic conferences or events from imposing eligibility, fee, or rule requirements on nonpublic school or homeschooled students that conflict with the amendment's provisions.

Academic distress commission for knowing manipulation of student data

- Allows the Superintendent of Public Instruction to create an academic distress commission for any school district that is found to have knowingly manipulated student data with evidence of intent to deceive.

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, from not earlier than four weeks prior to the first day of the school year and not later than October 1 as under current law.



- 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.

Governor's Effective and Efficient Schools Recognition Program

- Makes changes in the administration of the Governor's Effective and Efficient Schools Recognition Program.
- Qualifies college-preparatory schools for the recognition program.

School employees

- Repeals current law that specifies the provisions specifying minimum salary steps for teachers.
- 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, and to give those employees any title that reflects the assignment of those duties.
- Specifies that the officers who may be assigned business manager duties include the district treasurer, notwithstanding current law prohibiting the business manager from having possession of district money, and notwithstanding the current law that the treasurer may not be otherwise regularly employed by the board.
- Expresses the General Assembly's intent to supersede a recent appellate court decision that current law prohibits the assignment of a business manager's duties to the district treasurer.
- 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

- Revises the provisions of the voluntary physical activity pilot program to require a participating school district to select one or more school buildings to participate in the program, instead of requiring all of the school buildings of a participating district to participate in the program as under current law.
- Adjusts the physical activity pilot program's requirement for a participating school's students to engage in at least 30 minutes of physical activity daily by allowing the students, alternatively, to satisfy the requirement with at least 150 minutes of physical activity in a week.
- Specifies that the State Board of Education, 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 that comprise the composition of the report cards for school districts and schools.
- Repeals (an apparently obsolete) provision of current law that permits the Ohio Department of Education to implement a No Child Left Behind waiver application once the application is 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 of Public Instruction 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 New Leaders for Ohio Schools nonprofit corporation to submit an annual report to the General Assembly beginning December 31, 2013.

I. School Financing

New funding system for primary and secondary education

(R.C. 3310.56, 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, 3317.013, 3317.014, 3317.016, 3317.017, 3317.02, 3317.022, 3317.023, 3317.0212, 3317.0213, 3317.0214,



3317.0217, 3317.03, 3317.032, 3317.05, 3317.051, 3317.08, 3317.10, 3317.16, 3317.161, 3317.19, 3317.20, 3318.011, 3318.363, 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, 3365.01, 5126.05, 5727.84, and 5751.20; Sections 263.230, 263.240, 263.250, 263.320, and 263.325; repealed R.C. 3314.088, 3314.13, 3317.012, 3317.018, 3317.029, 3317.052, 3317.053, 3323.16, and 3326.39)

The bill creates a new system of financing for school districts and other public entities that provide primary and secondary education. For a detailed analysis of the current funding system and the one proposed by the Governor, see the LSC Redbook for the Department of Education. For a comparison of the Governor's proposal with the school funding system proposed in the House Passed version, see the LSC Comparison Document for the Department. Both documents are published on the LSC web site at www.lsc.state.oh.us/. Click on "Budget Bills and Related Documents," then on "Main Operating," and then on "Redbooks" or "Comparison Document."

Note, as used below, "ADM" means average daily membership. It is the full-time equivalent number of students counted annually for computing funding a district or school for a particular purpose or category.

Formula amount

(R.C. 3317.02)

The bill specifies a formula amount of \$5,732, for fiscal year 2014, and \$5,789, 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 enrollment²³ and in computing a district's required annual deposit into its capital and maintenance fund.²⁴

Core foundation funding

City, local, and exempted village school districts

(R.C. 3317.017, 3317.022, and 3317.0217)

The bill specifies that core foundation funding for each city, local, and exempted village school district is the sum of the following:

²³ R.C. 3313.98.

²⁴ R.C. 3315.18, not in the bill.



(1) An opportunity grant that is equal to the formula amount times the district's formula ADM 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 bill 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) Funding for special education and related services calculated on a per-pupil basis in a manner similar to prior school funding models, where a prescribed "weight" for each of six categories of disabilities is multiplied by the formula amount;

(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);

(10) Career-technical education funds calculated on a per-pupil basis in a manner similar to prior school funding models, where a "weight" for each category (or type) of career-technical education course is multiplied by the formula amount. Payment of these funds is subject to approval by the lead district of the district's career-technical planning district (also known as a "CTPD").

(11) Career-technical education "associated services" funds calculated in a manner similar to prior models, where a district's total career-technical ADM is multiplied by the formula amount, the state share index, and a further multiple of .05.



Joint vocational school districts

(R.C. 3317.16)

The bill 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 bill applies this factor in calculating special education funds, limited English proficiency funds, and career-technical education funds.

(2) Funding for special education and related services calculated in a manner similar to other districts;

(3) Economically disadvantaged funds;

(4) A specific amount for each of three limited English proficiency categories;

(5) Career-technical education funds calculated in a manner similar to other districts.

(6) Career-technical education associated services funds calculated in a manner similar to other districts.

Community schools and science, technology, engineering, and mathematics (STEM) schools

(R.C. 3314.08, 3326.33, 3326.34, and 3326.38)

For community schools and science, technology, engineering, and mathematics (STEM) schools, the bill specifies per-pupil payments for each enrolled student and corresponding deductions from state aid account of the student's resident district:

(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) If the student is a special education student, an amount equal to the formula amount multiplied by the weight for the student's disability category;

(4) If the student is in kindergarten through third grade, \$300, in fiscal year 2014, or \$303, in fiscal year 2015 (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) If the student is a career-technical education student, an amount equal to the formula amount multiplied by the weight attributed to the student's category of career-technical education. Payment of these funds is subject to approval by the lead district of the district's career-technical planning district (CTPD).

Student counts

Monthly certification of average daily membership

(R.C. 3317.01 and 3317.03)

The bill 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 school week of each month. Under current law, this certification is required only once each year during the first full week of October.

The bill also specifies that a district's computed state operating funding be based on the annualized average of monthly average daily membership counts.

Counting kindergarten students

(R.C. 3317.03(C)(1))

The bill provides for the counting of kindergarten students on the basis of the full-time equivalency for which they are enrolled. Under current law, all kindergarten students are counted as one full-time equivalent student regardless of whether they attend 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 bill 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 of economically disadvantaged students based on anything other than family income.

Payments prior to the effective date of the bill's school funding provisions

(Section 263.230)

The bill requires that the Superintendent of Public Instruction, prior to the effective date of the bill's school funding provisions (90 days), 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 the effective date of the bill's school funding provisions, the bill 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 the effective date.

Payment caps and guarantees

(Sections 263.240 and 263.250)

The bill adjusts a city, exempted village, or local school district's core foundation funding, which includes the pupil transportation formula and supplement funding and career-technical education funding, by imposing a cap that restricts the increase in core funding over the previous year's state aid to no more than 6% of the previous year's state aid. 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% of the previous year's state aid.

Straight A Program

(Sections 263.10, 263.320, and 263.325)

The bill 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) for projects that aim to achieve at least the following goals: (1) increased student achievement and progress, (2) improved productivity, and (3) sustainable cost reduction of operations.

The bill appropriates \$50 million, for fiscal year 2014, and \$100 million, for fiscal year 2015, from the Lottery Profits Education Fund to finance grants under the program.

Grant application process

Grant proposal

The bill 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 education consortia apply for a grant, the lead applicant must be either the school district, school building, community school, or STEM school – not an institution of higher of education or private entity. In addition, the lead applicant must indicate on the application which entity is the lead applicant.

Grant evaluation system

The bill requires the Department of Education to establish, with the approval of the governing board (see "**Grant decision**" below), an evaluation and scoring system for awarding grant applications. The system must give priority to applicants whose goals "demonstrate particular attempts" in achieving the following:

(1) Cost reduction in the delivery of services;

(2) Progress in improving literacy in grades kindergarten to three;



(3) Achievement and progress for students with disabilities, economically disadvantaged students, limited English proficient students, and gifted students;

(4) Improving the performance measures that comprise the Prepared for Success component under the new academic performance rating system; and

(5) "Utilizing programs recognized as innovative under the federal Race to the Top program."

Grant decision

The bill requires grant decisions to be made by a "governing board" consisting of eight members consisting of the Superintendent of Public Instruction, or the Superintendent's designee, three members appointed by the Governor, two members appointed by the Speaker of the House, and two members appointed by the President of the Senate.²⁵ 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 selected by the governing board and staff to modify or improve a grant application (see "**Advisory council**" below).

Grant amount

For a school district, educational service center, community school, STEM school, college-preparatory boarding school, or individual school that applies for a grant, the maximum grant amount that may be awarded is \$500,000. For education consortia that apply for a grant, the maximum grant amount that may be awarded is \$1 million.

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;

²⁵ The bill specifies that governing board members may not be compensated for their services.

- (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 governing board and the applicant.

Annual report regarding the grant program

The bill 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

Administrative support

The bill requires the Department to provide administrative support to the governing board.

Advisory council

The bill permits the governing board to establish an advisory council that consists of grant advisors with fiscal expertise and education expertise. The advisors must evaluate proposals from applicants, consult with the governing board regarding strategic planning, and "advise the staff administering the program."²⁶

²⁶ As in the case of the Governing Board, members of the advisory council may not be compensated.

Special education funding

Special education categories and multiples

(R.C. 3310.56 and 3317.013)

The bill maintains the following multiples (or weights) for the six categories of special education services specified under current law and adds one type of disability to category two, as described in the table below:

Category	Disability under current law	Disability under the bill	Multiple under current law
1	Speech and language disabled	Same as current law	0.2906
2	Specific learning disabled; developmentally disabled; other health impaired-minor	Adds "preschool child who is developmentally delayed" to the disabilities listed in current law	0.7374
3	Hearing disabled; severe behavior disabled	Same as current law	1.7716
4	Vision impaired; other health impairment-major	Same as current law	2.3643
5	Orthopedically disabled; multiple disabilities	Same as current law	3.2022
6	Autistic; traumatic brain injured; both visually and hearing impaired	Same as current law	4.7205

The bill also maintains the current requirement that each of the prescribed multiples be multiplied by 90% (that is, reduced by 10%).

With respect to the Jon Peterson Special Needs Scholarship Program, the bill aligns the special education categories and multiples used to calculate scholarships under that program with the special education categories and multiples described above, instead of the categories and multiples prescribed for fiscal year 2009 as under current law.²⁷

²⁷ R.C. 3310.56. Under current law not changed by the bill, the scholarship amount for a school year must be the least of (1) \$20,000, (2) the amount of fees charged for that school year by the alternative public provider or registered private provider, or (3) an amount calculated using the formula amount and the multiple that corresponds with the child's disability.

Catastrophic cost for special education students

(R.C. 3314.08, 3317.0214, 3317.16, and 3326.34)

The bill maintains provisions of current law that require the Department of Education 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 threshold catastrophic cost for serving the student.²⁸ The bill's formula for calculating a district's payment is identical to the formula in current law, except that a district's state share percentage (prescribed by current law) is replaced with a district's state share index when calculating the amount for city, local, and exempted village school districts.

Preschool special education funding

(R.C. 3317.0213)

The bill specifies a formula for additional state aid for preschool special education children for each city, local, and exempted village school district and eliminates all existing references to unit funding for preschool children with disabilities. The bill'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 students' resident school district, the bill 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 board²⁹ is providing services to preschool special education students under agreement with their resident district, the bill 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. The Department must ensure that the county DD board receives at least the same amount of state funding from the Department that it received for the previous fiscal year, as determined by the Department.

²⁸ Under current law and the bill, the threshold amount is \$27,375, for a student in categories two through five, and \$32,850, for a student in category six.

²⁹ A county DD board is a county board of developmental disabilities.



Funding for limited English proficient students

(R.C. 3317.016)

The bill establishes the following dollar amounts for categories of limited English proficient students:

Category	Type of student	Dollar amount in the bill
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, in fiscal year 2014, and \$1,515, in fiscal year 2015
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, in fiscal year 2014, and \$1,136, in fiscal year 2015
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, in fiscal year 2014, and \$758, in fiscal year 2015

Gifted unit funding

(R.C. 3317.051)

Allocation and payment of gifted units

The bill requires the Department of Education 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

The bill specifies that a district must use the funds it receives for gifted coordinator units only for gifted coordinator services and the funds it receives for gifted interventional specialist units only for gifted interventional specialist services. Moreover, the bill requires 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.

The bill 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 to employ qualified personnel to provide gifted student services for the district.

Career-technical education funding

Career-technical education categories and multiples

(R.C. 3317.014)

The bill revises the career-technical education program categories that exist in current law by changing the types of programs that are considered category one and two under current law and by creating three additional categories of career-technical education programs. It also changes the multiples specified in current law for categories one and two and creates new multiples for categories three, four, and five.

The following table explains these changes in greater detail:

Category	Career-technical education program under current law	Career-technical education program under the bill	Multiple under current law	Multiple under the bill
1	Job-training and workforce development programs approved by the Department	Workforce development programs in environmental and agricultural systems, construction technologies, engineering and science technologies, finance, health science, information technology, and manufacturing technologies	0.57	0.76



Category	Career-technical education program under current law	Career-technical education program under the bill	Multiple under current law	Multiple under the bill
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, and transportation systems	0.28	0.68
3	None	Workforce development career-based intervention programs	None	0.43
4	None	Workforce development programs in arts and communications, education and training, marketing, workforce development academics, and career development	None	0.31
5	None	Family and consumer science programs	None	0.24

Approval of a career-technical education program

(R.C. 3317.161)

In order for a city, local, exempted village, or joint vocational school district, community school, or STEM school to receive career-technical education funding, the lead district of a CTPD must review the career-technical education program of the district or school and determine whether to approve or disapprove the program. If a program is approved, the Department must transfer the funds attributable to the career-technical students enrolled in the district or school, according to a payment schedule prescribed by the Department. If the program is disapproved, the Department must automatically review the lead district's decision. In reviewing the lead district's decision, the Department must consider the demand for the career-technical education program and the availability of the program within the career-technical planning district. If, following the review, the Department decides to approve the program, it must transfer the funds at that time. The bill specifies that the Department's decision is final.

Expenditures of career-technical education funding

(R.C. 3317.022(E))

The bill specifies that a comprehensive single-district career-technical planning district or a school district that is not a party to a career-technical educational compact



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 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.³⁰)

Career-technical education provided by community schools

(R.C. 3314.086)

The bill specifically authorizes community schools to provide career-technical education. 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 current law, community schools are not prohibited from providing career-technical education, and additional weighted funds for this education are provided for all community schools except e-schools. The bill, however, provides for the payment of career-technical weighted funding for e-schools.

Career-technical education funding transfers

(R.C. 3317.023(H))

The bill removes a provision of current law that requires a district educating a student entitled to attend school in another district pursuant to a shared education contract, compact, or cooperative education agreement to be credited any career-technical weighted funding attributable to the student.

Career-technical education at state institutions

(R.C. 3317.05)

The bill maintains unit funding for career-technical education at state institutions operated by the Departments of Mental Health, Developmental Disabilities, Youth Services, and Rehabilitation and Correction as under current law.

³⁰ Ohio Administrative Code 3301-61-16.

Transportation funding

(R.C. 3317.0212)

The bill removes certain adjustments from the pupil transportation formula for school districts specified in current 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 is calculated in current law, except that a district's state share percentage is replaced with a district's state share index.

The bill requires the Department of Education, 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 bill 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 bill 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. For this purpose, a subgroup of 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 proficiency students, or (4) students identified as gifted in superior cognitive ability and specific academic ability fields. The bill requires the Department of Education 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 by the district or school.

The bill also specifies that the Department must require school districts and schools to account for the expenditure of state operating funds for services to each subgroup. If a district or school fails to show satisfactory achievement and progress, as determined by the State Board of Education, 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. 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 school, district, 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 include, but are not limited to, 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; 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 bill repeals a provision of current law establishing a permanent statutory payment and funding structure for state payments to educational service centers (ESC) for services to school districts. Instead, under the bill, any 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 bill 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 bill also expressly permits an ESC to apply for federal, state, and private grants.

The bill also 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 multiplied by the ESC's total student count (see "**Total student count**" below) and, for fiscal year 2015, is \$35 multiplied by the total student count. However, if the appropriation is not sufficient, the bill requires that the payments be prorated accordingly.

The bill also earmarks \$3.8 million of the appropriation in each fiscal year for gifted education at ESCs. The distribution of these funds is based on a unit methodology used prior to FY 2010.



Background on current statutory funding structure

Current law requires client school districts to make payments for services from an ESC as follows:

- \$6.50 per pupil from each school district served;
- Either \$37.00 or \$40.52 (for an ESC made from the merger of at least three smaller ESCs) per pupil of direct state funding for each school district served;
- One "supervisory unit" for the first 50 classroom teachers required to be employed in the district and one such unit for each additional 100 required classroom teachers; and
- Additional fees for services agreed to separately.³¹

In most years, however, the state amount was prorated subject to appropriations.

Total student count

(R.C. 3313.843)

Under the bill, "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 of Education for all of the school districts with primary agreements with the ESC. This definition differs from the general definition under continuing law, which is 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.

Process to ensure correct ESC is paid state subsidy for services

(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 that the district intends to terminate the agreement in that year, and that

³¹ In this analysis, agreements made pursuant to R.C. 3313.843 are referred to as "primary" agreements, as opposed to agreements for additional services made pursuant to section 3313.845. The term "primary" ESC is referenced in an uncodified provision of the bill.

termination is effective on the 30th day of June of that year. When a school 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 bill 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 school district is paid to the new ESC rather than to the prior one.

To that end, the bill 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 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 bill 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 funds

(R.C. 3313.848)

The bill permits the governing body of the "client" of an ESC to elect, at the end of a fiscal year, to have unexpended 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 bill defines a "client" as a city, local, or exempted village school district, community school, STEM school, or other political subdivision. The bill 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.

If a client's chief administrator requests that the treasurer of an ESC spend a portion of the client's retained funds for a purpose other than services specifically set forth under a service agreement and the ESC's treasurer fulfills the request, the bill requires the ESC's treasurer to keep a record of the expenditure and its purpose. 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.



Background on ESC agreements

Recent changes, adopted in H.B. 153 of the 129th General Assembly, require *every* city, exempted village, and local school district with a student count of 16,000 or less to enter into an agreement with an ESC for services. That law also permits, but does not require, every school district with a student count greater than 16,000 to enter into an agreement with an ESC for services. Prior law had permitted, but did not require, city and exempted village districts with less than 13,000 students to arrange for those services.

Education services for students in county juvenile detention facilities

(R.C. 2151.362, 3313.64, and 3313.847 (renumbered as 3317.30))

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. In some cases, however, 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. Current law 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.³² The bill extends this policy option to other entities.

Coordination of education

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 bill places the responsibility for coordinating that education on the facility itself. Under the bill, 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.

³² R.C. 3313.847, as enacted by Am. Sub. S.B. 316 of the 129th General Assembly.



Direct billing for services

The bill 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 bill 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. These provisions currently apply in the case of an ESC providing services to a child in a juvenile detention facility and direct billing for those services.

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 bill, 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.³³

Ready to Learn Program

(Sections 263.10 and 263.163)

The bill creates the Ready to Learn Program to fund early childhood education services for 2,200 preschool-aged children whose family income is not greater than 200% of the federal poverty guidelines, with at least three eligible children funded in each county. The Department of Education must use the funding provided in the bill to contract with public or private early childhood education providers for this purpose. If a provider is a private provider, it must have at least a "three star rating" in the Department of Job and Family Services' "Step Up to Quality" program in order to contract with the Department for this program.

Programs receiving funding from the program must meet certain teacher qualification and professional development criteria, align curriculum to the

³³ R.C. 3314.08.



Department's early learning content standards, assess and report on child progress as required by the Department, and participate in the Step Up to Quality program.

Auxiliary Services funds

(R.C. 3317.06)

In regard to Auxiliary Services funds paid to school districts to be spent on behalf of nonpublic school students, the bill replaces the term "electronic textbook," as used under current law, with the term "digital text." The bill, however, generally leaves the definition of the term unaltered except to specify that such texts are "consumable." Thus, under the bill, "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 bill 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.

Background

School districts receive state Auxiliary Services funds to purchase goods and services for students who attend chartered nonpublic schools located within their territories. Those moneys may be used to purchase, for loan to students of chartered nonpublic schools, such things as textbooks, electronic textbooks (now called "digital" texts under the bill), workbooks, instructional equipment including computers, and library materials, or to provide health or special education services.

Fees for all-day kindergarten

(R.C. 3321.01(G))

The bill permits a school district to charge tuition for a student enrolled in all-day kindergarten, as long as the student is included in the student count reported to the Department of Education as less than one full-time equivalent student. This provision, by cross-reference, also appears to apply to community schools.³⁴ Under current law, school districts and apparently community schools are permitted to charge fees or

³⁴ R.C. 3321.01 is applicable to community school by reference in R.C. 3314.03(A)(11)(d). However, a separate provision of current law and the bill limits a community school's authority to charge tuition (R.C. 3314.08(F) and 3314.26).

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.

The bill retains the stipulation that the fees or tuition charged for all-day kindergarten services must be structured on a sliding scale according to family income.

Background

As noted above, the bill provides that each kindergarten student be included in a district's ADM according to the full-time equivalency of the time the student attends kindergarten. That is, if a student attends an all-day program, the student will be counted as one full-time equivalent student. On the other hand, if a student attends a half-day program, the student will be counted as one-half of one full-time equivalent student. Current law, enacted in 2009, requires that each kindergarten student be counted as one full-time equivalent student, regardless of the type of program the student attends. Prior to fiscal year 2010, however, all kindergarten students were counted only as one-half of one full-time equivalent student, but an additional poverty-based assistance payment was available to certain districts and community schools to fund the other half of the formula amount for all-day kindergarten students.³⁵ When the General Assembly authorized the practice of charging for all-day kindergarten in 2007, it restricted that authority to only those districts or schools *not* receiving the additional poverty-based assistance payment for all-day kindergarten,³⁶ and that restriction has remained in law since that time.

Study of open enrollment

(Section 263.450)

The bill establishes a temporary task force to review and make recommendations on open enrollment by December 31, 2013. Under the bill, the Superintendent of Public Instruction, 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 bill 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.

³⁵ R.C. 3317.029(D), repealed by the bill.

³⁶ R.C. 3321.01, as amended by Sub. H.B. 190 of the 127th General Assembly.



Study of funding for gifted student services

(Section 263.433)

The bill requires the Department of Education to conduct a study to determine the amounts of funding, method of funding, and the costs of statewide support for gifted students which must include costs for effective and appropriate identification, staffing, professional development, technology, materials and supplies at the school district level. The Department must issue a report of its findings to the General Assembly not later than March 31, 2014.

Electronic Textbook Pilot Project

(Sections 363.160, 363.180, and 363.580)

The bill 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), will also administer the pilot project and will perform all of the following duties related to the pilot project:

- (1) Set grant criteria and select grant recipients;
- (2) Issue a request for proposals for grants by January 31, 2014;
- (3) Award grants by May 31, 2014, for use during the 2014-2015 school year;
- (4) Notify schools of, and promote participation in, the pilot project (jointly with the Superintendent of Public Instruction); and
- (5) 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 bill also specifies that the number of grants awarded by the Chancellor may not exceed the number that can be funded with appropriations mad for that purpose. The bill appropriates \$1 million for each of fiscal years 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 bill also specifies that unexpended, unencumbered funds appropriated for fiscal year 2014 carry over to fiscal year 2015.



Preparing Students for Education Success Grant Program

(R.C. 3301.80)

The bill establishes the Preparing Students for Education Success Grant Program. Under the program, the Superintendent of Public Instruction is required to award grants to certain nonprofit charitable corporations that provide charitable services to needy residents of Ohio. To qualify a nonprofit corporation must (1) have at least two Ohio locations that provide after-school programming for youth 18 years of age or younger that holistically address areas affecting student academic success, and (2) provide evidence that the students who participated in the corporation's after-school programs have shown academic improvement. The Superintendent may award a grant to a qualified corporation, upon application, provided that the application conveys a "credible plan" to use grant money (1) to establish innovative, comprehensive new programs that will serve a high concentration of youth *and* (2) to improve educational outcomes and reduce barriers to academic success through targeted programming that provides literacy achievement, homework assistance, tutoring, and high-yield learning activities; character and self-esteem building; and a comprehensive health and wellness program. The bill also creates the Preparing Students for Education Success Fund in the state treasury. However, the bill does not make a specific appropriation for the program.

The bill requires that each corporation that receives a grant must submit an annual report that provides a detailed accounting of the use of the grant money to the Superintendent and the General Assembly.

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 bill repeals provisions that authorize the Superintendent of Public Instruction 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 bill 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).³⁷

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

³⁷ R.C. 3314.02, not in the bill. The "Big-Eight" districts are Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown.



(6) A federally tax-exempt entity under certain specified conditions.³⁸

Many, but not all, community schools are run by "operators," which are for-profit or nonprofit entities that may handle all of the day-to-day operations of the schools.

Community schools in multiple facilities

(R.C. 3314.05)

Current law allows a start-up community school to be located in multiple facilities in one district under the same contract, and to assign students in the same grade to different facilities, if the following conditions are met:

(1) The school's governing authority filed a copy of its contract with the school's sponsor with the Superintendent of Public Instruction on or before May 15, 2008;

(2) The school was not open for operation before July 1, 2008;

(3) The school's governing authority has 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;

(4) 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

(5) The school's performance rating does not fall below a combination of any of the following for two or more consecutive years:

(a) Continuous improvement;

(b) For the 2012-2013 and 2013-2014 school years, a rating of "C" for both performance index and the value-added dimension, or if the school serves only grades 10 through 12, a "C" for performance index only;

(c) For the 2014-2015 school year and for any school year thereafter, an overall grade of "C" or an overall performance designation of "meets standards" for community

³⁸ R.C. 3314.02(C)(1)(a) through (f).

schools that primarily serve students enrolled in dropout prevention and recovery programs.

The bill removes the requirements that the contract be filed with the Superintendent of Public Instruction on or before May 15, 2008, and that the school was not open for operation prior to July 1, 2008. By removing the timing restrictions, the bill presumably allows additional start-up community schools that meet the other 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 bill revises the provisions of current law regarding the Department of Education's oversight and approval of sponsors of community schools. Most sponsors must be approved by and enter into an agreement with the Department before they may contract with any schools. (Certain sponsors in the former pilot project area (Lucas County) are exempt from the approval provision, however.) Under current 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 bill extends to the State Board and Department the requirement 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 as provided under current law. To facilitate this option, the bill prescribes specific procedures for placing a sponsor on probation. Under the bill, 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 plan to remedy the conditions for which it is noncompliant and 60 days to implement that plan. If the sponsor does not meet either of the deadlines, the Department (1) must declare to the sponsor's schools that the sponsor is in probationary status, and (2) may prohibit the sponsor from sponsoring 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.

The bill enacts a separate provision stating that Department's authority to approve, disapprove, or revoke the approval of an entity's sponsorship applies to *both* start-up community schools *and* conversion community schools.

Direct authorization applications

(R.C. 3314.029)

Under the existing "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. Current 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 bill also authorizes the Department to deny an application if the school's sponsor *terminated* that contract.

Tuition for out-of-state students

(R.C. 3314.06 and 3314.08)

The bill 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.³⁹ The bill specifies that a community school may not receive funds from the state to pay for these students; thus, it may not include out-of-state tuition students in its report of enrolled students that is used to calculate state payments to the community school and the corresponding deductions from school districts.

E-school separation into multiple schools

(R.C. 3314.29)

The bill allows an Internet- or computer-based community school ("e-school") to separate into two schools by grade level if all of the following apply:

³⁹ Otherwise, community schools are generally prohibited from charging tuition.



- (1) The school was in operation before the bill's effective date;
- (2) The school offers at least grades one through eight;
- (3) The school's sponsor approves the division into two schools; and

(4) The school exercises its option to separate into two schools under the bill during either the 2013-2014 or 2014-2015 school year. However, the authority to operate as two separate schools created by the bill continues for the life of the schools.

The bill specifies that an e-school's division into two schools does not count toward the five-school annual limit on new e-schools specified under current law.⁴⁰

Dropout prevention and recovery program report cards

Ratings

(R.C. 3314.017(D))

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 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 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 that will be "exceeds standards," "meets standards," and "does not meet standards," instead of letter grades as assigned to other public schools.

The bill includes the rating of "exceeds standards," in addition to "meets standards" under current 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.

⁴⁰ R.C. 3314.013(B), not in the bill.

Review of performance indicators

(R.C. 3314.017(G))

The bill requires the State Board of Education, 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 under current law.

Community school contract suspension

(R.C. 3314.072)

Current 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."⁴¹ The bill specifies that 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.

Licensing requirements for physical education instructors at community school

(R.C. 3314.03(A)(10))

Under current 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 must hold a valid license, issued by the State Board of Education, for teaching physical education. The bill 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; however, there is no longer a requirement that the license be issued specifically for the teaching of physical education.

⁴¹ R.C. 3314.07 and 3314.072.

The bill does not affect a separate requirement of current 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.⁴²

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 733.10, 803.50, 812.10 and 812.40)

Beginning in the 2014-2015 school year, the bill 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 12.⁴³ The bill does not revise the minimum school year for community (charter) schools, which is 920 hours. For a description of the current law prescribing the school year, see "**Background on current minimum school year requirements**" below.

In addition, the bill eliminates a provision of current law that specifies that a school week consists of five days, but it also 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 bill eliminates any requirement for a minimum school month, which is four school weeks under current law,⁴⁴ and it eliminates the requirement that a school day be at least five hours long.⁴⁵

Moreover, the bill 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.⁴⁶ So, for example, if a student is suspended for three days from school for a violation of the district's code of conduct, that suspension will run for three days and the number of hours of each of those days as specified by the board of the district that suspended the student.

⁴² R.C. 3319.076, not in the bill.

⁴³ R.C. 3313.48(A); Sections 812.10 and 812.40.

⁴⁴ R.C. 3313.62.

⁴⁵ R.C. 3313.48.

⁴⁶ R.C. 3313.481 as reenacted by the bill.



Thus, the effect of these changes is that a school may fulfill the state minimum hourly requirements by developing an attendance schedule of its own choosing.

Exceptions

In order to satisfy the bill's minimum hourly requirements, in a manner similar to current law:

(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.

(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.⁴⁷

However, unlike under current law, a school is not 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))

The bill 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. The district board must publish notice of the meeting in a newspaper of general circulation in the district not later than 30 days prior to the hearing.

⁴⁷ R.C. 3313.48(A)(1) to (3) and 3317.01(B).



Prohibition on the reduction of hours

(R.C. 3313.48(C))

The bill 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 "**Application of district mandates to chartered nonpublic schools**," below).

Consideration of scheduling needs of other schools

Joint vocational school districts

(R.C. 3313.48(D))

The bill 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.

(City, exempted village, and local school districts are required under continuing law to transport high school students who attend career-technical classes at another district, including a joint vocational school district, from the public high school operated by the district to which the student is assigned to the career-technical program.⁴⁸)

Community schools

(R.C. 3313.48(E) and 3314.092)

The bill 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

⁴⁸ R.C. 3327.01.



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 bill 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))

Finally, the bill 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.

Application of district mandates to chartered nonpublic schools

(R.C. 3313.48(G))

The bill prohibits the State Board of Education from adopting or enforcing any rule or standard that would require chartered nonpublic schools to comply with the bill's provisions that 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))

As discussed above, the bill makes explicit that 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 bill 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))

A school is permitted under current law 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. The bill generally eliminates excused calamity days, and eliminates another provision in current law 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 bill, 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 bill does not affect a provision which excuses calamity days for community schools. Currently, the Department of Education 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 bill)

The bill retains the recently enacted provision that 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 bill



clarifies that 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)

The bill 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 permit a school to operate on an alternative schedule upon the approval of the Department of Education. Also, since calamity days are eliminated, the bill also eliminates the requirement that schools adopt contingency plans to make up calamity days beyond the five they are permitted now.

Collective bargaining agreements

(Section 803.50)

The bill specifically provides that its restructuring of the minimum school year does not apply to any collective bargaining agreement executed prior to July 1, 2014. But it stipulates that any collective bargaining agreement or renewal executed after that date must comply with those changes.

Background on current minimum school year requirements

Current law regulates the length of the school year and school day for both public and nonpublic schools. Community schools ("charter" schools) are not subject to the same requirements as school districts and nonpublic schools, discussed below. Instead, under continuing law, community schools must provide learning opportunities for a minimum of 920 hours per year. Traditional public schools and public STEM schools are, by statute, explicitly subject to a minimum school year and school day requirement. Nonpublic schools, however, are not explicitly subject to these requirements. Rather, the State Board of Education has, by rule, made adherence to minimum school year and school day requirements applicable to both chartered and nonchartered nonpublic schools.⁴⁹

Unless a public or nonpublic school obtains approval to operate on an alternative schedule, as discussed below, a school must be open for instruction with students in attendance at least 182 school days in a school year.⁵⁰ By statute, a school day for

⁴⁹ See R.C. 3314.03(A)(11)(a), 3313.48, 3313.62, 3326.11, and current R.C. 3313.481; Ohio Administrative Code (O.A.C.) 3301-35-08 and 3301-35-12.

⁵⁰ R.C. 3313.48. A school year begins on July 1 and ends the following June 30 (R.C. 3313.62).



students in grades 1 to 6 must include *at least* five hours, with two 15-minute recesses permitted, and a school day for students in grades 7 to 12 must be *at least* five hours, with no provisions for recesses.

The State Board of Education has rulemaking authority to further define what constitutes a school day. Those rules provide that a school day for public and nonpublic school students in grades 1 to 6 must be at least five hours, excluding a lunch period, and five and one-half hours, excluding a lunch period, for public school students in grades 7 to 12. Nonpublic school students in grades 7 to 12 need only have a school day of five hours, excluding a lunch period, which is the minimum prescribed in the statute.⁵¹

Nevertheless, a school day that is shortened by up to two hours because of hazardous weather conditions still counts as a school day towards satisfying the minimum 182-school-day requirement. In complying with the 182-day requirement, a school also may count up to four days when classes are dismissed a half-day early for individual parent-teacher conferences or reporting periods, two days for teacher professional meetings, and up to five days for a public calamity, such as inclement weather.⁵² Taking into account these permitted closings for parent-teacher conferences, reporting, professional development, and calamity days, a school must be open for instruction at least 173 days each year.

Current law also requires a public school to have a school week of five days.⁵³ This requirement does not appear to be extended to nonpublic schools by either statute or administrative rule.

Currently Mandated Minimum School Year, School Week, and School Day

	School Year	School Week	School Day	
			Grades 1-6	Grades 7-12
School Districts and STEM Schools	182 days	5 days	5 hours	5½ hours
Chartered Nonpublic Schools	182 days	Not Specified	5 hours	5 hours
Nonchartered Nonpublic Schools	182 days	Not Specified	5 hours	5 hours

⁵¹ O.A.C. 3301-35-06, 3301-35-08, and 3301-35-12.

⁵² R.C. 3313.48 and 3317.01(B).

⁵³ R.C. 3313.62.



NOTES: The 182-day school year may include up to five "calamity" days, up to four days a school was closed a half-day early for parent-teacher conferences or reporting periods, and up to two days for teacher professional meetings. The five-hour school day may include two 15-minute recesses for grades 1 to 6. Community schools ("charter" schools) are subject to an alternative requirement that they provide learning opportunities for 920 hours per year.

Alternative schedules permitted by current law

As an alternative to operating on a traditional five-hour-a-day, 182-day calendar, current law permits a school district to operate a school on a different schedule in order to (1) provide a flexible school day for parent-teacher conferences and reporting days that require more than the four half-days otherwise permitted, (2) operate on a calendar of quarters, trimesters, or pentamesters, or (3) establish a staggered attendance schedule ("split sessions"). The approval of the Department of Education is required to implement any of these alternative schedules.⁵⁴

If a school district obtains approval to operate an alternative schedule, the school must be open for instruction for at least 910 hours a year. Included within this 910-hour requirement, a school may count two 15-minute daily recess periods for students in grades 1 to 6; ten hours for individualized parent-teacher conferences and reporting periods; ten hours for teacher professional meetings; and the number of hours students are not required to attend because of public calamity days.

IV. Scholarship Programs

Educational Choice Scholarship Program

Background

The Educational Choice Scholarship Program (Ed Choice) 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. Under the program, students may use their scholarships to enroll in participating chartered nonpublic schools. Under current 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;

⁵⁴ Current R.C. 3313.481, repealed by the bill.

(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.); or⁵⁵

(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 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 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

⁵⁵ 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.

(b) \$5,000 for grades 9 through 12.

The scholarships are financed through a "deduct and transfer" method. Each student awarded an Ed Choice scholarship is counted in the enrollment of the student's resident school district for school funding purposes. The Department of Education then deducts the amount of each student's scholarship from the district's state aid account.

Beginning with the 2011-2012 school year, no more than 60,000 Ed Choice scholarships may be awarded for each school year. (Former law had set lower limits on the maximum number of scholarships.)

The bill adds two new categories of students who qualify for Ed Choice scholarships.

Qualification based on K-3 literacy performance

(R.C. 3310.02 and 3310.03)

Beginning with the 2016-2017 school year, the bill qualifies for the Ed Choice scholarship students in kindergarten through third grade who are enrolled in a district-operated school that 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.⁵⁶ A student who receives a scholarship under the bill continues to be eligible for the scholarship so long as the student remains in a qualifying district, the student takes 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. These provisions regarding continuing eligibility are already required of all recipients of the Ed Choice scholarship under current law.

Scholarships based solely on a school's K-3 literacy performance are to be counted in the total 60,000 scholarship cap that applies to the rest of the Ed Choice program under current law. (See "**Priority for Ed Choice scholarships**," below.)

⁵⁶ This is one of the measures used on the new report card system enacted by H.B. 555 of the 129th General Assembly.



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 bill expands the Ed Choice Scholarship Program to qualify certain students based entirely on their family incomes. Under the bill, 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 an Ed Choice scholarship. However, the bill 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% of the federal poverty guidelines provided the student remains enrolled in a chartered nonpublic school. All students who are newly qualified under the bill 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 current law. For fiscal years 2014 and 2015, the bill 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.

If applications for the new income-based scholarships exceed the number of scholarships that can be funded by the appropriation, the bill 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 in the total 60,000 scholarship cap that applies to the rest of the Ed Choice program under current law (see below).

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 (current law);

Second, to students eligible because of the performance rating or grade of their district buildings *and* whose family incomes are at or below 200% of the federal poverty guidelines (current law);

Third, to all other students eligible because of the performance rating or grade of their district buildings (current law);

Fourth, to students in kindergarten through third grade who are eligible because of the K-3 literacy grade of their district buildings *and* whose family incomes are at or below 200% of the federal poverty guidelines (added by the bill);

Fifth, to all other students in kindergarten through third grade who are eligible because of the K-3 literacy grade of their district buildings (added by the bill);

Sixth, to students who are eligible because of the performance index score ranking of their district buildings *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 buildings.

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.

As noted above, students eligible under the bill's new income-based eligibility are not subject to the 60,000 scholarship cap.



Eligibility based on performance index score ranking

(R.C. 3310.03(B))

As noted under "**Background**" above, current 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 bill 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 is 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 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 bill specifies that if a student is eligible for the Ed Choice scholarship based on both the student's public school performance and the bill'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.

However, 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 would continue to receive the scholarship under the family income expansion and that scholarship will be funded accordingly.

Pilot Project (Cleveland) Scholarship Program

(R.C. 3313.978)

The bill 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 bill 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.⁵⁷

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 of Public Instruction. Currently, only the Cleveland Municipal School District meets this criterion. The program has been authorized since 1995. It is financed partially with state funds and partially with an earmark of Cleveland's state payments.

Jon Peterson Special Needs Scholarship Program – formative evaluation

(Sections 125.11.10 and 263.440)

Under the bill and a provision of current law enacted in H.B. 153 of the 129th General Assembly, the Department of Education is required to conduct a formative evaluation of the Jon Peterson Special Needs Scholarship Program and to report its findings to the General Assembly by December 31, 2014. Under the current H.B. 153 provision, the Department is required to include in the report an assessment on (1) the level of the participating student's satisfaction with the program, (2) the level of the participating parent's satisfaction with the program, and (3) the fiscal impact to the state and resident school districts affected by the program. In addition, the H.B. 153 provision permits the Department to contract with one or more qualified researchers who have previous experience evaluating school choice programs to conduct the study and to accept grants to assist in funding the study.

While the bill maintains the requirement for a formative evaluation for the program, it eliminates all of the required assessments for the report, as well as the provisions permitting the Department to contract with a qualified researcher and to accept grants for the study.

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 K through 12. It began operating in the 2012-2013 school year. A scholarship may be

⁵⁷ The bill does not affect the maximum amount of a tutorial assistance grant under the program, which is \$400.



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 that are not in the IEP but are associated with educating the child.⁵⁸

V. State Board Standards and Reporting

School district and school minimum operating standards

(R.C. 3301.07(D))

Continuing law requires the State Board of Education to formulate and prescribe minimum standards to be applied to all elementary and secondary schools. The bill 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 current 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 bill also makes all of the following changes regarding the content of the minimum operating standards:

(1) Adds the 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 interactions to meet each student's personal learning goals;

(2) Removes the requirement that the standard for instructional materials and equipment, including library facilities, be aligned with and promote skills expected under the statewide academic standards;

(3) Specifies that the standards must provide for *the provision of safe building, grounds, health and sanitary facilities and services*;

(4) Revises 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

⁵⁸ R.C. 3310.52, not in the bill.



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 permissive school standards regarding 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)

Currently, the statutory specifications for the State Board of Education financial reporting standards require that certain categories of financial information be shown at *either* the school district *or* the school building level. The specific categories that the format is required to show include (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 bill revises the statutory specifications for these financial reporting standards. Under the bill, such financial information must be shown at *both* the district and school building level. 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 bill 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 of Education financial information in accordance with State Board's standards in the same manner as currently required for school districts and their boards.

Finally, the bill 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.



Performance management information

(R.C. 3302.26)

The bill requires the Department of Education 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 bill 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) Statistics of academic and financial performance measures for each school district to allow for a comparison and benchmarking between districts.

The bill permits the Department to contract with an independent organization to develop and host the performance management section of its web site.

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. 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.⁵⁹

Transportation subsidy

(R.C. 3327.01 and 3327.02 and Section 263.463; conforming changes in 3314.09, 3314.091, and 3326.20)

The bill eliminates the payment in lieu option of transportation option and instead replaces it with a transportation subsidy. Beginning in the 2014-2015 school year, the bill allows a student's parent, or the student if the student is at least 18 years of age and is not appointed a guardian or custodian, to opt to receive a subsidy instead of transportation from the school. If a parent or student chooses to apply for the subsidy, the school district is no longer required to provide transportation to and from school for that student.

Only those students enrolled in a school district, community school, STEM school, or nonpublic school for whom a district is required to transport may receive the subsidy. However, the subsidy is not available for any of the following:

(1) A student attending a community school or nonpublic school that is more than 30 miles of direct travel time, as provided under current law;

(2) A student attending a community school that either has an agreement with the district for the community school to transport the students or accepts responsibility to transport students;

(3) A student who attends a school district other than the student's resident district under an open enrollment policy;

(4) A student who attends school in a school district in which the student was entitled to attend at the end of the first full week of October of the school year, and the student or parent has moved to a new address located outside of that school district but is located within the same county.⁶⁰

In order to receive the subsidy, a parent or student must submit an application to the Department of Education and notify the school district by deadlines prescribed by the Department. So long as the parent or student qualifies under the bill and meets the procedures and deadlines set by the Department, the Department must award subsidies

⁵⁹ R.C. 3327.01 and R.C. 3327.02 (repealed by the bill).

⁶⁰ R.C. 3313.64(I).

to all applicants. Subsidies are to be awarded annually, and parents and students must reapply for a subsidy for each school year. The State Board of Education must adopt rules that prescribe procedures necessary to implement the transportation subsidy. In addition, the Department must set deadlines that would give districts enough time to account for those students opting to take the subsidy in planning its transportation routes and schedules for the following school year.

Subsidy amount

The amount of the subsidy is the lesser of the statewide average cost of pupil transportation for the previous school year or the average cost of pupil transportation for the previous school year for the student's resident school district. The Department must pay that amount in quarterly payments. In contrast, the payment in lieu of transportation, under current law, must be at least as high as a minimum set by the Department, but cannot exceed the statewide average cost for the previous year.

To fund the subsidy, the Department must deduct the amount of each subsidy from the state aid account of the student's resident district. The bill instructs the Department to include students who receive the subsidy in the calculation of the district's transportation payment. (See also "**Transportation funding**" under "**I. School Financing**" above.)

No effect on college-preparatory boarding schools

The bill specifies that the replacement of payment in lieu of transportation with the transportation subsidy has no effect on a school district's responsibility to transport a student to and from a college-preparatory boarding school. Under current law, a boarding school student's resident school district is responsible for the student's weekly transportation to and from the boarding school.

Public transit as a means to transport

(R.C. 3327.01(H))

Public transit buses are an authorized form of vehicle to transport students to and from school under the State Board of Education's rule.⁶¹ The bill prohibits a school district from using public transit busses to transport students in grades kindergarten through five to and from school. It does not affect their use for other grade levels.

⁶¹ Ohio Administrative Code 3301-83-19.

Fee for transportation charged by chartered nonpublic schools

(R.C. 3327.07)

Effective July 1, 2014, the bill specifically 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 opts to receive a subsidy instead of receiving transportation from the school district (see "**Transportation subsidy**," above) and 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 bill, 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.

The bill 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 current law.

Community school responsibility to transport

(R.C. 3314.091)

Current 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 a 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.

The bill 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 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 under current law to renew or relinquish that responsibility.



Under current law, not affected by the bill 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 bill 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 of Education.

VII. Other Education Provisions

Post-Secondary Enrollment Options Program

(R.C. 3365.01, 3365.02, 3365.022, 3365.07, and 3365.12)

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. 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. 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 bill retains both of these options under its new College Credit Plus Program.

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 the bill defines as the "formula amount" under its school funding formula. That amount is \$5,732, for fiscal year 2014, and \$5,789, for fiscal year 2015.

In recent years, however, due to the limited amount of funds and growing demand for PSEO courses by private school students, temporary law also authorized the Department of Education to apportion those funds according to rule of the State Board of Education. Under that rule, the Department allocates 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 have the highest priority for funding.

Qualification of home-instructed students for participation in PSEO

(R.C. 3365.01 and 3365.022)

Beginning July 1, 2013, the bill 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.

Under the bill, if a home-instructed 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 currently the same deadline applied to nonpublic school students. However, for the 2013-2014 school year, the bill allows the Department to accept late applications from home-instructed students who wish to participate during the 2013-2014 school year. For subsequent school years, April 1 will remain the notification deadline.

The bill specifies that if a home-instructed 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 and are apportioned by rule of the State Board of Education.

Alternative funding agreements

(R.C. 3365.12)

Under current 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 bill stipulates that the rules adopted by the Superintendent and the Chancellor must prohibit charging a student participating in PSEO any tuition or fees.

Course content and reimbursement

(R.C. 3365.07(C))

The bill prohibits the Department from reimbursing a participating college for any course that is not included in, or is the equivalent to, a transfer module or the Chancellor of the Board of Regents' Transfer Assurance Guide. A transfer module is a subset or a complete set of courses that satisfy an institution of higher education's general education requirements but that can be completed at another institution. The Transfer Assurance Guide (or "TAG") provides a system to match courses based on learning outcomes, regardless of at which state institution of higher education they are completed, so that a student who completes a TAG course is guaranteed that the credit for that course will transfer.

College admission requirements

(R.C. 3365.02(F))

Under current law, the State Board of Education is required to adopt rules to govern the PSEO program. One of the required rules is that a student may not enroll in a college course through the program if that student (1) has already taken high school courses in the same subject area as that college course and (2) has failed to attain a cumulative GPA of at least 3.0 on a 4.0 scale in such completed high school courses.

The bill eliminates this provision and replaces it with a requirement that student participation in PSEO be based solely on the participating college's established



admission standards. Therefore, it appears that this provision would prohibit a college from imposing on PSEO students entrance requirements that are more lax or more stringent than those imposed on other entering first-year undergraduate students. Nevertheless, certain college courses require prerequisites to be completed before enrolling in the class, which would likely allow colleges to require PSEO students to complete particular high school courses as prerequisites before enrolling in certain courses at the college level.

Dual enrollment programs

(R.C. 3313.6013)

The bill 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's degree at the time of graduation.

Background

Under current law, a "dual enrollment program" is a program in which a student, who is currently enrolled in a high school, may choose to participate in order 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 currently 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.

Participation in district extracurricular activities

(R.C. 3313.5311 and 3313.5312)

Chartered and nonchartered nonpublic school students

The bill 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 bill 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

Similarly, the bill requires each district superintendent to afford any of the district's resident students who are receiving home instruction (homeschooled) 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. A student may *not* participate in an activity in another district or school to which the student is not entitled to attend, if the activity is offered by the student's resident district school. 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 of Education for the continuation of home instruction (if homeschooled in the preceding school year), or (b) based on the student's academic record for the preceding school year, meet the district's academic eligibility standards for participating in extracurricular activities (if *not* homeschooled in the preceding school year).

The bill 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 based on 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 bill 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

The bill 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 bill 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.

Background

Under current law, school districts must afford to any of its resident students enrolled in a community school or STEM school the opportunity to participate in extracurricular activities offered by the traditional public school to which the student otherwise would be assigned. An "extracurricular activity" is a student activity program that a school or school district operates that is not included in the graded course of study. It also includes an interscholastic extracurricular activity that a school or district sponsors or participates in and that has participants from more than one school or district. To participate, a student must fulfill the same academic, nonacademic, and financial requirements as any other participant in the extracurricular activity.⁶²

A school or district may not impose fees for a community school or STEM school student to participate in extracurricular activities that exceed any fees charged to other students for the same activities. No school district, interscholastic conference, or organization that regulates interscholastic conferences or events may impose eligibility requirements that conflict with any of the applicable provisions.

⁶² R.C. 3313.535 and 3313.537, neither in the bill.



Academic distress commission for knowing manipulation of student data

(Section 263.490)

The bill permits the Superintendent of Public Instruction to establish an academic distress commission for any school district that is found by the Auditor of State to have knowingly manipulated student data with evidence of intent to deceive. Under the bill, such a commission may exercise all the authority vested in an academic distress commission that is established for a district with persistent poor academic performance. As such, the commission is tasked with assisting the district for which it was established in improving the district's academic performance.

The bill specifies that such a commission must consist of five voting members, three of whom are appointed by the Superintendent and two of whom are residents of the school district and appointed by the mayor of the largest municipality within that district. Under the bill, when a district becomes subject to this provision, the Superintendent must: (1) provide written notification of that fact to the mayor of the largest municipality within the district and (2) request that the mayor submit the names of the mayor's appointees. All appointments to the commission must be made within 30 days after the district is notified that it is subject to this provision.

If a member is unable to serve for any reason, the appointing authority must appoint a successor within 15 days after the vacancy occurs. Otherwise, the bill specifies that each member serves without compensation (except for necessary and actual expenses incurred while engaged in the business of the commission) at the pleasure of the member's appointing authority for the entire life of the commission.

The bill requires that a commission under this provision adhere to the same requirements as any other academic distress commission. The bill requires that such a commission ceases to exist based on rules adopted by the State Board of Education. Accordingly, the bill also requires that, not later than 90 days after the bill's (immediate) effective date, the State Board adopt these rules.

Under the bill, the Department of Education must compile a final report of the commission's activities upon termination of that commission, to assist other academic distress commissions in the conduct of their functions.

Administration of kindergarten diagnostic assessments

(R.C. 3301.0715)

The bill 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." Current 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 used to determine which students need to receive additional services in order to attain grade level performance.⁶³

Kindergarten early enrollment

(Section 263.473)

The bill 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 the compulsory school age.

Under current law, a child who is between 6 and 18 years of age is "of compulsory age." However, once a child is enrolled in kindergarten, that child is also considered "of compulsory school age." A child generally must be five or six years old, respectively, by September 30, unless the district has opted to set the earlier cut-off date of August 1, in order to enroll in kindergarten or first grade. A child admitted also can be prior to attaining 5 or 6 years of age by meeting conditions prescribed under a district's (or school's) acceleration policy.⁶⁴

Governor's Effective and Efficient 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 recognizes the top

⁶³ R.C. 3301.079, not in the bill.

⁶⁴ R.C. 3321.01.

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 bill 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.

Next, while it continues to require the standards to include indicators for both student performance and fiscal performance, the bill 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 bill adds college-preparatory boarding schools to the list of schools eligible for recognition.

Teacher and nonteaching school employee salary schedules

(R.C. 3317.12 and 3317.14; repealed R.C. 3317.13; conforming changes in R.C. 3311.78, 3313.42, 3317.19, 3317.141, 5126.24, and 5705.412)

The bill repeals a provision from current law that specifies the minimum salary schedules for teachers. The bill also eliminates provisions prescribing (1) the salary schedule filing deadlines and requirements for teachers and nonteaching school employees and (2) the conditions upon which the salary schedules for teachers and nonteaching school employees must be based. In eliminating those provisions, the bill generally requires each school district board of education annually to adopt salary schedules for teachers and nonteaching school employees.

The bill does not affect separate provisions of law affecting teacher salaries in a municipal school district (Cleveland) enacted in 2012.⁶⁵

⁶⁵ R.C. 3311.78, as amended by Sub. H.B. 525 of the 129th General Assembly.

Background

Current law requires the board of education of each school district and the governing board of each educational service center (ESC) to annually adopt a teacher salary schedule. If a district or ESC receives federal Race to the Top funds, it must adopt a merit-based salary schedule.⁶⁶ But, if not, the district or ESC must adopt either a merit-based schedule or one that contains provisions for increments based on training and years of service. In addition, each district and ESC must adopt a salary schedule for nonteaching employees based upon training, experience, and specified qualifications. While a board is permitted to establish its own service requirements and system for granting credit for service in schools not under the control of the board, the law also prescribes a *minimum* schedule for teacher salaries with which all school district and ESC boards must comply.⁶⁷ Under the statutory schedule, the base salary is \$20,000 for a teacher with zero years of service and a bachelor's degree. All of the other salaries on the schedule are increments upward (or downward in some cases, if a teacher does not have a bachelor's degree) as a teacher gains experience and education.⁶⁸ It is this minimum schedule that the bill eliminates.

Assignment of business manager functions

(R.C. 3319.031; Section 733.20)

The bill 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 bill 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, it states that the current 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 bill 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.

⁶⁶ R.C. 3317.141.

⁶⁷ R.C. 3317.12 and 3317.14.

⁶⁸ R.C. 3317.13, repealed by the bill.



The bill also 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 bill'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. In 2007, in *OAPSE/AFSCME Local 4 v. Berdine*,⁶⁹ the Eighth Appellate District Court of Appeals (Cuyahoga County), held that a school district board could not hire the same person as the treasurer and as the "director of support services," the latter of which had job duties very similar, but not identical, to the statutory duties of a district business manager. The court held that, by statute, a treasurer could not be "otherwise regularly employed" by the district board and the director of support services (functionally the equivalent of a business manager) could not have custody of the district's moneys. Thus, the same person could not be employed in both positions.

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 of Education. 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.⁷⁰

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 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. And, as noted above, current law specifies that the treasurer may not be "otherwise regularly employed by the board."⁷¹

⁶⁹ 174 Ohio App.3d 46.

⁷⁰ R.C. 3313.03 and 3313.04, neither in the bill.

⁷¹ R.C. 3313.22 and 3313.31, neither in the bill.



District superintendent nomination of teachers for employment

(R.C. 3319.07)

Each school district board of education must employ the teachers of the schools of its district. Additionally, the governing board of each educational service center employs certain teachers to provide services to the school districts with service agreements with the ESC. However, no teacher may be employed unless 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.⁷²

Thus, current law prohibits a district superintendent from nominating for employment a family member and creates a conflict for a district superintendent where a family member also is qualified to teach in the same district. To address this situation, the bill 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 bill 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. Currently, 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.

Physical activity pilot program

(R.C. 3313.6016)

Current law 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.

⁷² R.C. 2921.42, not in the bill.



The bill 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 as provided under current law. Moreover, the bill 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))

H.B. 555 of the 129th General Assembly enacted a new A-F letter grade academic performance rating and report card system for school districts and individual schools. The bill specifies that the State Board of Education, 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.

Current law, enacted in H.B. 555, already requires the State Board to adopt rules to prescribe the grading methods, benchmarks, and grading systems 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 must 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 must 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 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.⁷³

No Child Left Behind waiver

(R.C. 3302.01 and repealed R.C. 3302.043)

The bill repeals a current law provision that permits the Ohio Department of Education to implement changes described in the federal "No Child Left Behind Act"

⁷³ R.C. 3302.03(A)(2), (B)(3), and (C)(3).



(NCLB) waiver application once the application is approved by the U.S. Department of Education. While that provision authorizes the Ohio Department of Education to implement the waiver's changes, it also prohibits 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 bill apparently is obsolete.

The bill also includes any waiver approved by the U.S. Department of Education in Ohio's statutory definition of the NCLB. Currently, that definition includes in 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 bill 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 must set up a nonprofit corporation called "New Leaders for Ohio Schools." 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 and leadership of primary and secondary schools, (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 board of directors of the corporation must consist of the following eight 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; a person 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; 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 Ohio State University College of Education and Human Ecology are to serve as ex-officio nonvoting members of the board.



The person on the board who represents a major business enterprise in Ohio is to be appointed by an organization selected by the Governor. The organization is to be nonpartisan and consist of chief executive officers of corporations organized in Ohio.

The board must appoint a president of the corporation. The president, subject to the approval of the Board, must enter into a contract with The Ohio State University Fisher College of Business. Under the contract, the College is to provide oversight to the corporation, is to serve as fiscal agent for the corporation, and is to 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 of Directors must establish criteria for program costs, participant selection, and continued participation, and metrics to document and measure pilot program activities.

The bill specifies that the administrative costs of the corporation may not exceed 15% of the annual budget of the corporation.

It also requires the president to apply for and accept, grants, gifts, bequests, and contributions from private sources to support the corporation.

The bill requires the corporation must submit an annual report to the General Assembly and Governor beginning December 31, 2013.

Finally, the bill specifies that the corporation must cease operations on the date that is five years after the bill's (immediate) effective date.

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 is 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 as in current law.
- 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, as applicable; and

--The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for permits, variances, and plan approvals under the Water Pollution Control Law and the Safe Drinking Water Law.

Hazardous waste

- Adds to the purposes for which the existing Hazardous Waste Clean-up Fund is used administrative expenses of any hazardous waste closure or corrective action program.

Construction and demolition debris

- Allows a board of health to use money in its existing construction and demolition debris fund to abate 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 to abate accumulations of construction and demolition debris only at a location for which a license has not been issued under the Construction and Demolition Debris Law if certain conditions are met, including that the property owner did not participate in or consent to the placement of the construction and demolition debris on the property.

Water pollution control

- Requires federal grant money for nonpoint source water pollution management received by the Director to be credited to the existing Water Quality Protection Fund rather than the Nonpoint Source Pollution Management Fund as in current law, 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 as in current law.

Funding for converting school buses to alternative fuels

- Requires money that is credited to the existing 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 specified means.
- Eliminates the authority of the Director of Environmental Protection 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 bill 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 current law. It then abolishes the Dredge and Fill Fund, which is used for the administration of the isolated wetlands permit program.

Extension of solid waste transfer and disposal fees

(R.C. 3734.57)

The bill 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, of which currently one-half of the proceeds must be credited to the



Hazardous Waste Facility Management Fund and one-half to the Hazardous Waste Clean-up Fund. The bill revises the distribution of the proceeds by allocating 30% to the Hazardous Waste Facility Management Fun 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 bill 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 bill extends until 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 fee is scheduled to expire on June 30, 2013.

The bill also extends until 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, which is used to provide money to soil and water conservation districts. Current law requires the additional fee to be collected and so credited until June 30, 2013.

Extension of various air and water fees

Synthetic minor facility emissions fees

(R.C. 3745.11(D))

Under current law, each person who owns or operates a synthetic minor facility must pay an annual fee based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic compounds, and lead in accordance with a fee schedule. 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 existing law. Current law requires the fee to be paid through June 30, 2014. The bill 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 current law, a person applying for a plan approval for a wastewater treatment works is required to pay a fee of \$100 plus 0.65 of 1% of the estimated project cost, up to a maximum of \$15,000, when submitting an application through June 30, 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 bill, the first tier fee is extended through June 30, 2016, and the second tier applies to applications submitted on or after July 1, 2016.

Current law establishes two schedules for annual discharge fees to be paid by holders of national pollutant discharge elimination system (NPDES) permits with an average daily discharge flow of 5,000 or more gallons per day. Under each of the schedules, one of which is for public dischargers and one of which is for industrial dischargers, the fees are based on the average daily discharge flow and increase as the flow increases. Under current law, the fees are due by January 30, 2012, and January 30, 2013. The bill 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, current law imposes a \$7,500 surcharge to the annual discharge fee applicable to major industrial dischargers that is required to be paid by January 30, 2012, and January 30, 2013. The bill continues the surcharge and requires it to be paid annually by January 30, 2014, and January 30, 2015.

Under current law, one category of public discharger and eight categories of industrial dischargers that are NPDES permit holders are exempt from the annual discharge fees that are based on average daily discharge flow. Instead, they are required to pay an annual discharge fee of \$180. Under current law, the fee is due annually not later than January 30, 2012, and January 30, 2013. The bill continues the fee and 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 current law. The fee for initial licenses and license renewals is



required in statute through June 30, 2014, and has to be paid annually prior to January 31, 2014. The bill 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 current law, the fee cannot exceed \$20,000 through June 30, 2014, and \$15,000 on and after July 1, 2014. The bill 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.

Current law establishes two schedules of fees that the EPA charges for evaluating laboratories and laboratory personnel for compliance with accepted analytical techniques and procedures established under the Safe Drinking Water Law. A schedule with higher fees is applicable through June 30, 2014, and a schedule with lower fees is applicable on and after July 1, 2014. The bill 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 bill continues through June 30, 2016, a provision stating that an individual laboratory cannot be assessed a fee more than once in a three-year period unless the person requests the addition of analytical methods or analysts, in which case the person must pay \$1,800 for each additional survey requested.

Fees for certification of water supply or wastewater systems operators

(R.C. 3745.11(O))

Current 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. A higher schedule is established through November 30, 2014, and a lower schedule applies on and after December 1, 2014. The bill 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))

Current law requires any person applying for a permit, other than a 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 bill extends the \$100 fee through June 30, 2016, and applies the \$15 fee on and after July 1, 2016.

Similarly, under existing law, a person applying for a 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 bill extends the \$200 fee through June 30, 2016, and applies the \$15 fee on and after July 1, 2016.

Use of Hazardous Waste Clean-Up Fund

(R.C. 3734.28)

The bill adds to the purposes for which the existing Hazardous Waste Clean-up Fund is used administrative expenses of any hazardous waste closure or corrective action program. Currently, 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.

Use of money by boards of health – construction and demolition debris

(R.C. 3714.07 and 3714.074)

The bill allows a board of health to use money in its construction and demolition debris fund, which under current law is used for administration and enforcement, to abate 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 accumulations only at a location for which a license has not been issued under the Construction and Demolition Debris Law if 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 bill requires federal grant money for nonpoint source water pollution management received by the Director to be credited to the existing Water Quality Protection Fund rather than the Nonpoint Source Pollution Management Fund as in current law. It also eliminates the Nonpoint Source Pollution Management Fund.

The bill 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 as in current law. Under law unchanged by the bill, 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 bill requires money that is credited to the existing 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 applicable provisions of the federal Energy Policy Act and any regulations adopted under them in addition to grants for other purposes specified in current law. It also 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 bill, "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. 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.

(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 bill 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.



EXPOSITIONS COMMISSION

- Authorizes the Ohio Expositions Commission to accept gifts, devises, and bequests of money, lands, and other property and 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 bill authorizes the Ohio Expositions Commission to accept gifts, devises, and bequests of money, lands, and other property and apply the money, lands, or other property according to the terms of the gift, devise, or bequest.

The bill 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 bill 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 bill 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 Commission.

OHIO FACILITIES CONSTRUCTION COMMISSION

Elimination of Ohio Cultural Facilities Commission; transfer of authority

- Eliminates the Ohio Cultural Facilities Commission (CFC).
- 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 the Department'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 the Department 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 the SFC to delegate contracting authority to FCC.
- Requires the 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 the 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.
- Specifies that, in the case of a district that participates in the Expedited Local Partnership Program whose tangible personal property valuation (not including public utility personal property) made up 18% or more of its total taxable value for tax year 2005, (1) the district's priority for state funding for a districtwide project under the main Classroom Facilities Assistance Program (CFAP) will be based on the *smaller* of its wealth percentile when it entered into the Expedited Local Partnership agreement or its current percentile, and (2) the district's share of its CFAP project cost will be the *lesser* of (a) the percentage locked in when the district signed the Expedited Local Partner agreement or (b) the percentage computed using its current wealth percentile rank.
- 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 indebtedness for energy conservation measures on the 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 indebtedness 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 bill eliminates the Ohio Cultural Facilities Commission (CFC), and transfers its functions to the Ohio Facilities Construction Commission (FCC).

Cooperative agreements to administer cultural projects

The bill 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 existing law, FCC may enter into an agreement with CFC or with a governmental agency or cultural organization to administer a project.

The bill 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 bill, 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 bill 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

The bill makes several changes to the requirements for the construction of Ohio sports facilities. First, the bill 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 bill 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 bill 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

The bill 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 bill, the Director of Budget and Management must transfer any existing encumbrances against the current CFC Administration Fund to FCC's new Ohio Cultural Facilities Administration Fund.

Subject to applicable tax law limitation, the bill 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 bill 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 it. Under the bill, 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 bill 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 DAS to require DAS to perform any of the functions transferred from CFC to FCC.



The bill allows FCC to designate the CFC employees, if any, to be transferred to FCC, along with any equipment assigned to those positions. Under the bill, any transferred employee retains the employee's respective classification, but FCC may reassign and reclassify the employee's position and classification if FCC determines this change to be in the best interest of office administration.

The bill 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 bill 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 bill transfers from the Department of Natural Resources (DNR) to FCC the authority to administer DNR's construction projects. FCC currently administers construction and improvement projects on behalf of most state agencies.

Under the bill, 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 bill 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 bill allows DNR to award a contract without competitive bidding or selection if the contract involves a public exigency. The bill 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 bill eliminates the current requirements under which DNR advertises for bids, awards contracts using competitive bidding and selection, alters existing contracts under certain circumstances, and uses a modified bidding process for contracts that involve a public exigency. Instead, the Public Improvements Law will govern 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 bill takes effect, FCC and DNR must review the provisions that give DNR construction authority for dam, waterway, wildlife, and roadway projects.

School Facilities Commission

Background on School Facilities Commission programs

(R.C. Chapter 3318.)

The School Facilities Commission (SFC) administers several programs that provide state assistance to school districts and community schools in constructing classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP), is designed to provide each city, exempted village, and local school district with partial funding to address all of the district's classroom facilities needs. It is a graduated, cost-sharing program where a district's portion of the total cost of the project and priority for funding are based on the district's relative wealth. Districts are ranked by wealth into percentiles. The poorest districts are served first and receive a greater amount of state assistance than wealthier districts will receive when it is their turn to be served based on their respective wealth percentile. Other smaller programs address the particular needs of certain types of districts and schools but most assistance continues to be based on relative wealth.

Executive director; contracting authority

(R.C. 3318.31)

H.B. 487 of the 129th General Assembly retained SFC as an independent agency within FCC, an agency created by that act. The bill removes the current 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 bill also permits SFC to authorize FCC to make and enter into contracts and to execute all



corresponding instruments on behalf of SFC. Under continuing 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 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 current law, SFC, each fiscal year when it determines the districts it plans to serve during that year, must fix the priority of the next ten school districts according to their adjusted valuation per pupil. Such districts are generally given priority for funding in future fiscal years.

The bill eliminates the requirement to create the next list and to give those districts priority.

Project design standards

(R.C. 3318.031)

The bill replaces the current 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 continuing law, not changed by the bill, SFC must also consider the extent to which the design standards support the following:

- Provision of sufficient space for training new teachers and promotion of collaboration among teaching professionals;
- Provision of adequate space for teacher planning and collaboration;
- Provision of adequate space for parent involvement activities; and
- Provision of sufficient space for innovative partnerships between schools and health and social service agencies.

CFAP shares for Expedited Local Partner districts with large amount tangible personal property valuation

(R.C. 3318.36)

The bill makes an exception to the general requirement that school districts participating in the Expedited Local Partnership Program "lock in" their local share percentage for when they eventually become eligible for CFAP. Under the bill, when an Expedited Local Partner district becomes eligible for CFAP, if the district's tangible personal property valuation, not including public utility personal property, made up 18% or more of its total taxable value for tax year 2005 (the year the tax on that property began to phase out), the district's priority for state funding for a districtwide project under the CFAP will be based on the *smaller* of its wealth 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 will be the *lesser* of (1) the percentage locked in under the Expedited Local Partner agreement or (2) the percentage computed using its current wealth percentile rank.

Background

The annual wealth percentile rankings of school districts for school facilities funding is based on the "total" taxable value of each district, averaged over three years. That total taxable value is the sum of both the district's real property tax valuation and its tangible personal property tax valuation. Beginning in 2005, however, the tax on tangible personal property that is not public utility personal property was phased down over several years, and is now fully phased out.⁷⁴ Thus, the value of that tangible personal property is no longer included in a district's current total taxable value. As each district's three-year average adjusted valuation is computed each year, the impact of the tangible personal property valuation will decrease. This decline in total valuation could eventually lower a district's wealth percentile and increase the amount of state funding available for its school facilities projects.

But districts participating in the Expedited Local Partnership Program "lock in" the percentage of their districtwide CFAP projects when they enter into their expedited agreements. Under the Expedited Local Partner Program, a participating district may go ahead with some of its districtwide project using local funds, and apply that local expenditure toward its share when it becomes eligible for CFAP. Since a district's percentage of the total project cost is set in the expedited agreement, changes in the district's valuation (up or down) do not affect its share of the eventual CFAP project. Accordingly, districts that had a relatively higher amount of tangible personal property

⁷⁴ R.C. 5711.22, not in the bill.



in their total taxable values when the tax was phased out may experience a negative effect from having locked in the percentages of their local shares of their CFAP projects. That is, their shares may be lower now, if computed using their lower valuations, than they were when the districts entered into their expedited agreements.

Disposal of school district property

(R.C. 3318.08)

The bill 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.⁷⁵ Continuing law already requires the agreement to contain a similar stipulation regarding the required 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.⁷⁶

Energy conservation measures

(R.C. 133.06 and 3313.372)

Report of costsavings

A school district, subject to approval by SFC, may issue bonds to purchase energy conservation improvements without voter approval 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 bill, 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.

⁷⁵ See R.C. 3313.411, not in the bill.

⁷⁶ See R.C. 3314.41, not in the bill.



Requests for approval

Under the bill, 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 bill 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 the expenditure of funds is not in the best interest of that district. Moreover, under the bill, 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 their request by their academic distress commission.⁷⁷

Debt service

Under current law, debt service on energy conservation bonds is paid with estimated savings on energy costs. The bill 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. The bill also requires that debt service on energy conservation contracts be paid only to the extent that the projected savings outlined in the contract *actually* occur. The bill also requires the contractor to

⁷⁷ The Superintendent of Public Instruction must establish an academic distress commission for each school district that meets any of the following conditions for three or more consecutive years: (1) the district has been declared to be in academic emergency and has failed to make "adequate yearly progress" under the federal No Child Left Behind Act, (2) the district has received a grade of "F" for the performance index score *and* a grade of "D" or "F" for the overall value-added progress dimension, (3) the district has received an overall grade of "F" *or* a grade of "F" for the overall value-added progress dimension, or (4) at least 50% of the schools operated by the district have received an overall grade of "D" or "F." The commission ceases to exist when the district for two of the three prior school years either (a) is rated in need of continuous improvement or better, or (b) receives a grade of "C" or better for *both* the performance index score and overall value-added progress dimension. (See R.C. 3302.10, not in the bill.) The ratings referred to in (1) and (a) are as used under the former rating system recently replaced by H.B. 555 of the 129th General Assembly. The ratings referred to in (2), (3), (4), and (b) are as under the new rating system created by that act effective for the 2012-2013 school year and thereafter.



warrant and guarantee that the energy conservation measures will realize guaranteed savings and to provide an energy guarantee bond for the full term of the contract.

Contract term

The bill permits SFC to shorten the term of any new energy conservation measures installment contract to three years.

Notification of use of criteria architect or engineer

(R.C. 153.692)

The bill 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 bill 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.

BOARD OF EMBALMERS AND FUNERAL DIRECTORS

- Eliminates the current law restriction on a funeral director supervising 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 current law authority to hire inspectors from the Board to the Executive Director of the Board.
- Transfers the current law authority to hire Board staff from the Board to the Executive Director.
- 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.
- 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 and the Board of Embalmers and Funeral Directors may suspend or refuse to renew the funeral home's license.⁷⁸ The bill eliminates the current law restriction that a funeral director may supervise only one funeral home, thus allowing a funeral director to supervise more than one funeral home.

⁷⁸ R.C. 4717.99, not in the bill.



Fees

(R.C. 4717.07)

The bill increases the following fees for license 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; and
- The fee for the issuance of a duplicate license, from \$4 to \$10.

The bill 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 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 bill eliminates the current law 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 bill 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 bill also transfers authority for the employment of inspectors from the Board to the Executive Director.

The bill also removes current law 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 bill 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 bill 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 bill 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. Currently, the law states that these licenses are renewed annually in accordance with the Law's renewal procedures, which requires licenses to be renewed biennially.



DEPARTMENT OF HEALTH

General and city health districts

- Authorizes the Department of Health (ODH) to require general or city health districts to enter into shared services agreements.
- 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 be accredited as a condition precedent to receiving funding from the ODH.
- 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 continuing education units by each member of a board of health.
- Eliminates the Public Health Standards Task Force that assists and advises the Director in the adoption of standards for boards of health.
- Prohibits distribution of state or federal funds to boards of health or health districts on a regional basis.

Patient Centered Medical Home Program

- Establishes in ODH the Patient Centered Medical Home Program (which is separate from the existing Patient Centered Medical Home Education Program).
- Requires ODH to establish a patient centered medical home certificate and specifies the requirements and goals to be achieved through voluntary certification.
- 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 the ODH.

- Requires ODH to submit a report to the Governor and General Assembly three and five years after ODH adopts rules to certify patient centered medical homes.

Regulation of ambulatory surgical facilities

- Enacts provisions in the Revised Code (similar to existing administrative 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 Director of Health to specify ASF inspection forms in rules, conduct inspections of ASFs that are not certified by the federal Centers for Medicare and Medicaid Services, and deny license renewals unless certain conditions are met.
- Requires an ASF to notify the Director within certain time frames when it modifies its 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.

Prioritized distribution

- Establishes levels of priority regarding the distribution of public funds used for family planning services, including funds received from the federal government.

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.
- Requires ODH to consult with the Ohio Departments of Medicaid and Aging and the Office of the State Long-Term Care Ombudsperson 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.
- Eliminates a requirement that ODH annually report those activities and their effectiveness to the Governor and General Assembly.

Newborn screenings

- Requires that hospitals and freestanding birthing centers screen newborns for critical congenital heart defects, unless a parent objects on religious grounds.
- Authorizes the ODH Director to adopt rules establishing standards and procedures for the required critical congenital heart defects screenings.

Distribution of state household sewage treatment system 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 does not provide water for human consumption from obtaining a permit or license, paying fees, or complying with any rule adopted under the existing 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.

Other provisions

- Requires the ODH Director to adopt rules governing the distribution of funds to assist families.
- Eliminates the January 1 deadline for the ODH Director to determine the changes 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.
- Specifies that the Excluded Parties List System is available at the federal web site known as the System for Award Management.

General or city health districts

Expansion of Department of Health's authority over health districts

(R.C. 3701.13)

The bill authorizes the Department of Health (ODH) to require general or city health districts to enter into shared services agreements under existing law⁷⁹ 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.

The bill 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.

Accreditation of general or city health districts

(R.C. 3701.13)

As a condition precedent to receiving funding from ODH, the bill authorizes the ODH Director to require general or city health districts to be accredited by an accreditation body approved by the ODH Director. Accreditation must be obtained not later than July 1, 2018.

⁷⁹ R.C. 9.482, not in the bill.

Formation of combined general or city health districts

(R.C. 3709.01, 3709.051, and 3709.10)

The bill eliminates the requirement that city health districts be contiguous to form a single city health district. Under existing law, two or more contiguous 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 bill 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. Existing law authorizes two or more contiguous general health districts, not to exceed five, to unite in the formation of a single general health district if approved by an affirmative majority vote of the district advisory councils. The bill's revisions result in authorization for an unlimited number of noncontiguous general health districts to form a single general health district.

Continuing education for board of health members

(R.C. 3701.342)

The bill adds to the minimum standards for boards of health that the ODH Director is required to adopt rules that assure annual completion of two continuing education units by each member of a board of health. The bill does not specify the subject matter of those continuing education units.

Elimination of Public Health Standards Task Force

(R.C. 3701.342; R.C. 3701.343 (repealed))

The bill eliminates the nine-member Public Health Standards Task Force that assists and advises the ODH Director in formulating and evaluating public health services standards for boards of health. Currently, the ODH Director adopts the standards by rule, after consulting with the Task Force.

Public health funds

(R.C. 3701.541)

The bill provides that any state funds or funds from the federal government that are distributed by the Ohio Department of Health to a board of health or a city or



general health district must be distributed directly to the board or district. It prohibits the Department from distributing such funds on a regional basis.

Patient Centered Medical Home Program

(R.C. 3701.921, 3701.922, 3701.94, 3701.941, 3701.942, 3701.943, and 3701.944)

The bill establishes the Patient Centered Medical Home (PCMH) Program in ODH. The PCMH Program is established separately from the existing PCMH Education Program, and the ODH Director's authority to establish pilot projects that evaluate and implement the PCMH model of care under that program is eliminated. A PCMH model of care is an advanced model of primary care in which care teams attend to the multifaceted needs of patients, providing whole person comprehensive coordinated patient centered care.

Voluntary PCMH certification program

As part of the PCMH Program, ODH is required to establish a voluntary PCMH certification program.

Goals of PCMH 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 patients' 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;
and

(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;⁸⁰

(3) Implement and maintain health information technology that meets the requirements of federal law;⁸¹

(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; and

(6) Meet any other requirements ODH establishes.

Data collection

ODH is authorized to contract with a private entity to evaluate the effectiveness of certified PCMHs. ODH may provide to the entity any health care quality and

⁸⁰ 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/).

⁸¹ 42 U.S.C. 300jj.

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.

Report

The bill requires ODH to submit a report to the Governor and General Assembly evaluating the PCMH Program no later than three and five years after first 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.

Each of the reports must include all of the following:

(1) The number of patients receiving primary care services from certified PCMHs and the number and characteristics of those patients with complex or chronic conditions. To the extent available, information regarding the income, race, ethnicity, and language of the patients is to be included in the report;

(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; and

(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.

Regulation of ambulatory surgical facilities

(R.C. 3702.30 and 3702.302 through 3702.307)

Overview

The bill enacts provisions in the Revised Code requiring 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 current rules the Director of Health has adopted establishing quality standards for specified types of health care facilities subject to ODH licensure.⁸² In addition, the bill requires that an ASF notify the Director when certain events occur and specifies certain requirements related to ASF inspections.

Infection control programs

Relative to infection control programs, the bill specifies that each program's purposes 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 bill 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 current rules, 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 current 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.⁸³

Written transfer agreements

Requirement

The bill 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

⁸² Ohio Administrative Code (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)).

⁸³ O.A.C. 3701-83-09(D).

medical complications arise. A copy of the agreement must be filed with the Director of Health and an ASF must update an agreement each year and file the updated agreement with the Director.

The bill 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, a "provider-based entity" is 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 specific 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.)⁸⁴

(2) The Director has granted the ASF a variance pursuant to the procedure specified in the bill.

The bill's requirement is similar to the written transfer agreement requirement in current rule. The rule requires an ASF 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." It specifies that a formal agreement is not required, however, in those instances where the ASF is a provider-based entity of a hospital and the ASF policies and procedures to accommodate medical complications, emergency situations, and for other needs as they arise are in place and approved by the governing body of the parent hospital.⁸⁵

Variations

Application. The bill authorizes the Director of Health 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. A variance application is complete if it contains or includes as attachments all of the following:

⁸⁴ 42 C.F.R. 413.65(a)(2).

⁸⁵ O.A.C. 3701-83-19(E).

--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 record of the name, telephone numbers, and practice specialties of the physician;
- Written verification from the State Medical Board of Ohio 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; and

- Any other information the Director considers necessary.

Under current rule, an ASF must 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.⁸⁶

Decision. The bill specifies that the Director's decision to grant or refuse a variance is final and not subject to any administrative proceedings under the Administrative Procedure Act (R.C. Chapter 119.) or any other Revised Code provision. 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 bill's requirement is similar to one in current rule. The rule:⁸⁷

--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 to be 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 bill also authorizes the Director to impose conditions on any variance the Director has granted. The Director may at any time revoke the variance if the Director determines that the ASF is failing to meet one or more of the conditions.

Similar authorizations are incorporated in current rule.⁸⁸

Duration. The bill specifies that a variance is effective for the period of time specified by the 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

⁸⁶ O.A.C. 3701-83-14(B).

⁸⁷ O.A.C. 3701-83-14(C), (F), and (G).

⁸⁸ O.A.C. 3701-83-14(E).

may submit to the Director an application for a new variance with its next license renewal application.

Current rule specifies that the Director may stipulate a time period for which a variance is to be effective. The time period may be different than the time period sought by the ASF in the written variance request.⁸⁹

Inspections

The bill requires that rules the Director must adopt under current law establishing quality standards for health care facilities include provisions specifying the inspection form that must be used during ASF inspections. The bill also requires the Director to conduct an inspection of any ASF that is not certified by the federal Centers for Medicare and Medicaid as an ambulatory surgical center each time the ASF submits a license renewal application. Under current rules, the Director is not required to make any inspections, but is permitted to make them at any time as the Director considers necessary or for the purpose of investigating alleged violations of law governing health care facilities.⁹⁰

The bill prohibits the Director from renewing an ASF license unless all of the following conditions are met:

--The inspector completes each item on the following, as applicable:

- Until the Director adopts rules specifying the inspection form that must be used during ASF inspections, the form approved by the Director on the bill's effective date; or
- The form specified by the Director in rules.

--The inspection demonstrates that the ASF complies with all quality standards established by the Director in rules; and

--The Director determines that the most recent version of the updated written transfer agreement that the ASF files with the Director is satisfactory.

Notifications

The bill requires an ASF to notify the Director of Health within 48 hours when the ASF modifies its operating procedures or protocols that address back-up coverage

⁸⁹ O.A.C. 3701-83-14(D).

⁹⁰ O.A.C. 3701-83-06(A) and (E).



by consulting physicians and medical record maintenance and transfers. Additionally, an ASF must notify the Director within one week when it 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. Current rules do not contain similar requirements.

Prioritized distribution

(R.C. 3701.027, 3701.033, 5101.101, 5101.46, and 5101.461)

The bill 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 bill 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 funds subject to the priority levels described above include federal funds received under (1) the Maternal and Child Health Block Grant (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 bill exempts from the prioritized distribution both of the following: (1) the Medicaid program and (2) funds awarded by ODH as women's health services grants.



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 bill requires a nursing facility's plan of correction to include additional information.

Under current law, a plan of correction must describe the actions the nursing facility will take to correct each finding and specify the date by which each finding will be corrected. In the case of a finding that existed during the period between two surveys and that the nursing facility substantially corrected before the second survey, a plan of correction must describe the actions that the facility took to correct the finding and the date on which it was corrected.

Under the bill, 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:

(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; and

(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 root cause, (b) a detailed explanation of how the actions the nursing facility will take to correct the findings relate to the root cause of the finding, and (c) a detailed explanation of the relationship between the ongoing monitoring and improvement process and the root cause of the finding.

Current law requires ODH to approve a nursing facility's plan of correction, and any modification of an existing plan, 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 Law. The bill adds an extra condition for ODH approval: a plan of correction must include all the information that continuing law and the bill require.



The bill requires ODH to consult with the Ohio Departments of Medicaid and Aging and the Office of the State Long-Term Care Ombudsperson 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.

Nursing facility technical assistance

(R.C. 3721.027; R.C. 3721.026 (repealed))

The bill repeals 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. With the repeal, the Director is no longer required to submit an annual report to the Governor and General Assembly describing the unit's activities for the year and its effectiveness in improving resident outcomes.

Newborn screenings for critical congenital heart defects

(R.C. 3701.5010)

The bill requires that each hospital and freestanding birthing center screen each newborn born in the hospital or center for critical congenital heart defects. Current law requires that all newborns be screened, through a blood sample, for 35 genetic, endocrine, and metabolic disorders. ODH is charged with administering the Newborn Screening Program with the assistance of the Newborn Screening Advisory Council.⁹¹ Ohio law also requires that each hospital and each freestanding birthing center conduct a hearing screening on each newborn born in the hospital or center before discharge, unless the newborn is transferred to another hospital.⁹² The Infant Hearing Screening Subcommittee of the Medically Handicapped Children's Medical Advisory Council consults with and makes recommendations to the ODH Director regarding newborn hearing screenings.

Under the bill, each hospital and freestanding birthing center must use a physiologic test to screen each newborn born in the hospital or center for critical congenital heart defects. The hospital or center must conduct the screening after the newborn reaches 24 hours of age but before discharge, unless the newborn is transferred to another hospital. In the case of a transfer, that hospital must perform the screening when determined to be medically appropriate. A hospital or center is

⁹¹ R.C. 3701.501, not in the bill.

⁹² R.C. 3701.503 through 3701.506, 3701.508, and 3701.509, not in the bill.

prohibited from conducting the screening if the newborn's parent objects on religious grounds.

The bill requires that each hospital or center notify the following of the screening results: the newborn's parent, guardian, or custodian; the attending physician; and ODH. ODH is required to establish a statewide tracking system to ensure that universal critical congenital heart defects screening is implemented. The bill requires the ODH Director to adopt rules establishing standards and procedures for the mandated screenings. The rules must address the following topics:

(1) Identifying the critical congenital heart defects to be included in the screening;

(2) Specifying screening equipment and methods;

(3) Designating the persons responsible for performing screenings and rescreenings;

(4) Providing notice to the newborn's parent, guardian, or custodian of the required screening and the possibility that rescreenings may be necessary;

(5) Communicating results to the newborn's parent, guardian, or custodian and attending physician;

(6) Causing rescreenings to be performed when initial screenings have abnormal results; and

(7) Referring newborns who receive abnormal results to providers of follow-up services.

Distribution of state household sewage treatment system permit fees

(R.C. 3718.06)

The bill reallocates the distribution of money collected from state household sewage treatment system installation and alteration permit fees as follows:

(1) Decreases the percentage allocated to fund installation and evaluation of sewage treatment new technology pilot projects from not less than 25% as provided in current law to not less than 10%; and

(2) Increases from not more than 75% to not more than 90% 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 bill exempts a water system 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 existing 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 bill 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. Each physician, dentist, hospital, or person providing diagnostic or treatment services to patients with cancer must report each case of cancer to ODH. ODH is required to record in the registry all reports of cancer it receives.

In implementing the OCISS, current law requires the ODH Director to:

- Monitor the incidence of various types of malignant diseases in Ohio;
- Make appropriate epidemiologic studies to determine any causal relations of such diseases with occupational, nutritional, environmental, or infectious conditions;
- Alleviate or eliminate any of the conditions listed above;
- Advise, consult, cooperate with, and assist federal, state, and local agencies, universities, private organizations, corporations, and associations; and
- Accept and administer grants from the federal government or other sources.



Confidentiality of cancer reports

Current law includes confidentiality provisions that apply only to information on cancer provided to or obtained by a cancer registry and ODH. It specifies that this information is confidential and is to be used only for statistical, scientific, and medical research for the purpose of reducing the morbidity or mortality of malignant disease. The bill repeals this provision. However, both federal law and Ohio law unchanged by the bill include general provisions governing the confidentiality of protected health information.⁹³

In general, protected health information reported to or obtained by ODH is confidential and cannot be released without the written consent of the individual who is the subject of the information, unless one of the following applies:

(1) The release of the information is necessary to provide treatment to the individual or to ensure the accuracy of the information and the information is released pursuant to a written agreement that requires the recipient of the information to comply with confidentiality requirements.

(2) The information is released pursuant to a search warrant or subpoena issued by or at the request of a grand jury or prosecutor in connection with a criminal investigation or prosecution.

(3) The ODH Director determines the release of the information is necessary to avert or mitigate a clear threat to an individual or to the public health to the extent necessary to control, prevent, or mitigate disease.

Information that does not identify an individual is not protected health information and may be released in summary, statistical, or aggregate form.

Financial assistance to purchase hearing aids for children

(Sections 285.10 and 285.20)

The bill requires that the ODH Director adopt rules governing the distribution of the additional \$200,000 it appropriates per fiscal year for fiscal years 2014 and 2015 to assist families in purchasing hearing aids for children under 21 years of age. These must include rules that do both of the following: (1) establish eligibility criteria to include families with incomes at or below 400% of the federal poverty line and (2) develop a

⁹³ See the Health Insurance Portability and Accountability Act of 1996, 104 Pub. L. No. 191, 110 Stat. 2021, 42 U.S.C. 1320d *et seq*; 45 C.F.R. 16.304; and R.C. 3701.17, not in the bill.



sliding scale of disbursements based on family income. The bill 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 bill eliminates a requirement that adjustment to charges that may be imposed for copies of medical records be made not later than January 1 of each year. Current law specifies the amounts that may be charged for medical records, but provides for an annual adjustment based on the Consumer Price Index (CPI). Under the bill, 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 bill 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 Internet site.

Trauma center preparedness report

(R.C. 149.43; R.C. 3701.072 (repealed))

Under current law, the ODH Director must adopt rules requiring a trauma center to report to the ODH Director information on the center's preparedness and capacity to respond to disasters, mass casualties, and bioterrorism. The ODH Director is required to review the information and, after the review, may evaluate the center's preparedness and capacity. The bill eliminates the requirement that the ODH Director adopt those rules and the accompanying authority to evaluate the 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 bill abolishes the Council on Stroke Prevention and Education, a council that 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 full-time, part-time, or temporary 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. 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.

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 is one of the databases specified in statute. It is maintained by the U.S. General Services Administration. The bill specifies that the Excluded Parties List System is available at the federal web site known as the System for Award Management.



OFFICE OF INSPECTOR GENERAL

- Authorizes a Deputy Inspector General, who has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission, to exercise the powers and authority of a peace officer while engaged in the scope of the deputy inspector general's duties.
- Extends the position of the Deputy Inspector General for funds received through the American Recovery and Reinvestment Act of 2009, which currently expires on September 30, 2013, through June 30, 2014.

Deputy Inspector General – powers and authority to act as peace officer

(R.C. 109.71 and 121.483)

The bill authorizes a Deputy Inspector General, who has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission, to exercise the powers and authority of a peace officer under the laws of Ohio while engaged in the scope of the deputy inspector general's duties. 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 funds received through the American Recovery and Reinvestment Act

(R.C. 121.53 (not in the bill) and Section 105.05 of H.B. 2 of the 128th General Assembly; Sections 620.10 and 620.11)

The bill 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 currently is 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.

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 renewal fee

(R.C. 3905.40 and 3905.862)

Continuing law prescribes fees for services and certifications provided by the Department of Insurance (INS). The bill limits agent appointment and agent appointment renewal fees that INS may charge to not more than \$20, as opposed to the current fee of \$20. It also abolishes the agent appointment termination fee of \$5 and makes conforming changes.



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 (PCSA) (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.
- 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 following applicable American Institute of Certified Public Accountants auditing standards for the most recent fiscal year (initial renewal) or the two most recent previous fiscal years (subsequent renewal).
- Removes the requirement that a private child placing agency or private noncustodial agency, as a condition of renewal of a certificate of fitness, provide ODJFS with evidence of an independent audit of its first year of certification (initial renewal) or the two most recent fiscal years it is possible to have such an audit (subsequent renewal) unless an audit by the State Auditor during that year sets forth that no money has been illegally expended, concerted, misappropriated, or is unaccounted for or sets forth findings that are inconsequential as defined by government auditing standards.
- Removes the requirement that for a private child placing agency or private noncustodial 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.

- Removes the requirement that all audits be conducted in accordance with generally accepted government auditing standards and instead requires that the independent audits demonstrate that the agency operated in a fiscally accountable manner as determined by ODJFS.
- Allows ODJFS to adopt rules in accordance with R.C. 111.15 as necessary to implement the above-described dot points.
- Repeals the provision that authorizes 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 it determines that the adult resident is physically unable to provide fingerprints and poses no danger to foster children or adoptive children who may be placed in the home.
- Repeals the provision that specifies that, in such cases as described in the preceding dot point, the involved agency must request that BCII perform a records check using the person's name and Social Security number.

Child Support

- Revises the frequency of publication by the Office of Child Support in ODJFS 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 the ODJFS when an employee is rehired after a period of separation from employment of less than 60 days.

Unemployment

- Creates the Military Spouse Compensation Grant Program to provide compensation to an individual who leaves employment to accompany the individual's spouse on a military transfer.
- Requires the ODJFS Director to administer and enforce the Program and to give great weight and deference to decisions made under Ohio's Unemployment

Compensation Law with respect to unemployment compensation in administering and enforcing the Program.

- Requires the Director to adopt rules for the Program, which must include rules establishing eligibility requirements, application procedures, awarding and payment procedures, grant reduction requirements, all of which must be based upon the Unemployment Compensation Law; and appeal procedures.
- Describes the manner in which weekly grant amounts are calculated, including maximum amounts, which is similar to the manner in which weekly benefit amounts are calculated under the Unemployment Compensation Law.
- Requires the Director to use eligible funds to issue grants, except from the Unemployment Compensation Fund.
- Prohibits waiver of a grant and exempts grants from creditor claims and from levy, execution, attachment, and all other process or remedy for recovery or collection of a debt.
- Prohibits failing to comply with the Program and lists fines for violating this prohibition.
- Includes knowingly making a false statement or swearing or affirming the truth of a false statement previously made, when the statement is made to secure a grant, in the criminal offense of falsification.

Workforce development

- Establishes the Workforce Training Pilot Program for the economically disadvantaged.
- Requires the ODJFS Director, in consultation with the Director of Development Services and JobsOhio, to issue a request for proposals to provide grants for demonstration projects that provide training in life and technical skills and specifies requirements for the request for proposals.
- Lists requirements an applicant must satisfy to receive a grant under the Pilot Program.
- Requires the ODJFS Director, in consultation with the Director of Development Services and JobsOhio, to award a grant in each of the "JobsOhio" regions.



- Permits the ODJFS Director to award a grant to one or two demonstration projects located in such a region, but prohibits any region from receiving more than \$1 million in grant funding.

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

- Exempts therapeutic wilderness camps from certification by ODJFS.

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 (ODE). Child care consists of administering to the needs of infants, toddlers, preschool-age children, and school-age children outside of school hours for any part of the 24-hour day in a place or residence other than a child's own home.⁹⁴

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.

⁹⁴ R.C. 3301.51 to 3301.59, not in the bill.

Child Care Providers		
Type	Description/Number of children served	Regulatory system
Child day-care center	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.
Family day-care home	Type A home – 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. Type B home – 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.	A type A home must be licensed by ODJFS, regardless of whether it provides publicly funded child care. 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.
In-home aide	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 current 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.

Current law specifies that the criminal records checks for all of the specified persons must be requested at the time of the initial application for licensure, certification, or employment and every four years thereafter. The bill requires instead that the criminal records checks be requested on initial application and every *five* years thereafter.

Restriction on licensure for applicants with a prior revocation

(R.C. 5104.03)

Current 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 bill maintains this restriction, but only if the revocation occurred less than five years before applying for the license.

Requests for information from the Statewide Automated Child Welfare Information System (SACWIS)

(R.C. 5104.11)

As part of the requirements for certification of type B homes, current law requires that a CDJFS request from the public children services agency (PCSA) (until SACWIS is finalized statewide) or ODJFS (once SACWIS is finalized statewide) 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. The bill provides that the CDJFS request this information from only the PCSA.

Authority to revoke a type B home certificate

(R.C. 5104.11 and 5104.12)

Under current law, a CDJFS director may revoke a type B home or in-home aide certificate after determining that the revocation is necessary. The bill 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 (Ohio ECC) or violates certain prohibitions regarding Ohio ECC.

Licensure of youth development programs

(R.C. 5104.02 and 5104.021)

Under current law, 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 ODE;

(4) The community-based center is operating the program under the charitable exemption from federal income taxation.

The ODJFS Director currently is prohibited from issuing a child day-care center or type A home license to these youth development programs. The bill permits the ODJFS Director to issue a child day-care center or type A home license to a youth development program that is exempt from the child care licensure law 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 bill removes the restriction that the program must provide at least two of the activities described in (2) above.

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 (the main operating appropriations act for 2011-2013) required that, if ODJFS implements a program that uses 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 is a reason for which the provider's license or certification may be subject to revocation and (2) misuse of the system by a caretaker parent participating in the program is a reason for which the parent may lose eligibility for publicly funded child care.

The bill requires ODJFS to establish Ohio ECC 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 in Ohio ECC. A provider participating in Ohio ECC 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; R.C. 5103.03 (not in the bill))

Current 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. 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 existing law, a private child placing agency or private noncustodial agency that seeks renewal of that certificate, as a condition of renewal, must provide ODJFS evidence of an independent audit of its first year of certification (initial renewal) or the two most recent years (subsequent renewal) it is possible to have such an audit unless the State Auditor has audited the agency during that year or years and the audit sets forth that no money has been illegally expended, converted, misappropriated, or is unaccounted for or sets forth findings that are inconsequential, as defined by government auditing



standards. The bill repeals 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 bill removes 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 must be conducted in accordance with generally accepted government auditing standards. The bill 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 in accordance with R.C. 111.15 rules as necessary to implement the above-described provisions.

The bill removes the term "government auditing standards," defined as the government auditing standards published by the comptroller general of the U.S. General Accounting Office and replaces it with "American Institute of Certified Public Accountants auditing standards," defined as the auditing standards published by the American Institute of Certified Public Accountants.

Criminal records checks for adult residents of a prospective adoptive or foster home or a foster caregiver's home

(R.C. 2151.86)

Under existing law, ODJFS may waive the requirement that a criminal records check based on fingerprints be conducted for an adult resident of a prospective adoptive or foster home or the home of a foster caregiver if the recommending agency documents to the Department's satisfaction that 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. In such cases, the recommending or approving agency must request that BCII conduct a criminal records check using the person's name and social security number.

The bill repeals the provision that authorizes 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 it determines that the adult resident is physically unable to provide fingerprints and poses no danger to foster children or adoptive children who may be



placed in the home. Additionally, the bill repeals the provision that specifies that in such cases, the involved agency must request that BCII perform a records check using the person's name and Social Security number.

Child support

Poster of delinquent child support obligors

(R.C. 3123.958)

The bill authorizes, instead of requires as under current law, the Office of Child Support in ODJFS to publish throughout the state 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 current law.

Conditions for filing a new hire report

(R.C. 3121.89 and 3121.891; conforming changes to R.C. 3121.892 and 3121.893)

The bill 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 bill defines a 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. Current law requires 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 will be assigned to work in Ohio to whom the employer anticipates paying compensation, but does *not* make an exception for an employee who was previously employed by an employer and has 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.

Unemployment

Military Spouse Compensation Grant Program

(R.C. 4143.02, 4143.03(B) and (C), and 4143.08, by reference to R.C. 4141.43, not in the bill)

The bill creates the Military Spouse Compensation Grant Program to provide compensation to an individual who leaves employment to accompany the individual's spouse on a military transfer. The ODJFS Director must administer the Program in accordance with the bill's requirements.



The Director must enforce the Program in accordance with the rules the Director adopts under the bill in accordance with the Administrative Procedure Act. In addition to any other rules the Director is required to adopt under the bill as discussed below, the Director, in accordance with the Administrative Procedure Act, may adopt any other rules as the Director determines necessary to administer and enforce the Program. Any rules adopted must be consistent with any similar provision addressed in Ohio's Unemployment Compensation Law. Additionally, the bill allows the Director to apply any agreement the Director has entered into pursuant to the Unemployment Compensation Law, to the extent permitted under an agreement, in administering the Program, or the Director may enter into similar agreements as the Director determines necessary. Many of these agreements concern enforcement and administration involving claimants who make a claim in or previously worked in multiple jurisdictions. The bill requires the Director to cooperate with the Industrial Commission, the Bureau of Workers' Compensation, the U.S. Internal Revenue Service, the U.S. Employment Service, and other similar departments and agencies, as determined by the Director, in the exchange or disclosure of information as to wages, employment, payrolls, unemployment, and other information in the administration of the Program.

In administering and enforcing the Program, the Director must give great weight and deference to decisions made under the Unemployment Compensation Law with respect to unemployment compensation. The bill allows the Director to administer oaths, certify to official acts, take depositions, issue subpoenas, and compel the attendance and testimony of witnesses and the production of documents and testimony in connection with the administration of the Program. If a witness refuses to attend or testify, or to produce documents, as to any matter regarding which the witness might be lawfully interrogated in the administration of the Program, the court of common pleas of the county in which the person resides or is found, the court of appeals that has jurisdiction over the county in which the person resides or is found, upon the Director's application, must compel obedience by proceedings as for contempt as in case of like refusal to obey a similar order of the court.

Eligibility for grants

(R.C. 4143.04, 4143.01, 4143.03(A)(1), (2), and (6), by reference to R.C. 4141.162 and R.C. 4141.01 and 4141.33, not in the bill)

Under the bill, an individual is eligible to receive a grant for a week in which the individual satisfies all of the following requirements:



(1) The individual's spouse is a member of the U.S. armed services, the spouse is the subject of a military transfer, and the individual left employment to accompany the individual's spouse;

(2) The individual is not otherwise eligible for unemployment compensation (any compensation payable under Ohio's Unemployment Compensation Law including amounts payable by the Director pursuant to an agreement under any federal law providing for compensation, assistance, or allowances with respect to unemployment);

(3) The individual satisfies the eligibility requirements established by the Director in the rules the Director adopts.

Under the bill, the Director must adopt rules to establish eligibility requirements an individual must satisfy to receive a grant, including the definition of an individual's "base period," which must be similar to the requirements an individual must satisfy to receive unemployment compensation. To receive unemployment compensation, continuing law requires an individual to:

(1) Have worked in "covered employment" (almost all types of employment, with certain exclusions such as church employment or casual labor) for at least 20 qualifying weeks with the individual's base period (the bill requires the Director to define base period under the Program);

(2) Have had an average weekly wage of 27½% of the statewide average weekly wage within the base period (for 2013, \$230);

(3) Have become unemployed for a nondisqualifying reason;

(4) Be able to, available for, and actively seeking suitable work;

(5) Be a U.S. citizen or legal alien.⁹⁵

Additionally, under the bill the Director must adopt rules establishing procedures for an individual to follow to apply for a grant and procedures for the awarding and payment of grants. These procedures must be similar to the manner in which claims for unemployment compensation are applied for, awarded, and paid pursuant to the Unemployment Compensation Law. Under that Law, the Director first determines whether an individual has earned enough and worked long enough to qualify overall for unemployment compensation. The Director next examines whether, for each weekly claim, the individual is qualified for unemployment compensation,

⁹⁵ R.C. 4141.01(R) and 4141.29, not in the bill.



examining the reason for unemployment and whether the individual satisfies the work search requirements.⁹⁶

Additionally, the bill requires the Director to adopt rules to establish requirements for eligibility for an individual who has seasonal employment, which must be similar to the Unemployment Compensation Law requirements for seasonal employment (employment of individuals hired primarily to perform services in an industry that because of climatic conditions or the industry's seasonal nature it is customary to operate only during regularly recurring periods of 40 weeks or less in any consecutive 52 weeks). Because of the nature of the industries involved in seasonal employment, continuing law specifies some different eligibility requirements for an individual who has seasonal employment in the individual's base period.

The bill allows the Director to use the information the Director obtains under the Income and Eligibility Verification System to determine an individual's eligibility for a grant under the Program.

Payment of grants

(R.C. 4143.04(C), by reference to R.C. 4141.09, not in the bill)

Similar to unemployment compensation, the bill requires all grants to be paid through public employment offices in accordance with the Director's rules. The bill requires the Director to use eligible funds to issue grants, except from the Unemployment Compensation Fund, which is the Fund from which unemployment compensation is paid.

Grant amounts

(R.C. 4143.04(D), (E), (F), (G), and (H), by reference to R.C. 4141.30)

The amount of a grant awarded under the bill is similar to the amount of unemployment compensation one may receive. Under the bill, a grant is payable to an eligible and qualified individual for each week the individual is totally unemployed at the weekly grant amount determined by the following:

- (1) Computing the individual's average weekly wage;
- (2) Determining the individual's dependency class discussed below;
- (3) Computing the individual's weekly grant amount to be 50% of the individual's average weekly wage.

⁹⁶ R.C. 4141.28, not in the bill.

An individual's grant amount cannot exceed the following amounts:

- (1) For dependency class A, 50% of the statewide average weekly wage (SAWW) as calculated under the Unemployment Compensation Law;
- (2) For dependency class B, 60% of the SAWW;
- (3) For dependency class C, 66⅔% of the SAWW.

A dependent under the Program is the same as a dependent under the Unemployment Compensation Law (generally, children and spouses). An individual is assigned a dependency class as described in the table below:

Class	Description of dependents
A	No dependents, or has insufficient wages to qualify for more than the maximum weekly grant amount as provided under dependency class A
B	One or two dependents
C	Three or more dependents

A grant is payable to each partially unemployed individual otherwise eligible on account of each week the individual is partially unemployed in an amount equal to the individual's weekly grant amount determined above less that part of the remuneration payable to the individual with respect to that week that is in excess of 20% of the individual's weekly grant amount.

The total amount of a grant to which an individual is entitled in any grant year, whether for partial or total unemployment, or both, must not exceed the lesser of the following two amounts:

- (1) An amount equal to 26 times the individual's weekly grant amount; or
- (2) An amount computed by taking the sum of 20 times the individual's weekly grant amount for the first 20 base period qualifying weeks plus one times the weekly grant amount for each additional qualifying week beyond the first 20 qualifying weeks in the individual's base period.

Any weekly grant amount that is not a multiple of one dollar must be rounded to the next lower multiple of one dollar. Any grant paid must be calculated against the maximum total unemployment compensation payable to the individual in a benefit year under the Unemployment Compensation Law.



Extended benefits

(R.C. 4143.04(I), by reference to R.C. 4141.301, not in the bill)

If permitted by the U.S. Secretary of Labor, a grant paid under the Program must be considered regular benefits for purposes of state extended benefits under the Unemployment Compensation Law. The federal government pays for half or all of extended benefits, depending upon the event that triggered the extended benefit period. If an individual who receives a grant is eligible for state extended benefits, notwithstanding the requirements that extended benefits be paid from the Unemployment Compensation Fund or that employers' accounts be charged for state extended benefits, extended benefits that may become payable to that individual under the Program that are chargeable to an employer's account of an employer from whom the individual was separated must not be charged to that account and must be paid from the funds used to pay grants under the bill.

Reduction in grant amounts

(R.C. 4143.05 and 4143.03(A)(4) and (5), by reference to R.C. 4141.284, 4141.31, 4141.312, and 4141.321, not in the bill)

The bill requires the ODJFS Director to reduce the amount of any weekly grant amount paid under the Program in accordance with the rules the Director adopts. The requirements must be similar to the requirements for reductions under the Unemployment Compensation Law. Under that Law, if in any week a participating employee reports the receipt of any of the following types of payment, the unemployment compensation amount payable to that individual must be reduced by the amount of those payments received for that week:

- (1) Remuneration in lieu of notice;
- (2) Compensation for wage loss under Ohio's Workers' Compensation Law or a similar provision under the workers' compensation law of any state or the United States;
- (3) Payments in the form of retirement, or pension allowances as provided in continuing law;
- (4) Unless an exception concerning military service applies, remuneration in the form of separation or termination pay paid to an employee at the time of the employee's separation from employment;



(5) Vacation pay or allowance payable under the Law, terms of a labor-management contract or agreement, or other contract of hire, which payments are allocated to designated weeks;

(6) The determinable value of cost savings days.

The Director also must adopt rules to establish procedures and requirements addressing child support obligations, which must be similar to the procedures and requirements described in the Unemployment Compensation Law. Under that Law, the Director, when a claim for unemployment compensation is filed by an individual who owes child support obligations, must notify the state or local child support enforcement agency enforcing the obligation only if the claimant has been determined to be eligible for unemployment compensation and must withhold and deduct specified amounts from the unemployment compensation payable.

Under the bill the Director must make any deduction from a grant for purposes of federal income tax payment in a similar manner as the Director makes that deduction with respect to unemployment compensation. Currently, with respect to unemployment compensation, the Director must inform an individual who files an application for determination of benefit rights that unemployment compensation is subject to federal income tax, that requirements exist pertaining to estimated tax payments, that the individual may elect to have federal income tax deducted and withheld from the unemployment compensation benefits payable to that individual in the amount specified in the Internal Revenue Code, and that the individual may change the withholding status the individual has previously elected once during the individual's benefit year. The Director must make the income tax deduction if an individual elects to have it made and must comply with procedures established by the U.S. Department of Labor in making that deduction.

Appeals

(R.C. 4143.03(A)(7) and 4143.06, by reference to R.C. 119.12)

An individual may appeal a determination made by the Director in accordance with the Director's rules. Those procedures must include the time limits in which the individual has to file an appeal. Unlike unemployment compensation claims, it does not appear that appeals of grant determinations go before the Unemployment Compensation Review Commission, as the law specifying the Commission's jurisdiction is not amended in the bill to specifically provide jurisdiction over these appeals.⁹⁷

⁹⁷ R.C. 4141.06 and 4141.281, not in the bill.



The determination made upon completion of the appeals process established by the Director under the bill is a final determination that may be appealed pursuant to the procedures in Ohio's Administrative Procedure Act to appeal to a court.

Overpayment and fraud

(R.C. 2921.13 and 4143.03(A)(8), by reference to R.C. 4141.35, not in the bill)

Under the bill and similar to unemployment compensation, an individual who obtains a grant through fraudulent misrepresentation may be guilty of falsification or falsification in a theft offense. The bill prohibits any person from knowingly making a false statement, or knowingly swearing or affirming the truth of a false statement previously made, when the statement is made with purpose to secure the payment of a grant. Whoever violates this prohibition is guilty of falsification, a first degree misdemeanor. If the statement is made with purpose to commit or facilitate the commission of a theft offense, whoever violates the prohibition is guilty of falsification in a theft offense, a first degree misdemeanor. However, this penalty escalates up to a third degree felony based on the value of property or services stolen.

Additionally, the bill requires the Director to adopt rules establishing penalties for overpayments and procedures to collect those overpayments, which must be similar to the penalties and procedures for overpayments under the Unemployment Compensation Law. If an individual obtains unemployment compensation through fraudulent misrepresentation, then under that Law the Director must do all of the following:

(1) Within a specified time period, reject or cancel the individual's entire weekly claim for benefits that was fraudulently claimed, or the individual's entire benefit rights if the misrepresentation was in connection with the filing of the individual's application;

(2) Declare the individual ineligible for two otherwise valid weekly claims for benefits claimed within six years subsequent to the discovery of the misrepresentation;

(3) Require the total amount of unemployment compensation rejected or canceled be repaid before the individual may become eligible for further benefits and withhold any unpaid sums from future compensation payments accruing and otherwise payable to the individual;

(4) Assess, if the compensation is not repaid within 30 days after the Director's order becomes final, interest on the amount remaining at a rate of 14% per annum, compounded monthly.



The Director also may take action to collect compensation that has been fraudulently obtained, interest, and court costs, through attachment proceedings under Ohio's Attachment Law and garnishment proceedings under Ohio's Garnishment Law.

If an overpayment is not the result of fraudulent misrepresentation, the Director must cancel that waiting period and require that the unemployment compensation be repaid or be withheld from any unemployment compensation to which the applicant is or may become entitled before any additional compensation is paid.

Additional prohibitions and penalties

(R.C. 4143.07 and 4143.99)

Similar to unemployment compensation, except with respect to the rules adopted by the Director under the bill concerning child support obligations, no agreement by an individual to waive the individual's right to a grant is valid, nor may a grant be assigned, released, or commuted. A grant also is exempt from all creditor claims and from levy, execution, garnishment, attachment, and all other process or remedy for recovery or collection of a debt, and that exemption may not be waived.⁹⁸

Also similar to unemployment compensation, the bill prohibits an individual claiming a grant under the Program from being charged fees of any kind by the Director in any proceeding under the Program and prohibits any person from charging or receiving anything of value in violation of the bill. Whoever violates these prohibitions is guilty of a first degree misdemeanor. Any individual claiming a grant may represent the individual's self personally or be represented by a person admitted to the practice of law or by a person not admitted to the practice of law in any proceeding under this new chapter before the Director, but no such counsel or agent representing an individual claiming a grant may either charge or receive for those services more than an amount approved by the Director.⁹⁹

The bill prohibits any employee or other person from violating the bill's provisions governing the Program, or do any act prohibited by those provisions, or fail to perform any duty lawfully enjoined, within the time prescribed by the Director, for which no penalty has been specifically provided, or fail to obey any lawful order given or made by the Director or any judgment or decree made by any court in connection with the Program. Whoever violates this prohibition must be fined not more than \$500 for the first offense, and for each subsequent offense, fined not less than \$25 or more than \$1,000. Every day during which any person fails to comply with any order or to

⁹⁸ See R.C. 4141.32, not in the bill.

⁹⁹ See R.C. 4141.07, not in the bill.



perform any duty constitutes a separate violation. The Unemployment Compensation Law has a similar prohibition.¹⁰⁰

Liberal construction

(R.C. 4143.09)

The bill requires the Program to be liberally construed. Under continuing law, the Unemployment Compensation Law also must be liberally construed.¹⁰¹

Additional definitions

(R.C. 4143.01 and 4143.03(A)(3), by reference to R.C. 4141.01, not in the bill)

The bill defines the following terms for purposes of the Program:

(1) "Average weekly wage" means the amount obtained by dividing an individual's total remuneration for all qualifying weeks during the base period by the number of such qualifying weeks (same as the Unemployment Compensation Law).

(2) "Duration of unemployment" means the full period of unemployment next ensuing after a separation from any base period, as defined in rules adopted under the bill, or subsequent work and until an individual has become reemployed in employment subject to the Program, or the unemployment compensation act of another state, or of the United States, and until the individual has worked six weeks and for those weeks has earned or been paid remuneration equal to six times an average weekly wage of not less than the amount as determined in the rules adopted by the Director (similar to the Unemployment Compensation Law).

(3) "Grant year," with respect to an individual, means the 52-week period beginning with the first day of that week with respect to which the individual first files a valid application for a grant under the Program, and thereafter the 52-week period beginning with the first day of that week with respect to which the individual next files a valid application after the termination of the individual's last preceding grant year, except that the application is not considered valid unless the individual has had employment in six weeks and has, since the beginning of the individual's previous grant year, in the employment earned three times the average weekly wage determined for the previous grant year.

¹⁰⁰ See R.C. 4141.40, not in the bill.

¹⁰¹ R.C. 4141.46, not in the bill.



(4) "Partially unemployed" with respect to a week, means any week if, due to involuntary loss of work, the total remuneration payable to an individual for that week is less than the individual's weekly benefit amount (same as the Unemployment Compensation Law).

(5) "Qualifying week" means any calendar week in an individual's base period with respect to which the individual earns or is paid remuneration in employment.

(6) "Totally unemployed" with respect to a week, means any week during which an individual performs no services and with respect to such week no remuneration is payable to the individual (same as the Unemployment Compensation Law).

Federal law

Unemployment compensation is funded through a federal-state partnership. If an employer pays contributions into an "approved" state system, the employer receives significant credit on the employer's federal unemployment tax. Additionally, a state receives administrative funding for its unemployment compensation program paid for through the federal taxes on employers. "Approval" requires adherence to federal law and U.S. Department of Labor regulations. Federal law requires each state to establish a state unemployment compensation fund that is used to pay unemployment benefits in order for employers in that state to receive the tax credit under the Federal Unemployment Tax Act.¹⁰²

If grants awarded under the Military Spouse Compensation Grant Program created in the bill are considered unemployment compensation, a question may exist as to whether Ohio's unemployment compensation system complies with federal law. For example, to receive administrative funding, federal law requires methods of administration, including a state merit system, that insures full payment of unemployment compensation when due.¹⁰³ Since the bill requires grants to be paid from available funds, if no funds are available then it does not appear that the Program satisfies this requirement. Additionally, as discussed above, federal law requires a state to create an unemployment fund from which unemployment compensation is paid. The federal law does not appear to address whether unemployment compensation may be paid from a different fund.

¹⁰² 26 U.S.C. 3302 and 3304.

¹⁰³ 42 U.S.C. 503.



Workforce development

Workforce Training Pilot Program for the economically disadvantaged

(Sections 751.40 and 812.20)

The bill establishes the Workforce Training Pilot Program for the economically disadvantaged to provide grants to provide training in life and technical skills. Under the bill, the ODJFS Director administers the Pilot Program for a period of two years, beginning July 1, 2013 (the Pilot Program has an immediate effective date).

Under the bill, the ODJFS Director, in consultation with the Director of Development Services and JobsOhio, must issue a request for proposals to allow an entity to receive a grant under the Pilot Program to create and administer a demonstration project in the field of workforce development. The demonstration project must provide training to those individuals located in the region described below where the project is located who the applicant determines are economically disadvantaged. The request for proposals must include all of the following requirements:

(1) That the applicant must include in the proposal a description of the manner in which the applicant will determine whether an individual is economically disadvantaged;

(2) That the demonstration project must provide life skills training, to assist an individual to develop character traits necessary to obtain employment, and technical, field-related training;

(3) That the applicant is collaborating with an organization in the region described below where the project is located and at least one community-based nonprofit organization that has experience in life-skill support services and workforce development; and

(4) That the applicant satisfies any other requirements established in the request for proposals.

The bill requires the ODJFS Director, in consultation with the Director of Development Services and JobsOhio, to award a grant in fiscal year 2014 for a demonstration project in each of the following regions of the state (the "JobsOhio" regions):

(1) Allen, Crawford, Defiance, Fulton, Hancock, Hardin, Henry, Lucas, Ottawa, Paulding, Putnam, Sandusky, Seneca, Van Wert, Williams, Wood, and Wyandot counties;



(2) Ashland, Ashtabula, Columbiana, Cuyahoga, Erie, Geauga, Huron, Lake, Lorain, Mahoning, Medina, Portage, Richland, Stark, Summit, Trumbull, Tuscarawas, and Wayne counties;

(3) Auglaize, Champaign, Clark, Clinton, Darke, Fayette, Greene, Mercer, Miami, Montgomery, Preble, and Shelby counties;

(4) Delaware, Fairfield, Franklin, Knox, Licking, Logan, Madison, Marion, Morrow, Pickaway, and Union counties;

(5) Adams, Athens, Belmont, Carroll, Coshocton, Gallia, Guernsey, Harrison, Highland, Hocking, Holmes, Jackson, Jefferson, Lawrence, Meigs, Monroe, Morgan, Muskingum, Noble, Perry, Pike, Ross, Scioto, Vinton, and Washington counties; and

(6) Brown, Butler, Clermont, Hamilton, and Warren counties.

The ODJFS Director may award a grant to one or two demonstration projects located in a region described above, however, no region must receive more than \$1 million in grant funding. The bill requires, on July 1, 2013, or as soon as possible thereafter, the Director of Budget and Management to transfer \$8,000,000 cash from the Economic Development Projects Fund, which is comprised of upfront license fees for casino operators (R.C. 3772.17) and is used by the Board of Regents, to the Training Activities Fund used by ODJFS. The transferred funds must be used for the Pilot Program.

The bill requires the ODJFS Director to adopt rules in accordance with the Administrative Procedure Act to establish reporting requirements for grant recipients. Those rules must require a grant recipient to report on the successful completion rate of project participants, rate of participant job placement, tracking of participant's employment after completion of the project, and any other information requested by the ODJFS Director. The ODJFS Director must require grant recipients to report this information during the two-year Pilot Program and to submit a final report upon the expiration of the Pilot Program. A grant recipient must comply with rules adopted by the Director.

Ohio Parenting and Pregnancy Program

(R.C. 5101.804, 3125.18, 5101.35, 5101.80, 5101.801, 5101.803, and 5153.16)

The bill 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. Under the bill, ODJFS may enter into an agreement only if the entity meets 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.

The bill permits an entity that has entered into an agreement with ODJFS to provide some or all of the services through a subcontractor. Under the bill, 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; and

(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

(R.C. 5103.02)

The bill exempts therapeutic wilderness camps from a requirement to be certified by ODJFS. It defines "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 current 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 bill does not change these requirements.

In addition to the requirements described in the previous paragraph, however, therapeutic wilderness camps are subject to certification by ODJFS. With limited exception, any institution or association that receives or desires to receive and care for children for two or more consecutive weeks must be certified by ODJFS. The bill exempts therapeutic wilderness camps from this requirement.



JUDICIARY/SUPREME COURT

- 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.
- Adds a juvenile judge to the Summit County Court of Common Pleas, to be elected in the general election of 2014 for a term beginning on January 1, 2015.

Use of special projects funds by court of common pleas

(R.C. 2303.201)

Under current 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. If the court of common pleas offers a special program or service 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.

The bill 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.

Summit County juvenile judge

(R.C. 2301.02 and 2301.03)

The bill adds a juvenile judge to the Summit County Court of Common Pleas, to be elected in the general election of 2014 for a term beginning on January 1, 2015. The addition of the judge brings the total number of Summit County Court of Common Pleas judges to 14 and the number of juvenile judges to two.



OHIO LOTTERY COMMISSION

- Removes the option that a lottery sales agent mail directly to the Ohio 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.
- Prohibits any lottery tickets from being sold, offered for sale, or purchased from a licensed lottery sales agent or the Commission by telephone or by the use of computer, credit card, debit card, or facsimile services.

Lottery sales agents requirements

(R.C. 3770.02)

The bill 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. Currently, lottery sales agents may either mail the net proceeds directly to the Commission or deposit them in designated banking institutions. Therefore, the bill removes the option of mailing net proceeds directly to the Commission.

Additionally, the bill 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.

Method of purchase of lottery tickets

(R.C. 3770.03(A))

The bill prohibits any lottery tickets from being sold, offered for sale, or purchased from a licensed lottery sales agent or the Commission by telephone or by the use of computer, credit card, debit card, or facsimile services. Continuing law requires the Commission to promulgate rules for conducting a statewide lottery which includes video lottery terminal games. Continuing law also provides that any reference in the State Lottery Law to tickets must not be construed to in any way limit the authority of the Commission to operate video lottery terminal games. Therefore, the prohibition discussed above applies to all lottery games, including video lottery terminal games.



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 as the Ohio Department of Job and Family Services (ODJFS) and the ODJFS Director have regarding administrative and program matters.
- Transfers responsibility for the state-level administration of medical assistance programs (Medicaid, Children's Health Insurance Program (CHIP), and Refugee Medical Assistance (RMA)) to ODM from ODJFS's Office of Medical Assistance.
- 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, during the period beginning July 1, 2013, and ending June 30, 2015, to establish, change, and abolish positions for ODM, and to assign, reassign, classify, reclassify, transfer, reduce, promote, or demote all ODM employees who are not subject to state law governing public employees' collective bargaining.
- Authorizes the ODJFS Director, during the period beginning July 1, 2013, and ending June 30, 2015, to establish, change, and abolish positions for ODJFS, and to assign, reassign, classify, reclassify, transfer, reduce, promote, or demote all ODJFS 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

- Requires Medicaid to cover all mandatory eligibility groups.
- 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.

Alterations to and elimination of eligibility groups

- Permits the ODM Director to alter the eligibility requirements for, and terminate Medicaid's coverage of, one or more optional eligibility groups or subgroups beginning January 1, 2014.
- Repeals the law that requires Medicaid to cover the optional eligibility group consisting of uninsured women in need of treatment for breast or cervical cancer.
- Repeals the law that requires Medicaid to cover the optional eligibility group consisting of individuals under age 21 who have aged out of the foster care system.
- Repeals the law that requires Medicaid to cover the optional eligibility category consisting of pregnant women who are presumptively eligible for Medicaid.
- Repeals the law that requires Medicaid to cover the optional eligibility category consisting of children who are presumptively eligible for Medicaid.
- Repeals the law that requires Medicaid to cover children in the custody of certified public or private nonprofit agencies or institutions or whose adoptions are subsidized.
- Repeals the law that requires Medicaid to cover residential parents with family incomes not exceeding 90% of the federal poverty line.
- Repeals the law that requires Medicaid to cover pregnant women with family incomes at or below 200% of the federal poverty line.
- Repeals the law that requires Medicaid to include the Medicaid Buy-In for Workers with Disabilities program.



- Repeals the law that requires Medicaid to cover SSI recipients whose money payments are discontinued as a result of an increase in Social Security Old Age, Survivors, and Disability Insurance benefits.
- Repeals the law that expressly permits Medicaid to cover, for up to 12 months, individuals who lose eligibility for Ohio Works First due to increased income from employment.
- Repeals the law that expressly permits the Medicaid program to cover various other groups of individuals, including families with children that meet eligibility requirements for the former Aid to Dependent Children program and individuals under age 19 with family incomes not exceeding 150% of the federal poverty line.
- Provides that, notwithstanding the repeals discussed above, no individual eligible for Medicaid pursuant to those laws is to lose Medicaid eligibility before January 1, 2014, due to the repeals.
- Requires the ODM Director, when transitioning to new income eligibility determination systems required by federal law, to maintain Medicaid eligibility for women in need of treatment for breast and cervical cancer, nonpregnant individuals who may receive family planning services and supplies, and low-income residential parents other than such women, individuals, and parents with actual incomes exceeding 138% of the federal poverty line.

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.

Medicaid expansion

- Regarding the eligibility group authorized by the Patient Protection and Affordable Care Act that is popularly known as the Medicaid expansion and consists of individuals who are under age 65, not pregnant, not entitled to (or enrolled for) benefits under Medicare Part A, not enrolled for benefits under Medicare Part B, not otherwise eligible for Medicaid, and have incomes not exceeding 138% of the federal poverty line, prohibits Medicaid from covering the group.
- Provides that the prohibition against Medicaid covering the expansion group does not affect the Medicaid eligibility of any individual who enrolls in the MetroHealth Care Plus Medicaid waiver program on or after February 5, 2013.

209(b) option

- Expressly 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.

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.
- On or after 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.

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 or to provide required supporting documentation not later than 30 days after the date the provider timely applies for revalidation.
- Provides that, if a provider continues operating under an expired Medicaid provider agreement while waiting for ODM to decide whether to revalidate the agreement and ODM decides against revalidation, Medicaid payments are not to be made for services provided during the period beginning on the date the provider agreement expires and ending on the effective date of a subsequent provider agreement, if any, ODM enters into with the provider.
- 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.

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.

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 current law to set the Medicaid drug dispensing fee applies to only Medicaid-participating terminal distributors of dangerous drugs (rather than all 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.
- Requires the ODM Director, when establishing the Medicaid dispensing fee, to consider the extent to which each terminal distributor participates in Medicaid as a provider.
- 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

- Provides for the fiscal years 2014 and 2015 Medicaid payment rates for hospital inpatient and outpatient services that are paid under a prospective payment system to be not less than the Medicaid payment rates for the services in effect on June 30, 2013.
- 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 services

- Excludes custom wheelchair costs and repairs to and replacements of custom wheelchairs and parts from the costs for bundled services included in the direct care costs that are part of nursing facilities' Medicaid-allowable costs and (2) reduces to \$1.56 (from \$1.88) the amount added, because of bundled services, to Medicaid rates paid for direct care costs.
- Requires the ODM Director, for fiscal years 2014 and 2015, to implement strategies for purchasing wheelchairs 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.
- Provides 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.
- Requires ODM to pay the quality bonuses not later than the first day of each November.
- Requires a nursing facility to meet at least two of certain accountability measures to qualify for the quality bonus.
- 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 Facility Focus (SFF) list and fails to make improvements or graduate from the SFF program within certain periods of time.
- Requires the Ohio Department of Aging (ODA) 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 in (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 administration issues regarding termination of waiver programs.

Medicaid managed care

- Requires a Medicaid managed care organization or its third party administrator to give a health care provider advance notice of (1) termination of the provider's status as a managed care network provider and (2) in the case of a pharmacy, removal of a prescribed drug from the formulary or preferred drug list being used or any change in the terms governing access to the drug.
- 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 Dual Eligible Integrated Care Demonstration Project, 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.
- Extends the period during which certain aged, blind, or disabled individuals receiving services through the Bureau for Children with Medical Handicaps (BCMh) are excluded from being permitted or required to participate 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 existing Hospital Inpatient and Outpatient Supplemental Upper Payment Limit Program to provide supplemental Medicaid payments to hospitals for providing Medicaid-covered inpatient and outpatient services.
- 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

- Replaces a provision authorizing establishment of an 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 provisions that authorize the Office of Health Transformation (OHT) Executive Director to facilitate state agency collaboration for health transformation purposes, and authorize the exchange of personally identifiable information between state agencies regarding a health transformation initiative.

Core competencies for direct care workers

- Beginning October 1, 2015, prohibits the ODM Director from making a Medicaid payment to a direct care worker for a direct care service or entering into a Medicaid provider agreement with the worker unless the worker meets core competencies described in an operating protocol developed by the OHT Executive Director or designee, in consultation with the ODM Director, the ODA Director, and the directors of the Departments of Developmental Disabilities (ODODD), Mental Health and Addiction Services (ODMHAS), and the Ohio Department of Health (ODH).
- Not later than October 1, 2014, requires the ODH Director to establish a direct care worker certification program and authorizes the Director to adopt rules as necessary to implement the program.

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, ODA, and ODODD to have, by June 30, 2015 (extended from June 30, 2013), non-institutionally 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 (1) certain 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 and (2) the number of times that Medicaid recipients receiving nursing facility services are admitted to hospitals or utilize emergency department services when the admissions or utilizations are avoidable.
- Creates for fiscal years 2014 and 2015 the Hospital Readmissions Program Advisory Workgroup, which is to serve in an advisory capacity regarding establishment of a program that improves patient outcomes and rewards providers' success in lowering hospital readmission rates.
- 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 (ODVS) regarding the coordination of veterans' services.
- Authorizes ODM and ODVS to implement, during fiscal years 2014 and 2015, certain initiatives that they determine during the collaboration will maximize the efficiency of the services and ensure that veterans' needs are met.

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 otherwise would be 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 otherwise be credited to that fund to be credited to the Health Care/Medicaid Support and Recoveries Fund.
- Repeals a requirement that federal approval be sought to claim federal Medicaid funds for administrative costs that the Ohio Department of Health and the Arthur G. James and Richard J. Solove Research Institute of The Ohio State University incur in analyzing and evaluating certain data under the Ohio Cancer Incidence Surveillance System.

Legislation to reform Medicaid

- Requires that legislation be introduced in the House of Representatives to reform Medicaid and Ohio's health care delivery system.

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.¹⁰⁴ Current state law establishes the Office of Medical Assistance as a unit within the Ohio Department of Job and Family Services (ODJFS) and requires the Office to act as the single state agency to supervise the administration of the Medicaid program. Effective July 1, 2013, the bill abolishes the Office and creates the Ohio Department of Medicaid (ODM).¹⁰⁵ 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 bill provides for ODM to also oversee the administration of the Children's Health Insurance Program (CHIP) and the Refugee Medical Assistance (RMA) program. The bill 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. However, the bill does not expressly authorize ODM to administer other programs. So, the term "medical assistance program" means only Medicaid, CHIP, and RMA in its current application.

¹⁰⁴ 42 U.S.C. 1396a(a)(5).

¹⁰⁵ ODM is created twice in the bill. It is created in a Revised Code (codified) section, R.C. 121.02, which is subject to the referendum and goes into effect on the 91st day after the bill is signed by the Governor and filed with the Secretary of State. It is also created in an uncodified section that includes an earmark and is stated to be exempt from the referendum. The uncodified section provides for ODM to be created on July 1, 2013. The bill provides that when ODM's creation under the codified section comes into effect, it is a continuation of ODM as created in the uncodified section.

ODM Director

The bill provides for the ODM Director to be the executive head of the 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, and is to hold office during the Governor's term unless removed earlier at the pleasure of the Governor.

Staff

The bill 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 bill 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 Director of the Ohio Department of Administrative Services (ODAS) 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.¹⁰⁶ The bill 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 bill 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 Superintendent of the Bureau of Criminal Identification and Investigation (BCII) 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

¹⁰⁶ R.C. 124.30.



arrested for, convicted of, or pleaded guilty to any offense.¹⁰⁷ The bill 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 bill 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 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 bill includes the following provisions addressing administrative issues regarding the creation of ODM and the transfer of the responsibilities regarding medical assistance programs to the new department.

(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 of Medical Assistance 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.

¹⁰⁷ R.C. 109.5721.



(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 bill 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 bill 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. This authority 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.¹⁰⁸ 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

¹⁰⁸ 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 the state's collective bargaining law. (R.C. 124.152.)



Director take under this provision of the bill are not subject to appeal to the State Personnel Board of Review.

Staff training regarding transfers

The bill 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 bill.

New and amended grant agreements with counties

The ODJFS Director and boards of county commissioners are permitted by the bill 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 bill gives ODM and the ODM Director many of the same types of responsibilities and authorities as ODJFS and the ODJFS Director 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. and R.C. section 111.15.

Chapter 119. is known as the Administrative Procedure Act and Section 111.15 as the abbreviated rule-making procedure. The major difference between them is that Chapter 119. requires that an agency provide public notice and conduct a hearing on a proposed rule before its adoption; section 111.15 does not.



The bill gives the ODM Director the same direction regarding which rule making procedure to follow as continuing law gives the ODJFS Director.¹⁰⁹ It provides that, when authorized by statute to adopt a rule, the Director must adopt the rule in accordance with Chapter 119. if (1) the statute requires that it be adopted in accordance with Chapter 119. 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 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 bill 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.¹¹⁰

The bill 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,

¹⁰⁹ R.C. 5101.09.

¹¹⁰ R.C. 5101.10.

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 existing Foundation Grant Fund.¹¹¹

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.¹¹² The bill gives ODM this authority regarding the medical assistance programs it administers.

The bill 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.¹¹³

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.¹¹⁴ The bill 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

¹¹¹ R.C. 5101.111.

¹¹² R.C. 5101.11.

¹¹³ R.C. 5101.12.

¹¹⁴ R.C. 5101.38.



mileage provided for by the Administrative Procedure Act (R.C. Chapter 119.). ODJFS has this authority under continuing law.¹¹⁵

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.¹¹⁶

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.¹¹⁷

The bill gives the State Auditor authority to take actions on ODM's behalf as the Auditor may do under continuing law for ODJFS.¹¹⁸ 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 bill 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.¹¹⁹ 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.

¹¹⁵ R.C. 5101.37(A).

¹¹⁶ R.C. 5101.37(C).

¹¹⁷ R.C. 5101.37(D).

¹¹⁸ R.C. 5101.181(E).

¹¹⁹ R.C. 5101.181(G).



The bill 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.¹²⁰

Assignment of rights and third party liability issues

The bill provides for provisions of law regarding assignment of rights and third party liability to apply to all medical assistance programs ODM administers. Under current law, certain provisions expressly apply only to Medicaid and others expressly apply to Medicaid and CHIP. For example, current law provides that application for Medicaid gives a right of subrogation to ODJFS for any Workers' Compensation benefits payable to a person who is subject to a support order on behalf of the Medicaid recipient, to the extent of any Medicaid payments made on the recipient's behalf.¹²¹ The bill provides instead that enrollment in any medical assistance program ODM administers gives that right of subrogation to ODM.

Certain of the current laws governing assignment of rights and third party liability apply 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 bill, 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 bill assigns to ODM the types of duties ODJFS has under current law regarding the restrictions on the release of information about medical assistance recipients. The bill 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.¹²²

¹²⁰ R.C. 5101.181(H).

¹²¹ R.C. 5101.36.

¹²² R.C. 5101.273.



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 Stamps program). Because the Medicaid program is another program that uses IEVS, the bill requires the ODJFS Director to consult with the ODM Director regarding the implementation of IEVS. The bill requires the ODJFS Director also to consult with the ODAS Director regarding IEVS's implementation.

Eligibility determinations

Current law permits the Office of Medical Assistance to accept applications, determine eligibility, redetermine eligibility, and perform related administrative activities for Medicaid and CHIP. The Office also may 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.¹²³

The bill 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 bill 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 bill maintains provisions of law regarding eligibility determinations for Medicaid and CHIP currently 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. And, 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

¹²³ R.C. 5101.47.



regarding accepting applications, determining or redetermining eligibility, and performing related administrative activities for the program.

Current law is inconsistent regarding the role of county departments of job and family services in making Medicaid and CHIP eligibility determinations. As discussed above, the Office is authorized by current law to make Medicaid and CHIP eligibility determinations and to enter into agreements with one or more local government entities to make the eligibility determinations. Current law requires county departments to make Medicaid eligibility determinations if the Office elects to enter into agreements with county departments to have county departments make Medicaid eligibility determinations. However, current law also requires county departments to make Medicaid eligibility determinations for Supplemental Security Income (SSI) recipients and, if assigned by the Medical Assistance Director, make eligibility determinations for Part II or III of CHIP. The bill eliminates the provisions that expressly provide for county departments to make eligibility determinations and leaves the issue of county departments' roles up to ODM pursuant to its authority to enter into agreements with one or more agencies of local governments to make eligibility determinations for medical assistance programs.

Appeals

Current law permits an individual who is an applicant for, or recipient or former recipient of, Medicaid and disagrees with a decision regarding Medicaid to receive a state hearing by ODJFS. The individual may make an administrative appeal of the state hearing decision to the ODJFS Director and, if the individual disagrees with the administrative appeal decision, to a court of common pleas.¹²⁴

The bill 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 established under current law;

(2) Contract with ODJFS to provide for ODJFS to hear the appeals in accordance with current law;

¹²⁴ R.C. 5101.35.

(3) Delegate authority to hear appeals to an exchange or exchange appeals entity.¹²⁵

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 bill relocates and reorganizes many provisions of the Revised Code governing medical assistance programs as part of the creation of ODM and the transfer of the programs to ODM. See below for tables regarding the relocations and reorganizations.

As part of the reorganization, the bill enacts the following ten new Revised Code chapters:

(1) Chapter 5124. (the Ohio Department of Developmental Disabilities' (ODODD's) administration of Medicaid's coverage of intermediate care facility for the mentally retarded (ICF/MR) services);

(2) Chapter 5160. (General administrative provisions, provisions applicable 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/MR 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);

¹²⁵ 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.)

(9) Chapter 5167. (Medicaid managed care);

(10) Chapter 5168. (Hospital Care Assurance Program and other health care provider assessments and fees).

The bill 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 bill 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.¹²⁶

Streamlining of statutes

Many current statutes governing Medicaid include provisions that are repeated many times in other statutes. The bill streamlines many of these provisions by enacting general statutes that deal with particular issues, such as the need to obtain federal approval before implementing changes to the Medicaid program. This negates the need to have such issues repeated in numerous statutes. The following are examples of the bill's streamlined statutes.

Compliance with federal requirements

Whereas current law repeatedly requires or permits the Office of Medical Assistance to seek federal approval to implement the numerous components of the Medicaid program included in state statutes, the bill includes general statutes that apply to all other statutes that require or permit Medicaid to include various components.

Under the bill, 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

¹²⁶ Similar authority is given to the Ohio Department of Aging (ODA) and ODODD Directors regarding updating citations to authorizing statutes in their rules.



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 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, current law includes numerous provisions that require or permit 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 bill eliminates the authorizing provisions and enacts 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

Following are two tables that explain how Revised Code sections pertaining to medical assistance programs are reorganized under the bill. Table I shows how the bill renumbers existing Revised Code sections concerning medical assistance programs.

Table II concerns the following:

(1) The bill copies, sometimes with modifications, parts of current law regarding administrative matters regarding ODJFS and enacts them in new Revised Code sections that are applicable to ODM. Several Revised Code sections concern programs that ODJFS will continue to administer and programs ODM will administer. The bill amends these sections to remove the parts regarding the programs ODM will administer and re-enacts the removed parts, sometimes with modifications, in new Revised Code chapters applicable to ODM.

(2) The bill relocates provisions of current law governing Medicaid coverage of ICF/MR services to a new Revised Code chapter next to the existing Revised Code chapter regarding ODODD. The relocation is part of ODODD's assumption of responsibilities regarding Medicaid coverage of ICF/MR services.

(3) Other provisions of law regarding Medicaid are relocated to new Revised Code sections in an effort to improve the law's organization.

Table II shows where these provisions are located in current law and where they are located in the bill. As used in Table II, "ICFs/MR" refers to provisions regarding intermediate care facilities for the mentally retarded and "NFs" refers to provisions regarding nursing facilities.

TABLE I

R.C. section number under current law	R.C. section number under the bill
173.40	173.52
173.401	173.521
173.402	173.524
173.403	173.53
173.404	173.55
3721.50	5168.40



R.C. section number under current law	R.C. section number under the bill
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
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



R.C. section number under current law	R.C. section number under the bill
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
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



R.C. section number under current law	R.C. section number under the bill
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
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



R.C. section number under current law	R.C. section number under the bill
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
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



R.C. section number under current law	R.C. section number under the bill
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
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



R.C. section number under current law	R.C. section number under the bill
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	5124.155
5111.30	5165.073
5111.31	5165.08
5111.32	5165.081
5111.33	5124.34
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



R.C. section number under current law	R.C. section number under the bill
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
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
5111.71	5162.36



R.C. section number under current law	R.C. section number under the bill
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
5111.882	5166.302



R.C. section number under current law	R.C. section number under the bill
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
5111.99	5165.99
5112.01	5168.01



R.C. section number under current law	R.C. section number under the bill
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
5112.45	5168.25
5112.46	5168.26
5112.47	5168.27



R.C. section number under current law	R.C. section number under the bill
5112.48	5168.28
5112.99	5168.99
5112.991	5168.991

TABLE II

Where the provision is found in current law	Where the provision is found in the bill
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)
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



Where the provision is found in current law	Where the provision is found in the bill
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
5111.20 (ICFs/MR)	5124.01
5111.21 (ICFs/MR)	5124.06
5111.21(C) (NFs)	5165.082
5111.212 (ICFs/MR)	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/MR)	5124.07



Where the provision is found in current law	Where the provision is found in the bill
5111.22 (last sentence of (A)) (ICFs/MR)	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/MR)	5124.072
5111.22 (last sentence of the second-to-last paragraph and the last paragraph) (NFs)	5165.072
5111.211 (ICFs/MR)	5124.37
5111.222(A) (NFs)	5165.01(Y)
5111.222(C) (NFs)	5165.152
5111.223 (ICFs/MR)	5124.071
5111.225 (part of (A)) (NFs)	5160.01(A)
5111.232 (first paragraph of (C)) (ICFs/MR)	5124.191
5111.232 ((B), second paragraph of (C), (D), and (E)) (ICFs/MR)	5124.192
5111.232 (first paragraph of (C) and (E)(1) and (2)) (NFs)	5165.191
5111.251(G) (ICFs/MR)	5124.28
5111.258(A) (ICFs/MR)	5124.153
5111.258(B) (ICFs/MR)	5124.154
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/MR)	5124.10
5111.26 (second sentence of (A)(1)(a)) (ICFs/MR)	5124.103
5111.26 (second sentence of (A)(1)(a)) (NFs)	5165.103
5111.26 (sixth sentence of (A)(1)(a)) (ICFs/MR)	5124.104
5111.26 (sixth sentence of (A)(1)(a)) (NFs)	5165.104
5111.26(A)(2) (ICFs/MR)	5124.106
5111.26(A)(2) (NFs)	5165.106
5111.26(B) (ICFs/MR)	5124.102
5111.26(B) (NFs)	5165.102
5111.26(C) (ICFs/MR)	5124.105
5111.26(C) (NFs)	5165.105
5111.264 (ICFs/MR)	5124.30



Where the provision is found in current law	Where the provision is found in the bill
5111.27(A) (ICFs/MR)	5124.108
5111.27(B) and (D) (ICFs/MR)	5124.109
5111.27(B) and (D) (NFs)	5165.109
5111.27(C) and (D) (ICFs/MR)	5124.193
5111.27(C) and (D) (NFs)	5165.193
5111.27(E) (ICFs/MR)	5124.32
5111.27(E) (NFs)	5165.32
5111.27(F) (ICFs/MR)	5124.31
5111.28(A) (ICFs/MR)	5124.40
5111.28(B) (ICFs/MR)	5124.41
5111.28(B) (NFs)	5165.41
5111.28(C) (ICFs/MR)	5124.42
5111.28(C) (NFs)	5165.42
5111.28(D) (ICFs/MR)	5124.44
5111.28(D) (NFs)	5165.44
5111.28(E) (ICFs/MR)	5124.45
5111.28(E) (NFs)	5165.45
5111.28(F) (ICFs/MR)	5124.43
5111.28(F) (NFs)	5165.43
5111.29(A) (ICFs/MR)	5124.38
5111.29(B) (ICFs/MR)	5124.46
5111.29(B) (NFs)	5165.46
5111.31 (ICFs/MR)	5124.08
5111.32 (other than part of the second sentence of the first paragraph) (ICFs/MR)	5124.081
5111.32 (part of the second sentence of the first paragraph) (ICFs/MR)	5124.01(WW)
5111.32 (part of the second sentence of the first paragraph) (NFs)	5165.01(PP) and (RR)
5111.65(A) (ICFs/MR)	5124.01(A)
5111.65(A) (NFs)	5165.01(A)
5111.65(B) (ICFs/MR)	5124.01(E)
5111.65(B) (NFs)	5165.01(G)
5111.65(C) (ICFs/MR)	5124.01(N)

Where the provision is found in current law	Where the provision is found in the bill
5111.65(C) (NFs)	5165.01(N)
5111.65(D) (ICFs/MR)	5124.01(O)
5111.65(D) (NFs)	5165.01(O)
5111.65(E) (ICFs/MR)	5124.01(P)
5111.65(E) (NFs)	5165.01(P)
5111.65(F) (ICFs/MR)	5124.01(Q)
5111.65(G) (NFs)	5165.01(Q)
5111.65(H) (ICFs/MR)	5124.01(R)
5111.65(H) (NFs)	5165.01(R)
5111.65(I) (ICFs/MR)	5124.01(S)
5111.65(I) (NFs)	5165.01(S)
5111.65(J) (ICFs/MR)	5124.01(U)
5111.65(J) (NFs)	5165.01(T)
5111.65(L) (ICFs/MR)	5124.01(CC)
5111.65(L) (NFs)	5165.01(X)
5111.65(M) (ICFs/MR)	5124.01(ZZ)
5111.65(N) (NFs)	5165.01(VV)
5111.66 (ICFs/MR)	5124.50
5111.67 (ICFs/MR)	5124.51
5111.671 (ICFs/MR)	5124.511
5111.672 (ICFs/MR)	5124.512
5111.673 (ICFs/MR)	5124.513
5111.674 (ICFs/MR)	5124.514
5111.675 (ICFs/MR)	5124.515
5111.676 (ICFs/MR)	5124.516
5111.677 (ICFs/MR)	5124.517
5111.68 (ICFs/MR)	5124.52
5111.681 (ICFs/MR)	5124.521
5111.682 (ICFs/MR)	5124.522
5111.683 (ICFs/MR)	5124.523
5111.684 (ICFs/MR)	5124.524
5111.685 (ICFs/MR)	5124.525
5111.686 (ICFs/MR)	5124.526



Where the provision is found in current law	Where the provision is found in the bill
5111.687 (ICFs/MR)	5124.527
5111.688 (ICFs/MR)	5124.528
5111.689 (ICFs/MR)	5124.53
5111.71(A)	5162.01(B)(12)
5111.85(A)	5166.01
5111.851(A)	5166.01
5111.874(A) (ICFs/MR)	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

(R.C. 5111.01 (primary), 5101.18, 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), 5111.70 to 5111.7011 (all repealed), 5163.01, 5163.03, 5163.04, 5163.05, 5163.06, 5163.061, 5163.07, and 5163.08; Sections 323.460 and 323.470)

Federal law establishes mandatory and optional eligibility groups for the Medicaid program. 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 bill revises state law governing the eligibility groups covered by Medicaid.

Current state law includes provisions providing for Medicaid to cover various groups. However the provisions do not clearly match federal law's provisions regarding Medicaid eligibility.



Eligibility groups covered by current law

The Medicaid program is permitted by current state law to cover, as long as federal funds are provided, all of the following:

(1) Families with children that meet 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 receive aid under SSI or are eligible for but not receiving SSI, provided that the income from all other sources for individuals with independent living arrangements do not exceed an amount adjusted annually;

(3) Aged, blind, and disabled persons who would be eligible for SSI if not for having countable income above the SSI eligibility limit and have incurred medical expenses that equal or exceed the amount by which their income exceeds the SSI eligibility limit;

(4) Aged, blind, and disabled individuals who do 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 continue 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 meet the income requirements for the Ohio Works First program but do not meet other eligibility requirements for the program specified in rules.

Current law also permits Medicaid to cover all of the following:

(1) If sufficient funds are 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 are provided, former participants of the Ohio Works First program who (a) are ineligible for Ohio Works First solely as a result of increased



income due to employment, (b) are not covered by, and do not have access to, medical insurance coverage through an employer with benefits comparable to those provided under Medicaid, and (c) meet any other requirement established in rules.

In addition to having authority to cover the groups discussed above, current state law requires 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) are not otherwise eligible for Medicaid, (b) have 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) need treatment for breast or cervical cancer, and (d) are not otherwise covered under creditable coverage;

(3) Any individuals 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;¹²⁷

(4) Children who are 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) reside with their children, (b) have family income not exceeding 90% of the federal poverty line, and (c) are not otherwise eligible for Medicaid;

(6) Pregnant women determined presumptively eligible for Medicaid;

(7) Children determined presumptively eligible for Medicaid;

(8) Individuals who qualify for Medicaid under the Medicaid Buy-In for Workers with Disabilities program, which is available to individuals who (a) are at least age 16 and under age 65, (b) either are considered disabled under the SSI program or are employed individuals with medically improved disabilities, (c) have countable resources not exceeding an amount annually adjusted for inflation, and (d) have countable incomes not exceeding 250% of the federal poverty line.

¹²⁷ 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.



Elimination and alteration of optional eligibility groups

The bill eliminates all of the provisions of law discussed above regarding eligibility groups that Medicaid may or must cover. However, it provides that no individual eligible for Medicaid pursuant to any of those provisions is to lose Medicaid eligibility before January 1, 2014, because of the provisions' elimination. An individual eligible for Medicaid pursuant to any of those provisions may lose Medicaid eligibility before January 1, 2014, if the individual would cease to be Medicaid eligible before that date for reasons unrelated to the provisions' elimination, including due to the acquisition of income or assets exceeding eligibility limits and failure to comply with eligibility requirements.

Removal of these provisions from statute does not necessarily mean that the Medicaid program will cease to cover any or all of the groups covered by the provisions. The bill includes a general provision that requires the Medicaid program to cover all mandatory eligibility groups and all of the optional eligibility groups that state statutes require Medicaid to cover. The bill permits Medicaid to cover optional eligibility groups that state statutes expressly permit Medicaid to cover or do not address whether Medicaid may cover. Medicaid is prohibited from covering any eligibility group that state statutes prohibit Medicaid from covering. Also, the bill requires the ODM Director, when transitioning to new income eligibility determination systems required by federal law (i.e., modified adjusted gross income and household income methodologies), to maintain Medicaid eligibility for women in need of treatment for breast and cervical cancer, nonpregnant individuals who may receive family planning services and supplies, and low-income residential parents other than such women, individuals, and parents with actual incomes (before any disregarded amounts or other deductions are applied pursuant to an income eligibility methodology) exceeding 138% of the federal poverty line. However, the bill authorizes the ODM Director, beginning January 1, 2014, to alter the eligibility requirements for, and terminate the Medicaid program's coverage of, one or more optional eligibility groups or subgroups, including the following:

- (1) Children placed with adoptive parents;
- (2) Low income women and children;
- (3) Employed individuals with disabilities;
- (4) Employed individuals with medically improved disabilities;
- (5) Independent foster care adolescents;



(6) Pregnant women who may be determined presumptively eligible for Medicaid;

(7) Children who may be determined presumptively eligible for Medicaid.

The bill specifies what is to happen if the ODM Director alters the eligibility requirements for, or terminates the Medicaid program's coverage of, an optional eligibility group or subgroup. If the ODM Director alters the eligibility requirements for an optional eligibility group or subgroup:

(1) No individual enrolled before the effective date of the altered eligibility requirements in Medicaid as part of the group or subgroup is to remain enrolled in Medicaid on and after that effective date unless the individual meets the altered eligibility requirements for the group or subgroup or meets the eligibility requirements for another eligibility group or subgroup.

(2) Beginning on the effective date of the altered eligibility requirements, no individual may enroll in Medicaid as part of the group or subgroup unless the individual meets the altered eligibility requirements for the group or subgroup or meets the eligibility requirements for another eligibility group or subgroup.

If the ODM Director terminates Medicaid coverage of an optional eligibility group or subgroup:

(1) No individual enrolled, before the effective date of the termination, in Medicaid as part of the group or subgroup is to remain enrolled in Medicaid on and after that effective date unless the individual meets the eligibility requirements for another eligibility group or subgroup.

(2) Beginning on the effective date of the termination, no individual may enroll in Medicaid as part of the group or subgroup but may enroll in Medicaid as part of another group or subgroup for which the individual meets the eligibility requirements.

If the ODM Director alters eligibility requirements for, or terminates, an optional eligibility group or subgroup, ODM must take actions it determines necessary to inform Medicaid recipients about the altered eligibility requirements or termination and, in the case of Medicaid recipients who will cease to be eligible for Medicaid as part of the group or subgroup, offer to assist the recipients with (1) continued Medicaid enrolled as part of another eligibility group or subgroup and (2) transitioning to other health coverage options available to them. ODM may require county departments of job and family services to take actions related to these duties.

No individual is allowed to appeal a denial of Medicaid eligibility as part of a group or subgroup whose Medicaid coverage is terminated if the denial is for Medicaid eligibility that would begin or continue on or after the effective date of the termination. An individual may initiate or continue, on or after the effective date of the termination, an appeal concerning the individual's eligibility for Medicaid as part of the group or subgroup if the decision being appealed concerns the individual's eligibility for Medicaid as part of the group or subgroup before the effective date of the termination. Such an appeal may not result in the appellant being enrolled, or continuing to be enrolled, in Medicaid as part of the group or subgroup on or after the effective date of the termination.

The alteration of the eligibility requirements for, or termination of, an optional eligibility group or subgroup has no effect on an automatic right of recovery or automatic assignment of rights.

All rules, standards, guidelines, or orders regarding an optional eligibility group or subgroup issued by the ODM Director before the effective date of altered eligibility requirements for, or termination of, the group or subgroup must be used for the purpose of determining the state's legal obligations for claims related to the group or subgroup that arise from (1) eligibility determinations regarding enrollment in Medicaid before that effective date, (2) claims for payment for Medicaid services provided before that effective date, and (3) recoveries of erroneous Medicaid payments.

The bill permits the ODM Director to initiate, before January 1, 2014, the rule-making process to alter the eligibility requirements for, or to eliminate, one or more Medicaid optional eligibility groups or subgroups. However, none of the rules may go into effect before that date.

Transitional Medicaid

(R.C. 5163.08)

Federal law includes a provision for transitional Medicaid. The transitional Medicaid 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.¹²⁸ 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 bill requires the Medicaid Director to implement the single 12-month eligibility period for transitional Medicaid.

Federal maintenance of effort requirement

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 to the eligibility standards, methodologies, and procedures for individuals under age 19 (or a higher age as the state may have elected).¹²⁹ The bill repeals a requirement that the state 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

The bill 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.

The bill expressly authorizes the Medicaid program to continue to implement the 209(b) option.

Tuition savings and scholarships exempt from consideration

The bill repeals a law that requires 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;

¹²⁸ 42 U.S.C. 1396r-6. This law sunsets December 31, 2013. However, this law was scheduled to sunset numerous times previously and to date Congress has always extended the sunset rather than allow the law to expire.

¹²⁹ 42 U.S.C. 1396a(gg).



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 bill 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 bill specifies that the copy is confidential and is not subject to disclosure under Ohio's Public Records Law (R.C. 149.43).

Under law generally unchanged by the bill, 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 bill requires this responsibility to be completed on the CDJFS's receipt of the trust instrument or when the CDJFS determines that the applicant or recipient is a trust beneficiary.

The bill 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).¹³⁰

Medicaid expansion

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, include a major expansion of the Medicaid program. As enacted, a state's Medicaid program is required 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

¹³⁰ 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.



Medicaid, and (6) have incomes not exceeding 133% (138% after using individuals' modified adjusted gross incomes) of the federal poverty line.¹³¹ Although federal health care reform 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.¹³²

The bill prohibits the Medicaid program from covering the expansion group. The bill provides, however, that the prohibition does not affect the Medicaid eligibility of any individual who enrolls in the MetroHealth Care Plus Medicaid waiver program on or after February 5, 2013.

209(b) option regarding aged, blind, and disabled individuals

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. Ohio's Medicaid program currently implements the 209(b) option.

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.¹³³ Consistent with this principle, current law gives 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 bill defines a "medical assistance program" as all of the following: (1) the Medicaid program, (2) the Children's Health Insurance Program, (3) the Refugee Medical Assistance Program, and (4) any other program that provides medical assistance and state statutes authorize ODM to administer (R.C. 5160.01(C)). The bill gives ODM that right instead of ODJFS.

¹³¹ 42 U.S.C. 1396a(a)(10)(A)(i)(VIII) and (e)(14).

¹³² *National Federation of Independent Business v. Sebelius* (2012), 132 S. Ct. 2566.

¹³³ 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, at p. 1.



In connection with the right of recovery, a medical assistance recipient and the recipient's attorney (if any) must, pursuant to current 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 bill, the relevant CDJFS if it has paid medical assistance.

Similar to the current requirement described above, the bill requires a medical assistance recipient and the recipient's attorney (if any) to cooperate with each medical provider of the recipient. The bill 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 bill 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)

The bill 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 bill 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 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 requires the Medical Assistance Director (under current law) or ODM Director (under the bill) to adopt rules establishing the amount, duration, and scope of Medicaid services.

The bill 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 bill 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 bill 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 bill 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 bill 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)

Current law requires the ODM Director to adopt rules establishing procedures for the use of time-limited Medicaid provider agreements. All provider agreements are



to be time-limited in accordance with the procedures, other than provider agreements with Medicaid managed care organizations, nursing facilities, ICFs/MR, and hospitals. ODM is to phase in the use of time-limited provider agreements during a period beginning not later than January 1, 2008, and ending January 1, 2015.

The bill 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/MR, and hospitals, are to be time-limited. The bill eliminates the phase-in process for converting provider agreements to time-limited provider agreements. The bill also eliminates provisions of current law that permit 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 current law provides that a provider agreement is to expire not later than seven years from its effective date, the bill sets the maximum duration of a provider agreement to five years.

Current law requires ODM's rules regarding time-limited provider agreements to include a process for re-enrollment of providers and specifies that all of the following apply to the re-enrollment process:

(1) ODM may terminate a time-limited provider agreement or deny re-enrollment when a provider fails to file an application for re-enrollment within the time and in the manner required under the re-enrollment process.

(2) If a provider files an application for re-enrollment 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.

(3) A decision by ODM to approve an application for re-enrollment becomes effective on the date of ODM's decision, and a decision to deny re-enrollment takes effect not sooner than 30 days after the date ODM mails written notice of the decision to the provider. ODM must specify in the notice the date on which the provider is required to cease operating under the provider agreement.

The bill 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 either (a) file a complete application for revalidation within the time and in the manner required under the revalidation process or (b) provide required supporting documentation not later than 30 days after the date the provider timely applies for revalidation.

(2) If a provider files an application for revalidation within the required time and in the required manner and timely provides required supporting documentation, 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.

Incomplete provider agreement or revalidation application

(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 entering into or refusing to enter into a provider agreement. This requirement does not apply under certain circumstances, including when ODM enters into or refuses to enter into a provider agreement with a managed care organization.

Renewing or refusing to renew a provider agreement is one of the actions that generally requires an adjudication. Consistent with the changes discussed above (see "**Time limit on provider agreements**,") the bill replaces references to renewal with references to revalidation.

The bill 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/MR, 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 or fails to provide required supporting documentation within the required time.



Application fees for provider agreements

(R.C. 5164.31)

ODM is required by current law to charge an application fee to a provider seeking to enter into or renew a Medicaid provider agreement, unless the provider is exempt from paying the fee under federal Medicaid regulations. The bill 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 bill maintains the exception for providers who are exempt under the federal Medicaid regulations.

The bill specifies that the application fees are nonrefundable when collected in accordance with the federal Medicaid regulation governing the fees.

Medicaid-related criminal records checks

(R.C. 5164.34 (primary), 109.572, 5164.341, and 5164.342)

The bill 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 that (1) other providers, including applicants for provider agreements, submit to criminal records checks as a condition of maintaining or obtaining provider agreements, (2) 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) 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

Unless ODM's rules provide otherwise, ODM must terminate, or deny an application for, a provider agreement (including a provider agreement for an independent provider of home and community-based services covered by an ODM-administered Medicaid waiver program) if the provider is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for, a disqualifying offense. A Medicaid provider is prohibited, unless ODM's rules provide otherwise, from permitting a person to be an owner, officer, board member, or employee of the provider if the person is found by a criminal records check to have been convicted of, pleaded guilty to, or been found eligible for intervention in lieu of conviction for, a disqualifying offense. The bill eliminates the 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 bill 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, current law already permits the results to be released to an individual receiving the services from the provider. The bill 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, the waiver agency must 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 bill specifies that the Excluded Parties List System is available at the federal web site known as the System for Award Management.

Dispensing fee; generic drug copayments

Medicaid dispensing fee for noncompounded drugs

(Section 323.130)

The bill 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 was in effect during fiscal years 2010 through 2013.

Drug dispensing fee survey

(R.C. 5164.752 and 5164.753)

For the purpose of establishing a Medicaid drug dispensing fee, current law requires ODM to initiate a private survey of retail pharmacy operations. The survey must include operational data and direct prescription expenses, professional services and personnel costs, usual and customary overhead expenses, and profit data of the retail pharmacies surveyed. Current law does not require pharmacies to participate in the survey.

Effective July 1, 2014, the bill modifies the provisions regarding the survey to require that Medicaid-participating terminal distributors of dangerous drugs, rather than all retail pharmacies, participate in the survey. The bill specifies that survey responses are confidential and not a public record, except as necessary to publish the survey's results. The requirement that the survey include "profit data" is eliminated. The ODM Director, when using the survey to establish the dispensing fee, is to consider the extent to which each terminal distributor participates in the Medicaid program as a provider of drugs.

Current law provides that the dispensing fee is effective the January following the survey. The bill 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. Current law requires that the cost-sharing requirements include copayments for prescribed drugs, other than generic drugs. The bill eliminates the exclusion of generic drugs.

The bill also replaces, in the Medicaid law, references to prescription drugs with references to prescribed drugs. The bill 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.¹³⁴

Miscellaneous payment rates

FY 2014 and FY 2015 Medicaid rates for hospital services

(Section 323.103)

The bill requires that the Medicaid payment rates for Medicaid-covered hospital inpatient services and hospital outpatient services that are paid under a prospective payment system and provided during fiscal years 2014 and 2015 be not less than the Medicaid payment 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 bill 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

¹³⁴ 42 C.F.R. 440.120.



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 bill 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 provided to Medicare Part B enrollees

(Section 323.230)

The bill 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 bill, but free standing dialysis center services are included. Under the bill, 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 are applicable 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 bill permits Medicaid payments for home health and private duty nursing services provided by the responsible adult of a Medicaid recipient only if the provision of services meets conditions to be established by the ODM Director. A "responsible adult" under the bill 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 bill 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 bill 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 bill 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 bill 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

(R.C. 5165.01 and 5165.19; Section 323.236)

Custom wheelchairs removed from bundling

H.B. 1 of the 128th General Assembly (the main operating appropriations act for 2009-2011) included the costs of wheelchairs among the costs included in nursing facilities' ancillary and support costs. H.B. 487 of the 129th General Assembly (the 2012 mid-biennium budget review act) moved the costs of wheelchairs from nursing facilities' ancillary and support costs to their direct care costs. The inclusion of wheelchair costs in nursing facilities' costs is part of what has been called "bundling." Other costs that are part of bundling include resident transportation, oxygen, over-the-counter pharmacy products, physical therapy, occupational therapy, speech therapy, and audiology. Bundling affects nursing facilities' Medicaid payments.

The bill removes custom wheelchairs from nursing facilities' Medicaid 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.

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 current law, this is reflected with 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 costs, this amount is reduced to \$1.56. Both the current increase and the bill'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.

Purchasing strategies for wheelchairs

The bill requires the ODM Director to implement, for fiscal years 2014 and 2015, strategies for purchasing wheelchairs 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 wheelchair providers. The Director must consider one or more of the following when determining the purchasing strategies:

- (1) Establishing selective contracting or competitive bidding;
- (2) Establishing a manufacturer's rebate program;

(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 bill 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. Peer groups three and four currently 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. Peer group two currently 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 current law, the maximum per Medicaid day payment is \$16.44. Beginning with fiscal year 2015, the bill 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 bill retains the current accountability measures for which nursing facilities may be awarded points for fiscal year 2014. However, the bill 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 bill eliminates. The following are the accountability measures for which the bill 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;¹³⁵

(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;

(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 bill 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.¹³⁶

(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

¹³⁵ 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.

¹³⁶ See "**Special Facility Focus Program**," in this analysis for a discussion of the Special Focus Facility list and its tables.

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;

(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,¹³⁷ (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.

¹³⁷ A substantial wall is 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.

(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.¹³⁸

(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:

¹³⁸ An "exempted hospital discharge" is 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)).

- (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

(R.C. 5165.26)

In addition to receiving quality incentive payments under Medicaid, a qualifying nursing facility may receive a quality bonus for a fiscal year if the total amount budgeted for quality incentive payments for that fiscal year is not spent. The bill revises the eligibility requirements that a nursing facility must meet to qualify for a quality bonus and provides for quality bonuses to be paid each fiscal year regardless of whether the total amount budgeted for quality incentive payments is spent.

To qualify for a quality bonus under current law for a fiscal year, 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 bill requires that at least two of the points be awarded for the following:

- (1) In the case of fiscal year 2014, for meeting the accountability measures regarding moderate 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 the accountability measures regarding moderate pain, pressure ulcers, physical restraints, urinary tract infections, tools for tracking hospital admissions, and vaccinations.

Under current law, a quality bonus is paid for a fiscal year only if the total amount budgeted for quality incentive payments is not spent. The bill provides for a total of at least \$30 million to be spent each fiscal year for quality bonuses. Any amount budgeted for quality incentive payments for a fiscal year but not spent is to be added to the \$30 million to determine the total amount to be spent on quality bonuses for that fiscal year. The bill requires that the quality bonuses be paid not later than the first day of each November.

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 bill adds a requirement that a nursing facility must meet to qualify as a critical access nursing facility.

Under current law, a nursing facility qualifies as a critical access nursing facility if it meets all of the following requirements:

(1) It is located in an area that, on December 31, 2011, was designated an empowerment zone under the federal Internal Revenue Code.

(2) It has an occupancy rate of at least 85% as of the last day of the calendar year immediately preceding the fiscal year.

(3) It has a Medicaid utilization rate of at least 65% as of the last day of the calendar year immediately preceding the fiscal year.

The bill adds a fourth requirement. A nursing facility must have been 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 must have been awarded for meeting the following:

(1) For fiscal year 2014, the accountability measures regarding pain, pressure ulcers, physical restraints, and urinary tract infections;

(2) For fiscal year 2015 and thereafter, the accountability measures regarding pain, pressure ulcers, physical restraints, urinary tract infections, and vaccinations.



Medicaid payment to reserve nursing facility bed

(R.C. 5165.34)

Continuing law requires 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). Under current law, 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 in the preceding calendar year 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 in the preceding calendar year 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 bill modifies this formula by specifying 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 the effective date of this provision of the bill 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 bill 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 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 Facility Focus Program

(R.C. 5165.771 and 5165.80)

The bill requires ODM to terminate a nursing facility's Medicaid participation if the nursing facility is placed on the federal Special Facility Focus (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.¹³⁹ 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 bill, 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 the effective date of this provision of the bill and fails to be placed on Table C not later than 12 months after that date;

(2) The nursing facility is listed in Table A, Table B, or Table C on the effective date of this provision of the bill and fails to be placed on Table D not later than 24 months after that date;

(3) The nursing facility is placed in Table A after the effective date of this provision of the bill and fails to be placed in Table C not later than 12 months after the placement;

(4) The nursing facility is placed in Table A after the effective date of this provision of the bill and fails to be placed in Table D not later than 24 months after the placement.

An order terminating a nursing facility's Medicaid participation is not subject to appeal under the Administrative Procedure Act (R.C. Chapter 119.).

¹³⁹ 42 U.S.C. 1396r(f)(10).



To help a nursing facility avoid having its participation in the Medicaid program terminated, the Ohio Department of Aging (ODA) 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 bill permits ODM or the contract agency to take either of these actions when a nursing facility's Medicaid participation is terminated pursuant to the bill'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. A nursing facility that undergoes a change of provider that is an arm's length transaction 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. The bill eliminates the requirement for this cost report.

Post-payment reviews of nursing facility Medicaid claims

(R.C. 5165.49 (primary) and 5165.41)

The bill 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)

Current 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. The bill 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 bill 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 bill 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. ICDS is an existing 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 administered by ODM or ODA (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 ODM- or ODA-administered Medicaid waiver program. 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.

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 bill provides for two additional Medicaid waiver programs, the PASSPORT program and the ICDS Medicaid waiver program, to cover home care attendant services. Under current law, only the Ohio Home Care program and Ohio Transitions II Aging Carve-Out program cover 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 bill 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 for individuals with behavioral health issues

(Section 323.330)

During fiscal years 2014 and 2015, the bill 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 bill authorizes the ODM Director to adopt rules as necessary to implement the above 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, 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

Advance notice to health care providers

(R.C. 5167.121)

The bill requires a Medicaid managed care organization or its third party administrator to give health care providers advance notice of both of the following:



(1) In the case of any provider, termination of the provider's status as a managed care network provider unless the termination is implemented because of fraud, illegal conduct, bankruptcy, insolvency, or any other reason specified by contract with the provider for which notification is not required;

(2) In the case of a pharmacy provider, removal of a prescribed drug from the formulary or preferred drug list used by the organization or administrator or any change in the terms governing access to the drug.

The minimum period of advance notice is either the period specified in the contract with the health care provider or, if there is no period specified in the contract, 90 days. The organization or administrator must notify the provider in the same manner it notifies the provider for other purposes.

Medicaid managed care inpatient capital payments

(R.C. 5167.10)

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 bill 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 bill prohibits a Medicaid managed care organization from compensating hospitals for inpatient capital costs in an amount that exceeds the maximum rate.

Emergency services under Medicaid managed care

(R.C. 5167.201)

Law unmodified by the bill 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 bill provides that any agreement entered into by a Medicaid managed care participant, a participant's parent, or a participant's legal guardian that requires payment for emergency services in violation of this law is void and unenforceable.



Medicaid payments for graduate medical education costs

(R.C. 5164.74 and 5164.741)

Current 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 bill eliminates provisions specifying how payments for GME costs are made under the Medicaid managed care system and requires the rules adopted by the Director to govern the allocation of payment for GME costs associated with both the fee-for-service component of Medicaid and the managed care system.

Under the eliminated provisions, if ODM requires a Medicaid managed care organization to pay for GME costs, ODM must include in its payment to the organization an amount sufficient for the organization to pay those costs; if ODM does include a sufficient amount, all of the following apply:

(1) Unless the provider is a hospital that refuses without good cause to contract with a Medicaid managed care organization, ODM must pay the provider for GME costs;

(2) The provider is prohibited from seeking reimbursement from the organization for those costs;

(3) The organization is not required to pay providers for those costs.

Medicaid Managed Care Performance Payment Fund

(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 Payments Fund. Under current law, the sum of all funds withheld may not exceed 1% of all premium payments made to all Medicaid managed care organizations. These amounts are held in the Managed Care Performance Payment Fund.

The bill modifies the Managed Care Performance Payment Fund as follows:

(1) Increases the total that may be withheld to 2% (rather than 1%) of all premium payments made to all Medicaid managed care organizations;

(2) Provides that the Fund 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 Medicaid Director (see "**Health Care Compliance Fund abolished**");

(3) Provides that a Medicaid managed care organization providing care under the Dual Eligible Integrated Care Demonstration Project is not subject to the withholding attributed to Project participants for fiscal years 2014 and 2015 (see "**Dual Eligible Integrated Care Demonstration Project Performance Payments**").

The bill 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, or (3) during fiscal years 2014 and 2015, reimburse Medicaid managed care organizations that have been fined and have later come into compliance for fiscal years 2014 and 2015, the amounts in the Fund may be used to make payments to Medicaid managed care organizations providing care under the Dual Eligible Integrated Care Demonstration Project.

Dual Eligible Integrated Care Demonstration Project Performance Payments

(Section 323.300)

ODM is authorized under current law to implement a Dual Eligible Integrated Care Demonstration Project to test and evaluate the integration of care received by individuals dually eligible for Medicaid and Medicare. For fiscal years 2014 and 2015, the bill requires ODM, if it implements the project 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;

(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 bill requires ODM to establish a percentage amount and apply the same percentage to all Medicaid managed care organizations providing care to Project participants. Each Medicaid managed care organization must agree to the withholding as a condition of receiving or maintaining its Medicaid provider agreement. The bill authorizes the ODM Director to use these amounts to provide performance payments to organizations providing care to Project participants in accordance with rules that the Director may adopt.



Pediatric accountable care organizations

(R.C. 5167.031)

The bill 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 (the main operating appropriations act for 2011-2013) required the recognition system to be implemented no later than July 1, 2012.¹⁴⁰ The bill 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)

H.B. 153 of the 129th General Assembly (the main operating appropriations act for 2011-2013) expanded the group of individuals required or permitted to participate in the Medicaid care management system, including certain individuals in the Medicaid coverage group known as the "aged, blind, or disabled." However, H.B. 153 prohibits, in fiscal years 2012 and 2013, certain individuals receiving services through the program for medically handicapped children, also known as the Bureau for Children with Medical Handicaps (BCMh), from being included in the Medicaid care management system. The excluded BCMh participants are those who were not already enrolled in the Medicaid care management system before June 30, 2011 and have one or more of the following: (1) cystic fibrosis, (2) hemophilia, or (3) cancer. H.B. 487 (the 2012 mid biennium budget review) extended that exclusion.

The bill changes the exclusion period to provide that the BCMh participants described above are to be excluded from the Medicaid care management system until the first day of the 13th month after the date that ODM first designates any individual who receives Medicaid on the basis of being aged, blind, or disabled who is under age 21 as an individual who is permitted or required to participate in the care management system.

¹⁴⁰ The state Medicaid agency has not yet adopted rules to develop the recognition system.



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 bill 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 current law, the franchise permit fee rate is \$11.67 per bed per day. The bill 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 percentage¹⁴¹ 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 nursing home beds that are exempt from the fee for the fiscal year because of a federal waiver;

(5) Divide the quotient determined pursuant to (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, the 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

¹⁴¹ 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 bill continues the Hospital Care Assurance Program (HCAP) for two additional years. HCAP is scheduled to end October 16, 2013, but under the bill, 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 bill 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 bill 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 and the Medicaid Managed Care Hospital Incentive Payment Program. 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.

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.¹⁴² The bill 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.

Current law no longer specifies a penalty for violating the confidentiality provisions pertaining to medical assistance programs. This occurred under H.B. 153 of the 129th General Assembly (the main operating appropriations act for 2011-2013), which 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. The bill reinstates the penalty that previously applied with respect to violations of the confidentiality provisions applicable to medical assistance programs.

Technologies to monitor recipient eligibility, claims history, and drug coverage

(R.C. 5164.757)

The bill replaces the ODJFS Director's authority to establish an e-prescribing system for Medicaid with the ODM Director's authority 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.

If the ODM Director chooses to acquire or specify the technologies, the bill requires the e-prescribing applications of the technologies to enable a Medicaid provider to do what the provider may do under the existing 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 current 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 to electronically monitor Medicaid recipients' medical history, drug regimen compliance, and fraud and abuse.

Associated with the bill's elimination of the ODJFS Director's authority to establish an e-prescribing system, the bill 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

¹⁴² R.C. 5160.45.



those providers, and (2) seek the most federal financial participation available for the development and implementation of the system.

Exchange of certain information by state agencies

(R.C. 191.04 and 191.06)

H.B. 487 of the 129th General Assembly authorized the OHT Executive Director or the Executive Director's designee to facilitate the coordination of operations and exchange of information between state agencies during fiscal year 2013. The act 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, the act 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 state 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 state agency to exchange, during fiscal year 2013 only, personally identifiable information with another state agency for purposes related to or in support of a health transformation initiative that has been identified as described above.

The bill extends the authorizations described above to fiscal years 2014 and 2015.

Direct care workers

(R.C. 3701.95 and 5164.83)

Certification program

The bill requires the ODH Director to establish a direct care worker¹⁴³ certification program not later than October 1, 2014. The bill authorizes the Director to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) as necessary to implement the program. The rules may address standards, procedures, and application fees charged for certification.

¹⁴³ The bill defines a "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, place of residence, or other setting specified by the ODM Director in rules (R.C. 191.061(A)(3)).



For purposes of the direct care worker certification program, the bill requires the Director to do both of the following:

(1) Specify the minimum standards that must be met by a direct care worker to attain certification, which may include standards pertaining to education, experience, and continuing education requirements, as well as standards for compliance with administrative requirements.

(2) Specify a procedure for determining whether a direct care worker satisfies the standards described in (1), above.

Core competencies

The bill requires the OHT Executive Director or the Executive Director's designee, not later than June 30, 2014, and in consultation with the ODM Director and the directors of ODA, ODODD, ODMHAS, and the Ohio Department of Health (ODH), to execute an operating protocol in accordance with law governing health transformation initiatives (R.C. 191.06(D)). The operating protocol must document the manner in which each of the directors' departments determine that direct care workers associated with programs administered by the departments demonstrate core competencies.¹⁴⁴ The OHT Executive Director or the Executive Director's designee and any one or more of the other directors may decide that core competencies are demonstrated by a direct care worker attaining certification through the direct care worker certification program established by the ODH Director pursuant to the bill. A decision to this effect does not preclude a director from specifying additional requirements that a direct care worker must meet to participate in a program administered by the director's department.

Medicaid reimbursement

The bill prohibits the ODM Director from doing either of the following unless a direct care worker demonstrates core competencies:

¹⁴⁴ The bill defines "core competencies" as the minimum standards a direct care worker must meet when providing direct care services and engaging in 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 development activities (R.C. 191.061(A)(1)).

(1) Make a direct or indirect payment¹⁴⁵ to the worker for a direct care service¹⁴⁶ provided by the worker on or after October 1, 2015.

(2) Enter into a provider agreement with the direct care worker on or after October 1, 2015.

Contracts for the management of Medicaid data requests

(R.C. 5162.12 and 5162.56)

The bill 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 bill requires the ODM Director to use the fees the Director receives pursuant to a contract to pay obligations the Director has to the persons who have entered into these contracts with the Director. Any money remaining after those obligations are paid must be deposited in the Health Care Services Administration Fund created under existing law.¹⁴⁷

The bill 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.

¹⁴⁵ The bill defines a "direct payment" as a payment delivered directly to a direct care worker by the Medicaid program for direct care services provided by the worker to a Medicaid recipient (R.C. 5164.83(A)(2)). An "indirect payment" is defined as a payment that is delivered to a third party but later transferred to a direct care worker by the Medicaid program for direct care services provided by the worker to a Medicaid recipient (R.C. 5164.83(A)(3)).

¹⁴⁶ The bill defines "direct care services" as health care services, ancillary services, or services related to or in support of the provision of health care or ancillary services (R.C. 191.061(A)(2)).

¹⁴⁷ R.C. 5162.56.



--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 Law¹⁴⁸ or the statute governing the confidentiality of personal information held by state and local agencies.¹⁴⁹

Exclusions

The bill 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 data that are for any of the following reasons are excluded from the 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 Executive Director of the Office of Health Transformation (OHT) or the Executive Director's designee adopts under existing law for health transformation initiatives.¹⁵⁰

Long-term services

Joint Legislative Committee for Unified Long-Term Services and Supports

(Section 323.90)

The bill 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 of the House;

¹⁴⁸ R.C. 149.43.

¹⁴⁹ R.C. 1347.08.

¹⁵⁰ R.C. 191.06(D).



(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;
- (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 bill requires ODM, ODA, and ODODD to continue efforts to achieve a sustainable and balanced delivery system for long-term services and supports. In working to achieve such a delivery system, the Departments are to strive to meet, by June 30, 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 services, and (5) self-directed personal assistance services.

Balancing Incentive Payments Program

(Section 323.160)

ODM is permitted, if it determines that participating in the Balancing Incentives Payments Program will assist in achieving the goals regarding long-term services, to apply to participate. 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.¹⁵¹

Existing law requires that any funds Ohio receives as the result of the larger federal match be deposited into the Balancing Incentive Payments Program Fund. The bill instead provides that any funds received be deposited into the General Revenue Fund.

Quality initiatives

Quality incentive program to reduce avoidable admissions

(Section 323.30)

The bill permits ODM to implement, for fiscal years 2014 and 2015, a quality incentive program to reduce both of the following:

(1) The use of avoidable emergency department services, as well as avoidable hospital and nursing facility admissions, by Medicaid recipients who enrolled in a home and community-based services Medicaid waiver component administered by ODM, receiving nursing or home health aide services available under the Medicaid home health services benefit, or receiving private duty nursing services.

¹⁵¹ Section 10202 of the Patient Protection and Affordable Care Act (Public Law 111-148).



(2) The number of times that Medicaid recipients receiving nursing facility services are admitted to hospitals or utilize emergency department services when admissions or utilizations are avoidable.

If ODM implements the quality incentive program, the bill 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.

Hospital Readmissions Program Advisory Workgroup

(Section 323.43)

The bill creates the Hospital Readmissions Program Advisory Workgroup for fiscal years 2014 and 2015. The Workgroup is to serve in an advisory capacity in the state's development and implementation of a hospital readmissions program that improves patient outcomes and rewards providers' success in lowering hospital readmission rates.

The bill requires the Medicaid Director to convene the Workgroup, which is to consist of individuals selected to serve as members by the Ohio Hospital Association, the Ohio Children's Hospital Association, and the Director. The Director or the Director's designee is to serve as chairperson. The bill requires ODM to provide staff and other support services.

The Workgroup, with ODM's assistance, is required by the bill to submit two reports to the General Assembly regarding a hospital readmissions program. The first report must be submitted not later than July 1, 2014; the second not later than July 1, 2015. A report due before the program is established must discuss the progress being made in establishing it. A report due after the program is established must discuss the program's effectiveness.

Children's hospitals quality outcomes program

(Section 323.40)

The bill permits the ODM Director to implement, for fiscal years 2014 and 2015, a children's hospitals quality outcomes program. The bill defines a "children's hospital" as a hospital (1) located in this state, (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.



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 bill 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 bill authorizes ODM to collaborate with the Ohio Department of Veterans Services (ODVS) to determine ways to improve the coordination of ODM and ODVS veterans' services in a manner that enhances veterans' receipt of the services. It also authorizes ODM and ODVS to implement, during fiscal years 2014 and 2015, initiatives that they determine during the collaboration will maximize the efficiency of those services and ensure that veterans' needs are met.



Funds

Money Follows the Person Enhanced Reimbursement Fund

(Section 323.140)

The bill 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.¹⁵² The projects are to be designed to achieve the following objectives with respect to institutional and home and community-based long-term care services under a state's Medicaid program:

(1) Increase the use of home and community-based, rather than institutional, long-term care services;

(2) Eliminate barriers or mechanisms that prevent or restrict the flexible use of Medicaid funds to enable Medicaid-eligible individuals to receive support for appropriate and necessary long-term services in the settings of their choice;

(3) Increase the ability of a state's Medicaid program to assure continued provision of home and community-based long-term care services to eligible individuals who choose to transition from an institution to a community setting;

(4) Ensure that procedures are in place to provide quality assurance for eligible individuals receiving Medicaid home and community-based services and to provide for continuous quality improvement in such services.

Health Care Compliance Fund abolished

(R.C. 5111.946 (repealed), 5162.54, and 5162.60; Section 323.380)

The bill abolishes the Health Care Compliance Fund. Currently, the fund is in the state treasury and all of the following must be credited to it:

¹⁵² Section 6071 of the Deficit Reduction Act of 2005, Public Law No. 109-171. The federal health care reform act 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).



(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 that are to be credited to the Health Care/Medicaid Support and Recoveries Fund;

(3) The fund's investment earnings.

Current law requires that money credited to the Health Care Compliance Fund be used solely for the following purposes:

(1) To reimburse Medicaid managed care organizations that have paid fines for failure to meet performance standards or other requirements and have come into compliance by meeting requirements specified by ODM;

(2) To provide financial incentive awards to Medicaid managed care organizations.

The bill provides for part of the money that otherwise would be 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 bill abolishes the Prescription Drug Rebates Fund. Currently, the fund is in the state treasury and both of the following must 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.

Current law requires ODM to use money credited to the fund to pay for Medicaid services and contracts. The bill provides for the money that would otherwise be credited to the Prescription Drug Rebates Fund to be credited instead to the Health Care/Medicaid Support and Recoveries Fund.

Ohio Cancer Incidence Surveillance System Medicaid Claims

(R.C. 5111.83 (repealed))

The bill repeals a requirement that federal approval be sought for a Medicaid administrative claiming program under which federal funds are received as reimbursement for administrative costs incurred by ODH and the Arthur G. James and Richard J. Solove Research Institute of The Ohio State University in analyzing and evaluating (1) cancer reports under the Ohio Cancer Incidence Surveillance System and (2) the incidence, prevalence, costs, and medical consequences of cancer on Medicaid recipients and other low-income populations.

Legislation to reform Medicaid and Ohio's health care delivery system

(Section 323.23)

The bill requires that legislation be introduced in the House of Representatives to reform the Medicaid program and Ohio's health care delivery system. The Director of the Governor's Office of Health Transformation and the Medicaid Director must provide assistance in developing the legislation. The legislation is to include all of the following:

(1) A focus on individuals who have the greatest potential to obtain the income and resources that would enable them to cease enrollment in Medicaid and instead obtain health care coverage through employer-sponsored health insurance or the health insurance marketplace;

(2) Strategies to lower Medicaid caseloads by promoting employment-related services available under Medicaid (including Medicaid managed care) and promoting other programs that offer workforce readiness, educational, and wellness services;

(3) Provisions that seek to lower net state and federal costs for the Medicaid program and reduce the number of individuals who enroll in Medicaid over time.



The bill permits the legislation to call for amending the state Medicaid plan, obtaining a federal Medicaid waiver, or a combination of the two. The Medicaid Director is authorized to submit to the U.S. Department of Health and Human Services a state Medicaid plan amendment, a request for a section 1115 waiver, or a combination of the two. The Directors are required, not sooner than September 15, 2013, and not later than October 1, 2013, to submit to the General Assembly the terms of any federal approval obtained for the reform. However, the Directors are prohibited from beginning implementation of the reform unless the General Assembly enacts legislation authorizing implementation. And, if the General Assembly does not enact such legislation on or before December 31, 2013, the Directors must cease any activity regarding this reform.



OHIO STATE MEDICAL BOARD

- 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 current law.

Approval of temporary hearing examiners

(R.C. 4731.23, by reference to R.C. 127.16)

The bill 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 current 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.



DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES

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).
- Updates certain terms to reflect current terminology in use at the two departments.
- 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.
- Makes the requirement that ODMH 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 determines 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 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 the Department of Administrative Services (DAS).
- 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 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.
- Requires ODMHAS to design and set criteria for the determination of priority populations rather than the determination of severe mental disability.



- Removes the requirement that ODMHAS provide training to those ODMHAS employees who are utilized by state operated, community based mental health services providers.
- Removes specifications for rules adopted by ODMH for the purpose of carrying law related to local boards and the hospitalization of the mentally ill.
- Removes the requirement that ODMH provide consultative services to community mental health agencies.
- Alters requirements placed on board related to providing information for inclusion in ODMHAS' behavioral health information systems.
- 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.
- Alters the policies and procedures related to the submission of services plans by local boards and the allocation and withholding of funds.
- Alters policies and procedures related to confidential records and compilation of statistics.
- 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.
- Abolishes the Council on Alcohol, Drug, and Gambling Addiction Services.
- Enacts uncodified law to provide for the merger of ODMH and ODADAS into ODMHAS.
- Renames the "Mental Health Fund" the "Office of Support Services Fund."

Alcohol, drug addiction, and mental health service districts

- 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.
- 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.



- Revises the planning duties of boards:
 - Requires that (1) when a board of alcohol, drug addiction, and mental health services assesses the community's addiction and mental health needs, the board also evaluate strengths and challenges, and (2) when setting priorities, the priorities include treatment and prevention, and the board to consult with the county commissioners of the counties in the board's service districts.
 - Requires, in service districts that have separate alcohol and drug addiction services and community mental health boards, each board to submit a separate community services plan and each board to consult with its counterpart.
 - Removes certain information required in current law regarding inpatient services from being included in services plans.
- Requires a board of alcohol, drug addiction, and mental health services to submit to the 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.
- Requires a board to enter into a continuity of care agreement with the state institution operated by ODMHAS.
- 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 current law 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.
- 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.
- Expands the protected classes against which boards and contracted services providers are prohibited from discriminating to include age, ancestry, sexual orientation, military status, and genetic information and replaces the protected class of "creed" with "religion."
- 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.
- Removes boards' requirements for administration of mental health clinics and child guidance homes financed partly by state funds as of June 30, 1967.
- Makes conforming changes to reflect the merger of ODMH and ODADAS into ODMHAS.
- Updates certain terms to reflect industry terminology.

Level of care determinations

- 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:

--Maintained, operated, managed, and governed by ODMHAS; or

--Licensed by ODMHAS as a freestanding hospital or unit of a hospital.

- 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.

Merger of Department of Mental Health and the Department of Alcohol and Drug Addiction Services

(R.C. Chapter 3793. and 5119.; conforming changes in multiple R.C. sections; Section 815.20)

The bill 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 under current law remain intact under the bill, with the bill primarily merging the administrative and oversight functions under one department. Substantive changes to current law are discussed below. The bill also updates certain terms to reflect current terminology in use at the two departments.

Psychiatric rehabilitation facilities

(R.C. 5119.04)

The bill 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).

Classified service

(R.C. 5119.27 (renumbered 5119.05))

The bill 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 bill 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 bill 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.

Department organization and duties

(R.C. 5119.01 (renumbered 5119.10) (A), (E), and (F); R.C. 3793.03, 5119.013, and 5119.05)

The bill specifies that the Director of ODMHAS may organize ODMHAS for its efficient operation, including creating divisions or offices as necessary.

Similar to current law for ODMH, the bill authorizes ODMHAS to enter into contracts and other agreements with providers, agencies, institutions, and other entities, both public and private, as necessary for ODMHAS to carry out its duties. The bill specifies that the Ohio Public Personnel Laws do not apply to contracts the Director enters into for services provided to individuals with mental illness by providers, agencies, institutions, and other entities not owned or operated by ODMHAS.

Under current law, ODMH is 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 bill authorizes ODMHAS to enter into such contracts, but does not require it.

The bill 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.

Medical director

(R.C. 5119.07 (renumbered 5119.11))

The bill requires a person appointed as the medical director of ODMHAS to have, in addition to existing qualification standards, certification or substantial training and experience in the field of addiction medicine or addiction psychiatry. In addition to current responsibilities, under the bill the medical director is responsible for decisions relating to prevention and the clinical aspects of outpatient facilities and the certification of mental health and addiction services.



Responsibilities to provide services outside of a hospital

(R.C. 5119.02 (renumbered 5119.14) (B), (D), and (H) and 5119.03)

The bill authorizes ODMHAS to provide or contract to provide addiction services for offenders incarcerated in the state prison system.

The bill removes the authority of ODMH (ODMHAS) to provide for the custody, supervision, control, treatment, and training of mentally ill persons hospitalized elsewhere than within the enclosure of a hospital, if ODMHAS determines that such action is necessary.

Contracts between the Departments of Mental Health and Addiction Services (ODMHAS) and Youth Services

(R.C. 5119.02 (renumbered R.C. 5119.14))

Continuing law permits ODMHAS to receive from the Department of Youth Services (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 bill permits the departments to enter into a written agreement that specifies the procedures necessary to implement the receiving, while current law requires the departments to enter into such a written agreement.

Rules authority

(R.C. 5119.012 (renumbered 5119.141))

The bill adds to the authority provided to ODMH (ODMHAS) to carry out its powers and duties, the authority 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.

Certified position appointments

(R.C. 5119.071 (renumbered 5119.18))

The bill 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 current law procedures and policies are removed in favor of the standard DAS policies and procedures:

- 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 incompetence, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, violation of applicable laws or rules, or any other failure of good behavior, acts of misfeasance, malfeasance, or nonfeasance, or the conviction of a felony.
- 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, status, and benefits accruing to the classified position during the person's time of service in the unclassified position.

Under the bill, the standard DAS procedures also apply to such persons who hold a permanent position in the classified service within ODMHAS.

Training agreements

(R.C. 5119.11(A) (renumbered 5119.186))

The bill specifies that either the Director of ODMHAS (continuing law) or the managing officer of an institution of ODMHAS (added by the bill) 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 bill expands this provision to apply to addiction services as well. The bill 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.



Real estate transactions

(R.C. 3793.031 (renumbered 5119.201) (A), (B), and (C); 3793.02 and 5119.37)

The bill removes the requirement that ODMH receive the approval of the Governor and the Attorney General when conducting a transaction involving real estate, and removes other policies and procedures related to such transactions, in favor of utilizing the services of DAS for such transactions.

The bill 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, as stipulated under current law.

Department of Mental Health requirements

(R.C. 5119.06 (renumbered 5119.21))

The bill 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 bill requires ODMHAS to design and set criteria for the determination of priority populations rather than the determination of severe mental disability.

The bill removes the requirement that ODMHAS provide training related to the provision of community based mental health services to those ODMHAS employees who are utilized in state operated, community based mental health services.

Rules

(R.C. 5119.61 (renumbered 5119.22))

The bill removes specifications for rules adopted by ODMH for the purpose of carrying 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 bill 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 bill removes the requirement that ODMH provide consultative services to community mental health agencies with the knowledge and cooperation of local boards.

The bill requires 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. The bill alters the specific requirements related to the information collected as follows:

- Rather than financial information other than price related data regarding expenditures of local boards, ODMHAS is to collect financial information related to expenditures of federal, state, or local funds.
- Boards are now required to provide information about persons served under a contract with a board.

The bill 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 the bill specifies that the boards must submit such information in accordance with timeframes set by ODMHAS.

In addition to submitting a mental health and addiction services plan, the bill requires local boards to also submit a budget and statement of services. The bill removes the following current law requirements related to the submission of the plan:

- The Director of ODMH must issue criteria for determining when a plan is complete, for plan approval or disapproval, and provisions for conditional approval.
- If the Director disapproves all or part of any plan, the Director is to provide the board an opportunity to present its position. The Director is to inform the board of the reasons for the disapproval and of the criteria that must be met before the plan may be approved.
- The Director is to give the board a reasonable time in which to meet the criteria and is to offer technical assistance to the board to help it meet the criteria.



- If approval of a plan remains in dispute, either party may request that the dispute be resolved by a mediator, with the cost of the mediator being shared between both parties.
- The mediator is to issue a recommendation on the dispute.
- The Director, taking into account the recommendation of the mediator, is to issue a final decision on the dispute.

In place of the previous policies and procedures, the bill 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.
- 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.
- ODMHAS is required to establish procedures for the review of plans, budgets, or statements of services and for correct action or the revision of such documents.

Residential facility licenses

(R.C. 5119.22 (renumbered 5119.34))

The bill increases the length of time for which a residential facility license may be valid. The bill provides that a full license issued to a residential facility by ODMHAS expires up to three years after the date of issuance. Current law provides that a full license issued to a residential facility by ODMH expires two years after the date of issuance.

Fund allocation

(R.C. 5119.62 (renumbered 5119.23))

The bill removes specific requirements related to the allocation of funds appropriated by the General Assembly to boards of alcohol, drug addiction, and mental health 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. Specifically, the bill removes the authority of ODMH to allocate to boards a portion of the funds appropriated by the General Assembly to ODMH for the operation. Accordingly, all of the following provisions are removed:

- If ODMH allocates the fund, ODMH is 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;
 - 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 makes an allocation, notify each board of the unit costs of providing state hospital services for the upcoming fiscal year.
- Each board is to notify ODMH as to whether the board has elected to accept or decline the funds allocated by ODMH.

The bill 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 bill removes the requirement that ODMH is 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))

Current law enables ODMH to withhold funds from a local board for failure to comply with applicable laws. In addition to this authority, current law authorizes ODMH to withhold funds otherwise to be allocated to a local board if the board denies available service on the basis of race, color, religion, sex, national origin, developmental disability, age, or disability. The bill expands this list of protected classes to include marital status, sexual orientation, genetic information, and military status. Under current law, if ODMH decides to withhold funds, ODMH must provide information on how the board can come into compliance with the applicable laws, and give the board a reasonable time within to comply. Under the bill, the board has ten days to comply and may, but is not required to, offer technical assistance. Additionally, ODMHAS must hold a hearing on the matter and, under the bill, the hearing is to be held within ten days of receipt of the board's position on the matter.

Confidential documents

(R.C. 5119.28 and 5119.99(C))

The bill 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 the laws relating to occupations and professions.



- 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 and with the Department of Youth Services to ensure continuity of care for inmates and offenders who

are receiving mental health services in an institution of the Department of Rehabilitation and Correction or DYS 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 bill makes violating these requirements a fifth degree felony.

Federal block grant funds

(R.C. 5119.60 (renumbered 5119.32))

The bill 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 bill removes the requirement that ODMH establish and administer an annual plan to utilize federal block grant funds.

Services providers and certification of services

(R.C. 5119.611 (renumbered 5119.36), 5119.612 (renumbered 5119.37) and 3793.06 (repealed))

Continuing law requires ODMHAS to adopt rules related to the certification of services providers. Under the bill, ODMHAS is no longer required to establish standards for qualifications of mental health professionals and personnel who provide community mental health services. The bill also removes current law's 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.

Under continuing law, if a community services provider does not satisfy the standards for certification, the Director must identify the areas of noncompliance. Under current law, ODMHAS is required to offer technical assistance to the local board. The bill makes this offer permissive but also permits the offer to be made to the services provider.

Continuing law enables 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 to be certified by standards other than the standard standards that ODMHAS uses. The bill adds alcohol and drug addiction services and integrated alcohol and other drug addiction and physical health services to the services for which the Director may accept other standards for certification.

Current law requires ODADAS to maintain a current list of alcohol and drug addiction programs that are certified by ODMHAS and to provide the list to a judge of a court of common pleas who requests a copy. Current law also prohibits alcohol and drug addiction services providers from representing themselves as being certified by ODADAS if they are not actually certified at the time the representation is made. The bill removes both of these provisions.

Determination of services needed

(R.C. 5119.061 (renumbered 5119.40))

Current law requires ODMH 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 bill, 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 state supplement

(R.C. 5119.69 (renumbered 5119.41) and 5119.691 (renumbered 5119.411))

Continuing law prescribes eligibility standards for residential state supplement payments. Under current law one of the places that a person must reside in to be eligible for the supplement is a home or facility, other than a nursing home or nursing home unit of a home for the aging, licensed accordingly. Under the bill, this eligible residence is replaced by a residential care facility, licensed accordingly, or an assisted living program.

Current law requires ODMH to notify each person denied approval for residential state supplement payments of the person's right to a hearing on the matter. The bill requires the county department of job and family services to provide this notification.

Continuing law requires each residential state supplement administrative agency to determine whether individuals who reside in the agency's area are on a waiting list for the residential state supplement program have been admitted to a nursing facility. Under current law, if an agency determines that such an individual has been admitted to a facility the agency is to notify the long-term care consultation program administrator serving the area in which the individual resides about the determination. Under the bill, the notification requirement is removed.

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 bill requires ODMHAS to also collect and compile statistics and other information on the care and treatment of mentally disabled persons. In addition, under the bill 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.

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. 3793.07 (repealed))

The bill abolishes the Council on Alcohol, Drug, and Gambling Addiction Services.

Revolving Loans for Recovery Homes Fund

(R.C. 3793.19 (repealed))

This section creates the Revolving Loans for Recovery Homes Fund, consisting of money received from the federal government. Such funds are no longer being received.

Physician specialists

(R.C. 5119.09 (repealed))

This section authorizes ODMH to prepare job descriptions, classifications, and requirements for physician specialists working in ODMH. This responsibility now falls to DAS.

Purchase of supplies and competitive bidding

(R.C. 5119.31 (repealed))

The section authorizes DAS to purchase supplies for ODMH. This section is redundant, and ODMH and ODADAS already use DAS to purchase supplies.

Statement of policy

(R.C. 5119.47 (repealed))

This section specifies that it is 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 provide 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 bill adds definitions that mirror definitions in related chapters and alters definitions to reflect current practices of ODMH and ODADAS.

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 bill 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 bill 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.

Not later than September 1, 2013, the Director of ODMH and the Director of ODADAS must certify to the Director of OBM the amount of all of the unexpended, unencumbered balances of GRF appropriations made to their respective departments for FY 2012, excluding Ohio Public Facilities Commission rental payment funds. On receipt of the certification, the Director of OBM must transfer cash to the Department of Mental Health and Addiction Services Trust Fund in an amount up to, but not exceeding, the total amounts certified by the Directors of ODMH and ODADAS

Effective July 1, 2013, the Director of ODMHAS must perform activities that parallel continuing law and law amended by the bill 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 bill.

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 bill 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.

ODMHAS RELOCATION TABLES

In merging ODMH and ODADAS into ODMHAS, the bill relocates a large number of sections. In some cases, the bill simply renumbers a section. In others, the bill repeals the current 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 current section number. The second chart shows the reorganization by new section number.

Current location to new location

R.C. section number under current law	R.C. section number under the bill
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



R.C. section number under current law	R.C. section number under the bill
3793.07	Repealed by H.B. 284 of the 129th General Assembly
3793.08	5119.60
3793.09	Repealed
3793.10	5119.38
3793.11	5119.39
3793.12	5119.61
3793.13	5119.27
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



R.C. section number under current law	R.C. section number under the bill
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
5119.09	Repealed
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	5119.31
5119.24	5119.15
5119.27	5119.05
5119.30	5119.09
5119.31	Repealed
5119.33	5119.54
5119.34	5119.50
5119.35	5119.56
5119.351	5119.55



R.C. section number under current law	R.C. section number under the bill
5119.36	5119.52
5119.37	5119.201
5119.39	5119.201
5119.42	5119.07
5119.43	5119.06
5119.44	5119.051
5119.46	5119.60 5119.341
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	5119.37
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



R.C. section number under current law	R.C. section number under the bill
5119.69	5119.41
5119.691	5119.411
5119.99	5119.99

New location to current location

R.C. section number under the bill	R.C. section number under current law
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
5119.09	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 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



R.C. section number under the bill	R.C. section number under current law
5119.184	5119.10
5119.186	5119.11
5119.187	5119.12
5119.188	3793.16
5119.20	5119.39
5119.201	3793.031 5119.37
5119.21	3793.02
5119.21	5119.06
5119.22(D)	3793.04 3793.041 3793.05
5119.22	5119.61
5119.23	5119.62
5119.24	3793.21
5119.24	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
5119.31	5119.23
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) 5119.46
5119.342	5119.221



R.C. section number under the bill	R.C. section number under current law
5119.36	3793.06
5119.36	5119.611
5119.361	5119.613
5119.37	3793.061
5119.37	5119.612
5119.38	3793.10
5119.39	3793.11
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



R.C. section number under the bill	R.C. section number under current law
5119.92	3793.33
5119.93	3793.34
5119.94	3793.35
5119.95	3793.36
5119.96	3793.37
5119.97	3793.38
5119.98	3793.39
5119.99	3793.99
5119.99	5119.99
5191.185	5119.101
Repealed	3793.09 3793.19 5119.09 5119.31 5119.64 5119.65 5119.66 5119.67 5119.68
Repealed by H.B. 284 of the 129th General Assembly	3793.07

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

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 bill makes several changes to the membership requirements of these boards. The bill permits ADAMHS, ADAS, and CMH boards to elect to consist either of 18 members, as required by current law, or of



14 members. The bill 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 shall be 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 current members' terms expire, provided that the composition of the board reflects the bill's requirements for 14-member boards.

Alcohol, drug addiction, and mental health services boards

For ADAMHS boards, the proportion of members interested in mental health services and addiction services remains the same under the bill as under current law (half must be interested in mental health services and half must be interested in addiction services), however, interest in addiction services is expanded to include gambling addiction services in addition to alcohol or drug addiction services.

Reflecting the bill's merger of ODMH and ODADAS, the bill combines the number of members the director of each agency appoints under current 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 bill requires the Director of ODMHAS to appoint six members and the board of county commissioners to appoint eight members.

The bill maintains current 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 will be 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, will be for terms of two years, five initial appointments will be for terms of three years, and five initial appointments will be for terms of four years.

The bill allows, in specific circumstances, a member to serve longer on a board than under current law. The bill prohibits a member of a board from serving more than two consecutive four-year terms **under the same appointing authority**. Similarly, the bill 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 bill 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. Current



law prohibits any member from (1) serving more than two consecutive four-year terms, (2) serving for three consecutive terms only if one of the terms is 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 bill maintains some provisions of current 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 bill replaces or repeals other provisions related to board composition:

Directors of ODMH and ODADAS are required by current law to ensure these members are on each ADAMHS board	Director of ODMHAS is required by the bill to ensure these members are on each ADAMHS board
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 bill 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 bill 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 bill 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. Current law allows an ADAMHS board member to be an employee of a provider with which the board has entered into a contract for the provision of services or facilities, if the board member's employment duties with the provider consist of providing, only outside the district the board serves, services for which the Medicaid program pays.

The bill removes current 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 bill changes the number of members appointed by the Director of ODMHAS and the board of county commissioners for ADAS and CMH boards. The bill requires that for boards operating as 18-member boards, eight members be appointed by the Director and ten members be appointed by the board of county commissioners. Current law requires six members be appointed by the Director and 12 members be appointed by the board of county commissioners. 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 bill 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, (2) a parent or relative of such a person, (3) and a clinician with experience in the delivery of addiction services. Current law requires the Director to **appoint** each of the following: (1) a person who has received or is 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 bill includes gambling addiction in addition to drug and alcohol addiction, replaces the professional with a clinician with experience, and removes the requirement that an advocate be on the board.

The bill 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, (2) a parent or relative of such a person, and (3) a clinician with experience in the delivery of mental health services. Current law requires that the Director **appoint** each of the following: (1) a person who has received or is 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.

The bill removes expired language that provides for the establishment of an ADAMHS board between the original deadline for establishment (within 30 days of



October 10, 1989) and January 1, 2007; 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 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

The bill consolidates, amends, reorganizes, and enacts provisions regarding board duties with respect to mental health services and alcohol and drug addiction services. The bill maintains most of the duties that are in existing law and combines those that currently are 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 bill, which enumerate the responsibilities of ADAMHS, ADAS, and CMH boards.

Planning duties

The bill specifies that instead of implementing an annual plan that is approved by ODMHAS, a board must operate in accordance with such a plan. The bill 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 current law, to include treatment and prevention priorities. The bill expands the duties of a continuum of care, which current law refers to as a community support system and requires a board to establish to the extent resources are available, to include prevention in addition to treatment, support, and rehabilitation services and opportunities and requires residential addiction and mental health services to be components of the system.

The bill replaces the requirement that the annual plan include the needs of all residents of the district now 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 bill 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 bill requires the ADAS board to submit a community addiction services plan and the CMH board to submit a community mental health services plan. The bill 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.

The bill requires the board to 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 bill 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. Current law requires the board to receive, compile, and transmit to ODMHAS an application for funding. The bill 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 bill 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 bill 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.



The bill 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.

Other duties

The bill 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.

The bill requires boards to 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.

The bill requires boards annually, and upon any change in membership, to 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 bill 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. Current law does not specify that the services be publicly funded. The bill 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 bill 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 the current requirement that the inspection be pursuant to a contract with ODMH.

Boards are required by the bill 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 bill 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. Current law requires the utilization review process to be established.

The bill creates references in Chapter 340. (the law regarding local boards), to both of the following existing law 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 bill removes current law's requirement that boards administer mental health clinics and child guidance homes financed partly by state funds as of June 30, 1967.

ODMHAS reimbursement

The bill reorganizes the list of board services for which a county is eligible for monetary assistance from appropriated funds. The bill 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. Current law provides a county may 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.

Protected classes

The bill expands the protected classes against which boards and contracted services providers are prohibited from discriminating in the provisions of services under its authority, in employment, or contract. The bill expands the protected classes to include age, ancestry, sexual orientation, military standards, and genetic information and replaces the protected class of "creed" with "religion."

EDGE business enterprise procurement goals

The bill 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. Current law sets 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 bill requires any EDGE business enterprise that desires to bid on a contract to first apply to the Equal Employment Opportunity Coordinator of DAS.

The bill 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 bill 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 bill additionally applies these provisions to each EDGE business enterprise with which the board entered into a contract.

The bill 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.

Miscellaneous changes

The bill makes conforming changes to reflect the merger, by the bill, of ODMH and ODADAS into ODMHAS. The bill also updates certain terms to reflect industry terminology:

Current law	Bill
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	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 bill 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 bill 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.

Recovery Requires a Community Program

(Section 751.10)

The bill 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 nonMedicaid 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 nonMedicaid program costs for individuals moving into community settings.



DEPARTMENT OF NATURAL RESOURCES

Oil and Gas Law

- Changes 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.
- 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.
- Requires 50% of money received from signing fees, rentals, and royalty payments for oil and gas leases on land located in state parks to be credited to the existing Parks Mineral Royalties Fund rather than all money so received as in current law.
- Requires the remaining 50% of money so received to be credited to the Clean Ohio Distribution Fund, which the bill creates.
- Requires the Director of Budget and Management, if the new Fund reaches \$25 million in any year, to transfer the total balance of the Fund as follows: 75% to the existing Clean Ohio Conservation Fund, 12.5% to the existing Agricultural Easement Purchase Fund, and 12.5% to the existing Clean Ohio Trail Fund.

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 Division of Forestry and the Division of 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 consists 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 existing Wildlife Fund.
- Eliminates the Mined Land Set Aside Fund, which consists of federal grants and is 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 is scheduled to expire June 30, 2013.
- Eliminates the Conservancy District Organization Fund, which is used to provide an advance of money to a conservancy district for specified purposes.

Definition of "production operation" in Oil and Gas Law

(R.C. 1509.01)

The bill changes 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 bill 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 of the Division of Oil and Gas Resources Management on a quarterly basis rather than annually as in current 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 current 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 bill retains existing



requirements governing production statements for all wells and specifically applies them to production statements for horizontal wells.

Material safety data sheet

(R.C. 1509.10)

The bill 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.

Use of revenue from oil and gas drilling on state park lands

(R.C. 151.50, 164.27, 901.21, 1509.73, and 1519.05)

The bill requires 50% of money received from signing fees, rentals, and royalty payments for oil and gas leases entered into by a state agency on land located in state parks to be credited to the existing Parks Mineral Royalties Fund rather than all money so received as in current law. It requires the remaining 50% of the money so received to be credited to the Clean Ohio Distribution Fund, which the bill creates.

Under the bill, not later than October 5 each year, the Director of Budget and Management must determine the balance of the Clean Ohio Distribution Fund. If the balance of the Fund is \$25 million or more, the Director must transfer the total balance of the Fund as follows:

(1) 75% of the money must be credited to the existing Clean Ohio Conservation Fund, which is used for natural resources and parks and recreation grants;

(2) 12.5% of the money must be credited to the existing Clean Ohio Agricultural Easement Fund, which is used for certain farmland preservation purposes; and

(3) 12.5% of the money must be credited to the existing Clean Ohio Trail Fund, which is used for recreational trail grants.

Watercraft Revolving Loan Program and Fund

(R.C. 1547.721, 1547.722, 1547.723, 1547.724, 1547.725, and 1547.726, repealed)

The bill eliminates the Watercraft Revolving Loan Program, under which loans are made to public or private entities to pay allowable costs of eligible projects involving marine recreational facilities and refuge harbors. The bill also eliminates the Watercraft Revolving Loan Fund, which is used to fund the Program and consists of money appropriated or transferred to it.



Law enforcement funds

(R.C. 1501.45)

The bill eliminates the Division of Forestry Law Enforcement Fund and the Division of Natural Areas and Preserves Law Enforcement Fund, both of which consist of proceeds from forfeited property that were seized pursuant to a law enforcement investigation. It 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 the Division of Parks and Recreation Law Enforcement Fund to be used by the Division of Parks and Recreation for law enforcement purposes.

Wild Animal Fund

(R.C. 1531.06, 1531.17, and 1531.34, repealed)

The bill eliminates the Wild Animal Fund, which consists of moneys received from the sale of wild animals to other states, state or federal agencies, and conservation or zoological organizations and is used to fund programs for the acquisition, development, and management of lands and waters in Ohio for wildlife purposes. The bill requires money received from those sales instead to be credited to the existing Wildlife Fund.

Mined Land Set Aside Fund

(R.C. 1513.371, repealed)

The bill eliminates the Mined Land Set Aside Fund, which consists of federal grants and is used for specified activities for the reclamation and restoration of land and water resources adversely affected by past coal mining practices.

Transfers from the Coal-Workers Pneumoconiosis Fund

(R.C. 4131.03)

The bill eliminates the authority of the Director 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 bill also eliminates the Administrator's current law 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. Thus, the bill also eliminates the requirement that the



Administrator adopt rules governing these transfers to ensure the solvency of the Coal-Workers Pneumoconiosis Fund. Current law establishing this request and transfer process is set to expire June 30, 2013.

Conservancy District Organization Fund

(R.C. 6101.451, repealed)

The bill eliminates the Conservancy District Organization Fund, which is 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.



STATE BOARD OF NURSING

- Adds residential care facilities to the locations where an advanced practice registered nurse or physician assistant with prescriptive authority may prescribe schedule II controlled substances without being subject to otherwise applicable limitations.

Schedule II drugs

(R.C. 4723.481 and 4730.411)

The bill adds residential care facilities to the list of locations where advanced practice registered nurses (APRNs) and physician assistants (PAs) are permitted to prescribe schedule II controlled substances without being subject to three existing law limitations that otherwise apply when those professionals prescribe such drugs. The otherwise applicable limits are: (1) the patient must have a terminal condition, (2) the APRN's collaborating physician or the PA's supervising physician must have initially prescribed the drug for the patient, and (3) the prescription must be for an amount not exceeding the amount necessary for the patient's use in a single 24-hour period.

Except for conforming changes pertaining to the bill's other provisions, the bill does not alter the existing law that specifies the locations where APRNs and PAs may prescribe schedule II controlled substances without the limits described above. These locations are: (1) a hospital registered with the Department of Health, (2) an entity owned or controlled, in whole or in part, by a hospital or by an entity that owns or controls, in whole or in part, one or more hospitals, (3) a health care facility operated by the Department of Developmental Disabilities or Department of Mental Health (renamed the Department of Mental Health and Addiction Services), (4) a nursing home licensed by the Department of Health or a political subdivision, (5) a county home or district home that is certified under Medicare or Medicaid, (6) a hospice care program, (7) a community mental health agency (renamed as "community mental health services provider,") (8) an ambulatory surgical facility, (9) a freestanding birthing center, (10) a federally qualified health care center (FQHC), (11) an FQHC look-alike, (12) a health care office or facility operated by a board of health of a city or general health district or an authority having those duties, and (13) a site where a medical practice is operated, but only if the practice is comprised of one or more physicians who also are owners of the practice, the practice is organized to provide direct patient care, and at least one of the physician owners who practices primarily at that site collaborates with the APRN or supervises the PA.



The existing law locations were specified for APRNs in S.B. 83, and for PAs in H.B. 284, both of the 129th General Assembly. Prior to H.B. 284, PAs were not authorized to prescribe schedule II controlled substances under any circumstances.



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.

Notification of approved continuing education courses and license renewal

(R.C. 4725.16)

The bill 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 bill allows this mailing to be electronic.

The bill 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. Current law provides for the notices to be sent by mail to the last address shown in the Board's records.



STATE BOARD OF PHARMACY

Ohio Automated Rx Reporting System (OARRS)

- Requires, rather than permits, the State Board of Pharmacy to provide information in the 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 (ODM) may have violated the law.

Remote drug dispensing systems in long-term care facilities

- Authorizes a pharmacy licensed as a terminal distributor of dangerous drugs to use a remote dispensing system to assist in the distribution of dangerous drugs at a nursing home or residential care facility in certain circumstances.
- Specifies that a pharmacist is not required to maintain supervision and control of a remote dispensing system or be physically present where the system is used to dispense drugs.
- Requires the facility where a remote dispensing system is located to complete periodic audits of controlled substances dispensed through the system.
- Requires that any place at which an applicant for licensure or licensed terminal distributor intends to operate a remote dispensing system be included on the application or license.

Ohio Automated Rx Reporting System

(R.C. 4729.80 and 4729.81)

Access to information

Information contained in the Ohio Automated Rx Reporting System (OARRS), information obtained from it, and information contained in the records of requests for information from OARRS are not public records. The bill modifies the circumstances when information from OARRS may or must be released by the State Board of Pharmacy. Current law permits 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 bill instead *requires*



the Board to provide this information, including information related to prescriptions for the recipient that were not covered or reimbursed under an ODM-administered program.

Existing law also permits the Board to provide information to the Department of Job and Family Services (ODJFS) Director, if the information relates to a recipient of a program administered by the ODJFS (e.g., Medicaid, Children's Health Insurance Program (CHIP), Ohio Works First, unemployment compensation). The bill modifies this provision by *requiring* the Board to provide information to the Medicaid Director if the information relates to a recipient of a program administered by ODM (e.g., Medicaid and CHIP), including information related to prescriptions for the recipient that were not covered or reimbursed under an ODM-administered program. The bill eliminates the Board's authority to provide OARRS information to the ODJFS Director.

Notification to ODM Director

Current law requires the Board to review information in OARRS and, if it determines that a violation of law may have occurred, the Board must 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 bill 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.

Remote drug dispensing systems in long-term care facilities

(R.C. 4729.542 (primary), 4729.51, 4729.54, and 4729.99)

The bill authorizes a pharmacy that is licensed as a terminal distributor of dangerous drugs to use a remote dispensing system to assist in the distribution of dangerous drugs at a nursing home or residential care facility. "Remote dispensing system" is defined as a mechanical system for dispensing drugs that is installed in a facility and communicates electronically with a pharmacy. A remote dispensing system must meet all of the following requirements:

(1) The system must have a documented and ongoing quality assurance program that monitors total system performance and requires 100% accuracy in drugs dispensed and their strength.

(2) The system must have security adequate to prevent unauthorized access to dangerous drugs.



(3) Records kept by the system must comply with State Board of Pharmacy requirements.

The bill specifies that a pharmacist is not required to maintain supervision and control of a remote dispensing system or be physically present at the facility where the system is used to dispense drugs. As part of the bill's quality assurance program, the bill requires the facility where a remote dispensing system is located to complete periodic audits of controlled substances dispensed through the system.

Terminal distributor licenses and applications

Continuing law requires each application for a terminal distributor license to contain specified information, including a description of the establishment or place at which the person intends to possess, have custody or control of, or distribute dangerous drugs at retail. Each license issued must also contain this information. The bill adds to the information that must be included on an application for licensure and a license as a terminal distributor by requiring that the information include any place at which an applicant or licensee intends to operate a remote dispensing system.



OHIO PUBLIC DEFENDER COMMISSION

- Authorizes the State Public Defender, effective July 1, 2013, to provide legal representation and services to a child committed to the Department of Youth Services relative to the fact, duration, and conditions of the child's confinement.
- Requires the Department, effective July 1, 2013, to give the State Public Defender access to any child committed to the Department of Youth Services, to any Department Institution, and to any Department record that the State Public Defender needs to provide authorized representation and services.

Representation of a child committed to the Department of Youth Services

(R.C. 120.06(G) to (J) and 5139.04(H))

The bill permits the State Public Defender to provide legal representation and services to a child committed to the Department of Youth Services relative to either of the following:

(a) The fact or duration of the child's confinement, including, but not limited to, appeals, post-conviction relief, petitions for habeas corpus, and administrative issues that may extend the period of confinement;

(b) Conditions of the child's confinement.

"Conditions of confinement," as defined by the bill, means 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.

The bill grants the State Public Defender the right of access to any child committed to the Department, to any Department Institution, and to any Department record, as needed by the State Public Defender to implement the bill's provisions.

The bill provides that the authority granted to the State Public Defender to provide legal representation and services to a child committed to the Department does not authorize the State Public Defender to represent a child committed to the Department in general civil matters arising solely out of state law. A child's right to the legal representation and services that are authorized by the bill 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 bill also requires that the Department allow the State Public Defender access as authorized by the bill to any child committed to the Department, to any Department Institution, and to any Department record in order to fulfill the Department's constitutional obligation to provide juveniles who have been committed to the Department's care access to the courts.

These provisions take effect July 1, 2013.



DEPARTMENT OF PUBLIC SAFETY

Unclaimed motor vehicles and towing charges

- Increases the threshold value of an unclaimed motor vehicle in relation to which the owner of a repair garage or place of storage may seek to obtain a certificate of title, from \$2,500 to \$5,000.
- Enables a private tow truck, towing company, or tow company place of storage to seek to obtain the certificate of title to a vehicle if the vehicle has been left with the towing company for more than 15 business days and is valued at less than \$5,000.
- Alters the process that either a repair garage, place of storage, private tow truck, towing company, or tow company place of storage must follow when seeking the certificate of title of an unclaimed vehicle.
- Expands the types of certificate of title that may be sought to include salvage certificates of title and certificates for destruction only.
- Specifies that the Superintendent of the State Highway Patrol, as opposed to a state highway patrol trooper, can dispose of an abandoned vehicle.
- Enables the designee of a law enforcement officer that is authorized to dispose of an abandoned vehicle to dispose of the vehicle.
- Revises the required signage in private tow-away zones to reflect the possible loss of ownership of an abandoned vehicle.

Anatomical gift designation on driver's license or identification card

- 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, and is not metered.



- Permits only one motorcycle at a time to be parked in a metered parking space.
- Permits motorcycles to face any direction when parked in any parking space described above.

License plate provision

- 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.
- 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 "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.

Other provisions

- Requires the Registrar of Motor Vehicles to comply with the Financial Transaction Device Contracting Law and removes a provision of the Revised Code that allows 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 requires the vehicle to be operated for hire on an hourly basis; and removes a provision that requires a prearranged chauffeured limousine contract to specify the amount charged at a fixed rate per hour or trip.
- Requires the operator of an agricultural tractor to hold a driver's license when transporting persons on a trailer or unit of farm machinery.

Unclaimed motor vehicles – private towing companies

(R.C. 4505.101; Section 803.200)

The bill increases the threshold value of an unclaimed motor vehicle for which an owner of a repair garage or place of storage may seek to obtain a certificate of title. Under current law, such an entity may seek the title of an abandoned vehicle only if the value is less than \$2,500. Under the bill, such an entity can seek the title of abandoned vehicles with a value of less than \$5,000. The bill also revises the threshold period of abandonment to trigger this right from 15 days to 15 business days.

Also, under current law, this right is provided only to repair garages or places of storage. Under the bill, a private tow truck, towing company, or tow company place of storage is able to seek the title of an unclaimed vehicle after a period of 15 business days if the value of the vehicle is less than \$5,000.

The bill alters the process that either a repair garage or a towing company must follow when seeking the certificate of title of an unclaimed vehicle. The process under current law is as follows:

- The entity seeking the title of the abandoned vehicle must send a notice by certified mail to the owner of the vehicle. If the vehicle remains unclaimed by the owner of the vehicle 15 days after the notice is mailed, then the entity may seek to obtain the certificate of title.
- The entity sending the notice is required to execute an affidavit stating that all necessary requirements have been met and specifying certain information.
- Prior to the execution of the affidavit, a search must be conducted of the vehicle records of the Bureau of Motor Vehicles. If the search reveals any outstanding lien or mortgage on the motor vehicle, the entity seeking the title must notify the interested parties by certified mail, providing the location and value of the vehicle. If the lien holder or mortgagee does not claim the vehicle within 15 days, then the mortgagee or lien holder's claim on the vehicle is invalidated.
- The affidavit must then be presented to the clerk of courts in the county where the repair garage or place of storage is located. The clerk of courts is then required to issue a certificate of title, free and clear of all liens and encumbrances.



The bill makes changes to this process. First, in addition to a standard certificate of title, a repair garage or a towing company may also seek a salvage certificate of title or a certificate for destruction only. Second, the affidavit must be executed within 30 business days after receiving signed receipt from the certified mail or notification that the delivery was not possible. Third, if the search of the motor vehicle records reveals any additional owner, the entity seeking the title in question must also notify this owner via certified mail. Fourth, all time periods are set as "business days" as opposed to "days." Finally, the bill makes conforming changes with regard to the issuance of a destruction only certificate. The bill specifies that until such time as the Registrar of Motor Vehicles can adopt rules with relation to these changes, the Registrar is to continue to process the affidavits required under the Registrar's current policies, procedures, and standards.

Private tow-away zone signage

(R.C. 4513.60)

The bill also makes changes to the law with regard to the signage posted in private tow-away zones. The bill requires that such signs also include language indicating "that abandoned unclaimed motor vehicles may result in ownership interest for the tower under section 4505.101 of the Revised Code."

Law enforcement officers and the disposal of abandoned vehicles

(R.C. 4513.61 and 4513.62)

The bill makes changes to the law with regard to the disposal of abandoned vehicles by law enforcement officers. Under current law, the sheriff of a county or chief of police of a municipal corporation, township, or township or joint police district within the sheriff's or chief's respective territorial jurisdiction, or a state highway patrol trooper may dispose of an abandoned vehicle. The bill replaces a state highway patrol trooper with the Superintendent of the State Highway Patrol as a person who is authorized to dispose of an abandoned motor vehicle. The bill also specifies that the designee of any of the aforementioned law enforcement officers may dispose of an abandoned vehicle.

Anatomical gift designation on driver's license or identification card

(R.C. 2108.05, 4506.07, 4507.06, and 4507.51; Sections 110.30, 110.31, and 110.32)

Under current law, if a person wishes to certify the person's willingness to be an organ donor, the person may authorize a statement or symbol indicating such willingness to be imprinted on the person's driver's license, motorcycle operator's



license or endorsement, commercial driver's license, or identification card. The bill stipulates that once a person has authorized such a statement or symbol to be imprinted on the person's license or identification card, the authorization remains in effect until it is revoked. The person does not need to recertify the authorization upon renewal of the license or identification. The bill 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 current law, any application for a driver's license, motorcycle operator's license or endorsement, commercial driver's license, or identification card must include a statement of whether the applicant wishes to certify willingness to be an organ donor, regardless of whether the applicant has 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 bill 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, and is not metered. The bill also permits only one motorcycle at a time to be parked in a metered parking space. All such parked motorcycles may face any direction.

License Plate Safety Task Force

(Section 755.10)

The bill 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.

"Truth, Justice, and the American Way" license plate

(R.C. 4501.21 and 4503.732)

Under the bill, the owner or lessee of any passenger car, noncommercial motor vehicle, recreational vehicle, or other vehicle of a class approved by the Registrar of Motor Vehicles may apply to the Registrar for the registration of the vehicle and issuance of "Truth, Justice, and the American Way" license plates. The application for "Truth, Justice, and the American Way" license plates may be combined with a request for a special reserved license plate provided in current law. Upon receipt of the completed application and compliance with the bill's requirements, the Registrar is required to issue to the applicant the appropriate vehicle registration and a set of "Truth, Justice, and the American Way" license plates with a validation sticker, or a validation sticker alone when required by current law. In addition to the letters and numbers ordinarily inscribed on license plates, "Truth, Justice, and the American Way" license plates must be 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. The Registrar must approve the final design after entering into a license agreement with that entity for the appropriate use of the Superman name and the associated logo or marking, as applicable. "Truth, Justice, and the American Way" license plates must bear county identification stickers that identify the county of registration by name or number.

"Truth, Justice, and the American Way" license plates and validation stickers are issued upon payment of the regular tax prescribed in current law, any applicable local motor vehicle tax, a Bureau of Motor Vehicles administrative fee of \$10, a contribution of \$10, and the applicant's compliance with all other applicable laws relating to motor vehicle registration. If the application for "Truth, Justice, and the American Way" license plates is combined with a request for a special reserved license plate, the applicant must also pay the applicable additional special reserved license plate fee.

The Registrar must pay the \$10 contributions received under the bill into the state treasury to the credit of the existing License Plate Contribution Fund. The bill then requires the Registrar to pay those contributions to the Siegel and Shuster Society, a nonprofit corporation dedicated to commemorating and celebrating the creation of Superman in Cleveland.

The bill requires the Registrar to pay the \$10 Bureau of Motor Vehicles (BMV) administrative fee, the purpose of which is to compensate the BMV for additional



services required in issuing "Truth, Justice, and the American Way" license plates, into the state treasury to the credit of the State Bureau of Motor Vehicles Fund.

"Massillon Tiger Football Booster Club" license plate

(R.C. 4503.524)

Under the bill, the owner or lessee of any passenger car, noncommercial motor vehicle, recreational vehicle, or other vehicle of a class approved by the Registrar of Motor Vehicles may apply to the Registrar for the registration of the vehicle and issuance of "Massillon Tiger Football Booster Club" license plates. The application for "Massillon Tiger Football Booster Club" license plates may be combined with a request for a special reserved license plate provided in current law. Upon receipt of the completed application and compliance with the bill's requirements, the Registrar is required to issue to the applicant the appropriate vehicle registration and a set of "Massillon Tiger Football Booster Club" license plates with a validation sticker, or a validation sticker alone when required by current law.

In addition to the letters and numbers ordinarily inscribed on license plates, "Massillon Tiger Football Booster Club" license plates must be inscribed with words and markings selected and designed by the Massillon Tiger Football Booster Club and approved by the Registrar. "Massillon Tiger Football Booster Club" plates must bear county identification stickers that identify the county of registration by name or number.

"Massillon Tiger Football Booster Club" license plates and validation stickers are issued upon payment of the regular tax prescribed in current law, any applicable local motor vehicle tax, a Bureau of Motor Vehicles administrative fee of \$10, a contribution of \$25, and the applicant's compliance with all other applicable laws relating to motor vehicle registration. If the application for "Massillon Tiger Football Booster Club" license plates is combined with a request for a special reserved license plate provided in current law, the applicant must also pay the applicable additional special reserved license plate fee.

The Registrar must transmit the \$25 contributions received under the bill to the Treasurer of State for deposit into the existing License Plate Contribution Fund. The bill then requires the Registrar to pay the contributions to the Massillon Tiger Football Booster Club, which must use the contributions only to promote and support the football team of Washington High School of the Massillon City School District.

The bill requires the Registrar to deposit the \$10 BMV administrative fee, the purpose of which is to compensate the BMV for additional services required in issuing



"Massillon Tiger Football Booster Club" license plates, into the State Bureau of Motor Vehicles Fund.

Registrar contracts for use of a financial transaction device

(R.C. 4503.62)

The bill removes a provision of the Revised Code that allows the Registrar of Motor Vehicles, 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 bill also requires the Registrar to comply with the Financial Transaction Device Contracting Law (R.C. 113.40), 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 current law, the Registrar may, but is not required to, comply with the Financial Transaction Device Contracting Law and is permitted, with the approval of the Director of Public Safety, to contract with a third party to accept and process payments made using a financial transaction device.

Certificate of title processing equipment

(R.C. 1548.02, 4505.02, and 4505.09)

The bill 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 bill 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 bill 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. Current 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.



Definition of chauffeured limousine

(R.C. 4501.01; Sections 110.30, 110.31, and 110.32)

Under current law, a chauffeured limousine is defined as a motor vehicle that is designed to carry nine or fewer passengers and is operated for hire "on an hourly basis" pursuant to a prearranged contract. A prearranged contract is 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 bill removes the requirement that chauffeured limousines be operated for hire "on an hourly basis." The bill also removes the requirement that a prearranged contract must specify a "fixed rate per hour or trip."

Agricultural tractor operation and driver's license

(R.C. 4507.021 and 4507.03)

As a general matter, a person is not required to have a driver's license to temporarily drive an agricultural tractor on a street or highway at a speed of 25 miles per hour or less. The bill requires the operator of an agricultural tractor to hold a driver's license when transporting persons on a trailer or unit of farm machinery. Additionally, the bill relocates the provision of current law requiring a person operating an agricultural tractor faster than 25 miles per hour to hold a driver's license. Violation of the new and existing requirement to have a driver's license when operating an agricultural tractor under these limited circumstances is a first degree misdemeanor.



PUBLIC UTILITIES COMMISSION

- Changes, from 750 feet to 1,250 feet, the minimum setback distance for wind turbines of an economically significant wind farm beginning on the effective date of the set back distance change.
- Maintains the current minimum setback distance of 750 feet for Power Siting Board certification applications that are filed before the effective date of the setback distance change, even if amendments to those applications are filed on or after that date.

Wind turbine setback

(R.C. 4906.20)

The bill increases the minimum setback distance for wind turbines of an economically significant wind farm from at least 750 feet to at least 1,250 feet beginning on the bill's effective date. However, the bill maintains the current setback distance of at least 750 feet for Power Siting Board (PSB) certification applications that are filed before the effective date of the setback distance change, and that setback distance applies even if amendments to such applications are filed on or after the effective date of the change.

The standard for measuring the setback distance, unchanged by the bill, 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 current law, PSB rules must prescribe minimum setbacks for wind turbines at economically significant wind farms. The setback, however, 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.

Current law defines an economically significant wind farm as wind turbines and associated facilities with a single interconnection to the electrical grid that are designed



for, or capable of, operation at an aggregate capacity of at least five but less than 50 megawatts.¹⁵³

¹⁵³ R.C. 4906.13, not in the bill.



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 program

- Authorizes boards of trustees of state universities to establish an undergraduate tuition guarantee program under which a state university guarantees a cohort of students a set rate for general and instructional fees for four years.
- Allows a one-time increase of not more than 6% of general and instructional fees for the first cohort under the program unless a higher percentage is approved by the Chancellor of the Board of Regents.
- Requires the Chancellor to publish a report on the undergraduate tuition guarantee programs established under the bill within five years after the bill's effective date.
- Suspends the bill's temporary tuition caps for a university that establishes an undergraduate tuition guarantee program.

Campus completion plans

- Requires each state institution of higher education, by May 1, 2014, and biennially thereafter, to submit to the Chancellor of the Board of Regents a campus-specific completion plan designed to increase college completion rates.

Certificates of value

- 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.



Residency status for students who vote in Ohio

- Requires that, if a state institution of higher education issues a student a letter or utility bill to use as proof for voting purposes in Ohio, the student must be granted residency status by rule of the Chancellor of the Board of Regents for the purpose of state subsidy and tuition surcharges.

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 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.
- 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 a provision of law that required the Chancellor by August 15, 2011, to develop a plan for designating public institutions of higher education as charter universities.
- 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 bill requires the board of trustees of each state institution of higher education to limit its 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, and 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 bill'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 obligations incurred or commitments made prior to the bill's effective date, such as bond obligations. Further, the Chancellor of the Board of Regents may modify the limitations, with Controlling Board approval, to respond to exceptional circumstances as the Chancellor identifies.

Undergraduate tuition guarantee program

(R.C. 3345.48 and Section 363.220)

The bill authorizes the board of trustees of a state university¹⁵⁴ 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 6% increase in those fees. The bill 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 bill 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) a "benchmark" by which the board sets an increase in general and instructional fees (if applicable),¹⁵⁵ (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 the board adopts 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

¹⁵⁴ State university includes 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. (R.C. 3345.011, not in the bill.)

¹⁵⁵ Benchmarks are subject to approval by the Chancellor of the Board of Regents.



the student complies with the requirements of the program, except that the board may increase the guaranteed amount by up to six per cent 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 six per cent, the board must 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. The board may not increase general and instructional fees for that cohort or any subsequent cohorts under the program unless the General Assembly approves such an increase for all tuition guarantee programs.

Finally, the 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 of trustees 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 of trustees, 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 bill specifies that the Chancellor not "unreasonably withhold" approval of a program that conforms in principle with the parameters and guidelines of the requirements enacted by the bill.

Within five years of the bill's effective date, 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 bill also specifically exempts state universities that establish an undergraduate tuition guarantee program from the tuition caps set by the bill for the 2013-2014 and 2014-2015 academic years, as described above.



Campus completion plans for institutions of higher education

(New R.C. 3345.81)

The bill requires each state institution of higher education by May 1, 2014, and biennially thereafter, to submit to the Chancellor of the Board of Regents, for each campus under the authority of that institution, a campus-specific completion plan designed to increase college completion rates. Each plan must be consistent with the mission and priorities of that specific campus and promote student access, retention, progression, and completion of each student's program of study at the respective campus.

The bill also requires that the Chancellor prescribe a format for the college completion plans and determine their required content. At a minimum, plans must examine and, as appropriate, include (1) increased alignment between institutions of higher education, (2) a communications strategy, (3) a guidance plan for current and potential students that includes a broadened awareness of dual enrollment opportunities and financial literacy and planning, (4) increased support to ensure success for first-year students, such as mentoring and career counseling, (5) the development of systems to streamline and accelerate course and degree completion, and (6) incentives and rewards for successful student progression within, and completion of, the student's program.

Certificates of value

(R.C. 3333.342)

The bill authorizes the Chancellor of the Board of Regents 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 bill, 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 bill 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.

Northeast Ohio Medical University Partnership

(R.C. 3350.15)

The bill 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 campus at Cleveland State University enables students enrolled under the partnership to be based in Cleveland and to take 50% or more of the medical curriculum at Cleveland State, local hospitals, and community- and neighborhood-based primary care clinics.

The bill also states that Cleveland State University may not receive state capital appropriations to pay for facilities for the NEOMED academic campus.¹⁵⁶

Residency status for students who vote in Ohio

(R.C. 3333.31)

The bill requires that the Chancellor's rules on granting residency status to students for purposes of granting a state subsidy and surcharge grants residency to students to whom a state institution of higher education issues a letter or utility bill to use as proof of residency to vote in the state. Thus, if a student is able to vote in the state

¹⁵⁶ 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. (See Section 371.20.50(C) of that act.)



because of the letter or utility bill provided by the state institution, then the state institution must charge that student the "in-state" tuition rate of that institution. A student granted residency under the bill is not considered a resident for any other purpose, such as state scholarships or grant eligibility.

Under current law, the Chancellor of the Board of Regents has the authority to establish, by rule, who qualifies for in-state tuition as a resident for all state institutions of higher education. This rule applies to both undergraduate and graduate students. Generally, the rule requires that a person has lived in the state for at least 12 consecutive months preceding enrollment. The rule also contains a general stipulation that a person who moves out of Ohio does not relinquish residency status for 12 months.¹⁵⁷ There are several exceptions to the residency requirement, including exceptions for certain veterans and their spouses and dependents and members of the National Guard and their spouses and dependents.¹⁵⁸

Creation of Higher Education Scholarship and Grant Reserve Funds

The bill creates four funds related to higher education scholarship and grant programs. The details of each fund may be found below:

Ohio College Opportunity Grant Program Reserve Fund

(R.C. 3333.124)

The bill creates the Ohio College Opportunity Grant Program Reserve Fund in the state treasury. Under the bill, the Chancellor of the Board of Regents 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 bill 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 bill also permits the Director to transfer any unencumbered balance from the Fund to GRF.

¹⁵⁷ O.A.C. 3333-1-10(C)(1) and (2) and (F)(2).

¹⁵⁸ R.C. 3333.42, not in the bill.



Choose Ohio First Scholarship Reserve Fund

(R.C. 3333.613)

The bill creates the Choose Ohio First Scholarship Reserve Fund in the state treasury. Under the bill, 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 Choose Ohio First Scholarship Program. Upon receipt of the certification, the bill permits the Director to transfer an 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 bill also permits the Director to transfer any unencumbered balance from the Fund to GRF.

War Orphans Scholarship Reserve Fund

(R.C. 5910.08)

The bill creates the War Orphans Scholarship Reserve Fund in the state treasury. Under the bill, 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 War Orphans Scholarship Program. Upon receipt of the certification, the bill 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 bill 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 bill creates the National Guard Scholarship Donation Fund within the state treasury for the purpose of operating the existing Ohio National Guard Scholarship Program. The bill 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 bill 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 bill 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 bill 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. 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.

Continuing law requires the Board of Regents (presumably meaning the Chancellor) to designate entities (referred to as "vendors") to offer ARP investment options. To be eligible for designation as a vendor, an entity must meet certain requirements. One of the requirements is that the entity must offer the same or similar investment options as ARPs, optional retirement plans, or similar types of plans that meet all of the following requirements: (a) are offered as defined contribution plans¹⁵⁹ that are qualified plans under the U.S. Internal Revenue Code, (b) are maintained by institutions of higher education in at least ten other states, and (c) are established as primary retirement plans that are alternatives to or a component of the applicable public retirement system.

As an alternative to meeting the requirement described above, the bill permits an entity to be designated to offer ARP investment options if it has provided investment options for at least ten years under ARPs at public institutions of higher education in Ohio.

¹⁵⁹ Defined contribution plans are those that provide for an individual account and benefits based solely on the amount contributed to the account and any earnings or losses on that amount. This differs from a defined benefit plan, which provides a set benefit (such as a monthly pension) on retirement based typically on a formula including years of service, age, and salary.



Criteria for consideration

When designating an entity, continuing law requires the Board to identify, consider, and evaluate a number of criteria concerning the experience of the entity in other states. The bill 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. 3333.82)

The bill authorizes the Chancellor of the Board of Regents 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 disproving course applications, negotiating changes in course proposals, and cataloging each approved course. The bill's language is similar to a provision of former law that was removed in 2011.

Background

Under the clearinghouse program, school districts, community schools, STEM schools, public and private colleges and universities, and other nonprofit and for-profit course providers may offer on-line or other distance learning courses 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 (see www.ohiolearns.org).

State university enrollment for non-Ohio Core high school graduates

(R.C. 3313.603(C) and 3345.06)

The bill 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, current 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 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 bill prescribes the additional exception as described above.

Youth STEM Commercialization and Entrepreneurship Program

(Section 363.333)

The bill 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 of the Board of Regents 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. 3333.049)

The bill 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 of Regents or the other state agency.

Annual reports by the Chancellor

(R.C. 3333.041)

Currently, the Chancellor of the Board of Regents is required to submit various annual reports to the Governor and the General Assembly. The bill removes three of the Chancellor's reporting requirements, including reports on the following:

- (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.

However, while the bill no longer requires the Chancellor to report on the Ohio Innovation Partnership (see above), the bill does maintain current 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. The bill also maintains all other reporting requirements of the Chancellor, including reports on (1) the status of graduates of Ohio school districts at state institutions of higher education, (2) aggregate academic growth data for students assigned to graduates of teacher preparation programs who teach certain subjects and grade levels, (3) specified information regarding the Ohio Tuition Trust Authority, (4) a description of dual enrollment programs offered by secondary schools, and (5) the academic and economic impact of the Ohio Co-op/Internship Program.

Repeal of provision for charter university proposal

(Repealed R.C. 3345.81)

The bill repeals a provision that required the Chancellor of the Board of Regents 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 bill changes references to the Ohio Cooperative Extension to OSU Extension throughout the Revised Code. In addition, the bill defines "OSU Extension" as the Cooperative Extension Service established by the federal Smith-Lever Act and administered in Ohio by The Ohio State University. Current law does not define "Ohio Cooperative Extension."



DEPARTMENT OF REHABILITATION AND CORRECTION

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, the victim of the offense is an employee of the Department of Rehabilitation and Correction (DRC) or the Department of Youth Services (DYS), and the offense is committed by a person incarcerated in the state correctional institution or by a person institutionalized in the DHS institution pursuant to a commitment to DHS.
- Eliminates the increased penalty for assault when committed against a probation department employee, visitor, or business visitor and the assault is committed in a DRC or DHS institution or against a DRC or DHS employee in a DRC or DHS institution by a person not incarcerated in such an institution.

Other provisions

- Creates the Office of Enterprise Development Advisory Board to advise and assist the Department of Rehabilitation and Correction in implementing the Department's job training and employment program.
- Eliminates the Advisory Council of Directors for Prison Labor that currently provides some services that are similar to those that will be provided by the Office of Enterprise Development Advisory Board.

Classification of violations of the offense of assault

(R.C. 2903.13, 2923.125, and 2929.13; Section 815.10)

The bill 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, the victim of the offense is an employee of the Department of Rehabilitation and Correction (DRC) or the Department of Youth Services (DYS), and the offense is committed by a person incarcerated in the state correctional institution or by a person institutionalized in the DHS institution pursuant to a commitment to DHS.

The bill eliminates existing law that makes assault a fifth degree felony instead of a first degree misdemeanor when the assault occurs in or on the grounds of a state



correctional institution or an institution of DYS and either (1) the victim of the offense is an employee of a probation department or is on the premises of the particular institution for business purposes or as a visitor, and the offense is 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 is an employee of DRC or DYS, and the offense is 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.

Creation of the Office of Enterprise Development Advisory Board

(R.C. 5145.162; Sections 610.20 and 610.21)

The bill creates the Office of Enterprise Development Advisory Board to advise and assist the DRC with the creation of training programs and jobs for inmates and releaseses through partnerships with private sector businesses. The bill eliminates the Advisory Council of Directors for Prison Labor. Under current law, the Advisory Council provides advice and assistance to DRC when it adopts rules for the administration of DRC's program for the employment of prisoners, establishes prices for goods, products, services, or labor produced or supplied by prisoners, and otherwise establishes and administers DRC's program for the employment of prisoners.

The bill 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 bill, 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 DRC. Under current law, the members of the Advisory Council are appointed by the Governor. 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 bill 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 bill 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 bill 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.



SECRETARY OF STATE

- 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 applicable federal grant agreements.
- Specifies that all investment earnings of the fund are to be credited to the fund.

Miscellaneous Federal Grants Fund

(R.C. 111.28)

The bill 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 bill requires the Secretary 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.



DEPARTMENT OF TAXATION

Income tax

- Reduces income tax rates in all brackets by 7% beginning with taxable years that begin in 2013.
- 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.
- 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 (NOAA) and the Commissioned Corps of the Public Health Service (PHS).
- Reconciles a timing issue related to the annual inflation indexing adjustment of income tax brackets and personal exemption amounts.
- 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 in the state.

Sales, use, and lodging taxes

- Prescribes a method for the collection of sales and use tax on lodging sold by a hotel intermediary – i.e., a person other than a hotel that contracts with hotels to sell lodging.
- Prohibits counties, townships, or municipal corporations from enacting or amending a lodging tax until the subdivision extends its lodging tax base to include services provided by a hotel intermediary and prescribes a method for collection of the tax.
- Prescribes 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.



- Allows a seller presumed to have substantial nexus with Ohio to rebut that presumption.
- Requires 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.
- 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 cost of administering taxes collected by remote sellers.
- Earmarks all voluntary Ohio use tax collections by remote sellers, which are not deposited to the Remote Seller Administration Fund, for deposit in the Income Tax Reduction 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.

Other excise taxes

- Exempts from "gross casino revenue," for the purpose of calculating the casino tax, bad debts from receipts on the basis of which the Gross Casino Revenue Tax was paid in a prior tax period.
- Extends through June 30, 2015, the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund.
- 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 that, to the Commissioner's knowledge, are 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.
- Specifies that, for the purpose of an agreement to pledge county cigarette or alcoholic beverage tax revenue for the construction or renovation of a sports facility, tax revenue includes revenue from taxes levied by the legislative authority of a charter county.

Commercial activity tax

- Excludes from the taxable gross receipts base of the commercial activity tax (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 commercial activity tax exclusion for "qualified distribution center" (QDC) receipts, and instead requires the operator of such a QDC to pay the unpaid 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.
- Creates a temporary committee of General Assembly members to review and recommend reforms and improvements to the commercial activity tax (CAT) on or before October 31, 2013.

Property taxes

- 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.



- 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 five 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.

Local Government Fund and other revenue distributions

- 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 commercial activity tax (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 Ohio Public Works Commission (OPWC) awarded to fund local infrastructure projects that are highway-related.
- Requires the Director of OBM 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

- Increases the maximum historic rehabilitation tax credit that may be claimed by an owner or qualifying lessee from \$5 million to \$10 million.
- 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.
- 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.
- 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 the Department of Taxation, to publish a method of online registration for electronic income tax filing that is accessible to all individuals, trusts, and pass-through entities required to file income tax returns.
- 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 current 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 and financial institutions 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 to enforce oil and gas regulatory laws.
- Excuses the Tax Commissioner from issuing any tax refund if the amount of the refund is \$1 or less, and excuses 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 current law that provide separate rules for the accrual of interest on refunds arising from overpayments under certain circumstances.
- Eliminates the Discovery Project Fund, which currently finances 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.
- Beginning in 2014, applies the interest on an assessment for 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 for wireless 9-1-1 charges and assessments are to be remitted.
- Renames the fund receiving income tax contribution (refund "check-off") funds the "Income Tax Contribution Fund."

Income tax

The bill reduces income tax rates, bars the same person from claiming more than one personal exemption or credit, revises filing requirements for some pass-through entity investors, and corrects the timing of inflation indexing adjustments.

Currently, 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 bill reduces income tax rates in all brackets by 7% beginning with taxable years that begin in 2013.

Under current law, the income tax is levied at rates (for 2012) 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.

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. The personal exemption amount is adjusted each year; for 2012, the amount is \$1,700. In addition, the taxpayer may claim a \$20 credit for each personal exemption claimed (e.g., a taxpayer who claims three personal exemptions may claim a credit equal to \$60).

Under current law, 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 bill eliminates this option, and instead specifies that, beginning with taxable years beginning in or after 2013, only one taxpayer – the taxpayer who may claim an individual as a dependent – may receive the personal exemption and exemption credit for that individual.

The limitation applies to taxable years beginning in 2013 or thereafter.



Composite returns of pass-through entities

(R.C. 5747.08(D); Section 803.80)

The bill 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 currently 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.

Currently, investors who are Ohio residents or who are nonresidents with other Ohio-source income, and on whose behalf the pass-through entity files a composite return (IT 4708), may file an individual return and claim the credit, but nonresident investors with no other Ohio-source income may not unless the Tax Commissioner allows. When a composite return is filed, all the income of investors included in the return is taxed at the highest marginal tax rate (5.925%) 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)

Ohio's income tax 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 bill extends the deduction to retirees of the Commissioned Corps of the National Oceanic and Atmospheric Administration and to retirees of the Commissioned



Corps of the Public Health Service 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 bill, "uniformed services" has the same meaning as in federal law: the Armed Forces, Commissioned Corps of the National Oceanic and Atmospheric Administration, and Commissioned Corps of the Public Health Service. Under federal law, "Armed Forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

Taxpayers qualifying for the deduction may claim it for taxable years that end on or after the bill's effective date.

Inflation indexing adjustment

(R.C. 5747.02 and 5747.025; Section 803.80)

The bill reconciles a timing issue related to the annual inflation indexing adjustment of income tax brackets and personal exemption amounts. The bill requires the Tax Commissioner to adjust both items, and calculate the factor used to make the adjustments, in August. The provision applies to taxable years beginning in or after 2013.

Current law requires the Tax Commissioner to adjust the tax brackets each July, but does not require the Tax Commissioner 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.

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 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 bill 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. Current law does not expressly mandate that the return or amended return be filed by the due date. The bill also clarifies that taxpayers and pass-through entities may request another method to effectuate an equitable apportionment of business in the state. Current law references only equitable allocation.

Sales, use, and lodging taxes

Hotel intermediary sales and use tax

(R.C. 5739.01, 5739.12, 5741.01, and 5741.12; Section 803.190)

Under continuing law, state and local sales and use tax applies to transactions by which lodging by a hotel is or is to be furnished to transient guests, and the tax is collected from a customer at the time the price is paid and remitted by a vendor to the state. The bill prescribes a method by which sales and use tax is collected and remitted when lodging is furnished through a customer's use of a hotel intermediary. A hotel intermediary is a person other than a hotel, such as a web site service, that contracts with hotels to sell reservations for lodging to transient guests.

The bill requires a hotel intermediary to collect from a customer the sales or use tax on amounts paid by the customer to book a hotel room.¹⁶⁰ The intermediary must remit to the state all tax collected by the intermediary. However, if the intermediary fails to collect or remit the full amount of tax, the hotel in which the transient guest will lodge is required to collect from the guest and remit the uncollected or unremitted tax.

¹⁶⁰ The "As Introduced" version of the bill expanded the sales and use tax base to include most services, which would have included services provided by a hotel intermediary beyond the amount paid for a hotel room, which is already subject to the tax under continuing law. As a result of the subsequent removal of the sales and use tax base expansion provisions, the current bill inadvertently does not expand the sales and use tax to include services provided by a hotel intermediary.



Hotel intermediary lodging tax

(R.C. 5739.01, 5739.081, and 5739.09; Section 803.190)

Under continuing law, counties, townships, and municipal corporations are authorized, by resolution or ordinance, to levy taxes on transactions by which lodging by a hotel is or is to be furnished to transient guests. The bill requires counties, townships, or municipal corporations, before amending or enacting a lodging tax ordinance or resolution, to also levy the tax on any amount paid by a transient guest to a hotel intermediary for the intermediary's services.

Similar to the collection procedures for sales and use tax, the bill requires a hotel intermediary to collect from a customer the lodging tax on amounts paid by the customer for the intermediary's services and amounts paid by the customer to book a hotel room. The intermediary must remit to the subdivision or subdivisions that levy the applicable lodging tax all tax collected by the intermediary. If the intermediary fails to collect or remit the full amount of tax, the hotel in which the transient guest will lodge is required to collect from the guest and remit to the subdivision or subdivisions the uncollected or unremitted tax.

"Substantial nexus" standards

(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 and remit sales or use tax from a customer in that state.¹⁶¹ Otherwise, a state cannot require a seller to collect and remit use tax. In instances where use tax is not collected by the seller, continuing Ohio law requires that the consumer remit 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. Current law provides several explicit examples of circumstances under which an out-of-state seller has a substantial nexus with Ohio.

¹⁶¹ *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992) (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).



The bill prescribes new criteria for determining whether sellers are presumed to have "substantial nexus" with Ohio and are therefore required to register with the Tax Commissioner to collect and remit use tax. A seller is presumed to have substantial nexus with Ohio in any of the following circumstances:

(1) The seller uses a place of business in Ohio operated by the seller or another person, other than a common carrier. Current 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 uses employees or other agents and persons to conduct the seller's business or that use similar trademarks or trade names as the seller, or that sell a similar line of products under a business with the same industry classification as the seller. Current law includes only a seller that regularly employs or engages individuals in Ohio to conduct the seller's business.

(3) The seller uses 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. Current law includes a seller who uses a person in Ohio to receive or process the seller's orders.

(4) The seller is a hotel intermediary that furnishes lodging in hotels located in Ohio (see section on hotel intermediaries).

(5) The seller enters 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 may be 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."

A seller is presumed to have substantial nexus with Ohio if, as under current law, the seller makes regular deliveries of tangible personal property to Ohio other than by a common carrier or the seller rents, leases, or offers on approval tangible personal property to Ohio customers. In addition, the bill eliminates the following bases in current law that would cause a seller to have substantial nexus with Ohio:

(1) The seller is registered to do business in Ohio. Current law includes such sellers, except sellers registering with the streamlined sales tax central registration system.

(2) The seller is a member of an affiliated group of entities, at least one other member of which has substantial nexus with Ohio. Current law includes such sellers.



(3) 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. Current law includes such sellers.

Substantial nexus presumption

Current law provides several explicit examples of when a remote seller has substantial nexus with Ohio. The bill transforms the examples to rebuttable presumptions. A seller that has substantial nexus with Ohio, except for a seller that has click-through nexus, may rebut that presumption by demonstrating that the activities conducted by a person on the seller's behalf are 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 may be 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 may consist 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 bill requires an out-of-state seller and the seller's affiliates, before the seller sells or leases 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 bill 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 U.S. Congress. H.R. 684 and S. 336, which were introduced in the U.S. House of Representatives and Senate, respectively, would authorize qualifying states to compel online and catalog retailers to collect sales 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." 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 bill 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 bill does not exempt any person from collecting use tax that is required to do so under current law. The provisions pertaining to remote small sellers appear to anticipate the application the "Marketplace Fairness" legislation if it is enacted in its current form. Specifically, the bill 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 bill creates the Remote Seller Administration Fund to offset the cost of administering taxes collected and remitted by remote sellers. The fund is made up of 0.5% of voluntary Ohio use tax collections by out-of-state sellers that 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 bill earmarks all voluntary Ohio use tax collections by remote sellers, which are not deposited to the Remote Seller Administration Fund, for deposit in the Income Tax Reduction Fund. The deposit is required within 45 days after the end of each month. The 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 are made.



Under current law, all use tax collections are deposited to the state General Revenue Fund.

Remote small sellers

(R.C. 5741.01(R) to (T) and 5741.17)

The bill 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 bill 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 – 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.

Sales tax exemption for sales not taxable under federal law or the Ohio Constitution

(R.C. 5739.02(B)(10))

The bill 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. Current law refers 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.



Other excise taxes

Gross Casino Revenue Tax exemption for bad debts

(R.C. 5753.01)

A casino operator is required to pay a tax of 33% of the operator's gross casino revenue received at a casino. Under the bill, "gross casino revenue" does not include bad debts from receipts on the basis of which the Gross Casino Revenue Tax was paid in a prior tax period to the extent not previously excluded. "Bad debts" are any debts that have become worthless or uncollectible in a prior tax period, have been uncollected for at least six months, and may be claimed as an itemized deduction for wholly worthless or partially worthless debt under federal income tax law, or could be claimed as such if the taxpayer kept its accounts on the accrual basis. "Bad debts" do not include repossessed property, uncollectible amounts on property that remains in the possession of the casino operator until the full purchase price is paid, or expenses in attempting to collect any account receivable or for any portion of the debt recovered.

Wine tax diversion to Ohio Grape Industries Fund

(R.C. 4301.43)

The bill 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). The amount credited to the Ohio Grape Industries Fund is scheduled to decrease from 3¢ to 1¢ per gallon on July 1, 2013.

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 bill 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 current law, the tax on liquid natural gas, like all other forms of motor fuel, is measured in gallons. The bill 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 bill 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 provision begins to apply in the first month that begins after the provision takes effect.

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 tax return within 15 days after the sale or discontinuance. The bill 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 revenue

(R.C. 307.673)

Continuing law authorizes the board of county commissioners of a county that levied a local cigarette or alcoholic beverage tax in 1995 (Cuyahoga County) to pledge revenue from such taxes for the construction or renovation of a sports facility. The bill adds that such a pledge may include revenue from cigarette or alcoholic beverage taxes levied by the "legislative authority of a charter county." (Since 2011, Cuyahoga County has operated as a charter county.)

Under continuing law, references in the Revised Code to a board of county commissioners also refer to the legislative body of a charter county if that body



exercises the same functions as a board of county commissioners under the county's charter.¹⁶²

Commercial activity tax

CAT exclusion for grain sold by grain handlers

(R.C. 5751.01; Section 803.90)

The bill 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.

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.

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 currently over 35 other categories of receipts that are at least partly excluded from the gross receipts base from which taxable gross receipts is derived.

Penalties for improperly excluded qualified distribution center receipts

(R.C. 5751.01(F)(2)(z))

The bill 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 operator's "supplier tax liability," which equals the commercial activity tax that would have been owed by the suppliers of the distribution center had the distribution center not been improperly issued a QDC certificate, less the tax actually paid by such suppliers. 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

¹⁶² R.C. 1.62.



bill, supplier tax liability explicitly excludes any interest or penalties on the unpaid amount.

The bill 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 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

The CAT is an annual excise tax imposed on businesses for the privilege of doing business in Ohio. The tax base or measure for the CAT is "taxable gross receipts." Generally, taxable gross receipts are a company's gross receipts that are attributed to the company's Ohio business activity as prescribed under the "situs" or attribution rules. 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.

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 situated outside Ohio, using existing CAT situs rules, 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.

The QDC operator must submit an annual fee of \$100,000 for each year the QDC is issued a qualifying certificate. Under current law, the Commissioner may assess this annual fee in the same manner as taxes, penalties, and interest due under the CAT may be assessed. The bill eliminates the Commissioner's authority to assess the fee in this manner.



Commercial activity tax review committee

(R.C. 757.30)

The bill creates a temporary committee composed of eight members of the General Assembly to review and recommend reforms and improvements to the CAT. The members include two minority and two majority members of the House of Representatives, including the chair of the House Ways & Means Committee, and two minority and two majority members of the Senate, including the chair of the Senate Ways & Means Committee. The House committee members are appointed by the Speaker of the House, and the Senate members are appointed by the President of the Senate.

The committee, which is a public body for purposes of Ohio's open meetings law (R.C. 121.22) and may accept testimony, is chaired jointly by the House and Senate Ways & Means Committee chairs and meets monthly beginning in July 2013. On or before October 31, 2013, the committee is required to submit a report with the committee's recommendations for reforming and improving the CAT to the Governor, President and Minority Leader of the Senate, and Speaker and Minority Leader of the House.

The committee terminates by operation of law after October 31, 2013.

Property taxes

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 current law, a combined levy may be used for specific permanent improvements, general permanent improvements, or both. The bill 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 bill gives districts the additional option of renewing or replacing an existing combined levy solely for the purpose of funding general permanent improvements. The bill 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 exemption for fraternal organizations

(R.C. 5709.17; Section 803.170)

The bill 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.

The exemption begins to apply for tax year 2013.

Qualified energy project tax exemption

(R.C. 5727.75)

The bill extends by five 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, current law requires the owner or lessee to submit an exemption application to the Director of Development Services, 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 requires the owner or lessee to place the energy facility into service before 2015. The bill extends each of these deadlines by five years.

With respect to an energy facility using advanced energy technology, current law requires the owner or lessee to submit an exemption application to the Director of Development Services before 2016 and to place the energy facility into service before 2019. The bill extends each of these deadlines by five years.

Local Government Fund and other revenue distributions

Local Government Fund

(R.C. 5747.501; Section 757.10)

Continuing law requires that monthly allocations to the Local Government Fund (LGF) be made from any or all GRF tax sources. Beginning with FY 2014, the percentage of GRF tax revenue allocated to the LGF is whatever percentage of those revenues are required to freeze the allocation at the FY 2013 levels (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).

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 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.

Minimum distributions

The bill 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.

Use of commercial activity tax (CAT) revenue related to motor fuel receipts

(Section 757.20)

The bill authorizes the Director of OBM to use CAT revenue derived from taxable gross receipts attributable to the sale of motor fuel ("CAT motor fuel revenue") 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 infrastructure projects that are highway-related. A recently issued Ohio Supreme Court decision held that spending CAT motor fuel 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).¹⁶³

The bill requires the Director of OPWC to certify for fiscal years 2013 and 2014 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.¹⁶⁴ The OPWC is required to categorize

¹⁶³ *Beaver Excavating Co. v. Testa*, Slip Opinion No. 2012-Ohio-5776.

¹⁶⁴ 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.



the amount of such debt service according to the section of the Ohio Constitution under which the particular bond was issued.

The bill authorizes the Director of OBM, on or before the last day of fiscal year 2014 or 2015, to transfer the amount so certified from the Commercial Activity Tax Motor Fuel Receipts Fund to the GRF, presumably compensating the GRF for GRF money that had been used to service such bonds.¹⁶⁵ The Commercial Activity Tax Motor Fuel Receipts Fund receives and holds CAT motor fuel revenue.

The OBM Director must, on or before the end of each applicable fiscal year, credit any money remaining in the Commercial Activity Tax Motor Fuel Receipts Fund to the Highway Operating Fund after making the GRF transfer described above. 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.

Quarterly distributions of Ohio State Racing Commission Fund revenue

(R.C. 5753.03)

The bill 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."

Current law does 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 is there a deadline for when such a distribution must occur. However, the current 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 bill 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.

¹⁶⁵ The bill 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.



The bill 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. Current law does 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 bill 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 bill 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 bill postpones the due date for November tangible personal property tax "replacement payments" to school districts to the last day of the month. 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 current law, replacement payments for both fixed-rate and fixed-sum levies are due annually on May 31 and November 20.



Tax credits; administration and compliance

Historic Building Rehabilitation Tax Credit

The bill increases the maximum historic rehabilitation tax credit that may be claimed in a year and 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.

Continuing law establishes the historic building rehabilitation tax credit, which is a refundable credit that may be claimed against the income tax, corporation franchise tax, dealers in intangibles tax, or insurance company gross premiums tax. The credit equals 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 Director of Development Services, who evaluates the application and may approve a credit by issuing a tax credit certificate.

Annual credit limit

(R.C. 5725.34, 5726.52, 5729.17, and 5747.76)

The bill increases the maximum historic rehabilitation tax credit that may be claimed by an owner or qualifying lessee of a historic building, 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))

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 current 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, are attributed to the qualified lessee.

The bill 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.



General authority to issue tax assessments

(R.C. 5703.90, 5726.20, and 5751.014)

The bill 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 an income tax, school district income tax, 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 on taxpayers for failure to pay various 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 current law, any portion of the assessment not paid within 60 days after the assessment was issued, including interest and penalty, bears interest at the statutory rate for unpaid taxes (currently 3%) until the assessment is paid in its entirety.

The bill requires the Tax Commissioner to calculate interest charged after an assessment has been issued based on tax liability only; penalties and interest are not included. If an assessment is certified to the Attorney General for collection, the interest calculation reverts to current 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. Under current law, if a person does not access the electronic notice or order within ten business



days after the Commissioner serves the notice or order, the Commissioner is required to serve the notice or order by certified mail, personal service, or delivery service.

The bill requires the Tax Commissioner to deliver a tax notice or order to the intended recipient by ordinary mail if the recipient does not access an electronic notice or order within ten business days after the Tax Commissioner serves the notice or order electronically a second time and the recipient does not access the notice or order within ten business days.

Online registration for electronic income tax filing

(R.C. 5703.59(E))

The bill requires the Department of Taxation, beginning July 1, 2014, to publish a method of online registration for electronic income tax filing that is accessible to all individuals, trusts, and pass-through entities required to file income tax returns. Currently, the Department requires first time taxpayers to fax a copy of the taxpayer's social security card or federal taxpayer identification number assignment letter and at least one other piece of identification that includes the taxpayer's date of birth in order to file electronically over the Internet.

Electronic payment and filing requirements

(R.C. 113.061 and 5703.059; Section 803.90)

Under continuing law, quarterly taxpayers of the CAT must pay the tax electronically and, if the Tax Commissioner requires, file electronic returns. The bill 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 bill expressly authorizes the Tax Commissioner to adopt rules governing the electronic payment of, and the filing of returns for, both the CAT and the financial institutions tax (FIT). The electronic payments must also comply with any applicable Treasurer of State regulations that govern such payments.

CAT electronic filing penalties

Under current law, when a taxpayer fails to submit an electronic CAT payment or return, the Tax Commissioner may 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 bill 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 bill 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 bill imposes a specific penalty for the failure to file or timely file a complete return or pay the full amount of tax due, up to the greater of \$50 or 10% of the tax due for the quarter. Current law allows the Commissioner to extend the due date of filing a return for good cause. The bill limits the duration of any extension to 30 days.

Additionally, beginning January 1, 2014, the bill 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 or 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 offenses or the greater of \$50 or 10% of the amount due for every offense thereafter. Any penalty the Tax Commissioner imposes under the bill may be collected in the manner of an assessment, together with applicable penalties and interest, or waived by the Tax Commissioner.

Severance tax refunds

Current law requires that any severance tax refunds must be certified and paid from the Tax Refund Fund, but does not specify how severance tax revenue is credited to that fund. Beginning October 1, 2013, the bill specifies that all severance tax revenue is initially credited to the Severance Tax Receipts Fund, which is created by the bill. The Director of Budget and Management (OBM) 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 under current law.

Disclosure of severance tax information

(R.C. 5749.17; Section 803.120(A))

Current law prohibits 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 may share the information with the Attorney General for unspecified law enforcement purposes. The bill 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 bill introduces a \$1 minimum payment floor for all taxes administered by the Department of Taxation. Under the bill, 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. Currently, these \$1 minimums apply only to the income tax and the pass-through entity withholding taxes.

Accrual of interest on income tax refunds

(R.C. 5747.11)

Under current 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 bill 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 bill also removes a provision of current law that provides that interest resulting from an illegal or erroneous assessment accrues from the date the taxpayer paid the illegal or erroneous assessment until the date the refund is paid. Instead, interest would accrue on such amounts according to the same rule applicable to other overpayments as described above.



Elimination of the Tax Discovery Project Fund

(R.C. 5703.82)

The bill 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.

Current law requires the Tax Commissioner to request funds quarterly from the GRF to pay the costs of operating and administering the system.

H.B. 153 of the 129th General Assembly appropriated about \$2.4 million to the Discovery Project Fund. In FY 2011, spending was \$6.2 million. During FY 2011, the Department received Controlling Board approval for appropriation increases totaling \$4.5 million from the original appropriation of \$2.0 million. These additional appropriations covered incentive-based payments to an outside vendor for increased tax revenue found by the project. In July 2011, the Department received Controlling Board approval for another payment to the outside vendor of \$1.3 million, increasing the FY 2012 appropriation to \$3.8 million.

Under the bill, the Department would remain 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 and 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 current law, if current receipts of a particular tax or fee are not sufficient to enable the Treasurer to fully credit the fund, then the Treasurer is required to transfer the amount from the current receipts of the sales tax. The bill 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, but does not specify from what revenue the refund is drawn in such a situation. Refunds are still required to be paid from the Tax Refund Fund.



Additionally, the bill 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.¹⁶⁶ The bill does not specify from what receipts the refund is drawn if current estate tax revenues are insufficient to cover the full amount of an estate tax refund.

Interest on assessments for wireless 9-1-1 charges

(R.C. 5507.46)

The bill applies the interest on an assessment, charged by the Tax Commissioner beginning in 2014 for unpaid wireless 9-1-1 charges, 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. Wireless 9-1-1 charges are imposed on wireless subscribers in Ohio (both prepaid and nonprepaid) and, beginning in 2014, sales of prepaid wireless services. The charges fund certain aspects of Ohio's 9-1-1 systems. The charges are collected by wireless service providers, wireless resellers, and, beginning in 2014, sellers of prepaid wireless services.¹⁶⁷ The charges are to be remitted to the Tax Commissioner beginning in 2014, at which time the Tax Commissioner is also tasked with auditing the charge collectors and administering assessments for unpaid charges. The Tax Commissioner may also make assessments to collect unpaid interest on assessments.

The bill also removes provisions specifying how assessments and interest on assessments are to be remitted to the Tax Commissioner. Current law appears 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. The bill removes this provision.

Finally, the bill removes redundant language regarding the issuance of assessments for collecting interest and the rate and remittance of interest.

Rename fund receiving income tax contributions

(R.C. 5747.113)

The bill 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

¹⁶⁶ R.C. 5731.02 (not in the bill).

¹⁶⁷ R.C. 5507.42, 5507.53, 5507.54, 5507.55, and 5507.57, not in the bill.



(commonly referred to as refund "check-off") funds to pay the Department of Taxation's costs for 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.



TREASURER OF STATE

- 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.

Treasurer of State annual report

(R.C. 149.01)

The bill 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. Current 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 bill changes the filing date of the report, for the Treasurer of State only, to December 31.



RETIREMENT SYSTEMS

- Requires that copies of the annual financial reports and actuarial valuations of the five public 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, and that the reports and valuations be submitted immediately upon their availability.

Distribution of pension system financial reports

(R.C. 145.22, 742.14, 3307.51, 3309.21, and 5505.12)

Under the bill, certain financial reports prepared annually for the five public 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 current 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 bill also requires that the reports be distributed immediately upon their availability.



LOCAL GOVERNMENT

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 expeditious admissions 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 the appointee of each political subdivision with territory in the impacted lake district, to consult with the board of directors.
- Authorizes an LFA to levy a property tax with voter approval for current expenses, debt charges, permanent improvements, and parks and recreation, not to exceed one mill.
- Authorizes an LFA to levy a lodging tax with voter approval, the rate of which may not cause the aggregate rate of lodging taxes applicable in the impacted lake district to exceed 5%.
- Authorizes an LFA to 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., conservancy district) if the new district would have powers or duties that are the same as the LFA's.
- Prohibits any taxing authority from levying a property tax in the territory of an LFA if the purpose of the tax is similar to the purpose of a tax that the LFA is authorized to levy.
- Authorizes the Director of Natural Resources to transfer real property to an LFA to promote wetland mitigation banking, wildlife, or sporting activities, and authorizes the Division of Wildlife to enter agreements with an LFA to establish wetland or natural areas to benefit wildlife or sporting activities.
- Requires competitive bidding for LFA construction projects in excess of \$25,000 except under certain circumstances.
- Permits, but does not require, an LFA to apply prevailing wage requirements to public improvements it undertakes or contracts for.

County recorder funding for technology needs

- 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, and associated expenses and contract services therefor, and to reserve funds for future technological equipment needs.
- Increases the maximum dollar amount of specific filing fees that the county recorder may request for funding technological equipment needs.
- Requires the board of county commissioners to approve a funding proposal if the county recorder includes in the proposal estimates of the total filing fees that will be generated for filing or recording certain instruments, and the amount of that total that will be designated for the recorder's technological equipment needs.
- Specifies that funding technological equipment needs does not diminish the duty of the board of county commissioners to provide funding for the expenses incurred by, and personnel necessary for, the county recorder to perform the recorder's duties.

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.

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 (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.

Allocation of lodging tax revenues by convention facilities authorities

- Authorizes the convention facilities authority (CFA) 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.

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 incremental financing revenue

- Authorizes townships that have, at any time, adopted a resolution exempting real property from taxation using a TIF to borrow unencumbered money in the TIF fund to pay for current public safety expenses.



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 under existing law 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.
- 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.



County hospital trustees

(R.C. 339.02, 339.05, 339.06, and 339.07)

The bill expressly requires county hospital trustees to be representative of the areas served by the hospital.

The bill 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 bill authorizes, but does not require, the board of county commissioners to provide a stipend for service on the board of county hospital trustees. Under current law, county hospital trustees must serve without compensation. Continuing law, not amended by the bill, allows the trustees to be paid for the necessary and reasonable expenses incurred in the performance of their duties.

The bill requires a board of county hospital trustees to hold meetings at least quarterly. Current law requires 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 bill 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 bill, 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 bill 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 bill 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 expedient 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 5709.19)

Authorization and creation

(R.C. 353.01 and 353.02)

The bill authorizes one or more boards of county commissioners of one or more counties that contain property in 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 last 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 ppb, as measured by the Ohio EPA.¹⁶⁸

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

¹⁶⁸ Microcystin toxins are released by microcystis, or cyanobacterium, which are single-celled blue green alga that occur naturally in surface waters. Microcystis can proliferate to form dense blooms and mats under certain conditions. Ingestion of water or algal cells containing microcystin has produced adverse effects in fish, dogs, cats, livestock and humans. See State of California, Office of Health Hazard Assessment, <http://oehha.ca.gov>.

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. 353.04)

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 is required to prosecute and defend all suits and actions the LFA directs or to which the LFA is a party.

The LFA board is subject to open meetings and public records laws. The board may hold closed meetings and protect confidential information under the same circumstances as authorized for a community improvement corporation under R.C. 1724.11 (generally, financial or proprietary information submitted by a business in relation to the relocation or expansion of the business is confidential). Laws regarding sovereign immunity for public employees apply to the LFA.

The board is required to consult with an advisory council, consisting of one appointee from each political subdivision with territory in the impacted lake district. The board must provide notice of the LFA's existence and the process for the appointment of an advisory council to each such political subdivision within 60 days after the LFA's creation.

Each year, the board is required to prepare an annual report of its activities and make it available to the public.

General powers

(R.C. 353.03)

In addition to the authority to incur and pay the costs of activities that remediate, rehabilitate, enhance, foster, aid, improve, provide, or promote an impacted watershed, the bill grants the following general powers to an LFA. The LFA may:



- Acquire, improve, or sell real and personal property;
- Adopt and enforce reasonable rules governing 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 "**Construction contracts; prevailing wage**");
- Accept aid or contributions;
- Apply for and accept grants, loans, or commitments of guarantee or insurance, including any guarantees of its bonds and notes;
- Procure insurance;
- Maintain funds or reserves as it considers necessary for the efficient performance of its duties;
- Enforce any covenants running with the land, of which the lake facilities authority is the beneficiary;
- Appropriate land, easements, rights, rights-of-way, franchises, or other property in the impacted watershed;
- Issue general obligation bonds or notes for the remediation of an impacted watershed if approved by electors residing in the impacted lake district, not to exceed one mill per dollar of taxable value (0.1%) of all property within the impacted lake district;
- Issue revenue bonds beyond the limit of bonded indebtedness provided by law (see "**LFA revenue bonds**");
- Advise and provide input to political subdivisions within the impacted lake district with respect to zoning and land use planning within the impacted lake district;
- Enter into agreements for the management, ownership, possession, or control of lands to be used for wetland mitigation banking;



Construction contracts; prevailing wage

(R.C. 353.03(F))

With respect to contracts for the construction of buildings, structures, or other improvements exceeding \$25,000, the LFA is required to use a competitive bidding process and to select the lowest responsive and responsible bidder, who must be determined in accordance with a general law governing the factors to be applied in determining responsive and responsible bids (R.C. 9.312). In certain circumstances, the board may decline to use the competitive bidding process:

- There exists a real and present emergency that threatens damage to property or injury to persons of the lake facilities authority or other persons.
- A commonly recognized industry or other standard or specification does not exist and cannot objectively be articulated for the improvement.
- The contract is for any energy conservation measure.
- With respect to material to be incorporated into the improvement, only a single source or supplier exists.
- A single bid is received.

With respect to any construction contract, the LFA may choose to subject the project to prevailing wage requirements.

LFA revenue sources

In addition to issuing general obligation bonds (see "**General powers**"), the bill authorizes an LFA to generate revenue by means of a property tax, lodging tax, revenue bonds, and anticipation bonds and notes. In addition, a county is authorized to levy any unused sales tax authority or re-designate the purpose of a sales and use tax it currently levies to provide funds to an LFA.

Property tax

(R.C. 353.05 and 5705.55)

The LFA board of directors, by vote of two-thirds of all its members, may 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. (The bill does not address how this would be determined or by whom.)

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 bill 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 appear required to mature not later than 20 years after their issuance, and the bonds appear required to mature not later than 40 years after issuance. Bond proceeds are to be pledged to the payment of the notes, and proceeds from the tax are to be pledged to the payment of the bonds. The bill states that the anticipation bonds and notes satisfy the Constitution's "sinking fund" requirement that prohibits debt issuance unless a tax is levied sufficient to meet ongoing debt charges.

LFA revenue bonds

(R.C. 353.09 to 353.16)

The bill authorizes an LFA to issue revenue bonds in such amounts as the LFA considers necessary. The bonds are to be paid out of the revenues of the LFA that are pledged for such payment. The LFA may retire revenue bonds with revenue refunding



bonds. Revenue bonds issued in the form of a note must mature 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 bill authorizes the Director of Natural Resources to transfer real property owned by the state to an LFA for the purpose of promoting wetland banking, wildlife, or sporting activities. Also, the Division of Wildlife within the Department of Natural Resources may enter into an agreement with an LFA to establish wetland or natural areas to benefit wildlife or sporting activities.

County recorder funding for technology needs

(R.C. 305.23, 317.32, and 317.321; Section 803.150)

The bill revises the proposal procedure by which, and the purposes for which, a county recorder may request funding from the board of county commissioners for the recorder's technological equipment needs. The bill also increases the maximum dollar amount of specific filing fees that the county recorder may request for funding technology needs.

Current law funding of equipment needs

Current law authorizes 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 may request that an amount not to exceed \$7 of the following fees be placed in the county treasury and designated as general fund moneys to supplement the equipment needs of the county recorder: (1) the fee collected for filing or recording an instrument, except for the type of instrument designated in (2), if the photocopy or any similar process is employed,¹⁶⁹ (2) the fee for recording and indexing a transfer, conveyance, or assignment of tangible or intangible personal property, or rights or interests therein, if the photocopy or any similar process

¹⁶⁹ A base fee of \$14 and a Housing Trust Fund fee of \$14 are charged for the first two pages, and a base fee of \$4 and a Housing Trust Fund fee of \$4 are charged for each subsequent page.



is employed,¹⁷⁰ (3) the fee for filing a financing statement to perfect a security interest or an agricultural lien,¹⁷¹ and (4) various fees for recording an assortment of instruments regarding registered land.¹⁷²

A proposal may be for a term not to exceed five years. The board of county commissioners may approve, reject, or modify a proposal for the acquisition or maintenance of micrographic or other equipment or for contract services, but must approve a proposal to reserve funds for the office's future equipment needs. Any funding approved by the board is placed in the county treasury and designated as general fund moneys to supplement the equipment needs of the county recorder.

Funding of equipment needs under the bill

Under the bill, a county recorder may submit to the board of county commissioners a proposal for funding either or both of the following:

- (1) The acquisition and maintenance of imaging and other technological equipment, and associated expenses and contract services therefor;
- (2) To reserve funds for the office's future technology needs.

The county recorder may submit a proposal yearly, and regardless of which purpose (or for all of the purposes) for which the proposal is submitted, the board of county commissioners must approve the proposal if the county recorder includes in the proposal estimates of the total fees that will be collected for filing or recording the various instruments described above, and the amount of those total fees that will be credited to the special fund designated as general fund moneys to supplement the technology needs of the county recorder. (The estimates are already required by existing law to be in a proposal.)

The bill 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 in the proposal. The amount is to be placed in the county treasury to the credit of the special fund designated as general fund moneys to supplement the technology needs of the county recorder, for a period of one year from the date the proposal is approved.

¹⁷⁰ A fee of \$28 for the first two pages and a fee of \$8 for each subsequent page are charged and deposited into the special fund designated as general fund moneys to supplement the equipment needs of the county recorder.

¹⁷¹ A fee of \$20 is 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.

¹⁷² The fees range from \$5 to \$30.



Timing of proposals

The bill requires that a proposal approved by a board of county commissioners before the bill's effective date continues in effect for the number of years approved by the board. The special fund for the county recorder's equipment needs ceases to exist upon the expiration of the proposal.

Funding to perform county recorder's duties

The bill specifies that funding for the acquisition and maintenance of imaging and other technological equipment, and associated expenses and contract services therefor, and to reserve funds for the office's future technology needs does not diminish the duty of the board of county commissioners to provide funding for the expenses incurred by, and personnel necessary for, the county recorder to perform the duties of the recorder's office.

Disposition of body at local government expense

(R.C. 9.15)

Under the bill, 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 current 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 bill defines an indigent person as a person whose income does not exceed 150% of the federal poverty line. The statute currently does 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 bill, 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.

Existing law prohibits 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 757.40)

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 bill 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.¹⁷³

The bill 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 "**Exempt percentage of assessed value**," below);
- (3) Increases the term of a tax exemption;
- (4) Increases 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:

- (1) Decreases the size of a CRA;
- (2) Decreases the exempt percentage of assessed value of CRA property (but see "**Exempt percentage of assessed value**," 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.

¹⁷³ See Section 3 of Am. Sub. S.B. 19 of the 120th General Assembly.



The bill 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 bill applies retroactively to amendments to a grandfathered CRA ordinance or resolution adopted before or after the effective date of the bill.

Exempt percentage of assessed value

The bill additionally specifies that it does not authorize a municipal corporation 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.

Tax levy for fairs and other purposes

(R.C. 5705.19)

The bill authorizes a board of county commissioners to place on a 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 existing law that allows a board of county commissioners to place on a ballot a tax levy in excess of ten mills for the purpose of purchasing, maintaining, or improving, or any combination, real estate on which to hold a fair.

The bill also 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

(R.C. 715.691)

The bill 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 business 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.



Current law requires that all proceeds of the income tax be utilized 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 bill expands the purposes for which convention facilities authorities (CFAs) may allocate lodging tax revenue if 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 current law, 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 bill 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.

Use of oil and gas money for local park maintenance and acquisition

(R.C. 511.261, 755.06, and 1545.23)

The bill 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)

The bill authorizes townships that have, at any time, adopted a resolution exempting real property from taxation using a 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" 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 current law, the authority of a township to utilize unencumbered TIF funds for public safety expenses applies 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) is used to pay for public infrastructure and, in some cases, to compensate school districts or other taxing units.

County family and children first council membership

(R.C. 121.37 and 5126.0219 (not in the bill))

County family and children first councils help families seeking government services to streamline and coordinate existing government services. Each county 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 DD board.

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 bill permits the superintendent to appoint a designee to participate on the county council.

Regional Training Center – Butler County PCSA

(R.C. 5103.42)

Under existing law, 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. ODJFS may make a grant to a PCSA that establishes and maintains one of the regional training centers for the purpose of wholly or partially subsidizing the operation of the center. ODJFS must specify in the grant all of the center's duties, including the duties described in the second succeeding paragraph.

The bill requires the Butler County PCSA, prior to the beginning of the fiscal biennium that first follows the effective date of the bill's provisions enacting the requirement, 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 under existing law by the Hamilton County PCSA.

R.C. 5103.422, not in the bill, specifies that a regional training center's responsibilities include: (1) securing facilities suitable for training provided under the Ohio Child Welfare Training Program established by ODJFS under R.C. 5103.30, (2) providing administrative services and paying administrative costs related to the training, (3) maintaining a database of the data contained in the individual training needs assessments for each PCSA caseworker and PCSA caseworker supervisor employed by a PCSA located in the center's training region, (4) analyzing training needs of PCSA caseworkers and PCSA caseworker supervisors employed by a PCSA located in the center's training region, and (5) coordinating training at the center with the Ohio Child Welfare Training Program Coordinator. R.C. 5103.41, not in the bill, required ODJFS, prior to the beginning of the fiscal biennium that first followed October 5, 2000, and in consultation with the Ohio Child Welfare Training Program Steering Committee, to designate eight training regions in the state. ODJFS and the Committee, at times they select, must review the training regions' composition. ODJFS may change the training regions' composition as it considers necessary. Each training region may contain only one regional training center.

County expenses eligible for payment by financial transaction devices

(R.C. 301.28)

The bill 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 bill 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 bill, 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. Existing 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.¹⁷⁴ Under existing law, the county auditor already may withhold school district funds for these purposes.

Sale of city real property to board of county commissioners

(R.C. 721.01, 721.03, and 721.27)

The bill 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 ordinance, 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.¹⁷⁵

¹⁷⁴ R.C. 135.143, not in the bill.

¹⁷⁵ See *Great Plains Exploration, LLC v. City of Willoughby*, 2006 Ohio 7009 (11th App. Dist. 2006).



Legislative authority of nonchartered village – nonstaggered terms

(R.C. 731.091)

The bill 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 bill clarifies this law as follows:

(1) If the legislative authority has six members, the bill 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 bill 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 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.

Current law assumes that three members of the legislative authority of a nonchartered village are elected at each regular municipal election. This does not appear to be the case, however, which is why the bill 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 immediately when the bill becomes law.

Township member of county land reutilization board

(R.C. 1724.03)

The bill 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.



MISCELLANEOUS

Online public records

- Requires a public office that posts a public record on its web site, or on a public web site maintained by the state, to post the record in such a way that the public record, or the data contained in the public record, is capable of being searched and downloaded by the public, and is in a format that is machine readable.

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.

Annual report on risk management reserves

- Eliminates the requirement for an annual actuarial examination and written report for the preceding calendar year to be sent to the legislative leaders reporting on the amounts reserved and disbursements made from reserves in the state's Risk Management Reserve Fund.

Joint Legislative Committee on the Affordable Care Act

- Creates the Joint Legislative Committee on the Affordable Care Act (Committee) to review or study any matter that it considers relevant to the operation and impact of the Affordable Care Act in Ohio.
- Requires the Committee to consist of six members: three members of the House of Representatives appointed by the Speaker, and three members of the Senate appointed by the President.
- Requires that two members of the Committee appointed by the Speaker of the House and two members appointed by the President of the Senate be from the majority party, and one member appointed by the Speaker and one member appointed by the President be from the minority party.



- Requires each member's appointment to last during the General Assembly in which the member was appointed and until a successor is appointed, regardless of the adjournment sine die of the General Assembly or the expiration of a member's term.
- Requires vacancies to be filled in the manner of the original appointment.
- Authorizes the Committee to have the same powers as other standing or select committees of the General Assembly and to request assistance from the Legislative Service Commission.

Public official bonding requirements

- Eliminates the requirement for the Governor's approval and for multiple sureties to assure official public office bonds for the statewide elected officials, and requires instead that only one surety authorized to do business in Ohio assure the bond in the amount stated under current law for each officer, conditioned for the faithful discharge of the duties of the respective offices.
- Removes the requirement for the Governor to approve the surety for bonds given by cabinet-level department appointees, and removes the requirement for the Governor to fix the amount of the bond, which must be not less than \$10,000.
- Allows the Department of Administrative Services to procure a schedule or blanket bond from an authorized corporate surety authorized to do business in Ohio for these appointees and any other office the Governor designates.
- Removes the current authority for the director of each department, with the Governor's approval, to require any chief of a division, or any officer or employee in the director's department, to give bond in the amount the Governor prescribes.

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 and Research Development Fund.

Court of Claims

- Specifies, in certain actions in the Court of Claims, that there is no limitation on compensatory damages for "the actual loss of the person who is awarded the damages," and, except in wrongful death actions, limits the damages not representing that actual loss to not more than \$250,000 in favor of any one person.



- In an action described in the preceding dot point, provides that recoveries against the state are to be reduced by *benefits* or other collateral recovery (existing law), defines "benefits" and "collateral recovery," and prohibits any person from bringing a civil action under a subrogation provision in an insurance or other contract against the state with respect to those benefits.

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.
- Reduces the current law 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.
- 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.

Online public records

(R.C. 149.63)

The bill requires a public office that posts a public record on its web site, or on a public web site maintained by the state, to post the record in such a way that the public record, or the data contained in the public record, is capable of being searched and downloaded by the public, and is in a format that is machine readable.

This provision does not apply to public records that were posted on a public web site prior to the effective date of the section of law in which it is contained. Under the bill, "public office" means "any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government."¹⁷⁶

¹⁷⁶ R.C. 149.011, not in the bill.



Trafficking in persons and promoting prostitution

(R.C. 2901.13 and 2907.22)

Statute of limitations for trafficking in persons

Current 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, including the offense of trafficking in persons. 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 bill provides that trafficking in persons is subject to this 20-year period of limitation.

Promoting prostitution

Under current law, a person is prohibited, in part, from (1) knowingly establishing, maintaining, operating, managing, supervising, controlling, or having an interest in a brothel and (2) 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 bill 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 in (2) above the requirement that transporting of another be *across the boundary of Ohio or of any county in Ohio*.

Joint Legislative Committee on the Affordable Care Act

(R.C. 101.392)

The bill creates the Joint Legislative Committee on the Affordable Care Act to review or study any matter that the Committee considers relevant to the operation and impact of the federal Patient Protection and Affordable Care Act of 2010 in Ohio, including related regulations or guidance. The Committee is required to consist of six members: three members of the House of Representatives appointed by the Speaker of the House, and three members of the Senate appointed by the President of the Senate. Of these six members, the bill requires that two members appointed by the Speaker and



two members appointed by the President be from the majority party, and one member appointed by the Speaker and one member appointed by the President be from the minority party.

Each Committee member's appointment lasts during the General Assembly in which the member was appointed and until a successor is appointed, regardless of the adjournment sine die of the General Assembly or the expiration of a member's term. The bill requires vacancies to be filled in the manner of the original appointment.

The bill authorizes the Committee to have the same powers as other standing or select committees of the General Assembly. Additionally, the bill permits the Committee to request assistance from the Legislative Service Commission.

Public official bonding requirements

(R.C. 109.06, 111.02, 113.02, 117.03, and 121.11)

The bill eliminates the current requirement for the Governor's approval and for multiple sureties to assure official public office bonds for the statewide elected officials (Attorney General, Secretary of State, Treasurer of State, and Auditor of State), and requires instead that only one surety authorized to do business in Ohio assure the bond in the amount stated under current law for each officer, conditioned for the faithful discharge of the duties of the respective offices.

The bill removes the requirement for the Governor to approve the surety for bonds of cabinet-level department appointees, and removes the requirement for the Governor to fix the amount of the bond, which must be not less than \$10,000. The bill retains the \$10,000 threshold but does not state who determines the amount.

The bill allows the Department of Administrative Services to procure a schedule or blanket bond covering those cabinet level appointees and any other officers the Governor designates from any duly authorized corporate surety authorized to do business in Ohio.

The bill removes the authority for the director of each department, with the Governor's approval, to require any chief of a division, or any officer or employee in the director's department, to give bond in the amount the Governor prescribes.

Retention of investment interest in funds

(R.C. 151.11, 154.20, 154.22, 166.03, and 1555.15)

The bill 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 and Research Development Fund.

Court of Claims – state waiver of immunity; recovery standards

(R.C. 2743.02)

Standards for recovery against the state

The bill provides that, notwithstanding any other provision of the Revised Code or rules of a court to the contrary, in an action against the state to recover damages for injury, death, or loss to person or property caused by an act or omission of the state itself, of any officer or employee of the state while acting within the scope of employment or official responsibilities, or of any other person authorized to act on behalf of the state that occurred while engaged in activities at the request or direction, or for the benefit, of the state, the following apply:

(1) Punitive or exemplary damages cannot be awarded.

(2) Recoveries against the state must be reduced by the aggregate of "benefits" (the definition below includes insurance proceeds and disability awards in existing law and others added by the bill) or other "collateral recovery" (existing law and the bill define this term) received by the claimant for the injury, death, or loss. If a claimant receives or is entitled to receive benefits or other collateral recovery, the claimant or the claimant's attorney must disclose the benefits or other collateral recovery to the court, and the court must deduct the amount of the benefits or other collateral recovery from any award against the state recovered by the claimant. No insurer or other person is entitled to bring a civil action under a subrogation provision in an insurance or other contract against the state with respect to those benefits or other collateral recovery. Nothing in this provision affects or is to be construed to limit the rights of a beneficiary under a life insurance policy or the rights of sureties under fidelity or surety bonds. The provision described in this paragraph does not apply to civil actions in the Court of Claims against a state university or college under the circumstances described in R.C. 3345.40 (damages recoverable against state university or college). The collateral benefits provisions of R.C. 3345.40(B)(2) apply under those circumstances.



(3) There cannot be any limitation on compensatory damages that represent "the actual loss of the person who is awarded the damages," as defined below. However, except in wrongful death actions, damages that arise from the same cause of action, transaction or occurrence, or series of transactions or occurrences and that do not represent the actual loss of the person who is awarded the damages must not exceed \$250,000 in favor of any one person. This limitation does not apply to court costs that are awarded to a claimant, or to interest on a judgment rendered in favor of a claimant, in an action against the state.

Definitions

The bill defines the following terms:

(1) "Benefits" includes, but is not limited to, proceeds from a policy or policies of insurance, social security benefits, veterans' benefits, unemployment compensation, workers' compensation, Medicaid benefits, Medicare benefits, and disability awards.

(2) "Collateral recovery" includes, but is not limited to, any settlements with and judgments against third parties that arise out of the same operative facts involved, and the injury, death, or loss allegedly incurred, in the action against the state, or any other source of recovery for any such injury, death, or loss.

(3) Except as described in (4), below, "the actual loss of the person who is awarded the damages" includes all of the following:

(a) All wages, salaries, or other compensation lost by the person injured as a result of the injury, including wages, salaries, or other compensation lost as of the date of a judgment and future expected lost earnings of the injured person;

(b) All expenditures of the injured person or of another person on behalf of the injured person for medical care or treatment, rehabilitation services, or other care, treatment, services, products, or accommodations that were necessary because of the injury;

(c) All expenditures to be incurred in the future, as determined by the court, by the injured person or by another person on behalf of the injured person for medical care or treatment, rehabilitation services, or other care, treatment, services, products, or accommodations that will be necessary because of the injury;

(d) All expenditures of a person whose property was injured or destroyed or of another person on behalf of the person whose property was injured or destroyed in order to repair or replace that property;



(e) All expenditures of the injured person, of the person whose property was injured or destroyed, or of another person on behalf of either of those persons in relation to the actual preparation or presentation of the claim involved;

(f) Any other expenditures of the injured person, of the person whose property was injured or destroyed, or of another person on behalf of either of those persons that the court determines represent an actual loss experienced because of the personal or property injury or property loss.

(4) "The actual loss of the person who is awarded the damages" does not include either of the following:

(a) Any fees paid or owed to an attorney for any services rendered in relation to the personal or property injury or property loss;

(b) Any damages awarded for pain and suffering, for the loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education of the injured person, for mental anguish, or for any other intangible loss.

Screening tool for high-risk youth

(Section 501.10)

Under the bill, 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 bill permits the Department of Youth Services to receive funds for piloting the recommended tool in detention centers.

Religious exemption from Ohio's Civil Rights Law

(R.C. 4112.02)

The bill 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 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 bill, 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.

Age requirements for various board and council members

(R.C. 173.03, 3905.483, 4725.03, and 4758.10)

Reduces, from 60 to 50, the age required under current law for the following Board and Council members:

- The majority of members of the Ohio Advisory Council for the Aging;
- One of the public members of the Chemical Dependency Professionals Board;
- The public member of the State Board of Optometry;
- One of the consumer representatives on the Insurance Agent Education Advisory Council.



NOTE ON EFFECTIVE DATES

(Sections 812.10 to 812.70)

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 bill 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 bill also includes many exceptions to the default provision, some of which provide that specified provisions are not subject to the referendum and go into immediate effect.

EXPIRATION CLAUSE

(Section 809.10)

The bill 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 bill (other than an amending, enacting, or repealing clause) has no effect after June 30, 2015, unless its context clearly indicates otherwise.

HISTORY

ACTION	DATE
Introduced	02-12-13
Reported, H. Finance & Appropriations	04-17-13
Passed House (61-35)	04-18-13

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