# Ohio Legislative Service Commission

**Bill Analysis**

Jennifer A. Parker and other LSC staff

## Am. Sub. H.B. 59

130th General Assembly
(As Passed by the Senate)

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

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

## TABLE OF CONTENTS

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.

**ACCOUNTANCY BOARD** .......... 25
Pay range for the Executive Director .......... 25

**DEPARTMENT OF ADMINISTRATIVE SERVICES** .......... 26
Public employees health care program .......... 31
  Best practices .......... 31
  Run-off expenses for joint self-insurance plans of a political subdivision .......... 31
  Requirements of Department .......... 31
  Miscellaneous provisions related to public employees health care .......... 32
  Provisions removed by bill .......... 33
Annual fleet reporting by state higher education institutions .......... 34
Alternative fuel usage; Credit Banking and Selling Program .......... 34
Public exigency power .......... 35
Transfer of Employee Assistance Program .......... 35
Re-creation of the Vehicle Management Commission .......... 36
Maximum pay range of state departments' unclassified employees .......... 37
Job classification plans for state employees .......... 38

Compensatory time and pay policy approvals ....................38
Payroll Withholding Fund ....................38
Life Insurance Investment Fund ....................38
Building Improvement Fund ....................39
Building Operation Fund ....................39
Minor construction project management services....................40
Minor Construction Project Management Fund ....................40
Exempt employee consent to certain duties ....................40
Long-term care insurance for state employees....................40
Report – public records online....................41
9-1-1 service law changes ....................41
Introduction ....................41
Transfer of 9-1-1 duties to Steering Committee....................42
Transfers from DPS....................42
Transfers from PUCO....................43
Assessment process change....................43
Other changes regarding Steering Committee ....................44
Immunity from liability....................44
Reports to Steering Committee ....................45
Remittance of wireless 9-1-1 charges ....................46
Changes to wireless 9-1-1 funds ....................47
Wireless 9-1-1 Government Assistance Fund....................48
Wireless 9-1-1 Administrative Fund ....................48
9-1-1 Program Fund ....................49
Wireless 9-1-1 Public Safety Administrative Fund repeal....................49
Transfers to Next Generation 9-1-1 Fund ....................49
9-1-1 Program Office....................49
9-1-1 service program and Ohio 9-1-1 Coordinator repeal....................50
Ohio 9-1-1 Council and Wireless 9-1-1 Advisory Board repeal ....................50
County 9-1-1 planning committee changes ....................51

**DEPARTMENT OF AGING**....................52
Ombudsman-related criminal records checks ....................54
Regional long-term care ombudsman programs....................54
System for Award Management web site ....................55
Standards that permit a disqualified individual to be employed....................55
Community-based long-term care, AAA, and PAA record checks ....................55
Direct-care positions ....................56
Criminal records checks applied to AAAs, PAAs, and subcontractors ....................56
Subcontractors that are also home health agencies or waiver agencies....................57
Exception for individual subject to other criminal records check ....................57
System for Award Management web site ....................58
Standards that permit a disqualified individual to be employed....................58
PASSPORT program's structured family caregiver component ....................58
State-funded PASSPORT and assisted living programs – appeals ....................59
Appeal procedures....................59
When an appeal may be brought ....................60
When an appeal may not be brought....................61
Transfer of participants from Choices to PASSPORT....................61
Assisted Living Program assessments....................62
Long-term care assessments....................63
Performance-based reimbursement for PASSPORT operations ....................63

Spending levels for PASSPORT administrative agencies' functions ..........63
Payment rates for PASSPORT services ..........63
Long-term care facility bed fee ..........64
Report on long-term care consultations ..........64
Replacing references to "ombudsperson" ..........65

**DEPARTMENT OF AGRICULTURE** ..........66
Agricultural easements; Farmland Preservation Advisory Board ..........69
Concentrated animal feeding facilities ..........70
Dog registration ..........73
Appointment of county dog wardens ..........73
Cruel treatment of companion animals ..........74
  Negligently committing acts of cruel treatment against a companion animal ..........74
  Knowingly committing acts of cruel treatment against a companion animal ..........75
  Additional court actions ..........75
  Exceptions ..........76
Apiaries ..........76
Auctioneers ..........76
Agricultural commodity marketing programs ..........77
Regulation of dangerous wild animals and restricted snakes ..........78
High Volume Breeder Kennel Control License Fund ..........78
Weights and measures ..........78
  Price and point-of-sale verification ..........78
  Commercially used weighing and measuring devices ..........79
  Standards of weights and measures ..........80

**JOINT COMMITTEE ON AGENCY RULE REVIEW** ..........81
Removal of obsolete rules from Administrative Code ..........81

**AIR QUALITY DEVELOPMENT AUTHORITY** ..........82
Air quality facilities ..........82

**ATTORNEY GENERAL** ..........83
Protection of state liens in actions for judicial sale of real estate ..........84
Annual law enforcement agency report on receipt and use of fine moneys ..........85
Financial assistance for rape crisis programs ..........86

**AUDITOR OF STATE** ..........87
Auditor of State rule-making ..........87

**BARBER BOARD** ..........88
Restoration of expired license ..........88

**BROADCAST EDUCATIONAL MEDIA COMMISSION** ..........89
Broadcast Educational Media Commission ..........89
  Background ..........89
  Reconstitution of eTech as the Broadcast Educational Media Commission ..........90
    Elimination of duties ..........90
    Transfer of duties ..........91
    Continuation and transfer of employees ..........91

Membership of the Commission ....92
State technology plan....93
Interactive Distance Learning Pilot Project....93
Education Technology Trust Fund; Information Technology Service Fund....93

**OFFICE OF BUDGET AND MANAGEMENT**....94
Office of Internal Audit (OIA) changes....95
Expansion of agencies required or eligible for internal audits or audit plans....96
Clarification of OIA's auditing responsibility....96
Scope of internal audits....96
Confidentiality of internal audit documents....96
Publishing the Chief Internal Auditor report....97
State Audit Committee....97
Committee membership....97
Committee duties....98
State Lottery Commission internal audit plan....98
State appropriation limitation....98
Authority to use electronic funds transfers....99
Elimination of reimbursement for additional costs related to direct deposits....99
Transfers of interest to the General Revenue Fund (GRF)....99
Transfers of non-GRF funds to the GRF....100
Federal money for fiscal stabilization and recovery....100
Prohibition on transfers to the Income Tax Reduction Fund....100

**CASINO CONTROL COMMISSION**....101
Age in casino areas....102
Facial recognition cameras....102
Casino Control Commission Enforcement Fund....103

**STATE CHIROPRACTIC BOARD**....104
Chiropractors authorized to assess and clear concussed athletes....104

**CIVIL RIGHTS COMMISSION**....105
Civil Rights Commission....105

**DEPARTMENT OF COMMERCE**....106
Underground Storage Tank Revolving Loan Program....109
Program overview and explanation of "corrective actions"....109
Definition of "political subdivision"....110
Loan applications....110
Loan repayment and funding....111
Recovery of costs from tank owners or operators....111
Program administration....111
Facilities excluded from the Program....112
No limitation on the powers of the Fire Marshal or Attorney General....112
Video-service disconnections....113
Terminology....113
Changes to requirements....113
Enforcement....113
Mortgage loan originator written test and NMLS call reports....114
Exemption from Open Container Law for racetrack liquor permit holders....114

Issuance of D-5p liquor permit in certain park districts ....115
Intoxicating liquor and mixed beverages under the Liquor Control Laws ....116
Tasting samples of spirituous liquor ....117
Issuance of D-5j liquor permit....117
Interest payments on unclaimed funds....118
Bedding and stuffed toys – reporting requirements ....119
Historical Boilers Licensing Board vacancies ....119
Prevailing wage threshold index....119

**COSMETOLOGY BOARD**....120
Schools of cosmetology ....120
Complaints....120
Authorization to offer educational programs ....121

**STATE DENTAL BOARD**....122
Sealant placements and fluoride mouth rinse administration....122
Dental hygienists....122
Certified dental assistants and expanded function dental auxiliaries ....123

**DEVELOPMENT SERVICES AGENCY**....124
Alternative Fuel Transportation Program....126
Costs incurred by grant or loan recipients ....127
Industrial Technology and Enterprise Advisory Council....127
Technology Investment Tax Credit Program ....127
Office of Community Services name change....127
Community Services Division program assistance confidentiality....128
Release of a recipient's information....128
Access to a recipient's information ....129
JobsOhio officials – expansion of bribery provision ....129
Job creation tax credit reporting date for home-based employees ....130
Eligibility for the refundable job retention tax credit ....130
Thomas Alva Edison grant program to use the Edison Center Network ....131
Minority development financing....131
Economic development assistance for the relocation of facilities ....132
Ohio Research Commercialization Grant Program....132
Ohio Coal Development Office's technical advisory committee ....132
Funds abolished....133
Rapid Outreach Loan Fund ....133
Dormant funds ....133

**DEPARTMENT OF DEVELOPMENTAL DISABILITIES**....134
"Employment First" for individuals with developmental disabilities....139
Employment First policy ....139
Task force ....139
County boards of developmental disabilities (county DD boards) ....140
Regional council and county DD board annual cost report ....141
County DD board vacancy ....142
Intermediate care facilities for individuals with intellectual disabilities (ICFs/IID)....142
Administration of Medicaid coverage of ICF/IID services....144
ICFs/IID's Medicaid rates for capital costs....145
Efficiency incentive....145

Nonextensive renovations ....146
ICFs/IID's Medicaid rates for direct care costs ....146
Return on equity payments ....148
ICFs/IID's efficiency incentives for indirect care costs ....148
Terminology related to federal inflation data....149
Medicaid rate add-on for outlier ICF/IID services....150
Fiscal year 2014 Medicaid rates for ICF/IID services....151
Fiscal year 2015 Medicaid rates for ICF/IID services....153
Reduction in number of ICF/IID beds ....156
Medicaid cost reports....157
Cost report deadline extension....157
Cost reports for downsized, partially converted, and new ICFs/IID....158
Adjustment of new ICFs/IID's initial Medicaid rates ....159
ICF/IID Medicaid rate reconsideration....160
Evaluation of Medicaid payment rate formula for ICFs/IID....160
Use of county subsidies to pay nonfederal share of ICF/IID services ....160
ICF/IID franchise permit fee ....161
Decision-making by individuals with IID/DD ....161
Home and community-based services ....161
Medicaid rates for certain Individual Options (IO) services ....161
Fees charged county DD boards for home and community-based services ....162
County DD board share of nonfederal Medicaid expenditures....163
Developmental center services ....163
Innovative pilot projects....163

**DEPARTMENT OF EDUCATION** ....164
**I. School Financing** ....180
New funding system for primary and secondary education ....180
Formula amount....181
Core foundation funding....181
City, local, and exempted village school districts....181
Joint vocational school districts ....183
Community schools and science, technology, engineering, and mathematics (STEM) schools....183
Student counts....184
Biannual certification of average daily membership....184
Counting kindergarten students....184
Reporting of economically disadvantaged students....185
Payments prior to the effective date of the bill's school funding provisions....185
Payment caps and guarantees....185
Straight A Program ....186
Grant application process....186
Grant proposal ....186
Grant evaluation system....187
Grant decision....187
Grant agreement....187
Annual report regarding the grant program....188
Administration of the grant program ....188
Administrative support....188
Advisory council ....188
Special education funding....188
Special education categories and multiples....188

Catastrophic cost for special education students ....................189
Preschool special education funding ....................190
Funding for limited English proficient students ....................190
Gifted unit funding ....................191
Allocation and payment of gifted units ....................191
Use of unit funds ....................192
Career-technical education funding ....................192
Career-technical education categories and multiples ....................192
Approval of a career-technical education program ....................193
Expenditures of career-technical education funding ....................194
Career-technical education provided by community schools ....................194
Career-technical education funding transfers ....................195
Career-technical education at state institutions ....................195
Assignment to career-technical planning districts ....................195
Spending of economically disadvantaged funds ....................195
Transportation funding ....................196
Accountability for subgroups ....................196
Educational service center funding ....................197
Background on current statutory funding structure ....................198
Total student count ....................198
Shared services agreements ....................199
Fee-for-service agreements ....................199
Process to ensure correct ESC is paid state subsidy for services ....................200
Unexpended and unobligated funds ....................200
Background on ESC agreements ....................201
Education services for students in county juvenile detention facilities ....................201
Coordination of education ....................201
Direct billing for services ....................202
Auxiliary Services funds ....................202
Background ....................203
Nonpublic school administrative cost reimbursement ....................203
Fees for all-day kindergarten ....................203
Background ....................204
Study of open enrollment ....................204
Electronic Textbook Pilot Project ....................205
Loans to school districts ....................205
School district debt service deductions ....................206
**II. Community Schools** ....................206
Background ....................206
Community schools in multiple facilities ....................207
Community school sponsor oversight ....................208
Sponsor agreement terms ....................208
Sponsor probation and compliance plans ....................209
Direct authorization applications ....................210
Tuition for out-of-state students ....................210
Grandfathered community school sponsors ....................211
Community school closure criteria – grade 4-8 schools ....................211
E-school separation into multiple schools ....................212
E-school operator grades ....................213
Continuous enrollment ....................213
Dropout prevention and recovery program report cards ....................214
Ratings ....................214

Review of performance indicators ....214
Community school contract suspension ....214
**III. Minimum School Year** ....215
School year based on hours rather than days ....215
Exceptions ....216
Public hearing on school calendar ....216
Prohibition on the reduction of hours except by resolution ....217
Consideration of scheduling needs of other schools ....217
Joint vocational school districts ....217
Community schools ....217
Chartered nonpublic schools ....218
Prohibition on applying certain requirements to chartered nonpublic schools ....218
Transportation to nonpublic and community schools ....219
Calamity days eliminated ....219
Community school calamity hours retained ....219
Online lessons and Blizzard Bags ....219
Other changes related to the minimum school year ....220
Collective bargaining agreements ....220
Background on current minimum school year requirements ....220
Alternative schedules permitted by current law ....222
**IV. Scholarship Programs** ....222
Educational Choice Scholarship Program ....222
Background ....222
Qualification based on K-3 literacy performance ....224
Income-based eligibility ....225
Priorities ....225
Scholarship reductions if family income rises ....226
Priority for Ed Choice scholarships ....226
Eligibility based on performance index score ranking ....227
Students who qualify under more than one category ....228
Eligibility for homeschooled students and students transferring to Ohio ....228
Minimum eligibility age ....228
Volunteering in lieu of payment ....229
Pilot Project (Cleveland) Scholarship Program ....229
Background ....229
Jon Peterson Special Needs Scholarship Program ....230
Background ....230
Moratorium on applications ....230
Payments for certain students ....230
Formative evaluation ....231
Autism Scholarship Program; instructional assistant permit ....231
Administration of state assessments by nonpublic schools accepting scholarship students ....232
**V. State Board Standards and Reporting** ....233
School district and school minimum operating standards ....233
Financial reporting requirements for schools ....234
Performance management information ....234
School operating expenditure rankings ....235
**VI. Student Transportation** ....235
Background on student transportation responsibilities ....235
Payment in lieu ....236
Fee for transportation charged by chartered nonpublic schools ....236

Community school responsibility to transport ....................237
Transportation funding data ....................238
**VII. Other Education Provisions** ....................238
Supervisory services by educational service centers ....................238
Post-Secondary Enrollment Options Program ....................240
Background ....................240
Qualification of home-instructed students for participation in PSEO ....................241
Alternative funding agreements ....................241
Course content and reimbursement ....................242
College admission requirements ....................242
List of participating institutions of higher education ....................242
Dual enrollment programs ....................243
Background ....................243
College Credit Plus program recommendations ....................243
Participation in district extracurricular activities ....................244
Chartered and nonchartered nonpublic school students ....................244
Homeschooled students ....................244
Fee, rule, and eligibility restrictions ....................246
Background ....................246
Physical education exemptions ....................246
Physical education requirement ....................246
Physical activity pilot program ....................247
Body mass index screenings ....................247
State Board's health and wellness measure ....................248
Chartered nonpublic school end-of-course examination exemption ....................249
Administration of kindergarten diagnostic assessments ....................249
Kindergarten early enrollment ....................250
Joint vocational school district board membership ....................250
Extended programming ....................251
Requirements for extended programming ....................251
Provision of extended programming by certificated instructional personnel ....................252
Provision of extended programming by licensed educators ....................252
Agricultural education programs ....................252
Report with recommendations for quality agricultural education programs ....................252
Agricultural education instructors ....................253
Professional development ....................253
Governor's Effective and Efficient Schools Recognition Program ....................253
Teacher evaluations ....................254
Testing teachers ....................254
Background ....................254
Assignment of business manager functions ....................255
Background ....................256
District superintendent nomination of teachers for employment ....................256
In-service training for human trafficking prevention ....................257
State schools' Employees Food Service funds ....................257
STEM school contracting authority ....................257
Physical activity pilot program ....................257
Report card rating system benchmarks ....................258
No Child Left Behind waiver ....................259
New Leaders for Ohio Schools ....................259

Alternative license ....260
School district revenue from sale of real property....261
Executive sessions of a municipal school district transformation alliance ....261

**ENVIRONMENTAL PROTECTION AGENCY**....262
Crediting of application fees for state isolated wetlands permits....265
Extension of solid waste transfer and disposal fees ....265
Sale of tire fees....265
Extension of various air and water fees....266
Synthetic minor facility emissions fees ....266
Water pollution control fees and safe drinking water fees....266
Fees for certification of water supply or wastewater systems operators ....268
Application fees – water pollution control and safe drinking water ....268
Definition of "organic compound" for purposes of Title V air emissions fees....268
Use of Hazardous Waste Clean-Up Fund ....268
Environmental audits....269
Use of money by boards of health – construction and demolition debris ....269
Federal grants for nonpoint source pollution management....270
Funding for converting school buses to alternative fuels ....270

**OHIO ETHICS COMMISSION** ....272
Electronic filing of financial disclosure statements....272
Township officers and candidates filing financial disclosure statements....272

**EXPOSITIONS COMMISSION** ....274
Gifts to Ohio Expositions Commission ....274

**OHIO FACILITIES CONSTRUCTION COMMISSION**....275
Elimination of Ohio Cultural Facilities Commission; transfer of authority ....277
Cooperative agreements to administer cultural projects ....277
Requirements for Ohio sports facilities....279
Changes to funds....279
Transfer provisions....280
Transfer of construction authority from Department of Natural Resources ....280
School Facilities Commission....281
Background on School Facilities Commission programs ....281
Executive director; contracting authority....282
Next ten list ....282
Project design standards....282
CFAP shares for Expedited Local Partner districts with large amount tangible personal property valuation....283
Background....283
Disposal of school district property....284
Energy conservation measures....284
Report of costsavings....284
Requests for approval ....285
Debt service ....285
Notification of use of criteria architect or engineer....286
Energy and water conservation programs....286

**BOARD OF EMBALMERS AND FUNERAL DIRECTORS** ... 287
Supervision of funeral homes ... 287
Fees ... 288
Inspectors and Board staff ... 288
Compensation of the Executive Director and Board staff ... 289
Inspection by the Executive Director ... 289
Biennial renewal ... 289

**DEPARTMENT OF HEALTH** ... 290
General and city health districts ... 294
Expansion of ODH's authority over health districts ... 294
Accreditation of general and city health districts ... 294
Formation of combined general or city health districts ... 294
Continuing education for board of health members ... 295
Elimination of Public Health Standards Task Force ... 295
Standardized reporting of public health data ... 296
Patient Centered Medical Home Program ... 296
Voluntary PCMH certification program ... 296
Goals of PCMH Program ... 297
Certification requirements ... 297
Data collection ... 298
Report ... 298
Regulation of ambulatory surgical facilities ... 299
Overview ... 299
Infection control programs ... 299
Written transfer agreements ... 300
Requirement ... 300
Public hospital exclusion regarding abortion ... 301
Variances ... 301
Inspections ... 304
Notifications ... 304
Severability clause ... 305
Prioritized distribution of funds for family planning ... 305
Federal funds ... 306
Exemptions ... 306
Management of resident's financial affairs ... 306
Nursing facilities' plans of correction ... 306
Nursing facility technical assistance ... 307
Board of Executives of Long-Term Services and Supports ... 307
Board membership changes ... 308
Board member transition ... 309
Board member compensation ... 309
Board administration and assistance ... 310
Education, training, and credentialing opportunities ... 310
ODH to serve as the Board's fiscal agent ... 310
Requirements under the written agreement ... 311
Permitted terms of the written agreement ... 311
Board responsibilities regarding fiscal and administrative matters ... 311
Additional Board transition procedures ... 312
Distribution of state household sewage treatment system permit fees ... 313
Water systems ... 313
Ohio Cancer Incidence Surveillance System ... 313

Confidentiality of cancer reports ....................................................................314
Zoonotic disease program ....................................................................315
Financial assistance to purchase hearing aids for children ....................................................................315
Charges for copies of medical records ....................................................................316
Trauma center preparedness report ....................................................................316
Council on Stroke Prevention and Education ....................................................................316
System for Award Management web site ....................................................................317
Women, Infants, and Children (WIC) vendor contracts ....................................................................317

**OHIO HISTORICAL SOCIETY** ....................................................................319
Repeal of state registries of archaeological and historic landmarks ....................................................................319
Historical Society exempted from Controlling Board oversight ....................................................................320
Ohio History License Plate Program ....................................................................320
Ohio Cemetery Law Task Force ....................................................................321

**OHIO HOUSING FINANCE AGENCY** ....................................................................322
OHFA annual reporting ....................................................................322

**OFFICE OF INSPECTOR GENERAL** ....................................................................323
Deputy inspector general – powers and authority to act as peace officer ....................................................................323
Deputy Inspector General for funds received through the American Recovery and Reinvestment Act ....................................................................323

**DEPARTMENT OF INSURANCE** ....................................................................325
Agent appointment fees ....................................................................325

**DEPARTMENT OF JOB AND FAMILY SERVICES** ....................................................................326
Child care ....................................................................328
Regulation of child care: background ....................................................................328
Child care licensing ....................................................................329
Criminal records checks for child care providers ....................................................................329
Restriction on licensure for applicants with a prior revocation ....................................................................330
Requests for information from the Statewide Automated Child Welfare Information System (SACWIS) ....................................................................330
Authority to revoke a type B home certificate ....................................................................330
Licensure of youth development programs ....................................................................331
Exemption for preschools operated by nonchartered, nontax-supported schools ....................................................................331
Publicly funded child care ....................................................................332
Ohio Electronic Child Care System ....................................................................332
Child welfare ....................................................................333
Audit prior to renewal of certificate ....................................................................333
Criminal records checks for adult residents of a prospective adoptive or foster home or a foster caregiver's home ....................................................................334
Child support ....................................................................334
Poster of delinquent child support obligors ....................................................................334
Conditions for filing a new hire report ....................................................................334
Unemployment ....................................................................335
Spousal unemployment benefits – military transfer ....................................................................335
Ohio Parenting and Pregnancy Program ....................................................................335
Therapeutic wilderness camps ....................................................................337

**JUDICIARY/SUPREME COURT** ....................................................................338
Court of Claims ....................................................................341
Wrongful imprisonment ....................................................................341
Civil action to determine if individual is a wrongfully imprisoned individual ....................341
Inspection of sealed records of wrongfully imprisoned individual ....................341
Commissioner; awards of reparations; other procedures ....................342
Interpreters' fees and qualifications ....................342
Franklin County Probate Court Mental Health Fund ....................343
Common pleas special projects funds ....................343
Affidavit of disqualification of judges ....................344
Court reporters ....................345
"Assigned" and "acting" municipal and county judges ....................347
Existing law – one-judge municipal courts and county courts ....................347
The bill – one-judge municipal and county courts ....................347
The bill – two-judge municipal and county courts ....................348
The bill – three or more judge municipal or judge county courts ....................349
Volume of cases ....................349
Jurisdiction and adjudicatory powers ....................349
Reimbursement and per diem compensation ....................350
Reimbursement and per diem compensation – acting municipal court judges ....................350
Reimbursement and per diem compensation – acting county court judges ....................350
Reimbursement and per diem compensation – assigned municipal court and county court judges ....................350
Payment by treasurer ....................351
Vacation ....................351
Supreme Court addiction treatment pilot program ....................352
Participating courts ....................352
Collaboration ....................352
Evaluation plan ....................352
Treatment ....................353
Report ....................354

**LEGISLATIVE SERVICE COMMISSION** ....................355
Ohio Constitutional Modernization Commission ....................355

**STATE LIBRARY BOARD** ....................356
Forwarding of legislative documents by the State Library Board ....................356

**OHIO LOTTERY COMMISSION** ....................357
Lottery sales agents requirements ....................357

**DEPARTMENT OF MEDICAID** ....................358
Department of Medicaid created ....................372
Single state agency ....................373
ODM Director ....................374
Staff ....................374
Administrative issues related to the creation of ODM ....................375
Creation of ODM not subject to collective bargaining ....................376
Temporary authority regarding employees ....................376
Staff training regarding transfers ....................377
New and amended grant agreements with counties ....................377

Renumbering administrative rules ....................................................................................377
ODM given various authorities similar to ODJFS ..........................................................378
Rule making procedures..........................................................................................378
Funding issues .........................................................................................................379
Investigations and audits .........................................................................................379
Assignment of rights and third party liability issues.........................................................381
Confidentiality of medical assistance information ...........................................................382
Income and eligibility verification system ......................................................................382
Eligibility determinations..................................................................................................382
Appeals...........................................................................................................................383
Relocation and reorganization of Revised Code sections ...............................................384
Streamlining of statutes...................................................................................................385
Compliance with federal requirements....................................................................386
ODM's authorizing rules for other state agencies ...................................................387
**MEDICAL ASSISTANCE PROGRAMS RELOCATION TABLES**..................................387
**TABLE I**..............................................................................................................................388
**TABLE II**.............................................................................................................................399
Medicaid eligibility .............................................................................................................404
Eligibility groups covered by current law..........................................................................404
Elimination and alteration of optional eligibility groups.....................................................406
Transitional Medicaid .......................................................................................................409
Federal maintenance of effort requirement.......................................................................409
Eligibility simplification......................................................................................................410
Tuition savings and scholarships exempt from consideration ..........................................410
Trust reporting for Medicaid eligibility ..............................................................................410
Medicaid expansion .........................................................................................................411
209(b) option regarding aged, blind, and disabled individuals ..........................................411
Third-party payers.................................................................................................................412
Disclosure of third-party payer information ......................................................................412
Assignment of ODM's right of recovery ...........................................................................413
Medicaid subrogation for workers' compensation benefits...............................................413
Medicaid services .................................................................................................................413
Mandatory and optional services......................................................................................413
Rules regarding payment amounts...................................................................................414
Provider agreements.............................................................................................................414
Requirement to have provider agreement with ODM........................................................414
Time limit on provider agreements ...................................................................................414
Adjudications regarding provider agreements .................................................................416
Application fees for provider agreements ........................................................................417
Denying, terminating, and suspending provider agreements ...........................................417
Nursing facilities' provider agreement terms.....................................................................418
Medicaid-related criminal records checks..............................................................................419
Intervention in lieu of conviction .......................................................................................419
Release of results of criminal records check ....................................................................420
System for Award Management web site ........................................................................420
Recovery Audit Contractor program ......................................................................................420
Dispensing fee; generic drug copayments.............................................................................421
Medicaid dispensing fee for noncompounded drugs.........................................................421
Drug dispensing fee survey..............................................................................................421
Medicaid copayments for drugs........................................................................................422
Miscellaneous payment rates.................................................................................................422
Physician groups acting as outpatient hospital clinics ......................................................422

Medicaid rates for hospital inpatient services ....423
Medicaid rates for hospital outpatient and laboratory services....423
Medicaid payment rate adjustments....424
Medicaid payments for noninstitutional services to Medicare Part B enrollees ....424
Medicaid payments for home health and private duty nursing services ....425
Mental health services ....425
Inpatient psychiatric hospital services for certain individuals under age 21....425
Prior authorization for community mental health services....426
Review of home health services....426
Medicaid coverage of wheelchairs, oxygen, and transportation....427
Services removed from bundling ....427
Purchasing strategies....428
Nursing facility services....428
Nursing facilities' peer groups ....428
Nursing facilities' quality incentive payments....430
Maximum quality incentive payment....430
Fiscal year 2014 accountability measures ....430
Fiscal year 2015 and thereafter accountability measures ....431
Nursing facilities' quality bonuses....435
Critical access incentive payments....436
Medicaid payment to reserve nursing facility bed ....436
Alternative purchasing model for nursing facility services....437
Special Focus Facility Program ....437
Nursing facility cost report after a change of operator ....439
Post-payment reviews of nursing facility Medicaid claims....439
Nursing facility resident's personal needs allowance....439
Home and community-based services ....440
Collection of patient liabilities ....440
Integrated Care Delivery System Medicaid waiver ....440
Home care attendant services....441
Home and community-based services for individuals with behavioral health issues....441
Administrative issues related to termination of waiver programs ....442
Annual report ....442
Medicaid managed care inpatient capital payments ....442
Emergency services under Medicaid managed care ....443
Medicaid payments for graduate medical education costs....443
Medicaid Managed Care Performance Payment Fund ....444
Dual Eligible Integrated Care Demonstration Project performance payments....444
Pediatric accountable care organizations ....445
Exclusion of BCMH participants from Medicaid managed care....445
Sources of Medicaid revenues....446
Nursing home and hospital long-term care franchise permit fees ....446
Hospital Care Assurance Program ....447
Hospital assessments ....447
Medical assistance confidentiality ....448
Technologies to monitor recipient eligibility, claims history, and drug coverage....448
Exchange of certain information by state agencies ....449
Health information exchanges....450
Direct Care Worker Advisory Workgroup....451
Creation and membership....451
Responsibilities ....452
General Assembly's intent to enact future legislation....453

Termination....453
Contracts for the management of Medicaid data requests....454
Exclusions....454
Long-term services....455
Joint Legislative Committee for Unified Long-Term Services and Supports....455
Rebalancing long-term care....456
Balancing Incentive Payments Program....456
Quality initiatives....457
Quality incentive program to reduce avoidable admissions....457
Children's hospitals quality outcomes program....457
Improved birth outcomes initiatives....458
Medicaid and Veterans' Services collaboration....458
Health home services....459
Telemedicine policy workgroup....459
Funds....460
Money Follows the Person Enhanced Reimbursement Fund....460
Health Care Compliance Fund abolished....461
Prescription Drug Rebates Fund abolished....462
Integrated Care Delivery System Evaluation....462

**OHIO STATE MEDICAL BOARD**....464
Approval of temporary hearing examiners....464
Internal management and assessment....465
Expedited certificate to practice medicine....465
Eligibility....466
Application and issuance....467
Educational requirements for genetic counselor licensure....467

**DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES**....469
Merger of Department of Mental Health and the Department of Alcohol and Drug Addiction Services....473
Psychiatric rehabilitation facilities....473
Classified service....474
Special police officers....474
Department organization and duties....474
Medical director....475
Responsibilities to provide services outside of a hospital....475
Contracts between the Departments of Mental Health and Addiction Services (ODMHAS) and Youth Services....475
Rules authority....475
Certified position appointments....476
Training agreements....477
Real estate transactions....477
Department of Mental Health requirements....477
Rules....478
Residential facility licenses....480
Capital funding for substance use facilities....480
Fund allocation....480
Withholding funds due to discrimination....481
Confidential documents....482
Federal block grant funds....485
Services providers and certification of services....485

Determination of services needed ........................................................................486
Residential state supplement ..............................................................................486
Compilation of statistics.......................................................................................487
Outright repeals....................................................................................................487
Council on Alcohol, Drug, and Gambling Addiction Services ..........................................487
Revolving Loans for Recovery Homes Fund..............................................................487
Physician specialists ..........................................................................................487
Purchase of supplies and competitive bidding ..........................................................487
Statement of policy............................................................................................488
Operation of runaway shelters for minors ................................................................488
Definitions ..........................................................................................................488
Transition relating to consolidation .......................................................................488
Residential state supplement ..................................................................................491
**ODMHAS RELOCATION TABLES** ..........................................................................492
Current location to new location ............................................................................492
New location to current location ............................................................................496
Alcohol, drug addiction, and mental health service districts.....................................499
Changes to membership of local boards ..................................................................499
Alcohol, drug addiction, and mental health services boards ..........................................500
Alcohol and drug addiction services (ADAS) and community mental health (CMH) boards..........................................................................................................502
Duties of boards ...................................................................................................503
Planning duties.................................................................................................504
Fiduciary duties ...............................................................................................505
Other duties......................................................................................................506
Repealed duties ................................................................................................507
ODMHAS reimbursement.......................................................................................507
EDGE business enterprise procurement goals ..........................................................508
Miscellaneous changes .........................................................................................508
Recovery Requires a Community Program .................................................................509

**DEPARTMENT OF NATURAL RESOURCES**..................................................................510
Brine and other waste substances ..........................................................................516
Definition of "production operation" in Oil and Gas Law ............................................518
Production reports.................................................................................................518
Country of origin disclosure form for certain steel products used in oil and gas production .....518
Material safety data sheet ......................................................................................519
Technologically enhanced naturally occurring radioactive material and other material from horizontal wells ...............................................................................................519
Department of Natural Resources ............................................................................519
Environmental Protection Agency ............................................................................521
Department of Health ............................................................................................522
Clean Ohio Trail Fund ............................................................................................523
State Recreational Vehicle Fund and Fund Advisory Board ..........................................523
Exemption of certain watercraft from registration ......................................................524
Registration and identification of watercraft owned by liveries ...................................525
Watercraft operation requirements ...........................................................................526
Watercraft Revolving Loan Program and Fund............................................................527
Law enforcement funds...........................................................................................528
Wild Animal Fund...................................................................................................528
Mined Land Set Aside Fund ....................................................................................528
Transfers from the Coal-Workers Pneumoconiosis Fund ..............................................528

Conservancy District Organization Fund ....529
Ohio Lake Erie Commission ....529

**OCCUPATIONAL THERAPY, PHYSICAL THERAPY, AND ATHLETICS TRAINERS BOARD** ....530
Procedures for summary suspensions ....530

**OPPORTUNITIES FOR OHIOANS WITH DISABILITIES AGENCY** ....532
Replacement of the Rehabilitation Services Commission ....532
Executive Director; functions and responsibilities ....533
Opportunities for Ohioans with Disabilities Commission (OODC) ....535
Definitions ....535
Governor's Program on Employment Initiatives ....535

**STATE BOARD OF OPTOMETRY** ....536
Notification of approved continuing education courses and license renewal ....536

**STATE BOARD OF PHARMACY** ....537
Ohio Automated Rx Reporting System ....538
Frequency of information submission ....538
Access to information ....538
Notification to ODM Director ....539
Remote drug dispensing systems in institutional facilities ....539
Terminal distributor licenses and applications ....540

**STATE BOARD OF PSYCHOLOGY** ....541
Certified Ohio behavior analysts ....541
Certification requirement ....541
Exceptions to certification requirement ....542
Requirements to obtain a certificate ....543
Grandfathering provision ....544
Certification renewal ....545
Discipline ....545
Disciplinary actions ....545
Reasons for discipline ....546
Summary suspensions ....547
Discipline for actions involving sexual conduct or contact ....547
Child support orders ....548
Human trafficking ....548
Administration ....548

**OHIO PUBLIC DEFENDER COMMISSION** ....550
Representation of a child committed to the Department of Youth Services ....550

**DEPARTMENT OF PUBLIC SAFETY** ....552
Deputy registrars ....554
Appointment of deputy registrars ....554
Terms of deputy registrar contracts ....555
Updated speed limits ....556
Anatomical gift designation on driver's license or identification card ....556

Motorcycle parking....557
"Truth, Justice, and the American Way" license plate....557
"Kiwanis Club" license plate....558
"Massillon Tiger Football Booster Club" license plate....559
Ohio Coal license plate....560
Registrar contracts for use of a financial transaction device....560
Certificate of title processing equipment....561
Definition of chauffeured limousine....561
Chauffeured limousines....561
Delayed effective date for Revised Code section 4503.192....562
Highway Operating Fund designations....562

**PUBLIC UTILITIES COMMISSION**....563
Wind farm setback....564
Railroad audible warnings....566
  Horn-sounding requirement....566
  Crimes for failure to comply with audible-warning requirements....566
  Civil penalties for failure to comply with audible-warning requirements....567
  Civil actions for horn sounding at private crossings....567
Telecommunications transition to Internet-protocol network....567
Recovery of environmental remediation costs....568

**STATE RACING COMMISSION**....569
Video lottery sales agent commission percentage to the Commission....569

**OHIO REAL ESTATE COMMISSION**....570
Brokers and salespersons appraiser education....570
Consumer guide to agency relationships....570

**OHIO BOARD OF REGENTS**....572
Cap on undergraduate tuition increases....575
Undergraduate tuition guarantee program....575
Strategic completion plans for institutions of higher education....578
Certificates of value....578
  Certificate of value standards....578
One-Year Option credit articulation system....579
Northeast Ohio Medical University Partnership....579
Creation of Higher Education Scholarship and Grant Reserve Funds....580
  Ohio College Opportunity Grant Program Reserve Fund....580
  Choose Ohio First Scholarship Reserve Fund....580
  War Orphans Scholarship Reserve Fund....580
  National Guard Scholarship Donation Fund....581
Ohio War Orphans Scholarship Donation Fund....581
Alternative retirement plan investment entities....581
  Designation....581
  Criteria for consideration....582
Distance Learning Clearinghouse....582
  Background....582
Ohio/Co-Op Internship Program....583
  Background....583
State university enrollment for non-Ohio Core high school graduates....584

Background....584
Youth STEM Commercialization and Entrepreneurship Program....585
Private university exempt from liability for certain breach of confidentiality....585
Annual reports by the Chancellor....585
Efficiency advisory committee....586
Ohio University advisory committee....586
Repeal of provision for charter university proposal....587
OSU Extension....587

**DEPARTMENT OF REHABILITATION AND CORRECTION**....588
Creation of the Office of Enterprise Development Advisory Board....588
DRC study....590

**OHIO HOUSE OF REPRESENTATIVES AND SENATE**....592
Use of state-issued payment cards....592

**SECRETARY OF STATE**....593
Gifts to political entities for office facilities....594
General provisions....594
Administrative requirements....595
Identification of source of political publication....596
Miscellaneous Federal Grants Fund....596
Forms for UCC filing statements and amendments....596
Minimum number of direct recording electronic voting machines....597
Repeal of permanently enjoined provisions governing personal funds in campaigns....597

**DEPARTMENT OF TAXATION**....599
Income tax....606
Business income deduction....607
Limits on personal exemptions and $20 credit....608
Composite returns of pass-through entities....608
NOAA and PHS commissioned corps retirement pay deduction....609
Inflation indexing adjustment....609
Requests for alternative apportionment of income....610
Sales and use taxes....610
"Substantial nexus" standards....610
Substantial nexus presumption....612
Out-of-state seller doing business with the state....612
"Marketplace Fairness Act of 2013"....613
Remote Seller Administration Fund....613
Use tax collections by remote sellers for Income Tax Reduction Fund....614
Remote small sellers....614
Sales tax exemption for sales not taxable under federal law or the Ohio Constitution....615
Sales and use tax exemption for items used in aerospace vehicle research....615
Computer data center equipment sales and use tax exemption....615
Eligibility for the exemption....615
Exemption application....616
Agreement with Tax Credit Authority....616
Addition of businesses to existing agreement....617
Agreement compliance....617
Direct payment permit....617

Sales and use tax exemption for sales to a nonprofit sports facility operator .......................618
Other excise taxes ....................................................................................................618
Wine tax diversion to Ohio Grape Industries Fund ............................................................618
Cigarette license approval ....................................................................................618
Motor fuel excise tax on liquid natural gas ....................................................................619
Motor fuel tax refund for school districts .......................................................................619
Notice of fuel dealer sale or closing ...............................................................................619
Commercial activity tax (CAT) ........................................................................................620
CAT exclusion for grain sold by grain handlers ...............................................................620
Penalties for improperly excluded qualified distribution center receipts ..............................620
Existing QDC exclusion ...................................................................................................621
Motor fuel receipts tax ....................................................................................................621
Taxpayers .......................................................................................................................622
Tax base .........................................................................................................................622
Tax rate ...........................................................................................................................623
Allocation of tax revenue .................................................................................................623
Allocation of motor-fuel related CAT revenue ................................................................623
Use of tax revenue for Ohio Public Works Commission bond payments ..........................624
Tax returns and payment ..................................................................................................625
Licensing ..........................................................................................................................625
Administration and enforcement .......................................................................................626
Officer and employee liability ...........................................................................................627
Tax avoidance provision ....................................................................................................627
Municipal taxing authority .................................................................................................627
Tax on mutual and stock insurance company premium deposits ..........................................627
CAT review committee .......................................................................................................628
Property taxes ...................................................................................................................628
School district combined levies for current expenses and improvements ...........................628
Renewal or replacement of combined levies ....................................................................629
Property tax levy for school safety .....................................................................................629
Property tax exemption for fraternal organizations .............................................................630
Qualified energy project tax exemption ..............................................................................630
Eligibility for Hamilton County partial property tax exemption .............................................631
Income limit on veterans' organization property tax exemption ...........................................631
Transfer of tax-delinquent cemeteries ..................................................................................632
Title of transferred tax-forfeited lands .................................................................................632
Local Government Fund and other revenue distributions ......................................................633
Local Government Fund and Public Library Fund allocations ...............................................633
Minimum distributions to county LGFs ..................................................................................633
Quarterly distributions of Ohio State Racing Commission Fund revenue ..............................634
Electronic payments to local governments and political parties ..........................................634
Public Library Fund certification date ..................................................................................635
Due date for tangible personal property tax replacement payments to school districts ........635
Tax credits; administration and compliance .........................................................................635
Historic Building Rehabilitation Tax Credit ...........................................................................635
Annual credit limit ..............................................................................................................636
Application to CAT ...............................................................................................................636
Attribution of qualified rehabilitation expenditures ..............................................................637
Sales and use tax subsidy for retail "impact facilities" ..........................................................637
New Markets Tax Credit ........................................................................................................638
Federal credit .....................................................................................................................638
Ohio credit ..........................................................................................................................639

Qualified active low-income community businesses ....................639
Pairing state and federal credits ....................640
Calculation of post-assessment interest ....................640
Service of tax notices and orders ....................640
Electronic payment and filing requirements ....................641
CAT electronic filing penalties ....................641
Electronic filing and payment of severance tax, related penalties, and refunds ....................641
Severance tax refunds ....................642
Disclosure of severance tax information ....................642
Tax payments and refunds: $1 minimum ....................643
Accrual of interest on income tax refunds ....................643
Elimination of the Tax Discovery Project Fund ....................643
Tax refund payments and estate tax refunds ....................644
Interest on assessments for wireless 9-1-1 charges ....................645
Rename fund receiving income tax contributions ....................645
Motor fuel tax refunds and revenue distribution ....................646

**TREASURER OF STATE** ....................647
Housing Linked Deposit Program interest rate ....................647
Investment of state interim funds ....................648
Investment of county inactive moneys and public library fund money ....................649
Linked deposit programs ....................649
Treasurer of State annual report ....................649
Continuing education for treasurers ....................650

**RETIREMENT SYSTEMS** ....................651
Distribution of pension system financial reports ....................651
PERS membership determinations ....................651

**DEPARTMENT OF TRANSPORTATION** ....................653
Aluminum coil permit ....................653
Transportation improvement district projects outside district ....................654
Overweight and oversize vehicle permit violations ....................655
Department of Transportation county bridge program ....................655

**OHIO TUITION TRUST AUTHORITY** ....................656
Fund deposits and management ....................656

**DEPARTMENT OF VETERANS SERVICES** ....................657
Director of Veterans Services ....................657

**BUREAU OF WORKERS' COMPENSATION** ....................658
Prospective payment of workers' compensation premiums ....................659
Rules – payroll estimates ....................659
Reconciliation ....................660
Penalties ....................660
Transition ....................660
Health Partnership Program ....................661

Managed care organization contracts....661
MCO decertification....662
Self-insurance eligibility....662

**LOCAL GOVERNMENT**....664
Open Meetings Law exception for economic development applications....671
Municipal watershed management program....671
Prohibition against trespassing charges for contiguous property owners beautifying city-owned reservoir property....672
County recorder funding for technology needs....672
Current law funding of equipment needs....672
Funding of technology needs under the bill....673
Proposals for funding....674
Amount of fees requested....674
Operation of the proposals....675
Use of the fund for other purposes....675
Regional transit authority facilities....676
Recording registered land....676
County hospital trustees....677
Lake Facilities Authority....678
Authorization and creation....678
Governance and regulation....679
General powers....680
Construction contracts; prevailing wage....681
LFA revenue sources....682
Property tax....682
LFA lodging tax....682
Anticipation bonds and notes....683
LFA revenue bonds....683
Wetland mitigation banking....683
Disposition of body at local government expense....683
Recovery of township-owned cemetery....684
Rules application for grandfathered community reinvestment areas....685
Exempt percentage of assessed value....686
New community authorities....686
Organizational board of commissioners and board of trustees....687
Community development charge....687
Tax levy for fairs and other purposes....687
Township use of joint economic development zone income tax revenue....688
Allocation of lodging tax revenues by convention facilities authorities....688
Convention and visitors' bureau use of lodging tax revenue....689
Use of oil and gas money for local park maintenance and acquisition....689
Township use of TIF revenue for public safety expenses....690
Township use of motor fuel tax revenue....690
Teleconference or video conference proceedings....691
Background: joint boards of county commissioners....692
County family and children first council membership....693
Regional Training Center – Butler County PCSA....693
County expenses eligible for payment by financial transaction devices....694
Withholding funds to pay debt service charges....695

Sale of city real property to board of county commissioners ....... 695
Legislative authority of nonchartered village – nonstaggered terms ....... 695
Township member of county land reutilization board ....... 696

**MISCELLANEOUS** ....... 697
Trafficking in persons and promoting prostitution ....... 700
Statute of limitations for trafficking in persons ....... 700
Promoting prostitution ....... 700
Joint Legislative Committee on the Affordable Care Act ....... 700
Bonds of statewide elected officials ....... 701
Retention of investment interest in funds ....... 702
Screening tool for high-risk youth ....... 702
Religious exemption from Ohio's Civil Rights Law ....... 702
Age requirements for various board and council members ....... 704
Brain Injury Program ....... 704
Manufactured Homes Commission ....... 704
State Facility Utilization and Consolidation Task Force ....... 705
Ohio Council for Interstate Adult Offender Supervision ....... 706
Sale of state-owned employee housing sites ....... 706
Property list: ....... 708
Authority to convey Department of Youth Services real estate extended ....... 709
Public records cross-reference correction ....... 709

**NOTE ON EFFECTIVE DATES** ....... 710

**EXPIRATION CLAUSE** ....... 710

## 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.
- Requires a joint self-insurance plan to pay the run-off expenses of a participating political subdivision that terminates its participation in the program, under certain circumstances.
- Requires the run-off payment to be limited to an actuarially determined cap or 60 days, whichever is reached first.

## 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.

### 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.

### Transfer of Employee Assistance Program

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

### Vehicle Management Commission

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

### Other provisions

- Increases, from pay range 44 to pay range 47, the maximum compensation that each state department may pay to up to five of its unclassified employees who are involved in policy development and implementation.

- Specifies that the positions, offices, and employments for which the Director 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.

- Eliminates the requirement that the state make available a long-term care insurance policy that state officials and employees may elect to participate in.

- Requires the Director to deliver a report, to the Governor and General Assembly leaders, that proposes uniform standards for public offices that post public records on the Internet.

## 9-1-1 service law changes

### Transfer to Statewide Steering Committee

- Transfers the administration of 9-1-1 services from the Department of Public Safety (DPS) to the Statewide Emergency Services Internet Protocol Network Steering Committee.

- Transfers to the Steering Committee and its members the same immunity from liability in civil actions arising from any act or omission in connection with the development or operation of a 9-1-1 system enjoyed by the Ohio 9-1-1 Council and the Wireless 9-1-1 Advisory Board.

- Repeals the duty imposed on countywide 9-1-1 planning committees to report, by February 15, 2013, certain information to the Steering Committee, including:

  --Geographic location and population of the 9-1-1 service area;

  --9-1-1 call statistics;

  --Expenditures of 9-1-1 disbursements; and

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

- Requires any governmental entity or political subdivision operating a public safety answering point (PSAP) to report that same information, as well as any other information needed for the next generation 9-1-1 transition, to the Steering Committee.

- Requires a "9-1-1 service provider" to report to the Steering Committee the number of access lines in Ohio maintained by the provider, the provider's aggregate costs and cost recovery associated with provision of 9-1-1 services, and any other information needed for the next generation 9-1-1 transition.

- Imposes a time limit of 45 days for 9-1-1 service providers and political subdivisions or governmental entities operating a PSAP to make their respective reports after a Steering Committee request for such information.

- Grants the Steering Committee and the 9-1-1 Program Office Administrator, until January 1, 2014, certain duties related to the remittance, disbursement, audit, and assessment of wireless 9-1-1 charges received from wireless 9-1-1 service providers and resellers.

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

- Beginning January 1, 2014:

  --Reduces, from 98% to 97%, the amount of wireless 9-1-1 charge remittances to be deposited in the Wireless 9-1-1 Government Assistance Fund;

  --Replaces the Wireless 9-1-1 Public Safety Administrative Fund with the 9-1-1 Program Fund to defray the Steering Committee's administration of 9-1-1 services; and

  --Specifies that 2% of wireless 9-1-1 charges be deposited in the 9-1-1 Program Fund.

#### 9-1-1 entity changes

- Replaces the 9-1-1 Service Program housed in the Public Utilities Commission and the position of Ohio 9-1-1 Coordinator (set to be repealed as of January 1, 2014) with the 9-1-1 Program Office led by an administrator who is appointed by the Director and reports to the State Chief Information Officer.

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

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

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

- Changes the method of amending a final plan for a countywide 9-1-1 system.

## Public 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.

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

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

Under the bill, a joint self-insurance plan is required to pay the run-off expense of a participating political subdivision that terminates it participation in the program as long as the political subdivision has accumulated funds in the reserves for incurred but not reported claims. The bill requires the run-off payment to be limited to an actuarially determined cap or 60 days, whichever is reached first. Under the bill, a joint self-insurance plan is excluded from the requirement of paying the run-off expenses of a terminating political subdivision during the term of a specific, separate agreement with the political subdivision to maintain enrollment for a specified period, not to exceed three years.

### 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, and consists of 15 members appointed by the President of the Senate, the Speaker of the House of Representatives, and the Governor. The bill specifies that five members are to be appointed by the President, five members are to be appointed by the Speaker, and five members are to be appointed by the Governor. The members are to include representatives from state and local government employers, state and local government employees, insurance agents, health insurance companies, and joint purchasing arrangements currently in existence.

### 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.

## 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.

## Transfer of Employee Assistance Program

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

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

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

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

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

## Re-creation of the Vehicle Management Commission

(R.C. 125.833)

The bill recreates and modifies the Vehicle Management Commission within the Department of Administrative Services; this Commission was abolished by S.B. 171 of the 129th General Assembly, the Sunset Review Act, effective June 30, 2011.

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

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

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

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

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

## Maximum pay range of state departments' unclassified employees

(R.C. 124.11)

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.[1]

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.

---

[1] R.C. 124.152, not in the bill.

### 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."[2]

### 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

---

[2] R.C. 124.01, not in the bill.

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, including creating new funds.[3] 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.

---

[3] Section 515.40 of Am. Sub. H.B. 153 (not in the bill).

### 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.

### 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.

### Long-term care insurance for state employees

(R.C. 124.84)

The bill eliminates the requirement that the state make available a long-term care insurance policy that state officials and employees may elect to participate in.

Specifically, the bill eliminates the requirement for the Department to negotiate and contract with one or more insurance companies or health insuring corporations for the purchase of such a policy, and instead provides permissive authority for the Department to do so.

## Report – public records online

(Section 701.30)

The bill requires the Director of Administrative Services, not later than December 31, 2013, to deliver a report to the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate that proposes uniform standards that should apply to a public office that chooses to post public records on an Internet web site maintained by the public office. In developing the standards, the Director must consider, at a minimum, the following factors: any recommended technology and software to use; the projected costs of implementing and maintaining the technology and software; and how a public office is to post a public record on its web site, or on a public web site maintained by the state, so that the public record, or the data contained in the public record, is capable of being searched and downloaded by the public in a uniform manner.

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

## 9-1-1 service law changes

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

### Introduction

The bill modifies the changes made to the 9-1-1 service law in 2012 by H.B. 360 and H.B. 472 of the 129th General Assembly. H.B. 360, among other 9-1-1 law changes, made changes to the amount and other aspects of the wireless 9-1-1 charge imposed on prepaid subscribers. It transferred duties of the Public Utilities Commission (PUCO), in administering the 9-1-1 service law, to either the Department of Public Safety (DPS) or the Tax Commissioner and recodified the 9-1-1 service law in Chapter 5507. of the Revised Code. H.B. 472 made various changes regarding 9-1-1, such as it delayed the transfer of duties to DPS and the Tax Commissioner until 2014, shifted certain duties from the Tax Commissioner to DPS, and maintained the requirement that PUCO determine the rates for the wireline telephone network portion of a 9-1-1 system that are charged to wireline telephone customers.

The bill transfers all duties assigned to DPS and PUCO, except for the PUCO rate-making duties, to the Statewide Emergency Services Internet Protocol Network Steering Committee (Steering Committee). The Steering Committee consists of four legislators, five gubernatorial appointees representing county, municipal, and township organizations, and the State Chief Information Officer as its nonvoting chairperson. Its duties include (1) advising the state on the dispatch of emergency service providers and implementation, operation, and maintenance of a statewide emergency services Internet protocol network to support state and local government next generation 9-1-1, and (2) providing recommendations for governing and funding the network, transitioning to next generation 9-1-1, and consolidating PSAP operations.

The bill also recodifies the 9-1-1 service law in Chapter 128. of the Revised Code.[4] The bill maintains the duties of the Tax Commissioner prescribed in current law, including the provision that grants, beginning January 1, 2014, the responsibility for administering the collection of 9-1-1 charges and disbursement of the funds to the Tax Commissioner.

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

(R.C. Chapter 128.)

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

#### Transfers from DPS

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

- Receive certifications that a political subdivision or a regional council of governments (1) has paid the 9-1-1 system costs for which disbursements from the Wireless 9-1-1 Government Assistance Fund may be used and (2) is providing county wireless enhanced 9-1-1 (R.C. 128.57);

- Monitor compliance with 9-1-1 technical and operational standards for public safety answering points (PSAPs) that are eligible for

[4] Currently, the 9-1-1 service law is codified in R.C. Chapter 5507. The bill recodifies this law in Chapter 128. by changing only the chapter number for each section. For example, R.C. 5507.01 is renumbered as R.C. 128.01. Citations for the section of the analysis pertaining to the 9-1-1 law only list the new R.C. section numbers.

reimbursements from the Wireless 9-1-1 Government Assistance Fund (R.C. 128.57);

- Request the Attorney General to begin proceedings against a telephone company that is a wireline service provider to enforce compliance with the 9-1-1 service law (R.C. 128.34); and

- Serve as the agency having jurisdiction over the disclosure or use of certain confidential data from a database that serves a PSAP (1) in times of public emergency or service outage when a wireline telephone company gives access to the database to a public utility or municipal utility handling customer calls and (2) in warning of a public emergency (as determined by the Steering Committee) when a wireline telephone company gives access to the database to a state and local government (R.C. 128.32).

### Transfers from PUCO

(R.C. 128.46 and 128.55)

Current law as established in H.B. 472, schedules certain duties of PUCO to expire on January 1, 2014, at which time they will become the responsibility of the Tax Commissioner. Under the bill, during the period prior to the transfer of these PUCO duties, the Steering Committee, rather than the PUCO:

- Must disburse moneys from the Wireless 9-1-1 Government Assistance Fund to each county in the same manner as the 2012 disbursements (see "**Wireless Government Assistance Fund**" discussed below);

- May conduct audits of wireless service providers or resellers to determine if the provider or reseller has failed to bill, collect, or remit the wireless 9-1-1 charge as required or has retained more than the 2% billing and collection fee allowed under the law; and

- May make assessments against the provider or reseller if an audit finds that a provider or reseller failed to bill, collect, or remit the wireless 9-1-1 charge.

#### Assessment process change

(R.C. 128.46)

Under temporary assessment authority granted to the Steering Committee and the 9-1-1 Program Office Administrator, the bill establishes an assessment process

similar to the process in current 9-1-1 service law, that is scheduled to begin January 1, 2014, for the Tax Commissioner.

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

Under current law, PUCO may conduct audits of and make assessments against wireless providers or resellers. Assessments are final unless an assessed party petitions for a rehearing. Such PUCO proceedings are subject to the PUCO law governing proceedings and hearings.[5]

### Other changes regarding Steering Committee

#### Immunity from liability

(R.C. 128.32)

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

[5] R.C. Chapter 4903., not in the bill.

### Reports to Steering Committee

(R.C. 128.02(D))

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

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

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

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

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

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

[6] 47 C.F.R. 51.713.

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

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

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

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

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

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

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

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

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

(R.C. 128.53 and 128.54)

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

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

| Fund | Percentage of Wireless 9-1-1 charge remittances Prior to January 1, 2014 | Entity Authorized to Use Fund | Percentage of Wireless 9-1-1 charge remittances Beginning January 1, 2014 | Entity Authorized to Use Fund |
|---|---|---|---|---|
| Wireless 9-1-1 Government Assistance Fund | 98% | Steering Committee disburses to counties | 97% | Tax Commissioner disburses to counties according to policies established by the Steering Committee |
| Wireless 9-1-1 Administrative Fund | 2% | Steering Committee to cover costs | 1% | Tax Commissioner to cover costs |
| Wireless 9-1-1 Public Safety Administrative Fund **Repealed** | | | 1% **Repealed** | DPS **Repealed** |
| 9-1-1 Program Fund | | | 2% | Steering Committee to cover costs |

### Wireless 9-1-1 Government Assistance Fund

(R.C. 128.53(B) and (C))

Until January 1, 2014, the bill specifies that the Wireless 9-1-1 Government Assistance Fund receive 98% of the wireless 9-1-1 service charges. The bill replaces the Coordinator with the Steering Committee as the entity (1) upon whose order the Treasurer of State disburses money from the Wireless 9-1-1 Government Assistance Fund (to counties for wireless enhanced 9-1-1 service according to a proportionate share as determined according to former 9-1-1 law as it existed prior to December 20, 2012 – the effective date of H.B. 360[7]) and (2) to which the Treasurer must annually certify the amount of moneys in the Fund. The bill also grants the Steering Committee instead of PUCO the authority to transfer funds to the Next Generation 9-1-1 Fund. The transfer amount determination, unchanged by the bill, is equal to the funds remaining after disbursements are made to counties.

### Wireless 9-1-1 Administrative Fund

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

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

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

Beginning January 1, 2014, 1% of the remittances of the wireless 9-1-1 charges must be paid to the Wireless 9-1-1 Administrative Fund. The Fund is to be used by the Tax Commissioner to defray the costs in carrying out the 9-1-1 service law.

---

[7] R.C. 4931.64, not in the bill.

### 9-1-1 Program Fund

(R.C. 128.54(A)(1)(c) and (A)(3))

The bill creates the 9-1-1 Program Fund to replace the Wireless 9-1-1 Public Safety Administrative Fund. Beginning January 1, 2014, 2% of the remittances of the wireless 9-1-1 charges must be credited to this Fund for use by the Steering Committee to defray the costs of carrying out the 9-1-1 service law.

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

(R.C. 128.54(A)(1)(c))

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

### Transfers to Next Generation 9-1-1 Fund

(R.C. 128.54(A)(4))

The bill retains the current law requirement that any excess funds remaining in the administrative funds (Wireless 9-1-1 Public Safety Administrative Fund and Wireless 9-1-1 Administrative Fund) after paying administrative costs be transferred to the Next Generation 9-1-1 Fund each year. Under current law the Tax Commissioner and DPS use the administrative funds and are required to make the transfer of any excess. Under the bill, the new 9-1-1 Program Fund (which replaces the Wireless 9-1-1 Public Safety Administrative Fund) appears to be subject to the transfer since the Steering Committee uses the fund to pay administrative costs and replaces DPS as the entity making such transfers.

## 9-1-1 Program Office

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

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

The administrator is temporarily responsible for receiving (1) remittances of wireless 9-1-1 charges collected by wireless service providers, resellers, and sellers and

(2) assessments for failure to bill, collect, or remit the charges. The bill does not specify any staffing assistance for the administrator. Nor does it specify the duties of the administrator for the period beginning January 1, 2014. (See "**Transfers from PUCO**" and "**Remittance of wireless 9-1-1 charges**" discussed above.)

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

(R.C. 128.40)

The bill eliminates the 9-1-1 service program within PUCO headed by the Ohio 9-1-1 Coordinator. Under current law the Coordinator is appointed by and reports to the PUCO chairperson. The Coordinator administers the Wireless 9-1-1 Government Assistance Fund, carries out duties as assigned by the PUCO chairperson based on recommended duties submitted by the Ohio 9-1-1 Council, and may be assisted by PUCO employees as assigned by the PUCO chairperson.

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

(R.C. 5507.65 and 5507.66)

The bill repeals the Ohio 9-1-1 Council and the Wireless 9-1-1 Advisory Board. Under current law, the Council is responsible for the following duties:

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

Current law does not specify any duties for the Advisory Board. Former Board duties to make recommendations regarding rules governing provisions of the 9-1-1 service law were removed by H.B. 472 of the 129th General Assembly.

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

(R.C. 128.07 and 128.12)

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

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

- Upgrade any part or all of a system from basic to enhanced wireline 9-1-1;
- Permit a regional council of government to operate a PSAP;
- Change the funding for a PSAP from among the alternatives under the 9-1-1 service law; and
- Provide that the state highway patrol or one or more PSAPs of another 9-1-1 system function as PSAPs for all or part of the territory of the system described in the final plan.

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

# 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.

- Excludes persons whose sole duties are transporting individuals under R.C. Chapter 306. from the definition of "direct-care position."

- 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 the PASSPORT program to include a structured family caregiver component under which a PASSPORT enrollee may choose a family member to serve as the enrollee's caregiver.

- Requires generally that the component be available as a pilot program in three rural PASSPORT regions not later than January 1, 2014.

- 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 PAA operations that includes a pay-for-performance component.

- Specifies that the spending for PAAs site operating functions for PASSPORT, Choices, Assisted Living, and PACE are to be 105% of the level provided in fiscal year 2013.

- Requires the Medicaid payment rates for services provided under the PASSPORT program, other than adult day-care services, during fiscal years 2014 and 2015 to be not less than 98.5% of the Medicaid payment rates for the services in effect on June 30, 2011.

- Requires the Medicaid payment rates for adult day-care services provided under the PASSPORT program during fiscal years 2014 and 2015 to be 20% higher than the amount of the Medicaid payment rates for the services in effect on June 30, 2013.

### 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.

- Replaces "ombudsperson" with "ombudsman" for ODA programs.

### Ombudsman-related criminal records checks

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

As a condition of employment with the Office of the State Long-Term Care Ombudsman[8] 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.

---

[8] 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.

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 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, AAA, and PAA record checks

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

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. "Direct-care position" does not include a person whose sole duties are transporting individuals under R.C. Chapter 306.

### 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) area agencies on aging (AAAs), (2) PASSPORT administrative agencies (PAAs), and (3) subcontractors.[9] 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).

[9] The ODA Director is to define "subcontractor" in rules.

### 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 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.

## PASSPORT program's structured family caregiver component

(R.C. 173.525 (primary) and 173.51)

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 bill requires that the PASSPORT program include a structured family caregiver component under which an individual enrolled in the PASSPORT program may choose a family member to provide home and community-based services that the individual receives under the PASSPORT program. To be eligible as a family caregiver under the PASSPORT program, a family member must do all of the following:

- Complete all the training, obtain all required credentials, and satisfy all other applicable requirements to be a PASSPORT provider;
- Arrange for an agency that is a PASSPORT provider to do all of the following:

(1) Assist the family member with the requirements to be a family caregiver;

(2) Provide or arrange professional staff training to or for the family member;

(3) If possible, include the family member in electronic records used for the PASSPORT program;

(4) Provide professional staff support that is appropriate for the PASSPORT enrollee's care needs to the enrollee for whom the family member serves as a family caregiver.

- Comply with any other applicable requirements specified in rules.

Under the bill, an individual may serve as the family caregiver for not more than two PASSPORT enrollees. A family caregiver may provide the services in the home of either the caregiver or the PASSPORT enrollee.

The bill requires that the structured family caregiver component be available as a pilot program in three rural PASSPORT regions not later than January 1, 2014. It further specifies that the payment rate for the component must be adequate to pay the family caregiver a stipend and reimburse the agency provider for the costs of providing the professional staff support required by the bill.

## 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 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.

### 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.

## Replacing references to "ombudsperson"

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

The 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.

### Dogs and other companion animals

- Requires an individual to register a dog for a period of one year or three years or register the dog permanently rather than requiring annual registration as in current law.

- Revises the fee structure for dog registrations by establishing a fee of $2 for each year of registration for a one-year or three-year registration and a $20 fee for permanent registration rather than a fee of $2 per registration as in current law.

- Requires that any dog registration fee increase adopted by a board of county commissioners be in the ratio of $2 for each year of registration and in the ratio of $20 for a permanent registration rather than in the ratio of $2 for each dog registration as in current law.

- Revises the formula for the transfer of a portion of such a county fee increase to the OSU College of Veterinary Medicine.

- Requires the county auditor to designate the color of dog registration tags, and eliminates the requirement that such tags must be a different color each year.

- Authorizes a board of county commissioners, in lieu of appointing and employing a county dog warden and deputies, to appoint the county sheriff to enforce the laws governing dogs and prohibiting cruelty to animals.

- Requires the board, if it chooses to appoint the sheriff, to enter into a two-year written agreement with the sheriff for that purpose, and specifies that an agreement may authorize both of the following:

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

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

- Requires any dog warden and deputy dog wardens appointed in accordance with the bill to comply with any training requirements applicable to county dog wardens and deputy dog wardens appointed or employed under current law governing dog wardens and with the requirements established in that law.

- Specifically prohibits an owner, manager, or employee of a registered animal rescue for dogs, a boarding kennel, or a training kennel (dog kennel) who confines or is the custodian or caretaker of a companion animal from negligently committing specified acts of cruel treatment against a companion animal, a violation of which is a first degree misdemeanor on each offense.

- Specifically prohibits an owner, manager, or employee of a dog kennel who confines or is the custodian or caretaker of a companion animal from knowingly committing

specified acts of cruel treatment against a companion animal, a violation of which is a fifth degree felony on each offense.

### Apiaries

- Credits money that is collected from registration fees and fines under the Apiaries Law to the 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.

### Agricultural commodity marketing programs

- Revises the procedures governing the approval by the Director of Agriculture of an amendment to an agricultural commodity marketing program that was established before April 10, 1985, 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.

- Specifies that, for the purposes of voting in a referendum held on a proposed egg marketing program or a proposed amendment to such a program, an eligible producer is a person who produces and markets, or causes to be produced and marketed, eggs from a flock of more than 75,000 domesticated chickens and, if the referendum is held on a proposed amendment, is subject to an assessment under the program.

### Other animal provisions

- Removes spider monkeys from the permitting and standards of care and housing requirements established in the Possession of Dangerous Wild Animals and Restricted Snakes Law, but requires a person that possesses one of those monkeys to register it with the Director in accordance with that Law.

- Specifies that the care and housing standards adopted by the Zoological Association of America with which persons who are issued restricted snake possession and propagation permits under that Law must comply, as provided in current law, are those that were in effect on September 5, 2012.

- 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.

### Weights and measures

- Requires the Director to verify advertised prices, price representations, and point-of-sale systems to determine their accuracy, and requires the Director to perform specified actions in order to implement that requirement, including adopting rules establishing requirements governing the accuracy of advertised prices and point-of-sale systems.

- Prohibits a person from operating specified types of commercially used weighing and measuring devices without a permit to operate issued by the Director or the Director's designee.

- Authorizes only specified persons to install for use, repair, service, or place into service a commercially used weighing and measuring device.

- Requires a service person who is employed by a commercially used weighing and measuring device servicing agency to register with the Director in accordance with rules.

- Requires the Director to maintain traceability of the state standards of weights and measures to those of the International System of Units rather than those of the National Institute of Standards and Technology 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 (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. 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 CAFF Law with the following criminal penalties:

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

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

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

For purposes of the penalties discussed above for negligent violations, the 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 CAFF 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 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.

## Dog registration

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

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

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

Current law authorizes a board of county commissioners to increase the dog registration fee in the ratio of $2 for each dog registration. The bill retains that authority and requires that any dog registration fee increase adopted by a board be in the ratio of $2 for each year of registration and in the ratio of $20 for a permanent registration.

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

Finally, the bill requires the county auditor to designate the color of dog registration tags, and eliminates the requirement that such tags must be a different color each year.

## Appointment of county dog wardens

(R.C. 955.12 and 955.121)

The bill authorizes a board of county commissioners, in lieu of appointing a county dog warden and deputies under existing law, to appoint the county sheriff to enforce the laws governing dogs and prohibiting cruelty to animals. If the board chooses to appoint the county sheriff as the county dog warden, the board must enter into a two-year written agreement with the sheriff for that purpose at the first meeting in a calendar year following a general election in which at least one of the members of the board was elected.

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

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

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

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

## Cruel treatment of companion animals

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

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

The bill prohibits an owner, manager, or employee of an animal rescue for dogs, boarding kennel, or training kennel (dog kennel) who confines or is the custodian or caretaker of a companion animal from negligently doing any of the following:

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

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

Violation of that prohibition is a first degree misdemeanor on each offense.

The bill retains the provision in existing law that generally prohibits any person from committing any of the above acts. Violation of the general prohibition is a second degree misdemeanor on a first offense and a first degree misdemeanor on each subsequent offense.

For purposes of the bill's provisions regarding such dog kennels, an animal rescue for dogs is a rescue that is registered with the Director of Agriculture under existing law. A boarding kennel is an establishment operating for profit that keeps, houses, and maintains dogs solely for the purpose of providing shelter, care, and feeding of the dogs in return for a fee or other consideration. A training kennel is an establishment operating for profit that keeps, houses, and maintains dogs for the purpose of training the dogs in return for a fee or other consideration. Under continuing law applicable to the bill, a companion animal is any animal that is kept inside a residential dwelling and any dog or cat regardless of where it is kept. A companion animal does not include livestock or any wild animal.

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

The bill prohibits an owner, manager, or employee of a dog kennel who confines or is the custodian or caretaker of a companion animal from knowingly torturing, tormenting, needlessly mutilating or maiming, cruelly beating, poisoning, needlessly killing, or committing an act of cruelty against the companion animal. Violation of the prohibition is a fifth degree felony on each offense.

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

### Additional court actions

Through the operation and application of existing statutes governing the treatment of companion animals, a court may order a person who is convicted of or pleads guilty to the prohibitions established by the bill to forfeit to an impounding agency any or all of the companion animals in that person's ownership or care. The court also may prohibit or place limitations on the person's ability to own or care for any companion animals for a specified or indefinite period of time and may order the person to reimburse an impounding agency for the reasonably necessary costs incurred by the agency for the care of a companion animal that the agency so impounded, provided that the costs were not otherwise paid under those statutes. Additionally, if a court has reason to believe that a person who is convicted of or pleads guilty to the prohibitions suffers from a mental or emotional disorder that contributed to the violation, the court may impose as a community control sanction or as a condition of probation a requirement that the offender undergo psychological evaluation or counseling, and the court must order the offender to pay the costs of the evaluation or counseling.

### Exceptions

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

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

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

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

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

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

## 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. 924.02 and 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 ⅔% 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 ⅔% of the volume of the affected commodity that was so produced.

In addition, the bill specifies that, for the purposes of a referendum held on a proposed egg marketing program or a proposed amendment to such a program, an eligible producer, i.e. a producer who is eligible to vote in a referendum, is a person who is in the business of producing and marketing, or causing to be produced and marketed, eggs from a flock of more than 75,000 domesticated chickens and, if the referendum is held on a proposed amendment to a program, is subject to an assessment under the program. Consequently, the bill excludes such an egg marketing program from the existing requirement that the Director determine the eligibility of agriculture

commodity producers to participate in referendums and other procedures that may be required to establish marketing programs for agricultural commodities.

## Regulation of dangerous wild animals and restricted snakes

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

The bill removes spider monkeys from permitting and standards of care and housing requirements established in the Possession of Dangerous Wild Animals and Restricted Snakes Law, but requires a person that possesses one of those monkeys to register it with the Director in accordance with that Law. The bill also makes conforming changes.

In addition, the bill specifies that the care and housing standards adopted by the Zoological Association of America with which persons who are issued restricted snake possession and propagation permits under that Law must comply, as provided in current law, are those that were in effect on September 5, 2012. Current law does not specify an effective date of those standards.

## 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.

## Weights and measures

(R.C. 1327.46, 1327.48, 1327.50, 1327.501, 1327.502, 1327.61, and 1327.99)

### Price and point-of-sale verification

The bill requires the Director of Agriculture to verify advertised prices, price representations, and point-of-sale systems, as necessary, to determine both the accuracy of prices and computations and the correct use of the equipment and the accuracy of prices printed or recalled from a database if a system utilizes scanning or coding in lieu of manual entry. In order to implement that requirement, the Director must do all of the following:

(1) Employ recognized procedures such as those designated in the National Institute of Standards and Technology Handbook 130, Uniform Laws and Regulations, "Examination Procedures for Price Verification";

(2) Adopt rules establishing requirements governing the accuracy of advertised prices and point-of-sale systems and establishing requirements and procedures for the enforcement of the requirement; and

(3) Conduct necessary inspections.

Under provisions of the Weights and Measures Law establishing penalties for violations of the rules adopted under that Law, a person who violates the rules adopted under the bill is guilty of a second degree misdemeanor on a first offense and a first degree misdemeanor on each subsequent offense within seven years after the first offense.

### Commercially used weighing and measuring devices

The bill revises an existing prohibition by prohibiting a person from operating in Ohio a commercially used weighing and measuring device that provides the quantity or cost of a final transaction and for which an application fee for a permit to operate such a device is established by the Weights and Measures Law unless the operator of the device obtains a permit to operate from the Director or the Director's designee. Current law prohibits a person from operating in Ohio a commercially used weighing and measuring device that provides the final quantity and final cost of a transaction and for which an application fee for a permit to operate such a device is established unless the operator of the device obtains such a permit.

In addition, the bill prohibits a person from installing for use, repairing, servicing, or placing into service a commercially used weighing and measuring device unless the installation, repair, service, or placement is performed by one of the following:

(1) A Department of Agriculture Division of Weights and Measures inspector;

(2) A service person registered with the Department; or

(3) A county or municipal weights and measures inspector.

The bill requires a service person who is employed by a commercially used weighing and measuring device servicing agency to register with the Director in accordance with rules adopted by the Director. Under the bill, a service person is an individual who installs, services, repairs, reconditions, or places into service a

commercially used weighing and measuring device for any type of compensation. The bill revises the existing statute providing rulemaking authority to the Director by requiring the Director to provide by rule for registration with the Director of service persons who are employed by commercially used weighing and measuring device servicing agencies rather than provide by rule for voluntary registration of private weighing and measuring device servicing agencies and personnel.

A commercially used weighing and measuring device is a device described in the National Institute of Standards and Technology Handbook 44 or its supplements and revisions and any other weighing and measuring device designated by rules adopted by the Director under current law. A commercially used weighing and measuring device includes specific types of scales and meters.

#### Standards of weights and measures

The bill requires the Director to maintain traceability of the state standards of weights and measures to those of the International System of Units rather than those of the National Institute of Standards and Technology as in current law. In addition, the bill does both of the following:

(1) Specifies that weights and measures that are traceable to federal prototype standards or approved by the Institute must be the state reference standards of weights and measures rather than the state primary standards as in current law; and

(2) Authorizes all working standards, rather than all secondary standards as in current law, of weights and measures to be prescribed by the Director.

## JOINT COMMITTEE ON AGENCY RULE REVIEW

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

### Removal of obsolete rules from Administrative Code

(R.C. 103.0521)

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

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

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

# 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.

## Financial assistance for rape crisis programs

- Adds state financial assistance to rape crisis programs to the purposes for which money in the Reparations Fund may be used and requires the Attorney General to adopt rules governing the provision of such assistance.

## 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.

### Financial assistance for rape crisis programs

(R.C. 2743.191)

The bill adds state financial assistance to rape crisis programs by the Attorney General to the purposes for which money in the Reparations Fund may be used. It requires the Attorney General to adopt rules governing the provision of such assistance. The bill defines "rape crisis program" to mean any of the following:

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

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

(3) A program operated by a government-based or nonprofit entity that provides a full continuum of services to victims of sexual assault, including, but not limited to, hotlines, victim advocacy, and support services from the onset of the need for services through the completion of healing, that does not provide medical services, and that may refer victims to physicians for medical care but does not engage in or refer for services for which the use of genetic services funds is prohibited by R.C. 3701.511 (counseling or referral for abortion, except in the case of a medical emergency). "Sexual assault" means rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, the former offense of felonious penetration, or any substantially equivalent offense under any existing or former municipal ordinance or statute of any state or the United States.

## AUDITOR OF STATE

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

### Auditor of State rule-making

(R.C. 111.15 and 117.20)

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

The 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.

- 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.
- Modifies the membership of, and the initial terms of office for, the newly constituted BEMC.
- 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 to 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.[10]

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

---

[10] 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.

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.

The bill specifies that all of the employee transfers and continuations described above 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 bill also modifies the membership structure of BEMC from that of eTech. First, it specifies that the Commission must consist of 15 (rather than 13) members, 11 (rather than nine) of whom are voting members. Of the 11 voting members, nine (rather than six) must be members of the public selected from among the leading citizens in the state who have an interest in educational broadcast media, demonstrated through service on boards or advisory councils of educational television stations, educational radio stations, educational technology agencies, or radio reading services. Additionally, the bill requires that, of the nine public voting members, three (rather than four) be appointed by the Governor, three (rather than one) be appointed by the Speaker of the House of Representatives, and three (rather than one) be appointed by the President of the Senate. Furthermore, the bill specifies that no more than two members appointed by each the Speaker and the President may be from the same political party. The bill also removes the State Chief Information Officer as a member of BEMC. Finally, 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.

In order to comport with the bill's modifications to the membership structure of BEMC, as described above, and to provide for staggered terms of office the bill modifies the initial terms of office for specified members of the Commission. Under the bill, one of the members appointed by each the Governor, the Speaker, and the President will initially serve one year. Additionally, one of the members appointed by each the Governor, the Speaker, and the President will initially serve two years. Finally, one of

the members appointed by each the Governor, the Speaker, and the President will initially serve three years. Thereafter, members serve four-year terms.

### State technology plan

(Repealed R.C. 3353.09)

The 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 Opportunities for Ohioans with Disabilities Agency (known as the Rehabilitation Services Commission under current law), 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:

- Opportunities for Ohioans with Disabilities Agency (known as the Rehabilitation Services Commission under current law);
- 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 |

| The bill – 5 members | Current law – 5 members |
| --- | --- |
| 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.[11]

[11] R.C. 131.44, not in the bill.

## CASINO CONTROL COMMISSION

### Age in casino areas

- Permits an individual who is less than 21 years of age, who is personally escorted by licensed casino personnel, to enter a designated area of a casino facility where casino gaming is being conducted to pass to another area where casino gaming is not being conducted.

### Facial recognition cameras

- Allows the Ohio Casino Control Commission, the Attorney General, and the State Lottery Commission to adopt rules related to requiring security equipment that captures facial feature pattern characteristics in certain locations at a casino facility, sweepstakes terminal device facility, or video lottery sales agent facility, as applicable.

### 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.

## Age in casino areas

(R.C. 3772.24)

The bill specifies that an individual who is less than 21 years of age may enter a designated area of a casino facility where casino gaming is being conducted, as established by the Ohio Casino Control Commission, to pass to another area where casino gaming is not being conducted, but only if the individual is personally escorted by licensed casino personnel, as approved by the Commission, who at all times remain in close proximity to the individual.

Current law allows an individual who is less than 21 years of age to enter a designated area of a casino facility where casino gaming is being conducted, as established by the Commission, to pass to another area where casino gaming is not being conducted, but does not require the individual to be escorted by casino personnel.

## Facial recognition cameras

(R.C. 2915.02, 3770.21, and 3772.03)

Under the bill, the Ohio Casino Control Commission can adopt rules that include security and surveillance standards and requirements that require a casino operator, holding company, or management company to install security and surveillance equipment where any chips, tokens, tickets, electronic cards, or similar objects can be redeemed for cash, whether by a casino gaming employee or by electronic means, that must capture, for law enforcement purposes, facial feature pattern characteristics, including a computerized facial image, and that must require such records to be retained for at least five years.

Similarly, the bill permits the Attorney General to adopt rules with the same criteria described above, in consultation with the Commission, for sweepstakes terminal device facilities and permits the State Lottery Commission to adopt rules with the same criteria described above, in consultation with the Ohio Casino Control Commission, for video lottery sales agents.

The Ohio Casino Control Commission, Attorney General, or State Lottery Commission, as applicable, can secure, by agreement, information and services as is considered necessary from any state agency or other unit of state government.

All costs related to the installation of security and surveillance equipment must be the responsibility of the casino operator, management company, or holding company, the sweepstakes terminal device facility, or the video lottery sales agent, as applicable.

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

### Video-service disconnections

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

### Mortgage loan originator written test and NMLS call reports

- Removes the requirement that an applicant for a mortgage loan originator license or a loan originator license must achieve a test score of at least 75% correct answers on

all questions relating to Ohio Mortgage Lending Laws and the Ohio Consumer Sales Practices Act in order to be considered to have passed the written test.

- Changes references to the "Nationwide Mortgage Licensing System and Registry," to the "NMLS" to reflect industry usage of the term.
- Makes confidential and not a public record a call report the Division of Financial Institutions obtains from the NMLS.

## Liquor control provisions

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

  --The person is attending a racing event at the facility; and

  --The owner of the facility grants permission for the possession and consumption of beer or intoxicating liquor on the property or facility.

- Allows for the issuance of a D-5p liquor permit for restaurants located in park districts that are adjacent to Lake Erie and meet specified criteria.
- Authorizes D-5p liquor permit holders to sell beer and intoxicating liquor for on- and off-premises consumption.
- Revises the definitions of "intoxicating liquor" and "mixed beverages" for the purposes of the Liquor Control Laws.
- Revises the law governing sales of spirituous liquor tasting samples at agency stores in several ways, including:

  --Allowing samples to be offered for sale in an area that is immediately adjacent to an agency store if specified criteria are met rather than allowing the sale of samples only in the area of an agency store that is open to the public as provided in current law;

  --Requiring, for purposes of offering samples, specified individuals that offer the tasting samples to purchase the spirituous liquor from the agency store at which the samples are offered at the current retail price rather than requiring an agency store to purchase the spirituous liquor at the current retail price; and

--Allowing three spirituous liquor sample events in a calendar week provided that specified criteria are met rather than five in a calendar month as provided in current law.

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

## Unclaimed Funds Law

- Provides for the payment of interest to claimants of unclaimed funds in accordance with a formula devised in the 2009 Ohio Supreme Court case of *Sogg v. Zurz*, 121 Ohio St.3d 449 (2009), its progeny, and final settlement agreement.

- Removes the current prohibition against the payment of interest on unclaimed funds in the possession of the state.

- Specifies time frames and amounts of interest allowed to claimants who otherwise are entitled to the unclaimed funds.

## Other provisions

- Reduces from two to one the number of reports that bedding and stuffed toy manufacturers and importers must submit annually to the Superintendent of Industrial Compliance.

- Requires the Director of Commerce to fill mid-term vacancies on the Historical Boilers Licensing Board, but does not require the advice and consent of the Senate for the Director's appointments.

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

## Underground Storage Tank Revolving Loan Program

(R.C. 3737.02, 3737.882, 3737.883; conforming changes in R.C. 3737.88 and 3737.884 (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 certain political subdivisions seeking to take action with regard to underground storage tanks and sites of previously existing releases from such tanks. An underground storage tank is a stationary containment device (including the connected underground pipes) used to contain an accumulation of petroleum or any substance classified as hazardous by the Fire Marshal, the volume of which, including the volume of connecting pipes, is 10% or more beneath the surface of the ground.[12] Under the Program, the Fire Marshal is required to issue interest-free loans to certain political subdivisions that meet the bill's application requirements and plan to spend from their 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 that owns but does not operate an underground storage tank to do any of the following for the tank, provided the tank is within the subdivision's territorial boundaries:

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

"Corrective action" is extensively defined in continuing law. Therefore, by permitting a subdivision to take a corrective action, the 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" 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

[12] R.C. 3737.87(L), (O), and (P), not in the bill.

corrective action is taken.[13] 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.

The bill also permits a political subdivision that is not "the responsible person" (which person is defined as a tank's owner or operator[14]) to take any of the actions described in the bullet points above for the site of a previously existing release, provided that:

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

### Definition of "political subdivision"

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.[15] 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.[16]

### 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

[13] R.C. 3737.87(B), not in the bill.

[14] R.C. 3737.87(N), not in the bill.

[15] R.C. 2744.01(F), not in the bill.

[16] R.C. 1724.01(A)(1), not in the bill.

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 underground storage tanks, including rules and orders of the Fire Marshal. 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 an action for the site of a previously existing release, the political subdivision may bring any appropriate proceedings against the owner or operator to recover its incurred costs. The identification or determination must be made after the political subdivision has spent loan funds. The proceedings may be brought in either the court of common pleas having jurisdiction where the tank is located or the Court of Common Pleas of Franklin County.

### Program administration

The 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.

### 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.[17]

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

The bill states that nothing in the provisions governing the Underground Storage Tank Revolving Loan Program limits the powers of the Fire Marshal or the Attorney General under current law authorizing the imposition of civil penalties for violations of the underground storage tank law.

---

[17] R.C. 3737.87(P)(1) to (9), not in the bill.

## 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) cable service in certain unincorporated areas of townships prior to October 1, 1979, unless a franchise was subsequently issued to the company.[18]

### 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

---

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

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.[19]

## Mortgage loan originator written test and NMLS call reports

(R.C. 1321.51, 1321.535, 1321.55, 1322.01, and 1322.051)

Under continuing law, each applicant for a mortgage loan originator license or a loan originator license must submit to a written test that is developed and approved by the Nationwide Mortgage Licensing System Registry, also known as the NMLS, and administered by a test provider approved by the NMLS based upon reasonable standards. Continuing law requires an applicant to achieve a test score of at least 75% correct answers on all questions to be considered to have passed the test. The bill removes the current requirement that an applicant must also achieve a test score of at least 75% correct answers on all questions relating to Ohio Mortgage Lending Laws and the Ohio Consumer Sales Practices Act as it applies to licensees and registrants under the Second Mortgage Law in order to be considered to have passed the written test.

Additionally, the bill requires that if the Division of Financial Institutions obtains a call report from the NMLS, the call report is confidential and not a public record for the purposes of the Public Records Law. Continuing law requires each mortgage licensee to, among other things, submit to the NMLS call reports or other reports of condition, which must be in the form and contain the information as required by the NMLS.

The bill makes several conforming changes by changing the references to the "Nationwide Mortgage Licensing System and Registry" to the "NMLS" to reflect industry usage of the term.

## Exemption from Open Container Law for racetrack liquor permit holders

(R.C. 4301.62)

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

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

---

[19] R.C. 1332.24(B) and (C), not in the bill.

(1) The person is attending a racing event at the facility; and

(2) The owner of the facility grants permission for the possession and consumption of beer or intoxicating liquor on the property of the facility.

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

(1) It is two and four-tenths miles or more in length;

(2) It is located on 200 acres or more of land;

(3) The primary business of the owner of the facility is the hosting and promoting of racing events; and

(4) The holder of a D-1 (retail sale of beer for on- or off-premises consumption), D-2 (retail sale of wine and mixed beverages for on- or off-premises consumption), or D-3 (retail sale of spirituous liquor until 1 a.m. for on-premises consumption) liquor permit is located on the property of the facility.

## Issuance of D-5p liquor permit in certain park districts

(R.C. 4303.181)

Under the bill, a D-5p liquor permit may be issued to the owner or operator of a retail food establishment or a food service operation licensed under the Retail Food Establishments and Food Service Operations Law that is located within certain park districts. Those park districts must be created under the Park Districts Law and consist of not less than 22,000 acres of land, a portion of which is adjacent to Lake Erie.

A D-5p liquor permit holder may do all of the following:

(1) Sell beer and any intoxicating liquor at retail, only by the individual drink in glass and from the container, for consumption on the premises where sold;

(2) Sell the same products in the same manner and amounts not for consumption on the premises where sold as may be sold by the holders of D-1 and D-2 liquor permits; and

(3) Exercise the same privileges as a D-5 (retail sale of beer and intoxicating liquor for on- or off-premises consumption) permit liquor holder.

A D-5p permit must not be transferred to another location. No quota restrictions can be placed on the number of such permits that may be issued. The fee for a D-5p permit is $2,344.

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

(R.C. 4301.01)

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

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

## Tasting samples of spirituous liquor

(R.C. 4301.171)

The bill revises the law governing the sales of spirituous liquor tasting samples at agency stores. It allows tasting samples of spirituous liquor to be offered for sale in an area that is immediately adjacent to an agency store if beer and other intoxicating liquor are sold in the area and if the area and the agency store are located on the same premises. Currently, the sale of spirituous liquor samples is allowed only in the area of an agency store that is open to the public.

The bill requires a trade marketing professional, broker, or solicitor to do both of the following:

(1) Notify the Division of Liquor Control about specified information related to the sale of tasting samples of spirituous liquor at an agency store not less than ten business days prior to the sale rather than not less than five business days prior to the sale as in current law; and

(2) For purposes of offering tasting samples of spirituous liquor, purchase the spirituous liquor used for tasting samples from the agency store at which the samples are offered at the current retail price rather than requiring an agency store to purchase the spirituous liquor at the current retail price.

The bill removes existing law that requires both of the following:

(1) The aggregate amount charged for the sale of tasting samples to be sufficient to cover the wholesale price of the spirituous liquor being tasted as that price is fixed under current law; and

(2) The trade marketing professional, broker, or solicitor to reimburse the agency store for the amount of the retail price of the spirituous liquor from the amount collected from the sale of tasting samples of spirituous liquor.

Finally, the bill allows three spirituous liquor sample events in a calendar week provided that specified criteria are met rather than five in a calendar month as provided in current law.

## Issuance of D-5j liquor permit

(R.C. 4303.181)

The bill revises one of the conditions under which the D-5j liquor permit may be issued in a community entertainment district by specifying that the municipal

corporation in which the permitted premises will be located in the district must have been incorporated as a village prior to 1860 rather than prior to 1840 as provided in current law.

Under continuing law, the D-5j liquor permit authorizes the owner or operator of a retail food establishment or food service operation licensed under the Retail Food Establishments and Food Service Operations Law to sell beer and intoxicating liquor for on- or off-premises consumption. A D-5j permit can be issued only within a community entertainment district that is designated under continuing law and that is located in a municipal corporation or township that meets certain requirements. Community entertainment districts are created by statute for bounded areas located in municipal corporations or townships. The bounded areas may include a combination of entertainment, retail, educational, sporting, social, cultural, or arts establishments within close proximity to certain establishments such as restaurants, sports facilities, and convention facilities.[20]

## Interest payments on unclaimed funds

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

In 2009, the Ohio Supreme Court determined that the prohibition in R.C. 169.08 against the payment of interest to claimants for unclaimed funds constituted an unlawful taking. The bill, therefore, removes the prohibition, and provides that interest earned by the state will be payable in accordance with final court orders derived from the *Sogg v. Zurz*, 121 Ohio St.3d 449 (2009), line of cases and final settlement agreement. The bill states that for properties received by the state on or before July 26, 1991, interest must be paid at a rate of 6% per annum from the date the state received the property up to and including July 26, 1991. No interest will be payable on any properties for the period from July 27, 1991, up to and including August 2, 2000. For properties held by the state on August 3, 2000, or after, interest must be paid at the applicable required rate per annum for the period held from August 3, 2000, or the date of receipt, whichever is later, up to and including the date the claim is paid.

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

---

[20] R.C. 4301.80, not in the bill.

## 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 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)

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.[21]

[21] R.C. 4115.03, not in the bill.

# COSMETOLOGY BOARD

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

## Schools of cosmetology

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

### Complaints

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

The bill adds to the current law list of requirements that a school must satisfy in order to be issued a license to operate as a school of cosmetology that the school must establish and maintain an internal procedure for processing complaints filed against the school and for providing students with instructions on how to file a complaint directly with the Board. A school of cosmetology that already holds a license when the provision goes into effect also must establish and maintain an internal procedure for

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

### Authorization to offer educational programs

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

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

- Authorizes the Director of Health to determine that certified dental assistants or expanded function dental auxiliaries (EFDAs) may administer fluoride mouth rinse or apply pit and fissure sealants without a dentist being present or a dentist examining the patient before the service.

- Authorizes certified dental assistants and EFDAs to apply sealants and administer fluoride mouth rinse under the conditions described above.

## Sealant placements and fluoride mouth rinse administration

### Dental hygienists

(R.C. 4715.22)

Under current law, a dental hygienist who provides dental hygiene services as part of a dental hygiene program[22] that is approved by the State Dental Board (and who is not practicing under a special permit authorizing practice under the oral health access supervision of a dentist) may provide dental hygiene services to a patient when the supervising dentist is not physically present at the location where the services are provided. For this to occur, three requirements must be met. One of those is that the services must be performed in accordance with a dentist's treatment plan after the dentist has examined and diagnosed the patient.

The bill specifies that this requirement does not apply under two circumstances:

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

(1) When the dental hygienist places pit and fissure sealants on the patient's teeth. (Pit and fissure sealants are thin plastic coatings that are applied to the grooves on the chewing surfaces of the back teeth to protect them from tooth decay.[23])

(2) When the dental hygienist administers fluoride mouth rinse to students through the school-based fluoride mouth rinse program that the ODH Director may establish under existing law.[24]

### Certified dental assistants and expanded function dental auxiliaries

(R.C. 3701.138, 4715.39, and 4715.64)

The bill authorizes the Director of Health to determine that dental assistants certified by the Dental Assisting National Board or the Ohio Commission on Dental Assistant Certification, expanded function dental auxiliaries (EFDAs) registered by the State Dental Board, or both, may do either or both of the following without a dentist being physically present or a dentist examining a patient before the service:

--Apply pit and fissure sealants through a program operated by a school district board of education or the governing board of an educational service center;

--Administer fluoride mouth rinse to a student who receives services from a school-based fluoride mouth rinse program that the Director is authorized to establish under existing law.[25]

Depending on the determinations the Director makes, the bill authorizes certified dental assistants, EFDAs, or both, to perform the described services without a dentist being physically present or a dentist examining a patient before the service.

Under current law, a certified dental assistant may apply pit and fissure sealants only after certain requirements are met. One of those is that on the day the application is to be performed, a dentist must evaluate the patient and designate the teeth and surfaces that will benefit from sealant application. An EFDA is prohibited from performing any service (including applying sealants) when a supervising dentist is not physically present at the location where the EFDA is practicing.

---

[23] U.S. Centers for Disease Control and Prevention, *Dental Sealants*, available at www.cdc.gov/oralhealth/publications/factsheets/sealants_faq.htm>.

[24] R.C. 3701.136, not in the bill.

[25] R.C. 3701.136, not in the bill.

# 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).

## Other provisions

- Expands the bribery provision that applies to JobsOhio personnel to also prohibit a JobsOhio director, officer, or employee, either before or after being appointed, qualified, or employed in that capacity, from knowingly soliciting or accepting for self or another person any valuable thing or valuable benefit to corrupt or improperly influence the director, officer, or employee or another JobsOhio director, officer, or employee with respect to the discharge of the particular director's, officer's, or employee's duty.

- Changes the date by which a taxpayer that has entered into an agreement with the Tax Credit Authority on the basis of home-based employees must report the number of employees and home-based employees employed by the employer in Ohio.

- Extends the refundable job retention tax credit to an eligible business whose principal place of business is not located in the same political subdivision as the

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

- Allows the Director of Development Services to utilize the Edison Center Network in issuing grants for research, 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.

- 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.[26] 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.

## JobsOhio officials – expansion of bribery provision

(R.C. 187.10)

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

Existing law, unchanged by the bill, prohibits any person, with purpose to corrupt a director, officer, or employee of JobsOhio, from promising, offering, or giving any valuable thing or valuable benefit and specifies that a person who violates this prohibition is guilty of the offense of "bribery," as set forth in existing R.C. 2921.02.

In relevant part, existing R.C. 2921.02, which is not in the bill, prohibits a person: (1) with purpose to corrupt a "public servant" (see below) or party official, or improperly to influence a public servant or party official with respect to the discharge of his or her duty, whether before or after the public servant or party official is elected, appointed, qualified, employed, summoned, or sworn, from promising, offering, or giving any valuable thing or valuable benefit, or (2) either before or after the person is elected, appointed, qualified, employed, summoned, or sworn as a "public servant" (see below) or party official, from knowingly soliciting or accepting for self or another

[26] R.C. 1347.08.

person any valuable thing or valuable benefit to corrupt or improperly influence the person or another public servant or party official with respect to the discharge of the person's or the other public servant's or party official's duty. A violation of either prohibition is the offense of "bribery," a felony of the third degree, and a public servant or party official who is convicted of the offense is forever disqualified from holding any public office, employment, or position of trust in Ohio. Existing R.C. 2921.01, which is not in the bill, specifies that the term "public servant" does not include an employee, officer, or Governor-appointed member of the board of directors of JobsOhio.

### 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.

### Eligibility for the refundable job retention tax credit

(R.C. 122.171 and Section 815.10)

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

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

Generally, JRTCs are nonrefundable, however, between July 1, 2011, and December 31, 2013, the TCA may grant refundable JRTCs to eligible businesses that

meet certain additional criteria. Among the additional criteria, the eligible business must have an annual payroll of at least $20 million and invest at least $5 million at a project site located within the same political subdivision as that in which the business has its principal place of business. The bill eliminates the requirement that the project site be located in the same political subdivision as the business's principal place of business if the business maintains a unit or division with at least 4,200 employees at the project site.

### Thomas Alva Edison grant program to use the Edison Center Network

(R.C. 122.33)

The bill allows the Director of Development Services to 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

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

The bill abolishes the Rapid Outreach Loan Fund, which is codified in the Revised Code. The Director of Budget and Management is to make a cash balance transfer on July 1, 2013, or as soon as possible thereafter, from the Rapid Outreach Loan Fund to the Facilities Establishment Fund. After the effective date of the repeal and upon completion of the transfer of the fund's cash balance, the fund is to be abolished. Currently, the Rapid Outreach Loan Fund is used for certain eligible projects that result in job preservation or creation.

### Dormant funds

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

The 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.
- Specifies that any prevocational services provided by a county DD board must be provided in accordance with an individual service plan and occur over a specified period of time with specific outcomes sought to be achieved.

## Regional council and county DD board cost report

- Requires each regional council and county DD board to file with ODODD a cost report on its expenditures and income and for each report to be audited.
- Permits ODODD to withhold 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 individuals with intellectual disabilities

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

- Provides that the contract between ODODD and ODM that provides for ODODD to assume the powers and duties of ODM with regard to the Medicaid program's coverage of ICF/IID services may provide for ODM to perform one or more of ODODD's duties regarding ICFs/IID that undergo a change of operator, close, or cease to participate in Medicaid.

- Modifies, effective July 1, 2014, Medicaid payments for capital costs of ICFs/IID by (1) halving, except under a certain circumstance, the efficiency incentive payments to ICFs/IID with more than eight beds, (2) eliminating, except under certain circumstances, nonextensive renovation payments to ICFs/IID with more than eight beds, and (3) eliminating return on equity payments to all ICFs/IID.

- Uses an ICF/IID's annual average case-mix score for the calendar year immediately preceding the fiscal year for which the rate will be paid to determine an ICF/IID's annual Medicaid payment rate for direct care costs rather than a quarterly case-mix score to determine an ICF/IID's quarterly rate.

- Reduces to 45 (from 80) the number of days that an ICF/IID has to submit corrected resident assessment data before ODODD may assign a case-mix score to the ICF/IID for failure to submit the corrected data.

- Requires that the average of the following be used for certain calculations for the purpose of determining an ICF/IID's fiscal year 2014 Medicaid payment rate for direct care costs: (1) the ICF/IID's case-mix score determined or assigned for the last quarter of calendar year 2012, (2) the ICF/IID's case-mix score for the first quarter of calendar year 2013 determined by using resident assessment data that ODODD, or any entity under contract with ODODD, compiled, and (3) if the ICF/IID submitted resident assessment data for the first quarter of calendar year 2013, the ICF/IID's case-mix score for the first quarter of calendar year 2013 determined by using resident assessment data that the ICF/IID submitted.

- Uses, for the purpose of determining an ICF/IID's fiscal year 2015 rate, the ICF/IID's case-mix score for the first quarter of calendar year 2013 determined by using resident assessment data that ODODD, or any entity under contract with ODODD, compiled if the ICF/IID did not submit resident assessment data for that quarter.

- Reduces, beginning with fiscal year 2016, the efficiency incentive that is part of the Medicaid payment rate for the indirect care costs of ICFs/IID with more than eight beds that do not obtain ODODD's approval to become downsized ICF/IID.

- Updates, in the law governing Medicaid payments for ICF/IID services, terminology related to the Consumer Price Index and Employment Cost Index published by the U.S. Bureau of Labor Statistics.

- Permits ODODD, subject to ODM's approval, to pay a qualifying ICF/IID a Medicaid rate add-on for outlier ICF/IID services provided to a resident who is a Medicaid recipient, is under 22 years of age, is dependent on a ventilator, and meets other requirements established in rules.

- For fiscal year 2014, requires ODODD to determine modified Medicaid payment rates for existing and new ICFs/IID and provides for an existing or new ICF/IID to be paid its modified rate, unless the mean of such rates for all existing and new ICFs/IID is other than $282.84, in which case the ICF/IID's rate is to be adjusted by a percentage that equals the percentage by which the mean rate is greater or less than $282.84.

- For fiscal year 2015, requires ODODD to determine modified Medicaid payment rates for existing and new ICFs/IID and provides for an existing or new ICF/IID to be paid its modified rate, unless the mean of such rates for all existing and new ICFs/IID is other than $282.77, in which case the ICF/IID's rate is to be adjusted by a percentage that equals the percentage by which the mean rate is greater or less than $282.77.

- Requires the ODODD Director, in consultation with certain organizations, to study (1) establishing a new grouper methodology to be used when determining ICFs/IID's case-mix scores for fiscal year 2015, (2) whether the amounts set as the maximum costs per case-mix units that may be used in determining fiscal year 2015 direct care rates will avoid or minimize rate reductions, and (3) specifying additional diagnoses and special care needs that individuals must have to meet criteria for special rates for outlier services and sources of funding for, or mechanisms to ensure the budget neutrality of, the additional diagnoses and special care needs.

- Requires ODODD to strive to achieve, not later than July 1, 2018, statewide reductions in the number of ICF/IID beds.

- Requires ODODD, in its efforts to achieve the ICF/IID bed reductions, to collaborate with the Ohio Association of County Boards Serving People with Developmental Disabilities, the Ohio Provider Resource Association, the Ohio Centers for Intellectual Disabilities formed by the Ohio Health Care Association, and the Values and Faith Alliance.

- Increases to 600 (from 500) (1) the number of Medicaid waiver slots for which the ODM Director may seek federal approval as part of continuing law regarding ICFs/IID that convert to providing Medicaid waiver services and (2) the number of ICF/IID beds that may be so converted.

- Permits an ICF/IID that downsizes or partially converts to providing home and community-based services on or after July 1, 2013, to file a Medicaid cost report if the ICF/IID has, on the day it downsizes or partially converts, a Medicaid-certified capacity that is at least 10% lower than its Medicaid-certified capacity on the day before or at least five fewer ICF/IID beds than it has on the day before.

- Permits a new ICF/IID also to file a Medicaid cost report if its beds are from a downsized ICF/IID and the downsized ICF/IID either has reduced its Medicaid-certified capacity by at least 10% or reduced the number of its ICF/IID-certified beds by at least five.

- Provides for the cost report for a downsized or partially converted ICF/IID to cover the period that begins with the day the ICF/IID downsizes or partially converts and ends on the last day of the last month of the first three full months of operation as a downsized ICF/IID or partially converted ICF/IID.

- Provides for the cost report for a new ICF/IID to cover the period that begins with the day that the ICF/IID's provider agreement takes effect and ends on the last day of the last month of the first full three months that the provider agreement is in effect.

- Provides for the cost report for a downsized or partially converted ICF/IID to be used to determine the ICF/IID's Medicaid payment rate for the period:

  (1) Beginning on the day it downsizes or partially converts if that day is the first day of a month or, if not, beginning on the first day of the month immediately following the month the ICF/IID downsizes or partially converts; and

  (2) Ending on the last day of the fiscal year immediately preceding the fiscal year for which it begins to be paid a rate determined using a cost report filed in accordance with regular filing procedures.

- Provides for the cost report for a new ICF/IID to be used to determine the ICF/IID's Medicaid payment rate for the period beginning on the day that the ICF/IID's provider agreement takes effect and ending on the last day of the fiscal year immediately preceding the fiscal year for which it begins to be paid a rate determined using a cost report field in accordance with regular filing procedures.

- Revises the law governing adjustments to new ICFs/IID's initial total Medicaid payment rates.

- Provides that ODODD is permitted, rather than required, to increase an existing ICF/IID's Medicaid payment rate for capital costs when Medicaid-certified beds are added to, or replaced at, the ICF/IID.

- Requires ODODD and a workgroup to evaluate revisions to the formula used to determine Medicaid payment rates for ICF/IID services.

- Requires the ODODD Director to pay the nonfederal share of a claim for ICF/IID services using subsidies otherwise allocated to county DD boards if:

  (1) Medicaid covers the services;

  (2) The services are provided to a Medicaid recipient who is eligible for the services and does not occupy a bed in the ICF/IID that used to be included in the Medicaid-certified capacity of another ICF/IID certified before June 1, 2003;

  (3) The services are provided by an ICF/IID whose Medicaid certification was initiated or supported by a county DD board; and

  (4) The provider has a valid Medicaid provider agreement for the time the services are provided.

- Sets the rate for the franchise permit fee charged ICFs/IID at $18.24 for fiscal year 2014 and $18.17 for fiscal year 2015 and thereafter.

- Provides that the authority of an individual with mental retardation or other developmental disability, other than such an individual for whom a guardian has been appointed, to make decisions regarding the receipt of services or participation in programs applies to decisions regarding ICF/IID services.

### Home and community-based services

- Provides for an Individual Options waiver provider to continue to receive for fiscal years 2014 and 2015 at least the higher Medicaid payment rate for routine homemaker/personal care services that the provider received for up to a year during fiscal years 2012 and 2013.

- Provides for ODODD to retain all of the fees that county DD boards pay regarding Medicaid-paid claims for home and community-based services provided to individuals eligible for services from the county DD boards.

- Requires the ODODD Director to establish a methodology to be used in fiscal years 2014 and 2015 to estimate the quarterly amount each county DD board is to pay of the nonfederal share of the Medicaid expenditures for which the board is responsible.

- Permits a developmental center to provide services to persons with mental retardation and developmental disabilities living in the community or to providers of services to these persons.

## Innovative pilot projects

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

## "Employment First" for individuals with developmental disabilities

(R.C. 5123.022, 5123.023, 5126.05, 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. 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 boards)

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

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

(2) Set benchmarks for improving community employment outcomes.

The 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.

Regarding prevocational services, the bill provides that these services must be provided in accordance with an individual service plan and occur over a specified period of time with specific outcomes sought to be achieved. It defines "prevocational

services" as services, including services as a volunteer, that provide learning and work experiences from which an individual can develop general strengths and skills that are not specific to a particular task or job but contribute to employability in community employment, supported work at community-based sites, or self-employment.

### Regional council and county DD board annual cost report

(R.C. 5126.131)

Each regional council established for the purpose of performing the duties of a county DD board and each county DD board is required by the bill to file with ODODD an annual cost report detailing the council's or board's income and expenditures.[27] 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.

---

[27] 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)

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.[28]

## Intermediate care facilities for individuals with intellectual disabilities (ICFs/IID)

(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:

---

[28] R.C. 5126.021, not in the bill.

(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.

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

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

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

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

---

[29] 42 U.S.C. 1396d(d) and 42 C.F.R. 400.200.

[30] 42 U.S.C. 1396d(d).

[31] 42 C.F.R. 440.150.

## Administration of Medicaid coverage of ICF/IID services

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

H.B. 153 of the 129th General Assembly 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/IID services. The bill relocates and reorganizes the law governing Medicaid coverage of ICF/IID services as part of the process of ODODD assuming many of ODM's duties regarding ICF/IID services. It provides that the ODODD Director is not required to amend any rule for the sole purpose of updating the citation in the Ohio Administrative Code to the Revised Code section that authorizes the rule to reflect that the 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/IID services are transferred to ODODD. Federal law does not permit ODM to transfer all of its responsibilities. For example, ODM continues to be responsible for entering into Medicaid provider agreements with ICFs/IID.[32] 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.[33]

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

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/IID Medicaid claims. Under that law, ODODD is responsible for the nonfederal share of Medicaid claims submitted for ICF/IID services if (1) the services are provided on or after July 1, 2003, (2) the ICF/IID receives initial certification by the Ohio Department of Health (ODH) Director as an ICF/IID on or after June 1, 2003, (3) the ICF/IID, or a portion of the ICF/IID, is licensed by the ODODD Director as a residential facility, and (4) there is a valid Medicaid provider agreement for the

---

[32] 42 C.F.R. 431.107(b).

[33] 42 C.F.R. 431.10(e)(1)(ii).

ICF/IID. ODODD is not responsible for Medicaid claims submitted for an ICF/IID if a residential facility license was obtained or modified for the ICF/IID without obtaining approval of a plan for the proposed residential facility. 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/IID 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/IID. The reduction occurs under continuing law that requires, with certain exceptions, ODODD to reduce a residential facility's licensed capacity when a resident of the residential facility is involuntarily committed to a state-operated ICF/IID. 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/IID.

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

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

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

### Efficiency incentive

Current law provides that an ICF/IID'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/IID 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/IID with more than eight beds is not to exceed 25% of the difference between its costs of ownership and the limit on costs of ownership payments. However, the reduction does not apply to an ICF/IID with more than eight beds that obtains ODODD's approval to become a downsized ICF/IID and the approval is conditioned on the downsizing being completed not later than July 1,

2018. An ICF/IID becomes a downsized ICF/IID by permanently reducing its Medicaid-certified capacity pursuant to a plan approved by ODODD.

#### Nonextensive renovations

Current law uses inconsistent terminology regarding the part of an ICF/IID's Medicaid payment for renovations. Continuing law defines "capital costs" as costs of ownership and costs of nonextensive renovation. However, the provision of current law that governs the amount of an ICF/IID'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/IID to qualify for a Medicaid payment for nonextensive renovations. First, at least five years must have elapsed since the ICF/IID's date of licensure or date of an extensive renovation of the portion of the ICF/IID that is proposed to be nonextensively renovated, unless the nonextensive renovation is necessary to meet the requirements of federal, state, or local statutes, ordinances, rules, or policies. Second, the ICF/IID must obtain ODODD's prior approval by submitting a plan that describes in detail the changes in capital assets to be accomplished by means of the nonextensive renovation and the timetable for completing the project, which cannot be more than 18 months after the nonextensive renovation begins. The bill adds a third condition for an ICF/IID with more than eight beds to qualify for a Medicaid payment for nonextensive renovations: either ODODD approved the nonextensive renovation before July 1, 2013, or the nonextensive renovation is part of a project that results in the ICF/IID becoming a downsized ICF/IID or partially converted ICF/IID. An ICF/IID becomes a partially converted ICF/IID by converting some, but not all, of its beds to providing home and community-based services under the Individual Options (IO) Medicaid waiver, including such a conversion that occurs after the ICF/IID is acquired through a request for proposals that the ODODD Director issues after the previous provider's license for the ICF/IID was revoked or surrendered. The bill does not add an additional condition for an ICF/IID with eight or fewer beds.

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

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

Direct care costs are part of an ICF/IID's costs that are used in determining the ICF/IID's total Medicaid payment rate. Current law requires ODODD to establish each ICF/IID's rate for direct care costs quarterly. The bill requires ODODD to determine

each ICF/IID's rate for direct care costs for each fiscal year. As part of the change from quarterly to annual rate determinations, the bill revises the first step in determining the rate. Under current law, the first step in determining the rate for a quarter is to multiply the lesser of the ICF/IID's cost per case unit or the maximum cost per case-mix unit for the ICF/IID's peer group by the ICF/IID's average case-mix score determined for the calendar quarter that preceded the immediately preceding calendar quarter. Under the bill, the first step in determining the rate for a fiscal year is to multiply the lesser of the ICF/IID's cost per case unit or the maximum cost per case-mix unit for the ICF/IID's peer group by the ICF/IID's annual average case-mix score for the calendar year immediately preceding the fiscal year.

Continuing law requires ODODD to determine an ICF/IID's case-mix score quarterly as part of the process of determining the ICF/IID's Medicaid payment rate for direct care costs. Generally, an ICF/IID's case-mix score is determined by using resident assessment data the ICF/IID submits to ODODD. Under certain circumstances, ODODD may assign a case-mix score that is 5% less than the ICF/IID's case-mix score for the immediately preceding quarter. The circumstances include when the ICF/IID fails to timely submit complete and accurate resident assessment data necessary to determine the ICF/IID's case-mix score for a quarter. ODODD must permit an ICF/IID to correct the data before assigning a case-mix score due to the submission of incorrect resident assessment data. Under current law, ODODD may assign the case-mix score if the ICF/IID fails to submit the corrected resident assessment data not later than 80 days after the end of the quarter to which the data pertains or later due date specified in rules. The bill reduces to 45 the number of days that an ICF/IID has to submit corrected resident assessment data before ODODD may assign a case-mix score to the ICF/IID for failure to submit the corrected data.

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

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

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

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

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

### Return on equity payments

Current law requires ODODD to pay ICFs/IID 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/IID's return on net equity may exceed one dollar per patient day. In calculating an ICF/IID's rate for return on net equity, ODODD must use the greater of the ICF/IID's inpatient days during the applicable cost reporting period or the number of inpatient days it would have had during that period if its occupancy rate had been 95%.

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

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

(R.C. 5124.21)

Indirect care costs are part of an ICF/IID's costs that are used in determining the ICF/IID's total Medicaid payment rate. A Medicaid payment rate for indirect care costs is determined for each ICF/IID individually and a maximum payment rate for indirect care costs is determined for each peer group of ICFs/IID. An ICF/IID's Medicaid rate for its indirect care costs is the lesser of the rate determined for it individually and the maximum rate determined for its peer group. The bill reduces, beginning with fiscal year 2016, the efficiency incentive that is included in determining the individual

Medicaid payment rate for the indirect care costs of an ICF/IID with more than eight beds other than such an ICF/IID that obtains ODODD's approval to become a downsized ICF/IID and the approval is conditioned on the downsizing being completed not later than July 1, 2018.

Under current law, the efficiency incentive for an ICF/IID 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/IID'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. The bill does not change the efficiency incentive for an ICF/IID with more than eight beds if the ICF/IID obtains ODODD's approval to become a downsized ICF/IID and the approval is conditioned on the downsizing being completed not later than July 1, 2018. The efficiency incentive for an ICF/IID with more than eight beds that does not obtain such approval is to be the following beginning in fiscal year 2015:

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

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

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

### Terminology related to federal inflation data

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

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

(1) In making an inflation adjustment to determine ICFs/IID's rates for capital costs, the CPI for shelter costs for all urban consumers for the north central region is used. The bill updates this by referring to the midwest region rather than the North Central Region.

(2) In making an inflation adjustment to determine ICFs/IID's rates for indirect care costs and in determining a reduction to an ICF/IID's total rate due to a late, incomplete, or inadequate Medicaid cost report, the CPI for all items for all urban

consumers for the North Central Region is used. The bill updates this by referring to the Midwest Region rather than the North Central Region.

(3) In making an inflation adjustment to determine ICFs/IID's rates for direct care costs, the health services component of the ECI for Total Compensation is used. The bill updates this by referring to the health care and social assistance component.

## Medicaid rate add-on for outlier ICF/IID 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/IID for outlier ICF/IID services the ICF/IID provides to qualifying ventilator-dependent residents on or after the effective date of this provision of the bill if the ICF/IID applies to ODODD to receive the rate add-on and ODODD approves the application. ODODD may approve an ICF/IID's application if all of the following apply:

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

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

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

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

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

ODODD is to negotiate 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.

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

(Section 259.200)

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

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

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

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

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

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

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

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

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

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

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

(a) Using the costs per case-mix units determined for ICFs/IID pursuant to the bill's provision governing ICFs/IID's fiscal year 2014 rates for direct care costs, determine the median of the costs per case-mix units of each peer group (see "**ICFs/IID's Medicaid rates for direct care costs**" above);

(b) Multiply the median determined above by the median of the averages determined for the ICFs/IID in the ICF/IID's peer group pursuant to the bill's provision governing ICFs/IID's fiscal year 2014 rates for direct care costs;

(c) Multiply the product determined above by 1.014.

(2) In place of the initial rate for indirect care costs otherwise determined for the ICF/IID, its initial rate for indirect care costs is to be $69.98 if it has more than eight beds or $59.60 if it has eight or fewer beds.

(3) In place of the initial rate for other protected costs otherwise determined for the ICF/IID, its initial rate for other protected costs is to be 115% of the median fiscal year 2014 rate determined for existing ICFs/IID.

A new ICF/IID's initial total modified rate is to be adjusted at the time new ICFs/IID's rates are ordinarily adjusted (see "**Adjustment of new ICFs/IID's initial Medicaid rates**" below). If the adjustment affects the ICF/IID's rate for services provided during fiscal year 2014, the modifications that are to be applied under the bill to existing ICFs/IID apply to the adjustment.

ODODD is required by the bill to reduce the amount it pays ICFs/IID for fiscal year 2014 if the U.S. Centers for Medicare and Medicaid Services requires that the ICF/IID franchise permit fee be reduced or eliminated. The amount of the reduction is to

reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

### Fiscal year 2015 Medicaid rates for ICF/IID services

(Section 259.210)

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

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

(1) In place of the inflation adjustment otherwise made in determining the ICF/IID's rate for other protected costs, its other protected costs, excluding the franchise permit fee component of those costs, from calendar year 2013 is to be multiplied by 1.014.

(2) In place of the maximum cost per case-mix unit otherwise established for the ICF/IID's peer group, its maximum costs per case-mix unit is to be $114.37 if it has more than eight beds, $109.09 if it has eight or fewer beds, or the different amount, if any, specified in a future amendment made by the General Assembly.

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

(4) In place of the current grouper methodology established in rules, a new grouper methodology to be established in rules is to be used in determining its case-mix score.

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

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

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

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

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

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

(a) Using the costs per case-mix units determined for ICFs/IID pursuant to the bill's provision governing ICFs/IID's fiscal year 2014 rates for direct care costs, determine the median of the costs per case-mix units of each peer group (see "**ICFs/IID's Medicaid rates for direct care costs**" above);

(b) Multiply the median determined above by the median annual average case-mix score for its peer group for calendar year 2013;

(c) Multiply the product determined above by 1.014.

(2) In place of the initial rate for indirect care costs otherwise determined for the ICF/IID, its initial rate for indirect care costs is to be $69.98 if it has more than eight beds or $59.60 if it has eight or fewer beds.

(3) In place of the initial rate for other protected costs otherwise determined for the ICF/IID, its initial rate for other protected costs is to be 115% of the median fiscal year 2015 rate determined for existing ICFs/IID.

A new ICF/IID's initial total modified rate is to be adjusted at the time new ICFs/IID's rates are ordinarily adjusted (see "**Adjustment of new ICFs/IID's initial Medicaid rates**" below). If the adjustment affects the ICF/IID's rate for services

provided during fiscal year 2015, the modifications that are to be applied under the bill to existing ICFs/IID apply to the adjustment.

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

The bill requires the ODODD Director to study certain issues related to ICFs/IID's fiscal year 2015 rates. The Director is to study the issues in consultation with the Ohio Provider Resource Association, Values and Faith Alliance, Ohio Association of County Boards of Developmental Disabilities, Ohio Health Care Association/Ohio Centers for Intellectual Disabilities. The Director and organizations are to study all of the following:

(1) Establishing a new grouper methodology to be used when determining ICFs/IID's case-mix scores for fiscal year 2015;

(2) Whether the maximum costs per case-mix units established by the bill ($114.37 for ICFs/IID with more than eight beds and $109.09 for ICFs/IID with eight or fewer beds) are set at levels that will avoid or minimize rate reductions for fiscal year 2015;

(3) Specifying additional diagnoses and special care needs that individuals must have to meet the criteria for admission to designated outlier ICFs/IID or units and sources of funding for, or mechanisms to ensure the budget neutrality of, the additional diagnoses and special care needs.

The Director is required to adopt rules not later than March 31, 2014, to do the following:

(1) If the Director and organizations with which the Director consults for the studies discussed above agree, not later than December 31, 2013, to the terms of a new grouper methodology, prescribe a new methodology that is consistent with the agreed upon terms.

(2) If the Director and organizations do not agree on such terms by that date, prescribe a new grouper methodology that provides for at least six classes based on data available to the Director on the day immediately before the effective date of this provision of the bill.

(3) Specify additional diagnoses and special care needs that individuals must have to meet the criteria for admission to designated outlier ICFs/IID or units.

The bill requires the Director and organizations, if they agree that the maximum costs per case-mix units established by the bill are not set at levels that will avoid or minimize rate reductions for fiscal year 2015, to recommend that the General Assembly revise the maximums. The recommendations are to be made not later than March 31, 2014. The bill states the General Assembly's intent to revise the maximums if the Director and organizations recommend the revisions.

### Reduction in number of ICF/IID beds

(R.C. 5124.67 (primary), 5124.01, 5124.63, and 5124.64; Section 125.11.03)

The bill requires ODODD to strive to achieve, not later than July 1, 2018, the following statewide reductions in ICF/IID beds:

(1) At least 500 and not more than 600 beds in ICFs/IID that, before becoming downsized ICFs/IID, have 16 or more beds;

(2) At least 500 and not more than 600 beds in ICFs/IID with any number of beds that convert some or all of their beds from providing ICF/IID services to providing home and community-based services under ODODD-administered Medicaid waiver programs.

In its efforts to achieve these reductions, ODODD must collaborate with the Ohio Association of County Boards Serving People with Developmental Disabilities, the Ohio Provider Resource Association, the Ohio Centers for Intellectual Disabilities formed by the Ohio Health Care Association, and the Values and Faith Alliance. The collaboration efforts may include the following:

(1) Identifying ICFs/IID that may reduce the number of their beds to help achieve the reductions;

(2) Encouraging ICFs/IID to reduce the number of their beds;

(3) Establishing interim time frames for making progress in achieving the reductions;

(4) Creating incentives for, and removing impediments to, the reductions;

(5) In the case of ICF/IID beds that are converted to providing home and community-based services, developing a mechanism to compensate ICFs/IID for beds that permanently cease to provide ICF/IID services.

ODODD must meet not less than twice each year with the organizations specified above to do the following:

(1) Review the progress being made in achieving the reductions;

(2) Prepare written reports on the progress;

(3) Identify additional measures needed to achieve the reductions.

Current law limits to 500 (1) the number of Medicaid waiver slots for which the ODM Director may seek federal approval as part of continuing law regarding ICFs/IID that convert to providing home and community-based services under ODODD-administered Medicaid waiver programs and (2) the number of ICF/IID beds that may be so converted. The bill increases these limits to 600 to match the ICF/IID bed reductions the bill requires ODODD to seek to achieve.

## Medicaid cost reports

(R.C. 5124.10 (primary), 5124.01, 5124.101, 5124.102, 5124.107, 5124.108, 5124.109, and 5124.522)

### Cost report deadline extension

Generally, ICFs/IID are required by continuing law to file annual cost reports with ODODD. Cost reports are a factor in determining the Medicaid payment rates for ICFs/IID.

An annual cost report is to cover the calendar year or portion of the calendar year during which an ICF/IID participated in the Medicaid program. It is due not later than 90 days after the end of the calendar year, or portion of the calendar year, that the cost report covers. However, ODODD, for good cause, may grant a 14-day extension of the time for filing a cost report on written request from an ICF/IID.

There are exceptions to the requirement discussed above. A new ICF/IID is to submit a cost report not later than 90 days after the end of its first three full calendar months of operation. An ICF/IID that undergoes a change of provider that is an arm's length transaction is to submit a cost report not later than 90 days after the end of its first three full calendar months of operation under the new provider. A new ICF/IID that opens, and an ICF/IID that undergoes a change of provider that is an arm's length transaction after the first day of October in a calendar year is not required to file a cost report for that calendar year. 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/IID or an

ICF/IID 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, partially converted, and new ICFs/IID

The bill permits an ICF/IID that becomes a downsized ICF/IID or partially converted ICF/IID on or after July 1, 2013, to file with ODODD a cost report sooner than it otherwise would if it meets certain conditions. To be able to file a cost report sooner than it otherwise would, a downsized or partially converted ICF/IID must have either of the following on the day it becomes a downsized ICF/IID or partially converted ICF/IID:

(1) A Medicaid-certified capacity that is at least 10% less than its Medicaid-certified capacity on the day immediately preceding the day it becomes a downsized ICF/IID or partially converted ICF/IID;

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

The bill also permits a new ICF/IID to file a cost report if its beds are from a downsized ICF/IID and the downsized ICF/IID has either of the following on the day it becomes a downsized ICF/IID:

(1) A Medicaid-certified capacity that is at least 10% less than its Medicaid-certified capacity on the day immediately preceding the day it becomes a downsized ICF/IID;

(2) At least five fewer ICF/IID-certified beds than it had on the day immediately preceding the day it becomes a downsized ICF/IID.

The cost report of a downsized ICF/IID or partially converted ICF/IID is to cover the period that begins with the day that it becomes a downsized ICF/IID or partially converted ICF/IID and ends on the last day of the last month of the first three full months of operation as a downsized ICF/IID or partially converted ICF/IID. The cost report of a new ICF/IID is to cover the period that begins with the day that the ICF/IID's provider agreement takes effect and ends on the last day of the last month of the first full three months that the provider agreement is in effect. ODODD must refuse to accept a cost report if either of the following apply:

(1) Unless ODODD grants a 14-day extension for good cause, the ICF/IID fails to file the cost report not later than 90 days after the last day of the period the cost report covers;

(2) The cost report is incomplete or inadequate.

If ODODD accepts a cost report, it must use the cost report to determine the ICF/IID's Medicaid payment rate for ICF/IID services the ICF/IID provides during a certain period. In the case of an ICF/IID that becomes a downsized or partially converted ICF/IID, the period is to begin on the day that the ICF/IID becomes a downsized or partially converted ICF/IID if that day is the first day of a month or, if that is not the case, the first day of the month immediately following the month that the ICF/IID becomes a downsized or partially converted ICF/IID. In the case of a new ICF/IID, the period is to begin on the day that the ICF/IID's provider agreement takes effect. The period is to end for all ICFs/IID on the last day of the fiscal year that immediately precedes the fiscal year for which the ICF/IID begins to be paid a rate determined using its next, or, in the case of a new ICF/IID, first, annual cost report. An ICF/IID is to file its next or first annual cost report at the regular time for filing the annual cost report if the ICF/IID becomes a downsized or partially converted ICF/IID on or before the first day of October or, in the case of a new ICF/IID, the ICF/IID's provider agreement takes effect on or before that date. The annual cost report is to cover the portion of the first calendar year that the ICF/IID operated as a downsized or partially converted ICF/IID or, in the case of a new ICF/IID, the portion of the first calendar year during which its provider agreement was in effect. If an ICF/IID becomes a downsized or partially converted ICF/IID after the first day of October or if a new ICF/IID's provider agreement takes effect after that date, the ICF/IID is not required to file an annual cost report for that calendar year but must file an annual cost report for the immediately following calendar year.

### Adjustment of new ICFs/IID's initial Medicaid rates

(R.C. 5124.151)

The bill revises the law governing when ODODD is to adjust a new ICF/IID's initial total Medicaid payment rate. Under current law, ODODD is to adjust a new ICF/IID's initial total rate at both of the following times:

(1) On the first day of July to reflect new rate determinations for all ICFs/IID;

(2) Following the ICF/IID's submission of its first cost report which is due not later than 90 days after the end of the ICF/IID's first three full months of operation.

The bill eliminates the requirement for ODODD to adjust a new ICF/IID's initial total rate following the ICF/IID's submission of its first cost report. In addition, the bill requires ODODD to adjust a new ICF/IID's initial total rate in accordance with the bill's provisions regarding cost reports for new ICFs/IID that obtain their beds from downsized ICFs/IID rather than on the first day of July if ODODD accepts a cost report

from the ICF/IID under those provisions. (See "**Cost reports for downsized, partially converted, and new ICFs/IID**" above.)

### ICF/IID Medicaid rate reconsideration

(R.C. 5124.38)

Under current law, ODODD must increase an existing ICF/IID's Medicaid payment rate for capital costs through a rate reconsideration process when Medicaid-certified beds are added to the ICF/IID or replaced at the same site. The bill provides that ODODD is permitted, rather than required, to make such a rate increase.

### Evaluation of Medicaid payment rate formula for ICFs/IID

(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/IID 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/IID services. In conducting the evaluation, ODODD and the workgroup must (1) focus primarily on the service needs of individuals with complex challenges that ICFs/IID are able to meet, (2) pursue the goal of reducing the Medicaid-certified capacity of individual ICFs/IID and the total number of ICF/IID beds in the state for the purpose of increasing the service choices and community integration of individuals eligible for ICF/IID services, and (3) consider the impact that exception reviews have on ICFs/IID's case-mix scores.

### Use of county subsidies to pay nonfederal share of ICF/IID services

(Section 259.240)

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

## ICF/IID franchise permit fee

(R.C. 5168.60)

Continuing law imposes an annual assessment on ICFs/IID. The assessment is termed a "franchise permit fee." Revenue raised by the franchise permit fee is to be used for the expenses of the programs ODODD administers and ODODD's administrative expenses.

The bill revises the rate at which the ICF/IID 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.

## Decision-making by individuals with IID/DD

(R.C. 5126.043)

Current law provides that an individual with mental retardation or a developmental disability is allowed to make decisions regarding receipt of a service or participation in a program provided for, or funded under, state law governing ODODD or county DD boards unless a guardian has been appointed for the individual. The bill provides that such an individual also may make decisions regarding ICF/IID services.

## 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,[34] or public hospital immediately before enrolling in the IO wavier, 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.

---

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

### 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 share for home and community-based services provided to an individual who the board determines is eligible for board services.[35] (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.

---

[35] R.C. 5126.0510.

# DEPARTMENT OF EDUCATION

## I. School Financing

### School funding in general

- Creates a new system of state financing for school districts and community schools and science, technology, engineering, and mathematics (STEM schools).
- Specifies a formula amount of $5,745, for fiscal year 2014, and $5,800, for fiscal year 2015.
- Requires each school district to certify its average daily membership (student count) on a biannual basis.
- Specifies that a district's computed state operating funding be calculated to reflect the biannual reporting of average daily membership.
- 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; individual school buildings; education consortia; institutions of higher education; and private entities partnering with one or more educational entities in the bill for projects that aim to achieve significant advancement in student achievement, spending reduction in the five year fiscal forecast, or utilization of a greater share of resources in the classroom.

#### Special education funding

- Specifies dollar amounts, rather than multiples as under current law, for each category of special education services.

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

- Changes the formula used to calculate scholarships under the Jon Peterson Special Needs Scholarship Program to align with the special education categories and amounts 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.

- Specifies dollar amounts, rather than multiples as under current law, for each category of career-technical education.

- 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 city, local, exempted village, or joint vocational school district, community school, or STEM school must spend at least 75% of its state career-technical education funding on costs directly associated with career-technical education programs and no more than 25% on personnel expenditures.

- Specifies that a community school or STEM school that receives state career-technical education funding must spend that funding only for the purposes that the Department designates as approved for career-technical education expenses, and

specifies that the Department must require the school to report data annually in order to monitor the school's compliance with the requirements for spending state career-technical education funding (similar to the current requirement applicable to school districts).

- Authorizes community schools to provide career-technical education and to contract with any public agency, board, or bureau or with any private individual or firm for the purchase of any career-technical education or vocational rehabilitation service for any enrolled student.

- Permits a student enrolled in a community school to simultaneously enroll in the career-technical program operated by the career-technical planning district to which the student's resident district belongs.

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

- Specifies that community schools and STEM schools may be assigned to a career-technical planning district.

### Spending economically disadvantaged funds

- Requires a city, local, exempted village, or joint vocational school district, community school, or STEM school to spend the economically disadvantaged funds it receives on specified initiatives.

- Requires each district and school to submit a report to the Department at the end of each fiscal year describing the initiatives on which the district's or school's economically disadvantaged funds were spent during that fiscal year, and requires the Department to submit a report of this information to the General Assembly not later than December 1 of each odd-numbered year, starting in 2015.

### Transportation funding

- Eliminates certain adjustments of transportation payments provided for under current law, but maintains the existing transportation base payment for each city, local, and exempted village school district.

- Requires the Department, for fiscal years 2014 and 2015, to pay each district a pro rata portion of the calculated transportation funding.

- Requires the Department to pay specified low-wealth, low-rider density districts an additional payment on top of the pro rata payment.

## Accountability for subgroups

- Specifies that the certification of state operating funds to school districts must include the amounts payable to each school building for each subgroup of students that receives certain state-funded services (students with disabilities, economically disadvantaged students, limited English proficient students, and gifted students).

- Requires that, if the Department determines that a district or school has not reached satisfactory achievement and progress for a subgroup, 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.

- Retains a current requirement that the Department deduct from each client school district of an ESC and pay to the ESC, $6.50 times the school district's total student count.

- Authorizes school districts, community schools, and STEM schools to enter into ESC shared services agreements.

- Expressly permits joint vocational school districts to enter into fee-for-service agreements.

- 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 and unobligated funds that were paid to an ESC during that fiscal year applied toward any payment owed to the ESC in the next fiscal year.

### Payments for students in county detention facilities

- Requires the county or joint county juvenile detention facility that cares for a child to coordinate the education of that child and provides that the facility, or the chartered nonpublic school that the facility operates, under certain circumstances, may provide education services to the child.

- Permits a county or joint county juvenile detention facility to contract with an educational service center, the school district in which the facility is located or, in some cases, an Internet- or computer-based community school (e-school) to provide education services to a child under the facility's care.

- Permits any entity that provides education services to a child under a county or joint county juvenile detention facility's care (except an e-school) to directly bill the school district responsible for paying the costs of educating the child.

- Provides that an e-school receive payment under the community school law for a child in a county or joint county facility.

### Other funding provisions

- Regarding the expenditure of Auxiliary Services funds for nonpublic school students, replaces the term "electronic textbook" with the term "digital text," as a consumable book accessed through electronic means and specifies that 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.

- Increases to $360 (from $325 under prior law) the maximum per pupil amount for reimbursement of chartered nonpublic school administrative costs.

- Provides that a school district (and apparently a community school too) may charge tuition for a student enrolled in all-day kindergarten, as long as it is offering all-day kindergarten for the first time or it charged for all-day kindergarten in the 2012-2013 school year.

- Requires the Department to adjust a district's average daily membership certification by one-half of the full-time equivalency for each student charged tuition for all-day kindergarten.

- Establishes a temporary task force to review and make recommendations on open enrollment by December 31, 2013.

- Creates the Electronic Textbook Pilot Project to provide competitive grants to public and chartered nonpublic schools to purchase electronic textbooks through the Distance Learning Clearinghouse.

- Repeals 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'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 initial term under an agreement between the Department and a community school sponsor runs for up to seven years, and establishes eligibility qualifications for extensions of that term.

- 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.

- Modifies language regarding grandfathered community school sponsors whose authority to sponsor is not subject to approval by the Department.

- Specifies that a community school that offers any of grades 4 to 8 and does not offer a grade higher than grade 9, in at least two of the three most recent school years, must have been *both*, (1) in a state of academic emergency *and* (2) showed less than one standard year of academic growth in either reading or mathematics, as determined by the Department, to trigger permanent closure of that school.

- 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, the school meets specified conditions, 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.

- Specifies that the resulting two e-schools from a division under the bill may not add grade levels.

- Requires the Department to issue composite grades to a community school operator that manages, in whole or in part, more than one e-school, based on the grades issued for the e-schools managed by the operator.

- Requires that an e-school managed by such an operator issued a composite grade be subject to sanctions or permanent closure based on the lower of the composite grade of the operator or the grade that the individual e-school received.

- Specifies that a student who transfers from one e-school to another e-school managed by the same operator is considered "continuously enrolled" for purposes of state assessment administration.

- 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, 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.

## 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."

- Retains the law defining a school week as five days for school districts, but specifies that a chartered nonpublic school may be open for instruction on any day of the week, including Saturday and Sunday.

- Exempts school districts from transporting students to and from chartered nonpublic and community schools on Saturday or Sunday, unless an agreement to do so is in place prior to July 1, 2014.

- Provides that the restructuring of the minimum school year does not apply to any collective bargaining agreement executed prior to 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

### Ed Choice scholarships

- Beginning with the 2016-2017 school year, qualifies for Educational Choice (Ed Choice) scholarships students in kindergarten through third grade enrolled in a district-operated school that has received a "D" or "F" in "making progress in improving K-3 literacy" in two of the three most recent state report cards.

- 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.
- Prescribes a tiered system of reducing income-based scholarships if a student's family income rises above 200%, 300%, or 400% of the federal poverty guidelines by limiting the student's scholarship to 75% of the full amount, 50% of the full amount, and 0% of the full amount, respectively.
- Makes a change regarding Ed Choice eligibility based on performance index score ratings in order to comport with the recently enacted performance rating system.
- Specifies that if a student is eligible for the Ed Choice scholarship based on both the student's public school performance and the 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.
- Qualifies a student for an Ed Choice scholarship if the student will be enrolling in school in Ohio for the first time (instead of "eligible to enroll in kindergarten," as under current law) in the school year for which the scholarship is sought and the district or building the student would otherwise attend qualifies for scholarships.
- Specifies that a student who will be enrolling in school in this state for the first time and would otherwise be assigned to a school building that would qualify for the Ed Choice scholarship must be at least five years of age by January 1st of the school year for which the scholarship is sought.
- Eliminates the current requirement that chartered nonpublic schools that accept the Ed Choice Scholarship must permit families of eligible students with family incomes of greater than 200% of the federal poverty guidelines to provide volunteer services in lieu of cash payment to pay all or part of the amount of the school's tuition not covered by the scholarship.

## Cleveland scholarships

- Increases maximum amount of a scholarship awarded under the Cleveland Scholarship Program from $5,000 to $5,700 beginning in fiscal year 2014.

## Jon Peterson Special Needs scholarships

- Places a moratorium on applications for new Jon Peterson Special Needs Scholarships for the fall 2013 application period.

- Requires the Department to reimburse school districts in fiscal year 2014 for the full amount deducted from their state education payments under the Jon Peterson Special Needs Scholarship Program for scholarships for students who did not attend a public school in their resident district in the previous school year, and appropriates $5 million from the General Revenue Fund for this purpose.

- Modifies a provision requiring the Department to conduct a formative evaluation of the Jon Peterson Special Needs Scholarship Program and to report the findings to the General Assembly by eliminating certain requirements of the study.

## Autism scholarships

- Specifies that individuals that provide services to a child under the Autism Scholarship Program are not required to obtain a one-year, renewable instructional assistant permit until December 20, 2014 (instead of December 20, 2013 as under current law).

## Administration of state assessments to scholarship students

- Requires each chartered nonpublic school to administer the state achievement assessments to all of its students if at least 35% of its total enrollment is made up of students who are participating in the Educational Choice Scholarship Program, Autism Scholarship Program, Jon Peterson Special Needs Scholarship Program, or the Pilot Project (Cleveland) Scholarship Program.

## 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 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.

- Adds a definition prescribing that "operating expenditures per pupil" has the same meaning as "expenditure per equivalent pupils" in regard to the current statutory system for ranking school districts and schools by operating expenditures per pupil.

## VI. Student Transportation

- Effective July 1, 2014, changes the minimum amount for payment in lieu of transportation from an amount determined by the Department to $225.

- 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

### Educational service center supervision

- Makes a number of changes to the relationship between educational service centers and school districts, specifically regarding administrative oversight and duties customarily performed by service centers.

## Post-Secondary Enrollment Options Program

- Qualifies 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.
- Prohibits state reimbursement to participating colleges under PSEO for remedial college courses.
- Requires that students be qualified to participate in PSEO based solely on the participating college's established placement standards for credit-bearing, college-level courses.
- Requires the Department annually to compile a list of all institutions of higher education that currently participate in PSEO or in other dual enrollment programs and, not later than December 31 of each school year, to distribute that list to all school districts, community schools, STEM schools, and chartered nonpublic schools in the state.
- Requires each district or school to provide this list of participating higher education institutions, as part of the counseling services required of the district or school prior to a student's participation in PSEO, to both the interested student and the student's parents or guardians.

## Dual enrollment programs

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

## College Credit Plus program recommendations

- Requires the Chancellor of the Board of Regents, by December 31, 2013, to make recommendations for the establishment of the "College Credit Plus" program to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

### Participation in district extracurricular activities by nonpublic or homeschooled students

- 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.

- Authorizes a school district board of education to require students enrolled in chartered or nonchartered nonpublic schools and students receiving home instruction who are participating in an extracurricular activity in that district to enroll and participate in not more than one academic course at the school offering the extracurricular activity as a condition to participating in the activity.

- Requires the district board, if it chooses to implement the course requirement described above, to admit students seeking to enroll in an academic course to fulfill that requirement as space allows, after first enrolling students assigned to that school.

- 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.

### Physical education exemptions

- Exempts children with disabilities and students enrolled in Internet or computer-based schools ("e-schools") from the physical education requirement to graduate from high school.

- Exempts children with disabilities and students that are enrolled in e-schools from the requirements for students currently attending districts or schools that choose to participate in the voluntary physical activity pilot program.

- Exempts children with disabilities from the requirements for students currently attending districts or schools that choose to participate in the voluntary body mass index screenings.

- Prohibits the inclusion of children with disabilities and students that are enrolled in e-schools from any report that uses the measure established by the State Board to gauge student success and compliance with specified health and wellness components.

### Chartered nonpublic school end-of-course examination exemption

- Exempts students who attend certain chartered nonpublic schools from passing the end-of-course examinations as a prerequisite for high school graduation.

### Kindergarten diagnostics

- Modifies the timeline for administering kindergarten readiness assessments, beginning July 1, 2014, to not earlier than the first day of the school year and not later than November 1, 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.

### Joint vocational school district board membership

- Replaces the current method of appointing members of a joint vocational school district (JVSD) board of education with a system where school districts and educational service centers (ESCs) that belong to a JVSD each appoint members to the JVSD board, but also specifies that the appointed individuals may not be members of the appointing board.

## Extended programming

- Requires extended programming offered by school districts for career-technical education students to (1) be used for activities that involve direct contact with students or are directly related to student programs and activities and (2) be provided for at least one hour on any given day that it is provided.

- Permits a school district to employ certificated instructional personnel for hours outside of the normal school day for the purpose of providing extended programming.

- Requires, with respect to licensed educators providing extended programming, that (1) a school district board pay each educator on an hourly basis at the regular per diem rate determined under the educator's employment contract or collective bargaining agreement and (2) the educator not provide more than eight hours of extended programming in a 24-hour day.

- Requires the Department to issue a report, not later than December 31, 2013, with recommendations for quality agricultural programs, and permits the Department to periodically review and update the report as it considers necessary.

- Requires all agricultural education instructors to (1) utilize a three-part model of agricultural education instruction focusing on classroom instruction, FFA activities, and extended programming projects and (2) submit a monthly time log to the principal of the school at which the extended programming is offered, or the principal's designee, for review.

## 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

- Exempts from the teacher content knowledge retesting requirement a community school comprised of students with disabilities.

- Specifies that a student who has 30 or more excused or unexcused absences must not be included in calculating student academic growth for a teacher evaluation.

- Decreases the percentage in which a teacher's evaluation is based on student academic growth from 50% to 35%.

- 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

- Creates the State School for the Blind Employees Food Service Fund and the State School for the Deaf Employees Food Service Fund, each of which consists of payments received from each respective school's employees who make purchases from the school's food service program.

- Expressly permits a STEM school to contract for any services necessary for the operation of the school.

- Revises the provisions of the voluntary physical activity pilot program 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, 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 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.
- Requires the State Board to adopt rules for the issuance of an alternative principal or administrator license to an individual who successfully completes the New Leaders for Ohio Schools pilot program.
- Authorizes the board of education of a school district to pay money received from the sale of real property into the school district's general fund and used only to pay for nonoperating capital expenses related to technological upgrades and equipment for instruction and assessment.
- Clarifies that the board of directors of a municipal school district (Cleveland) transformation alliance, and its committees and subcommittees, may hold executive sessions, as if they were a public body with public employees, for any of the reasons for which an executive session may be held under the Open Meetings Act.

## 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, 3317.201, 3317.25, 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, 3326.39, 3326.40, 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, and 3323.16)

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, the school funding system proposed in the House Passed version, and the school funding system proposed in the Senate 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 biannually for computing funding for a district or school for a particular purpose or category (see "**Student counts: Biannual certification of average daily membership**" below).

## Formula amount

(R.C. 3317.02)

The bill specifies a formula amount of $5,745 for fiscal year 2014, and $5,800, for fiscal year 2015. That amount is incorporated in the school funding system as described below. It is also used in computing transfer payments under interdistrict open enrollment[36] and in computing a district's required annual deposit into its capital and maintenance fund.[37]

## 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:

---

[36] R.C. 3313.98.

[37] R.C. 3315.18, not in the bill.

(1) An opportunity grant that is equal to the formula amount times the sum of the district's formula ADM and the district's preschool scholarship ADM[38] 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) A specific amount for each of six categories of disabilities for special education and related services;

(5) Kindergarten through third grade literacy funds;

(6) Economically disadvantaged funds;

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

(8) Gifted identification funds in an amount of $5, in fiscal year 2014, or $5.05, in fiscal year 2015, per student in the district's formula ADM;

(9) Gifted unit funding (see below);

(10) A specific amount for each of five career-technical education categories. 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 equal to a district's total career-technical ADM times the district's state share index times the amount specified in the bill for career-technical associated services.

---

[38] A district's "preschool scholarship ADM" is the number of preschool children receiving a scholarship to attend an alternative provider under the Autism Scholarship Program.

### 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) A specific amount for each of six categories of disabilities for special education and related services;

(3) Economically disadvantaged funds;

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

(5) A specific amount for each of five career-technical education categories;

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

### Community schools and 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) A specific amount for a student's disability category for special education services;

(4) A specific amount if the student is in kindergarten through third grade (except in the case of e-schools);

(5) Economically disadvantaged funds based on the resident district's economically disadvantaged index (except in the case of e-schools);

(6) A specific amount for a student's limited English proficiency category (except in the case of e-schools);

(7) A specific amount for a student's career-technical education category. Payment of these funds is subject to approval by the lead district of the district's career-technical planning district (CTPD).

## Student counts

### Biannual 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 October and the first full week of February. Under current law, this certification is required only once each year during the first full week of October.

The bill also prescribes that the October certification be used to calculate the district's state payments for the months of July through December of the fiscal year and that the *average* of the February and October certifications be used to calculate payments for the months of January through June.

### 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, 263.250, and 263.253)

The bill adjusts a city, exempted village, or local school district's aggregate amount of core foundation funding, pupil transportation funding, and supplement funding by imposing a cap that restricts the increase in the aggregate amount of funding over the previous year's state aid to no more than 6.25% of the previous year's state aid in fiscal year 2014 and 10.5% of the previous year's state aid in fiscal year 2015. This capped funding is further adjusted by guaranteeing that all districts receive at least the amount of state aid received in fiscal year 2013.

Similarly, joint vocational schools districts are guaranteed to receive at least the amount of state aid received in fiscal year 2013 but are also subject to a cap that limits the increase in state aid to no more than 6.25% of the previous year's state aid in fiscal year 2014 and 10.5% of the previous year's state aid in fiscal year 2015.

The bill also requires the Department to adjust, as necessary, the transitional aid guarantee base of school districts that participate in the establishment of a joint vocational school district that first begins receiving core foundation funding in fiscal year 2014 and to establish, as necessary, the guarantee base of the new joint vocational

school district as an amount equal to the absolute value of the sum of the associated adjustments for the participant school districts.

Finally, the bill guarantees that a community school that was declared to be excellent or higher on its report cards for the 2009-2010, 2010-2011, and 2011-2012 school years[39] receives at least the amount of payments received from the state in fiscal year 2013.

## 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, individual school buildings, education consortia (which may represent a partnership with other school districts, school buildings, community schools, or STEM schools), institutions of higher education, and private entities partnering with one or more of the educational entities identified in the bill for projects that aim to achieve significant advancement in one or more of the following goals: (1) student achievement, (2) spending reduction in the five year fiscal forecast,[40] and (3) utilization of a greater share of resources in the classroom.

The bill appropriates $100 million, for fiscal year 2014, and $150 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;

---

[39] *See* R.C. 3302.03 as it existed prior to March 22, 2013. Effective on that date, H.B. 555 of the 129th General Assembly changed the state academic performance rating system to one using letter grades.

[40] *See* R.C. 5705.391, not in the bill.

(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 to establish, with the approval of the governing board (see "**Grant decision**" below), an evaluation and scoring system for awarding grant applications.

#### Grant decision

The bill requires grant decisions to be made by a "governing board" consisting of nine members: the Superintendent, or the Superintendent's designee, four members appointed by the Governor, two members appointed by the Speaker of the House, and two members appointed by the President of the Senate.[41] 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 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;

---

[41] 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."[42]

## Special education funding

### Special education categories and multiples

(R.C. 3310.56 and 3317.013)

The bill specifies the following dollar amounts for the six categories of special education services, rather than multiples (or weights) that are multiplied by the formula

---

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

amount as 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[43] | Dollar amount for fiscal year 2014 under the bill | Dollar amount for fiscal year 2015 under the bill |
|---|---|---|---|---|---|
| 1 | Speech and language disabled | Same as current law | 0.2906 | $1,503 | $1,517 |
| 2 | Specific learning disabled; developmentally disabled; other health impaired-minor | Adds "preschool child who is developmentally delayed" to the disabilities listed in current law | 0.7374 | $3,813 | $3,849 |
| 3 | Hearing disabled; severe behavior disabled | Same as current law | 1.7716 | $9,160 | $9,248 |
| 4 | Vision impaired; other health impairment-major | Same as current law | 2.3643 | $12,225 | $12,342 |
| 5 | Orthopedically disabled; multiple disabilities | Same as current law | 3.2022 | $16,557 | $16,715 |
| 6 | Autistic; traumatic brain injured; both visually and hearing impaired | Same as current law | 4.7205 | $24,407 | $24,641 |

With respect to the Jon Peterson Special Needs Scholarship Program, the bill changes the formulas used to calculate scholarships under that program to align with the special education categories and amounts described above.

### Catastrophic cost for special education students

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

The bill maintains provisions of current law that require the Department to pay to a city, local, exempted village, or joint vocational school district, community school, or STEM school a certain amount of the costs incurred by the district or school for a student in categories two through six special education ADM that are in excess of the

[43] Under current law, the prescribed multiples are adjusted by further multiplying them by .90 (90%).

threshold catastrophic cost for serving the student.[44] 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 board[45] 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.

## Funding for limited English proficient students

(R.C. 3317.016)

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

---

[44] 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.

[45] A county DD board is a county board of developmental disabilities.

| Category | Type of student | Dollar amount for fiscal year 2014 under the bill | Dollar amount for fiscal year 2015 under 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 | $1,515 |
| 2 | A student who has been enrolled in schools in the United States for more than 180 school days or was previously exempted from taking the spring administration of either of the state's English language arts assessments (reading or writing) | $1,125 | $1,136 |
| 3 | A student who does not qualify for inclusion in categories 1 or 2 and is in a trial-mainstream period, as defined by the Department | $750 | $758 |

## Gifted unit funding

(R.C. 3317.051)

### Allocation and payment of gifted units

The bill requires the Department to allocate funding units to a city, exempted village, or local school district for services to identified gifted students, as follows:

(1) One gifted coordinator unit for every 3,300 students in a district's gifted unit ADM (which is the district's formula ADM minus the number of its resident students enrolled in community schools and STEM schools), with a minimum of 0.5 units and a maximum of 8 units for any district.

(2) One gifted intervention specialist unit for every 1,100 students in a district's gifted unit ADM, with a minimum of 0.3 units allocated for any district.

For fiscal year 2014, the Department must pay gifted unit funding to a district in an amount equal to $37,000 times the number of units allocated to the district. For fiscal year 2015, the Department must pay gifted unit funding to a district in an amount equal to $37,370 times the number of units allocated to the district.

### Use of unit funds

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 specifies dollar amounts for all five categories of career-technical education programs (rather than the multiples of the formula amount that apply to categories one and two in current law).

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 | Dollar amount for fiscal year 2014 under the bill | Dollar amount for fiscal year 2015 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 | $4,336 | $4,408 |

| Category | Career-technical education program under current law | Career-technical education program under the bill | Multiple under current law | Dollar amount for fiscal year 2014 under the bill | Dollar amount for fiscal year 2015 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 | $3,907 | $3,944 |
| 3 | None | Workforce development career-based intervention programs | None | $2,470 | $2,494 |
| 4 | None | Workforce development programs in arts and communications, education and training, marketing, workforce development academics, and career development | None | $1,781 | $1,789 |
| 5 | None | Family and consumer science programs | None | $1,379 | $1,392 |

### 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. 3314.08(C)(4) and (5), 3317.022(E), 3317.16(D), and 3326.39)

The bill specifies that a city, local, exempted village, or joint vocational school district, community school, or STEM school must spend at least 75% of the state career-technical education funding it receives on costs directly associated with career-technical education programs including development of new programs (such as curriculum development, purchase, and implementation; instructional resources and supplies; industry-based program certification; student assessment, credentialing, and placement; curriculum specific equipment purchases and leases; career-technical student organization fees and expenses; home and agency linkages; work-based learning experiences; professional development). No more than 25% of the district's or school's state career-technical education funding may be spent on personnel expenditures. (These requirements are currently prescribed for all career-technical providers by a State Board of Education rule.[46])

The bill also specifies that a community school or STEM school receiving state career-technical education funding must spend that funding only for the purposes that the Department designates as approved for career-technical education expenses (which are only the expenses connected to the delivery of career-technical programming to career-technical students). The Department must require the school to report data annually so that the Department may monitor the school's compliance with the requirements for spending state career-technical education funding. This provision already applies to city, local, exempted village, and joint vocational school districts under current law and continues to apply to them under the bill.

### Career-technical education provided by community schools

(R.C. 3314.086 and 3314.087)

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.

---

[46] Ohio Administrative Code 3301-61-16.

The bill also permits a student enrolled in a community school to simultaneously enroll in the career-technical program operated by the career-technical planning district to which the student's resident district belongs, rather than the career-technical program operated by the student's resident district as provided in existing law.

### 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.

### Assignment to career-technical planning districts

(R.C. 3317.023)

The bill specifies that community schools and STEM schools may be assigned to a career-technical planning district.

## Spending of economically disadvantaged funds

(R.C. 3314.08, 3317.022, 3317.16, 3317.25, and 3326.40)

The bill requires a city, local, exempted village, or joint vocational school district, community school, or STEM school to spend the economically disadvantaged funds it receives for any of the following initiatives or a combination of the following initiatives:

(1) Extended school day and school year;

(2) Reading improvement and intervention;

(3) Instructional technology or blended learning;

(4) Professional development in kindergarten through third grade;

(5) Dropout prevention; or

(6) School safety and security measures.

Each school district, community school, and STEM school must submit a report to the Department at the end of each fiscal year describing the initiative or initiatives on which the district's or school's economically disadvantaged funds were spent during that fiscal year. Starting in 2015, the Department must submit a report of this information to the General Assembly not later than December 1 of each odd-numbered year.

## Transportation funding

(R.C. 3317.0212)

The 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 also requires the Department, in fiscal years 2014 and 2015, to pay each city, local, and exempted village a pro rata portion of the transportation funding described above. Additionally, the 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 and intends that the funds be used for services that will allow students in those subgroups to master the knowledge base required for high school graduation. 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 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 requires that if a district or school fails to show satisfactory achievement and progress, as determined by the State Board, for any subgroup of students based on the annual state report card performance measures for that subgroup, the district or school must submit an improvement plan to the Department for approval. The plan may be included in any other improvement plan required of the district or school under state or federal law. The Department may require that the plan include an agreement to partner with another organization that has demonstrated the ability to improve the educational outcome for that subgroup of students to provide services to those students. The partner organization may be another district, school, or other educational provider.

To facilitate these provisions, not later than December 31, 2014, the State Board must establish measures of satisfactory achievement and progress, which 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; 3313.849; Repealed R.C. 3317.11; conforming changes in R.C. 3311.0510, 3312.08, 3313.376, 3313.845, 3315.40, 3317.023, and 3326.45; Section 263.360)

The 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. However, the bill retains and relocates a current law provision requiring that the Department annually deduct from each client school district of an ESC and pay to that ESC an amount equal to $6.50 times the school district's total student count. The bill also expressly permits the board of education of any client school district to pay an amount in excess of $6.50 per student and specifies that, if a majority of a service center's districts approve the higher amount, the Department must deduct the approved excess from all of the service center's client school districts.

The bill further specifies that any additional funds owed by a district to an ESC must be paid in accordance with the agreements entered into by the ESC and its client

school districts. In addition, the 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 $37 multiplied by the ESC's total student count and, for fiscal year 2015, is $35 multiplied by its total student count. However, if the appropriation is not sufficient, the bill requires that the payments be prorated accordingly.

### 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.[47]

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 for all of the school districts with primary agreements with the ESC. This definition differs from the general definition used under current law, which is the average number of students enrolled

---

[47] 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.

during the first full school week of October in a school district in grades kindergarten through twelve, including students with a dual enrollment in a joint vocational or cooperative education district that week, and the total number of preschool students with disabilities enrolled on the first day of September.

### Shared services agreements

(R.C. 3313.849)

The bill authorizes school districts, community schools, or STEM schools to agree to share any services offered by an ESC and to pool funding resources with any other school districts, community schools, or STEM schools provided that each participant in those shared services specifies in its service agreement: (1) the amount of funds it will be contributing toward the total cost of the shared services, (2) the services that will be shared, and (3) the other participating districts or schools. While it may be unclear what funding sources these entities may pool from, a plausible interpretation is that those entities may pool their $6.50 per pupil deduction, the state-funded subsidy, and any additional funds agreed upon in their ESC agreements to receive a more favorable cost for services for purchasing in bulk. The Department is required to pay the ESC for its services under a shared services agreement in the same manner as is required under a primary ESC agreement. Likewise, payment for additional services under a shared services agreement is governed by the terms of the fee-for-service agreement.

The bill specifies that the authority to enter into a shared services agreement is in addition to the authority to share the services of supervisory teachers, special instruction teachers, special education teachers, and other licensed personnel granted to school district boards of education under continuing law.

### Fee-for-service agreements

(R.C. 3313.844 and 3313.845)

The bill expressly permits a joint vocational school district to enter into a fee-for-service agreement with an ESC in the same manner as a school district.

The bill also requires the Department, at the request of a school district or community school, to pay the service center the amount due to it under a fee-for-service agreement and to deduct that amount from the payments made to the community school or school district.

Finally, the bill specifies that an agreement entered into by a community school and an ESC is valid only if a copy of that agreement is filed with the Department.

### Process to ensure correct ESC is paid state subsidy 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 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 and unobligated 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 and unobligated funds that were paid to the ESC under a service agreement during that fiscal year retained by the ESC for the purpose of applying them toward any payment the client will owe to the ESC for the next fiscal year. For this purpose, the 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.

Under the bill, a client must expend its retained funds only for services specifically set forth under a service agreement. The bill requires the treasurer of the ESC to keep a record of the client's expenditure and the service or services for which the expenditure was made. On at least an annual basis, or upon request, the ESC's treasurer must notify the client's treasurer or fiscal officer of these recorded expenditures. Upon receiving this notification, the client's treasurer or fiscal officer must include the

information in the treasurer or fiscal officer's financial report at the next meeting of the client's governing body.

### Background on ESC agreements

Recent changes, enacted in 2011 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.

See also "**Supervisory services by educational service centers**" below.

## 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.[48] 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

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

continue to receive that instruction, provided that the facility possesses the necessary hardware, software, and Internet-connectivity.

### 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.[49]

## 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.

---

[49] R.C. 3314.08.

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.

## Nonpublic school administrative cost reimbursement

(R.C. 3317.063)

The Superintendent annually reimburses each chartered nonpublic school for administrative and clerical costs incurred as a result of complying with state and federal recordkeeping and reporting requirements. The bill increases to $360 (from $325 under current law) the maximum amount per pupil that may be reimbursed to a school each year.

## Fees for all-day kindergarten

(R.C. 3321.01(G))

The bill permits a school district to charge tuition in any school year following the 2012-2013 school year for a student enrolled in all-day kindergarten, as long as the district is offering all-day kindergarten for the first time or the district charged for all-day kindergarten in the 2012-2013 school year as permitted under current law. The bill requires the Department to adjust a district's average daily membership certification by one-half of the full-time equivalency for each student charged fees or tuition for all-day kindergarten. This provision, by cross-reference, also appears to apply to community schools.[50]

Under current law, school districts and apparently community schools are permitted to charge fees or tuition for all-day kindergarten services only if they did not receive a poverty-based assistance payment for all-day kindergarten for fiscal year 2009.

---

[50] 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).

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.[51] 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,[52] 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, 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.

[51] R.C. 3317.029(D), repealed by the bill.

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

## 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); 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.

## 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 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).[53]

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

---

[53] 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.[54]

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

[54] 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 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'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.)

### Sponsor agreement terms

The bill specifies that the initial term of a community school sponsor's agreement with the Department lasts for up to seven years.[55] Moreover, the bill adds that, if a sponsor satisfies certain conditions, the Department must add one year to the agreement's term, unless the sponsor does not wish to have the term extended. In addition, either of the following conditions (as applicable) must be satisfied for a sponsor to qualify for a yearly extension:

(1) Prior to January 1, 2015, the sponsor is not ranked in the lowest 20% of sponsors statewide, according to the composite performance index score, under the annual sponsor rankings required by separate law[56] and the sponsor continues to meet all the prescribed community school sponsor requirements; or

(2) On or after January 1, 2015, the sponsor is rated as either "exemplary" or "effective" under the community school sponsor evaluation system that will replace

[55] Current law is silent on the term of a sponsor's agreement with the Department.

[56] R.C. 3314.017.

annual rankings effective on that date[57] and the sponsor continues to meet all the prescribed community school sponsor requirements.[58]

### Sponsor probation and compliance plans

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 option to place a sponsor on probationary status and the option to limit the sponsor's ability to sponsor additional schools, pending satisfactory remedies, rather than outright revoke that authority as provided under current law.[59] 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 proposed plan to remedy the conditions for which it is noncompliant. The Department must either approve or disapprove the plan within 14 days after receiving the proposed plan. If the plan is disapproved, the sponsor may submit a revised plan to the Department within 14 days after receiving the Department's notification of disapproval or within 60 days after receiving the Department's notification of noncompliance, whichever is earlier.

Similarly, the Department must either approve or disapprove the revised plan within 14 days after receiving the plan or within 60 days after notifying the sponsor of its noncompliance, whichever is earlier. A sponsor may continue to make revisions to a revised plan that was disapproved by the Department until the 60th day after receiving its notification of noncompliance. If a plan or a revised plan is approved by the Department, the sponsor must implement the plan within 60 days after receiving the noncompliance notification or within 30 days after the plan's approval, whichever is earlier.

---

[57] R.C. 3314.017, as amended by H.B. 555 of the 129th General Assembly.

[58] R.C. 3314.015(B)(1).

[59] R.C. 3314.015(F).

If the sponsor does not respond to the Department or implement an approved compliance plan by the deadlines described above, or if a sponsor does not receive approval of a compliance plan within 60 days after receiving its noncompliance notification, the Department (1) must declare to the sponsor that it is in probationary status, and (2) may 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 also adds a 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.[60]

### Direct authorization applications

(R.C. 3314.029)

Under the existing "Ohio School Sponsorship Program," the Department 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

[60] R.C. 3314.015(H).

those students tuition.[61] 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.

### Grandfathered community school sponsors

(R.C. 3314.027)

The bill removes language in current law regarding grandfathered community school sponsors not subject to approval by the Department. Specifically, it removes the current language stating that a sponsor may continue sponsoring a school "as long as the entity complies with all other sponsorship provisions of this chapter" (meaning R.C. Chapter 3314.) and "need not be approved by the Department for such sponsorship, as otherwise required under divisions (A)(2) and (B)(1) of section 3314.015 of the Revised Code." Presumably, the result of the changes made by the bill is that grandfathered community school sponsors may continue to sponsor community schools and enter into new contracts to sponsor community schools so long as the contracts conform with the Community School Law. However, the substance of the bill's changes may not be clear.

Under current law, certain sponsors are not subject to initial Department approval. Specifically, these are the entities that were already sponsoring community schools as of April 8, 2003, when the approval requirement became law to be approved by the Department.[62]

### Community school closure criteria – grade 4-8 schools

(R.C. 3314.35)

Under current law, beginning with the 2013-2014 school year, a community school that offers any of grades 4 to 8 and does not offer a grade higher than 9 must permanently close if it meets any of the following conditions for two of the three most recent school years: (1) the school has received a rating of "academic emergency" (under the former school district and school rating system), (2) the school has received an "F" for the performance index score and for the overall value-added progress dimension, or (3) the school has received an overall grade of "F" and an "F" for the overall value-added

---

[61] Otherwise, community schools are generally prohibited from charging tuition.

[62] The requirement for sponsors to be approved by the Department was enacted in Sub. H.B. 364 of the 124th General Assembly. Section 6 of that act, which exempted the grandfathered sponsors from approval, is now codified as R.C. 3314.027.

progress dimension.[63] (The latter two conditions refer to the new rating system enacted in 2012.[64])

The bill revises the first condition for closure by specifying that, to trigger permanent closure after July 1, 2013, the school must have been both, (1) in a state of academic emergency and (2) showed less than one standard year of academic growth in either reading or mathematics, as determined by the Department. Prior to July 1, 2013, both of these criteria apply for closure of such schools.[65]

## E-school separation into multiple schools

(R.C. 3314.29)

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

(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;

(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.

(5)(a) For a school that wishes to divide in the 2013-2014 school year, the school was rated in continuous improvement or higher on the report card for the 2011-2012 school year and received a "C" or higher for its performance index score on the report card for the 2012-2013 school year; or

(b) For a school that wishes to divide in the 2014-2015 school year, the school received a "C" or higher for its performance index score on the report cards for the 2012-2013 and 2013-2014 school years.

The bill also specifies that the accountability data, including report card data, of the original school before it separates, continues to apply to the applicable grade levels of the new schools.

---

[63] R.C. 3314.35(A)(3)(b).

[64] H.B. 555 of the 129th General Assembly, effective March 22, 2013.

[65] R.C. 3314.35(A)(2)(b).

The bill prohibits either of the resulting two e-schools to add additional grade levels at any time during either school's operation.

Finally, 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.[66]

## E-school operator grades

(R.C. 3314.035)

The bill requires the Department to issue composite grades to each operator that manages, in whole or in part, more than one e-school. The composite grades issued to an operator must be for the same academic performance measures prescribed for individual schools under current law and must be based on the grades issued for the separate e-schools managed by the operator.

The bill then specifies that an e-school managed by an operator that is issued composite grades is subject to sanctions and permanent closure based on the *lower* of the grade or grades issued to an individual school under current law or the composite grade or grades issued to the e-school's operator. Community schools that serve primarily students enrolled in dropout prevention and recovery programs are exempt from this provision.

## Continuous enrollment

(R.C. 3314.261)

The bill specifies that a student who transfers from one e-school to another e-school managed by the same operator is considered "continuously enrolled" for purposes of the administration of state assessments. For a student's test score to count toward a school's annual report card, that student must be "continuously enrolled," or not withdrawn from school, from the first full week of October through the date of the test.[67] Thus, a student who transfers within that time period from one e-school to another e-school managed by the same operator would be considered continuously enrolled and would still have to take the required state assessments, which results would be included in the calculation of the school's report card.

---

[66] R.C. 3314.013(B), not in the bill.

[67] R.C. 3302.03(K)(2)(a).

## Dropout prevention and recovery program report cards

### Ratings

(R.C. 3314.017(D)(3))

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.

### Review of performance indicators

(R.C. 3314.017(G))

The bill requires the State Board, not later than December 31, 2014, to review the performance levels and benchmarks for the performance indicators used in the report card issued for community schools that primarily serve students enrolled in dropout prevention and recovery programs. The State Board may revise the performance levels and benchmarks based on data collected in developing the rating and report card system 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."[68] The bill specifies that, beginning with the 2013-2014 school year, a suspended community school's contract is void, if the school's governing authority fails to provide the sponsor with a satisfactory proposal to remedy issues for which it was suspended by September 30 of the following school year. In other words, the school has until the following September 30 to remedy the issues or it will be permanently closed. Additionally, for a community school that has been suspended by its sponsor *prior to* the bill's (90-day) effective date, the school's governing authority must provide, by September 30, 2014, a proposal to remedy the issues for which the school's contract was suspended. If the governing authority fails to do so, the school's contract is void, and the school must permanently close.

## 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.[69] The bill does not revise the minimum school year for community 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 retains the current law that specifies the school week generally be five days, but adds an explicit statement that chartered nonpublic schools may be open for instruction with pupils in attendance on any day of the week, including Saturday and Sunday. The bill eliminates any requirement for a minimum school month, which is four school weeks under current law,[70] and it eliminates the requirement that a school day be at least five hours long.[71]

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

---

[68] R.C. 3314.07, not in the bill and 3314.072.

[69] R.C. 3313.48(A); Sections 812.10 and 812.40.

[70] R.C. 3313.62.

[71] R.C. 3313.48.

adopted by each particular school district board.[72] 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.

### 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.[73]

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.

---

[72] R.C. 3313.481 as reenacted by the bill.

[73] R.C. 3313.48(A)(1) to (3) and 3317.01(B).

## Prohibition on the reduction of hours except by resolution

(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 "**Prohibition on applying certain requirements 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.[74])

### 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

---

[74] 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.

## Prohibition on applying certain requirements to chartered nonpublic schools

(R.C. 3313.48(G))

The bill prohibits the State Board 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 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. 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 has, by rule, made adherence to minimum school year and school day requirements applicable to both chartered and nonchartered nonpublic schools.[75]

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.[76] By statute, a school day for

---

[75] 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.

[76] 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 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.[77]

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.[78] 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.[79] 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 |

[77] O.A.C. 3301-35-06, 3301-35-08, and 3301-35-12.

[78] R.C. 3313.48 and 3317.01(B).

[79] 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 is required to implement any of these alternative schedules.[80]

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;

[80] 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.); or[81]

(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

---

[81] 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.[82] 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 toward 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.)

---

[82] 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%, but does not exceed 400%, of the federal poverty guidelines provided the student remains enrolled in a chartered nonpublic school. For a student whose family income rises above 200% of the federal poverty guidelines after initially qualifying under the expansion, the bill prescribes a three-tiered system under which the student's scholarship will be reduced. However, if the student's family income rises above 400% of the federal poverty guidelines after initially qualifying, the student will no longer be eligible for a scholarship. (See "**Scholarship reductions if family income rises**" below.)

All students who are newly qualified under the 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.

#### Priorities

(R.C. 3310.032(D))

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

#### Scholarship reductions if family income rises

(R.C. 3310.032(E))

The bill prescribes a tiered system for reducing scholarship amounts if an eligible student's family income rises above 200% of the federal poverty guidelines, as follows:

(1) If the student's family income is above 200% but at or below 300% of the federal poverty guidelines, the student's scholarship is 75% of the full scholarship amount;

(2) If the student's family income is above 300% but at or below 400% of the federal poverty guidelines, the student's scholarship is 50% of the full scholarship amount; and

(3) If the student's family income is above 400% of the federal poverty guidelines, the student is no longer eligible to receive a scholarship.

### 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, but are subject instead to the separate order of priority prescribed for those students.

### 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.

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, assuming the student's family income does not rise above prescribed levels (see "**Scholarship reductions if family income rises**" above).

### Eligibility for homeschooled students and students transferring to Ohio

(R.C. 3310.03)

The bill expands the eligibility provisions for the Ed Choice scholarship to qualify a student who "will be enrolling in school in this state for the first time" in the school year for which the scholarship is sought and whose school district or school building that the student would otherwise attend qualifies for scholarships, including the bill's new qualification beginning in the 2016-2017 school year for students in buildings with a grade of "D" or "F" on the K-3 literacy performance measure. Current law specifies that the student must be "eligible to enroll in kindergarten," to qualify under the relevant eligibility provision. Therefore, under the bill, students moving to Ohio from another state and students who were previously homeschooled, regardless of their grade level, will be eligible for scholarships, in addition to the incoming kindergarteners who are currently eligible.

### Minimum eligibility age

(R.C. 3310.03)

The bill specifies that a student who will be enrolling in school in this state for the first time and would otherwise be assigned to a school building that would qualify

for the Ed Choice scholarship, as proposed under the bill, must be at least five years of age by January 1st of the school year for which the scholarship is sought. Current law specifies that the student must be "eligible to enroll in kindergarten," to qualify under the relevant eligibility provision. Therefore, under the bill, students moving to Ohio from another state and students who were previously homeschooled, regardless of their grade level, who are at least five years of age by January 1st will be eligible for scholarships, in addition to the incoming kindergarteners who are currently eligible.

### Volunteering in lieu of payment

(R.C. 3310.13(B))

Current law prohibits chartered nonpublic schools that accept the Ed Choice Scholarship to permit the family of an eligible student with a family income at or below 200% of the federal poverty guidelines to pay a tuition fee that is greater than the student's scholarship. On the other hand, current law also requires a school to permit families of eligible students with family incomes greater than 200% of the federal poverty guidelines to provide volunteer services in lieu of cash payment to pay all or part of the amount of the school's tuition not covered by the scholarship. The bill eliminates this latter provision from current law.

## 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.[83]

### Background

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

---

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

## Jon Peterson Special Needs Scholarship Program

### 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 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.[84]

### Moratorium on applications

(Section 263.443)

The bill prohibits the Department from accepting any applications for new Jon Peterson Special Needs Scholarships in the fall 2013 application period. However, the Department may accept applications from those students who received the scholarship in the previous or current school year.

Ordinarily, there are two application periods for the Jon Peterson Special Needs Scholarship annually. The first application period begins in February and ends on April 15th. Scholarships awarded to this group of applicants will be for the full school year. The second application period begins in October and ends on November 15th. Scholarships awarded during this second application period will be awarded for half of the school year (January 1 through June 30).[85]

### Payments for certain students

(Sections 263.10 and 263.250)

The bill requires the Department to reimburse school districts in fiscal year 2014 for the full amount deducted from their state education payments under the Jon Peterson Special Needs Scholarship Program for scholarships for students who did not attend a public school in their resident district in the previous school year. The bill appropriates $5 million from the General Revenue Fund for this purpose. If this amount is not sufficient, the Department must prorate the payment amounts.

---

[84] R.C. 3310.52, not in the bill.

[85] See R.C. 3310.52, not in the bill. See also http://education.ohio.gov/Topics/Other-Resources/Scholarships/Special-Needs-Scholarship.

### 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 and the provisions permitting the Department to contract with qualified researchers and to accept grants for the study, it eliminates all of the required assessments for the report. The bill also removes the current requirement for the Department to use "both quantitative and qualitative analyses" when conducting the evaluation.

## Autism Scholarship Program; instructional assistant permit

(Sections 605.23 and 605.24)

The bill changes existing law[86] to specify that individuals that provide services to a child under the Autism Scholarship Program are not required to obtain a one-year, renewable instructional assistant permit until December 20, 2014 (rather than December 20, 2013). Current law not changed by the bill, permits the State Board to issue an instructional assistant permit to an individual, upon the request of a registered private provider,[87] qualifying that individual to provide services to a child under the program.[88]

The Autism Scholarship Program pays scholarships to the parents of identified autistic children in grades pre-kindergarten to 12. The scholarship is to be used solely to pay all or part of the cost of sending the child to a public or an approved nonpublic

---

[86] Section 4 of Am. Sub. H.B. 279 of the 129th General Assembly.

[87] Continuing law defines a registered private provider as a nonpublic school or other nonpublic entity that has been approved by the Department to participate in the program (R.C. 3310.41(A), not in the bill).

[88] R.C. 3310.43, not in the bill.

special education program instead of the one provided by the child's resident school district. The scholarship amount is the lesser of the amount charged by the special education program or $20,000. The scholarship is to be used to pay for only those services specified in the child's "individualized education program" (IEP) prepared by the child's resident school district.

### Administration of state assessments by nonpublic schools accepting scholarship students

(R.C. 3301.0711(K), 3301.16, 3310.14, 3310.522, and 3313.976)

Current law requires a nonpublic school to administer the state assessments to each student attending the school with a scholarship under a state scholarship program.[89] All chartered nonpublic high schools, regardless of whether they accept state scholarships, must administer the Ohio Graduation Test (OGT) and all their students, generally, must pass all five areas of the test to be eligible for their diplomas.[90] (The OGT is scheduled to be replaced by a college and work ready assessment system consisting of a national standardized test and prescribed end-of-course examinations.)[91]

The bill requires a chartered nonpublic school to administer the applicable state achievement assessments to *all* of its students if at least 35% of its total enrollment is made up of students who are participating in any of the state scholarship programs. The bill also maintains current law by specifying that each chartered nonpublic school that (1) has a total enrollment in which *less than* 35% of students participate in the scholarship programs, and (2) educates students in ninth through twelfth grades, *must* continue to administer the OGT and the replacement assessments and *may* elect to administer the elementary state assessments.

---

[89] R.C. 3310.14, 3310.522, and 3313.976. These statutes apply that requirement to scholarship students under the Ed Choice Scholarship Program, Jon Peterson Special Needs Scholarship Program, and Cleveland Scholarship Program. The requirement applies to students participating in the Autism Scholarship Program by rule of the State Board (Ohio Administrative Code 3301-103-04(C)).

[90] R.C. 3313.612. Under specified conditions, a student may be awarded a diploma even if the student passes only four of the five areas of the OGT (R.C. 3313.615).

[91] Elsewhere, the bill exempts students enrolled in certain chartered nonpublic schools from the end-of-course examination provision but not from the requirement to pass the national standardized test (R.C. 3313.612(B)).

## V. State Board Standards and Reporting

### School district and school minimum operating standards

(R.C. 3301.07(D))

Continuing law requires the State Board to formulate and prescribe minimum standards to be applied to all elementary and secondary schools. The 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 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 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 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 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.

### School operating expenditure rankings

(R.C. 3302.20 and 3302.21)

In regard to the current statutory system for ranking school districts and schools by operating expenditures per pupil, the bill adds a definition prescribing that "operating expenditures per pupil" has the same meaning as "expenditure per equivalent pupils" (see "**Performance management information**" below). Under the bill, these rankings are to be included in the new performance management section on the Department's web site.

Currently, the Department must rank school districts, joint vocational school districts, community schools, Internet- or computer-based community schools, and STEM schools among similar types of schools. The Department is then required to post this information in a prominent location on 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.[92] A district also must transport STEM school students, unless the school's proposal as approved by the STEM committee provides for transportation.[93] 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.[94]

### Payment in lieu

(R.C. 3327.02)

The bill maintains current law provisions for a payment in lieu of transportation to a student's parent (see above), but changes the minimum amount for such a payment to $225, effective July 1, 2014. Currently, the minimum amount for such a payment is an "amount determined by the Department of Education."

The bill maintains current law regarding the maximum amount for a payment in lieu of transportation, which is the average cost of pupil transportation for the previous school year, as determined by the Department.

### Fee for transportation charged by chartered nonpublic schools

(R.C. 3327.07)

Effective July 1, 2014, the bill expressly permits a chartered nonpublic school to charge a fee for transportation, regardless of whether the student is eligible for transportation by a school district, if the chartered nonpublic school's governing authority purchased the vehicle transporting the student using without state or federal funds. This includes permission to charge a fee for transportation to a parent or guardian who chooses to decline transportation services from their child's resident school district and use transportation provided by the chartered nonpublic school instead.

---

[92] R.C. 3327.01.

[93] R.C. 3326.20, not in the bill.

[94] R.C. 3327.01 and 3327.02.

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.

# VII. Other Education Provisions

## Supervisory services by educational service centers

The bill makes the following changes with respect to an educational service center's (ESC) supervisory relationship with school districts:

- Requires each "local" district board to prescribe a curriculum for all schools under its control, and removes this requirement for ESCs with respect to "local" districts (R.C. 3313.60).
- Removes a requirement that each ESC annually certify the average daily membership (ADM) of students receiving services from schools under the ESC superintendent's supervision (i.e., "local" school districts) (R.C. 3317.03).
- Permits a "local" district superintendent to excuse a child that resides in the district from attendance for any part of the remainder of the current school year upon satisfying conditions specified in law and in accordance with district board and State Board rules, and removes this authority for an ESC superintendent acting on behalf of a "local" district (R.C. 3321.04).
- Requires the superintendent of a "local" district in which a child withdraws from school to immediately receive notice of the withdrawal from the child's teacher, and removes this requirement as it applies to ESC superintendents acting on behalf of "local" districts (R.C. 3321.13).
- Permits a city or exempted village district board to obtain services from an ESC attendance officer instead of employing its own attendance officer (R.C. 3321.14).
- Permits, rather than requires, every ESC governing board to employ an ESC attendance officer, and requires an ESC to make the decision regarding employment of an attendance officer based on consultation with the districts that have agreements with the ESC (R.C. 3321.15).

- With respect to the salary schedule that any district board participating in the school foundation program must adopt, removes a requirement that each "local" district board file a copy of its salary schedule with the ESC superintendent for certification of the correct salary to be paid to each teacher (R.C. 3317.14).

- Permits a "local" district to provide an instructional program for the employees of the district, in the same manner as currently authorized for "city" and "exempted village" districts (R.C. 3315.07(A)).

- Specifies that any school district board that has an agreement with an ESC to receive services may authorize the ESC to purchase or accept upon donation supplies and equipment for the district. Current law specifies that a "city" or "exempted village" district may make this authorization, subject to approval by the ESC, and a "local" district may make this authorization without any approval from the ESC (R.C. 3315.07(D)).

- Permits the superintendent of a "local" district to certify the qualifications of the school bus drivers employed or contracted by the district (R.C. 3327.10).

- Requires a "local" district board to appoint a business advisory council unless the district and an ESC have an agreement providing that the ESC's business advisory council will represent the district's business (R.C. 3313.82).

- Applies the above exception to the requirement to appoint a business advisory council to city and exempted village districts, which are already required to appoint a council under existing law (R.C. 3313.82).

- For purposes of each ESC appointing the committee for selecting and recommending high school graduates for the Ohio Scholarship Fund for Teacher Trainees, removes the requirement that the high school principal and classroom teacher appointed to the committee be from only a "city" or "exempted village" district, thus permitting the principal or teacher to be from a "local" district as well (R.C. 3315.33).

## Post-Secondary Enrollment Options Program

(R.C. 3365.01, 3365.02, 3365.021, 3365.022, 3365.07, and 3365.12)

### 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 $5,745, for fiscal year 2014, and $5,800, 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 to apportion those funds according to rule of the State Board. 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.

### 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 alterative formula meets the rules adopted by the Superintendent 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 remedial college course. Under continuing law, the Department is also prohibited from reimbursing a participating college for any course that is taken under "Option A" of PSEO (see "**Background**" above).

### College admission requirements

(R.C. 3365.02(F))

Under current law, the State Board 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 placement standards for credit-bearing, college-level courses. Therefore, because certain college courses require prerequisites to be completed before enrolling in the class, this provision would likely allow colleges to require PSEO students to complete particular high school courses as prerequisites before participating in the program and enrolling in certain courses at the college level.

### List of participating institutions of higher education

(R.C. 3365.02 and 3365.021)

The bill requires the Department to compile an annual list of all institutions of higher education that currently participate in PSEO or in other dual enrollment programs (see "**Dual enrollment programs**" below). This list must then be distributed, not later than December 31 of each school year, to all school districts, community schools, STEM schools, and chartered nonpublic schools in the state. Additionally, as part of the counseling services required of each district or school prior to a student's participation in PSEO (see below), the bill requires each district or school to provide the list of participating institutions to interested students and interested students' parents or guardians.

Under current law, public schools and chartered nonpublic schools are required to provide counseling to each interested student and the student's parents or guardians before that student participates in PSEO. Such counseling must include an explanation

of the possible risks and consequences of participating. For chartered nonpublic schools, counseling must also include a discussion regarding funding availability and the possibility of limited participation in the program, while counseling for public schools must include information in several specified areas, including, among others, program eligibility, the process for granting academic credits, financial arrangements for tuition and course materials, and the consequences of failing or not completing a course.

## 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.

## College Credit Plus program recommendations

(Section 363.590)

The bill requires the Chancellor of the Board of Regents to make recommendations to establish the "College Credit Plus" program. The program would allow high school students to earn credits through institutions of higher education in the state. Presumably, the program would replace the existing Post-Secondary Enrollment Options Program.

In developing the recommendations, the bill requires the Chancellor to consult with the Inter-University Council of Ohio, the Association of Independent Colleges and Universities of Ohio, the Ohio Association of Community Colleges, and the Superintendent of Public Instruction. By December 31, 2013, the Chancellor must provide a report of these recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives, "for implementation of the program in the 2014-2015 academic year."

## 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.

The bill permits a district board to require a student enrolled in a chartered or nonchartered nonpublic school to first enroll and participate in no more than one academic course at the school offering the extracurricular activity. If a district board chooses to implement such a requirement, it must enroll such students in academic courses at the school offering the extracurricular activity as space allows, after first enrolling students assigned to that school.

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.

Just as in the case of a nonpublic school student (described above), the bill permits a district board to require a homeschooled student to first enroll and participate in no more than one academic course at the school offering the extracurricular activity. If a district board chooses to implement such a requirement, it must enroll such students in academic courses at the school offering the extracurricular activity as space allows, after first enrolling students assigned to that school.

To participate, the student must (1) meet age and grade level requirements for the school offering the activity, as determined by the superintendent, (2) fulfill the same academic, nonacademic, and financial requirements as any other participant in the extracurricular activity, and (3) fulfill either of the following requirements: (a) meet academic requirements established by the State Board for the continuation of home instruction (if homeschooled in the preceding 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.[95]

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.

## Physical education exemptions

(R.C. 3302.032, 3313.603, 3313.6016, and 3313.674)

### Physical education requirement

(R.C. 3313.603)

The bill exempts children with disabilities and students who are currently enrolled in Internet or computer-based schools ("e-schools") from the physical education requirements for graduation from high school. This exemption is automatic and does not require approval by the district or school. However, the exemption for

[95] R.C. 3313.535 and 3313.537, neither in the bill.

children with disabilities is subject to, and must not conflict with, each child's individualized education program (IEP).

Under current law, all students that are enrolled in public or chartered nonpublic schools are required to complete one-half unit of physical education in order to graduate from high school. However, a district or school may choose to adopt a policy that exempts students who, during high school, participated in either (1) interscholastic athletics, marching band, or cheerleading for at least two full seasons, or (2) the Junior Reserve Officer Training Corps (JROTC) for at least two full school years.

### Physical activity pilot program

(R.C. 3313.6016)

The bill exempts children with disabilities and students who are enrolled in e-schools from a current law requirement that they meet a specified amount and level of physical activity each school day, if they attend districts or schools that choose to participate in the voluntary physical activity pilot program (see "**Physical activity pilot program**" below). Like the exemption from the physical education requirement above, this exemption is subject to each child's IEP.

Under current law, each district or school that chooses to participate in the pilot program must require all students in grades kindergarten through twelve to engage in at least 30 minutes of moderate to rigorous physical activity each school day, exclusive of recess. However, districts or schools must exempt from this requirement any student enrolled in (1) the Post-Secondary Enrollment Options (PSEO) Program, (2) a career-technical education program operated by the district or school, or (3) a dropout prevention and recovery program operated by the district or school. In addition, districts or schools may choose to exempt any student that is participating in interscholastic athletics, marching band, cheerleading, or JRTOC.

### Body mass index screenings

(R.C. 3313.674)

Subject to each child's IEP, the bill exempts children with disabilities from a current law requirement that they undergo screenings for body mass index and weight status category, if they attend districts or schools that choose to participate in the voluntary screenings. The bill maintains a provision of current law that already exempts e-school students from the requirements related to the body mass index screenings.[96]

---

[96] R.C. 3314.15, not in the bill.

Under current law, each district or school that chooses to participate in the body mass and weight status screenings may require each student to undergo such screenings. The district or school may either provide the screenings itself or allow the parents to obtain the screenings from a third-party provider. Following these screenings, the district or school must notify each student's parent or guardian of any health risks associated with the student's results. Additionally, the district or school must submit the results of these screenings to the Department of Health.

Currently, the parent or guardian of a student who attends a district or school participating in these screenings may submit a written statement to the district or school seeking an exemption. If the parent or guardian submits such a written statement, the district or school must not require that student to undergo the screenings.

### State Board's health and wellness measure

(R.C. 3302.032)

The bill prohibits the inclusion of children with disabilities and students that are enrolled in e-schools from any report that uses the measure established by the State Board to gauge (1) student success in meeting physical education benchmarks, (2) compliance with local wellness policies prescribed by the federal "Child Nutrition and WIC Reauthorization Act of 2004," (3) whether a school district or building elected to administer body mass index screenings, and (4) whether a school district or building is participating in the physical activity pilot program. The bill also explicitly exempts children with disabilities and e-school students from some of the individual components of this measure, including the physical education requirements for graduation (as described above) and the requirements related to the physical activity pilot program (also as described above). Meanwhile, the bill exempts children with disabilities from the requirements related to body mass index screenings and maintains a current law provision which already exempts e-school students from these requirements (as described above).

Under current law, the State Board was required to establish, by December 31, 2011, a measure of the four components listed above. Additionally, beginning with the report cards issued for the 2012-2013 school year, this measure must be reported on the annual district and building report cards. However, the measure does not factor into any performance ratings based on these report cards.

## Chartered nonpublic school end-of-course examination exemption

(R.C. 3313.612; conforming changes in R.C. 3301.0712 and 3313.615)

The bill exempts students who attend a chartered nonpublic school accredited through the Independent School Association of the Central States from taking end-of-course examinations as a prerequisite from graduating from high school. Under current law, all students enrolled in a school district, community school, STEM school, and chartered nonpublic school, with some exceptions, must pass the required state assessments to receive their high school diploma. Currently, that assessment is the Ohio Graduation Test (OGT); however, the OGT eventually is to be replaced with the college and work ready assessment system. The college and work ready assessment system consists of two parts – a nationally standardized assessment that measures college and career readiness and a series of end-of-course exams in the areas of science, mathematics, English language arts, American history, and American government.[97] Although the bill exempts students who attend the specified accredited chartered nonpublic schools from the end-of-course exams, the bill does not exempt those students from taking the nationally standardized assessment. Nor does the bill exempt those students from taking the OGT.

## 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

[97] R.C. 3301.0712.

used to determine which students need to receive additional services in order to attain grade level performance.[98]

### 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 may be admitted prior to attaining 5 or 6 years of age by meeting conditions prescribed under a district's (or school's) acceleration policy.[99]

### Joint vocational school district board membership

(R.C. 3311.19; conforming changes in R.C. 3313.911)

The bill revises the method of appointing members of a joint vocational school district (JVSD) board of education. Under current law, members of a JVSD board either consist of the members of the educational service center (ESC) governing board of the county in which the JVSD is located or selected members of the boards of education of participating districts and ESCs, depending on the composition of the JVSD.

The bill directs the board of each school district and ESC that is a member of a JVSD to appoint individuals to the JVSD board. However, unlike current law, these appointed individuals may not be members of the appointing district board or ESC board. The bill also provides that the total number of members on a JVSD board must be the same as the number of members that were on the board prior to the bill's

---

[98] R.C. 3301.079, not in the bill.

[99] R.C. 3321.01.

effective date.[100] Initial appointments under the bill are to be made as terms of current JVSD board members expire or are vacated prior to the expiration of a member's term. The bill allows member school district boards to appoint students as nonvoting members of the JVSD board.

The term of office for members of a JVSD board appointed on or after the bill's effective date is three years. In addition, the bill limits members to two consecutive terms, but a member may serve again after three or more years have passed since the member's last term expired.

Members must be selected based on the diversity of the employers from the geographical region of the state in which the JVSD is located. A majority of the JVSD board members must reside in or be employed within the member's JVSD territory. Further, members of JVSD boards must have experience as chief financial officers, chief executive officers, human resources managers, or other business and industry professionals who are qualified to discuss the labor needs of the region with respect to the regional economy. The bill also specifies that appointing district and ESC boards must appoint members who represent employers in the JVSD region who are qualified to consider a region's workforce needs with an understanding of the skills, training, and education needed for current and future employment needs in the region.

## Extended programming

(R.C. 3301.0725, 3313.6018, 3319.0811, and 3319.0812)

### Requirements for extended programming

The bill provides that extended programming[101] for career-technical education students that is offered by school districts must be used for activities that involve direct contact with students or are directly related to student programs and activities. However, the bill also provides that extended programming funds may be used for teacher professional development activities that are associated with agricultural education (see "**Agricultural education programs,**" "**Professional development**" below). On any given day that extended programming is provided, it must be provided for at least one hour.

---

[100] Elsewhere in this same provision the bill states that the number of members on a JVSD school board must consist of one member appointed by the board of each school district belonging to the JVSD. These statements appear to be in conflict.

[101] "Extended programming" is defined in rules adopted by the State Board as "instruction beyond the regular school year, that is based on locally approved courses of study and provides graduation credit to enrolled career-technical students" (Ohio Administrative Code 3301-61-16).

### Provision of extended programming by certificated instructional personnel

The bill permits a school district to employ certificated instructional personnel for the purpose of providing extended programming for hours outside of the normal school day. Under current law, a school district may employ certificated instructional personnel for more days during a school year than the district normally employs its regular classroom teachers.

### Provision of extended programming by licensed educators

The bill requires the board of education of a school district to pay a licensed educator who is providing extended programming on an hourly basis at the regular per diem rate determined under the licensed educator's employment contract or collective bargaining agreement. A licensed educator is prohibited from providing more than eight hours of extended programming in a 24-hour day.

## Agricultural education programs

(R.C. 3313.6019)

### Report with recommendations for quality agricultural education programs

The bill requires the Department of Education to issue a report with recommendations for quality agricultural education programs by December 31, 2013. These recommendations must be developed using both of the following:

(1) The standards for exemplary agricultural education that are described in the National Quality Program Standards for Secondary (Grades 9-12) Agricultural Education[102] developed by the National Council for Agricultural Education (or a successor document developed by the National Council for Agricultural Education or its successor);

(2) The Quality Program Standards for Ohio's Agricultural and Environmental Systems Career Field Programs[103] (or a successor document) developed by the Department, the Ohio Association of Agricultural Educators, the Ohio State University, and Wilmington College of Ohio.

---

[102] To access this document, go to www.ffa.org, then click on "Resources," then click on "FFA Learn," then click on "National Quality Program Standards Online Assessment," then click on the link for this document that is labeled "PDF."

[103] To access this document, go to www.ohioffa.org, then click on "For Educators," then click on "Resources Page," then click on the link under the "Quality Program Standards" heading.

The report must include the appropriate use of extended programming in agricultural education programs and the recommended number of hours outside the normal school day that licensed educators may be permitted to provide extended programming instruction.

Following the initial issuance of the report, the Department may periodically review and update the report as it considers necessary.

### Agricultural education instructors

The bill specifies that all agricultural education instructors must utilize a three-part model of agricultural education instruction of classroom instruction, FFA activities, and extended programming projects.

Agricultural education instructors must submit a monthly time log to the principal of the school at which the extended programming is offered (or the principal's designee) for review.

### Professional development

The bill provides that professional development associated with agricultural education is to be considered an acceptable use of extended student programming funds.

## 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 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 evaluations

(R.C. 3319.112)

Under continuing law, all school districts and educational service centers, and all community schools and STEM schools that receive federal Race to the Top grant funds, must adopt a standards-based teacher evaluation system that conforms to a framework developed by the State Board. The evaluation system must provide for multiple evaluation factors. Under current law, one of those factors must be student academic growth, and it must make up 50% of each evaluation. Under the bill, however, the student academic growth factor must account for 35% of each evaluation. In addition, the bill permits a school district to attribute an additional percentage to that factor, not to exceed 15% of each evaluation.

The bill also specifies that in calculating student academic growth for an evaluation, a student must be excluded if the student has 30 or more *excused or unexcused* absences for the school year, instead of 60 or more *unexcused* absences for the school year as under current law.

## Testing teachers

(R.C. 3319.58)

The bill exempts a community school primarily comprised of students with disabilities from the current law requirement that a teacher retake all written examinations of content knowledge, if the school is ranked in the lowest 10% of all public school buildings according to performance index score.

### Background

Under continuing law, in any year in which a building of a community school or STEM school is ranked in the lowest 10% of all public school buildings based on performance index, the building's classroom teachers must retake all exams required by the State Board for licensure to teach the subject area and grade level taught by the teacher. This requirement generally applies to all teachers of reading and English

language arts, math, science, foreign language, government, economics, fine arts, history, or geography.[104]

## 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.

The bill 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*,[105] 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.

---

[104] A similar testing provision applies to school district teachers of core subject areas who are rated "ineffective" for two of three performance evaluations.

[105] 174 Ohio App.3d 46.

### Background

Each school district board may (but is not required to) employ a district "business manager." If a board does employ a business manager, it may specify that the person either is responsible directly to the board or to the district superintendent. No one may be employed as a business manager without a business manager's license issued by the State Board. A business manager's statutory duties include (1) care and custody of all district property except moneys, (2) supervision of the construction, maintenance, operation, and repairs of buildings, (3) advertisement for bids for, purchase of, and custody of all district supplies and equipment, and (4) assistance in the preparation of the district's annual appropriation resolution. The business manager also may be given the authority to employ and terminate (with board confirmation) "noneducational employees," except those employees directly engaged in day-to-day fiscal operations and who are, instead, under the supervision of the district treasurer.[106]

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."[107]

## 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.[108]

Thus, current law prohibits a district superintendent from nominating for employment a family member and creates a conflict for a district superintendent where

---

[106] R.C. 3313.03 and 3313.04, neither in the bill.

[107] R.C. 3313.22 and 3313.31, neither in the bill.

[108] R.C. 2921.42, not in the bill.

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.

## State schools' Employees Food Service funds

(R.C. 3325.13 and 3325.14; Sections 375.10 and 377.10)

The bill creates two separate funds: (1) the State School for the Blind Employees Food Service Fund, and (2) the State School for the Deaf Employees Food Service Fund. Each fund consists of payments received from the respective school's employees who make purchases from the school's food service program. The money generated from those payments must be used to pay costs associated with the school's food service program. The bill also specifies that the approval of the State Board of Education is not required to designate money for deposit into either of the funds.

## STEM school contracting authority

(R.C. 3326.07 and 3326.08)

The bill expressly permits a STEM school to contract for any services necessary for the operation of the school, including the authority to "engage the services" of officers, teachers, and other employees.

## 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.

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, 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.[109]

---

[109] R.C. 3302.03(A)(2), (B)(3), and (C)(3).

## 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" (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 provides for the creation of 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 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 the incorporators.

The board of directors of the corporation must consist of the following nine directors: the Governor or the Governor's designee; the Superintendent or the Superintendent's designee; the Chancellor of the Board of Regents or the Chancellor's designee; two individuals to represent major business enterprises in Ohio; two individuals appointed by the Speaker of the House, one of whom must be an active

duty or retired military officer; and two individuals appointed by the President of the Senate, one of whom must be a current or retired teacher or principal.

The Dean of The Ohio State University Fisher College of Business and the Dean of The Ohio State University College of Education and Human Ecology are to serve as ex-officio nonvoting members of the board.

The individuals on the board who represent major business enterprises in Ohio are to be appointed by a statewide organization selected by the Governor. The organization is to be nonpartisan and consist of chief executive officers of major corporations organized in Ohio.

The board must elect a chairperson from among its members, and 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 overhead expenses 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 state financial support for the corporation must cease on the date that is five years after the bill's (immediate) effective date.

### Alternative license

(Section 733.50)

The bill requires the State Board to issue an alternative principal or alternative administrator license to an individual who successfully completes the New Leaders for Ohio Schools pilot program. The State Board must adopt rules that prescribe the requirements for such licenses and use existing rules for alternative principal and

administrator licenses, required under continuing law, as a guideline for the new rules. The bill does not specify a date by which the State Board must adopt the new rules.

### School district revenue from sale of real property

(R.C. 5705.10)

Authorizes the board of education of a school district to pay money received from the sale of real property into the school district's general fund and used only to pay for the costs of nonoperating capital expenses related to technological upgrades and equipment to be used for instruction and assessment. Under current law, except for a municipal school district (Cleveland), such money must be paid into the sinking fund, the bond retirement fund, or a special fund for the construction or acquisition of permanent improvements. Current law provides municipal school districts, under certain circumstances, with authority to pay such money into the district's general fund.

### Executive sessions of a municipal school district transformation alliance

(R.C. 3311.86)

Under continuing law, meetings of the board of directors of a municipal school district transformation alliance are public meetings open to the public at all times, except that the board may hold an executive session. The bill clarifies that the board and its committees and subcommittees may hold executive sessions, as if they were a public body with public employees, for any of the purposes for which an executive session may be held under the Open Meetings Act,[110] notwithstanding that the alliance is not a public body as defined in the Act, and that its employees are not public employees.

Under continuing law, a municipal school district is "a school district that is or has ever been under a federal court order requiring supervision and operational, fiscal, and personnel management of the district by the state Superintendent of Public Instruction."[111] Cleveland is currently the only municipal school district. Unlike other school districts, the board of education of a municipal school district is appointed by the mayor of the city containing the largest portion of the district's territory (City of Cleveland). H.B. 525 of the 129th General Assembly, enacted in 2012, prescribes a number of revisions in the administration of a municipal school district. One of those provisions authorizes the mayor to establish and appoint the board of directors of a Municipal School District Transformation Alliance to advise the district and Department of Education regarding district initiatives.

---

[110] R.C. 121.22.

[111] R.C. 3311.71(A), not in the bill.

## 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.

### Title V air emissions fees

- Defines "organic compound," for purposes of assessing air emissions fees under the Title V permit program, as any chemical compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

### 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.

### Environmental audits

- Removes the sunset on immunity from administrative and civil penalties that is provided to an owner or operator of a facility or property who conducts an environmental audit of the facility or property and voluntarily discloses information regarding an alleged violation of an environmental law to the director of the state agency with jurisdiction over the violation.

### Construction and demolition debris

- Allows a board of health to use money in its existing construction and demolition debris fund to abate abandoned accumulations of construction and demolition debris if it is the end of the board's fiscal year and the money is not needed for administration and enforcement for the following fiscal year.

- Authorizes a board to use such excess money to abate abandoned 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 the board believes that there is a substantial threat to public health or safety or the environment and 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.

## Definition of "organic compound" for purposes of Title V air emissions fees

(R.C. 3745.11(X))

The bill defines "organic compound," for purposes of assessing emissions fees under the Title V permit program administered under state and federal air pollution control laws, as any chemical compound of carbon, excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate.

## 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.

## Environmental audits

(R.C. 3745.72)

The bill removes the sunset on immunity from administrative and civil penalties that is provided to an owner or operator of a facility or property who conducts an environmental audit of the facility or property and voluntarily discloses information regarding an alleged violation of an environmental law to the director of the state agency with jurisdiction over the violation. Under current law, the immunity applies only with regard to audits completed before January 1, 2014.

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

(R.C. 3714.07 and 3714.074)

The 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 abandoned accumulations of construction and demolition debris. A board may do so only if it is the end of the board's fiscal year and the money is not needed for administration and enforcement for the following fiscal year. Furthermore, a board may use such excess money to abate abandoned accumulations only at a location for which a license has not been issued under the Construction and Demolition Debris Law if the board has reason to believe that there is a substantial threat to public health or safety or the environment and all of the following apply to the property on which the accumulations are located:

(1) The construction and demolition debris was placed on the property either after the owner of the property acquired title to it or before the owner of the property acquired title to it if the owner acquired title by bequest or devise;

(2) The property owner did not have knowledge that the construction and demolition debris was being placed on the property, or the owner posted on the

property signs prohibiting dumping or took other action to prevent the placing of construction and demolition debris on the property;

(3) The property owner did not participate in or consent to the placement of the construction and demolition debris on the property;

(4) The property owner did not receive any financial benefit from the placement of the construction and demolition debris on the property or from having that debris on the property;

(5) Title to the property was not transferred to the owner of that property for the purpose of avoiding liability for violations of the Construction and Demolition Debris Law or rules adopted under it; and

(6) The person responsible for the placement of the construction and demolition debris on the property, in placing it there, was not acting as an agent for the property owner.

## Federal grants for nonpoint source pollution management

(R.C. 6111.037)

The 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.

## OHIO ETHICS COMMISSION

- Allows a public official who is required to file financial disclosure statements with the appropriate ethics commission to file those statements electronically.
- Requires persons who are elected or appointed to, or who are candidates for, an office of a township with a population of 5,000 or more to file financial disclosure statements under the Ethics Law.
- Requires such a person to pay a filing fee of $35 when filing a financial disclosure statement.

### Electronic filing of financial disclosure statements

(R.C. 102.02)

The bill allows a public official who is required to file financial disclosure statements to file those statements electronically. Under continuing law, depending on the office, a public official must file those statements with the Ohio Ethics Commission, with the Joint Legislative Ethics Committee, or with the Supreme Court Board of Commissioners on Grievances and Discipline.

### Township officers and candidates filing financial disclosure statements

(R.C. 102.02; Section 803.220)

The bill expands the list of persons who are required to file financial disclosure statements under the Ethics Law to include persons who are elected or appointed to, or who are candidates for, an office of a township with a population of 5,000 or more. The Ethics Law currently requires other public officials, including persons who are elected or appointed to state, county, or city office to file financial disclosure statements regarding the sources of income and gifts received, persons with whom the candidate or official transacts business, and the source and amount of payment of expenses and meal and beverage costs. The bill expands these requirements also to apply to persons who are elected or appointed to, or who are candidates for, an office of a township with a population of 5,000 or more. The bill also clarifies that the employees of any township and persons who are elected or appointed to, or who are candidates for, an office of a township with a population of less than 5,000 are not required to file financial disclosure statements.

The bill specifies that the filing requirements first apply to 2013 statements required to be filed by persons who are candidates for or serving in a township office in calendar year 2014. The statements must be filed within 90 days after the effective date of the bill.

The bill establishes a $35 filing fee that each such candidate or officer must pay when filing the person's financial disclosure statement. The $35 amount is the same as the filing fee required to be paid by candidates for, and officers of, a city office.

## 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) as of January 1, 2014.
- Transfers CFC's functions to the Ohio Facilities Construction Commission (FCC).
- Revises the requirements for a cooperative agreement between FCC and a governmental agency or cultural organization to provide construction services for a state-funded cultural project.
- Revises the conditions under which state funds may be spent on a sports facility.
- Makes changes to the permitted content and use of cultural facility-related funds.
- Specifies procedures for the transfer of CFC's responsibilities, financial obligations, employees, equipment, assets, and records to FCC and allows FCC to enter into an agreement to transfer some of those responsibilities to the Department of Administrative Services (DAS).

### Transfer of construction authority from Department of Natural Resources

- Transfers from the Department of Natural Resources (DNR) to FCC, with certain exceptions, the authority to administer DNR's capital facilities projects.
- Authorizes DNR to administer improvements under an agreement with the supervisors of a soil and water conservation district.
- Authorizes DNR to administer certain dam, waterway, wildlife, and roadway activities and projects, and requires FCC and DNR to review this provision in two years.
- Allows DNR, in the case of a public exigency, to let contracts for those dam, waterway, wildlife, and roadway activities and projects without competitive bidding or selection.
- Permits the Executive Director of FCC to allow DNR to administer any other project of which the estimated cost is not more than $1,500,000.

### School Facilities Commission

- Requires that the Executive Director of FCC also serve as the Executive Director of the School Facilities Commission (SFC).

- Permits 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 January 1, 2014, the bill eliminates the Ohio Cultural Facilities Commission (CFC), and transfers its functions to the Ohio Facilities Construction Commission (FCC). The bill provides for CFC to continue its operations under existing law and at a similar level of funding during the period between July 1 and December 31, 2013.

### Cooperative agreements to administer cultural projects

Beginning January 1, 2014, 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

Effective January 1, 2014, 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

As of January 1, 2014, 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.[112] 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

[112] R.C. 5711.22, not in the bill.

agreements. Under the Expedited Local Partner Program, a participating district may go ahead with some of its districtwide project using local funds, and apply that local expenditure toward its share when it becomes eligible for CFAP. Since a district's percentage of the total project cost is set in the expedited agreement, changes in the district's valuation (up or down) do not affect its share of the eventual CFAP project. Accordingly, districts that had a relatively higher amount of tangible personal property in their total taxable values when the tax was phased out may experience a negative effect from having locked in the percentages of their local shares of their CFAP projects. That is, their shares may be lower now, if computed using their lower valuations, than they were when the districts entered into their expedited agreements.

### 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.[113] 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.[114]

### 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 9/10 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

---

[113] R.C. 3313.411, not in the bill.

[114] R.C. 3314.41, not in the bill.

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.

#### 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.[115]

#### 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,

---

[115] 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.

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 warrant and guarantee that the energy conservation measures will realize guaranteed savings and to pay the amount of any shortfall in the projected savings.

### 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.
- Requires the Board to fix the compensation of the Executive Director.
- Requires the Executive Director to fix the compensation of staff who are employed to assist the Board, which places Board staff into the unclassified civil service.
- 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.[116] The bill eliminates the current

[116] R.C. 4717.99, not in the bill.

law restriction that a funeral director may supervise only one funeral home, thus allowing a funeral director to supervise more than one funeral home.

### Fees

(R.C. 4717.07)

The bill increases the following fees for licenses issued by the Board:

- The fee for initial issuance or biennial renewal of an embalmer's or funeral director's license, from $140 to $150;
- The fee for the initial issuance or biennial renewal of a license to operate a funeral home, from $250 to $350;
- The fee for the initial issuance or biennial renewal of a license to operate an embalming facility, from $200 to $350;
- The fee for initial issuance or biennial renewal of a license to operate a crematory facility, from $200 to $350; 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.

### Compensation of the Executive Director and Board staff

(R.C. 4717.03)

The bill requires the Board to fix the compensation of the Executive Director and requires the Executive Director to fix the compensation of Board staff.

Administrative staff positions for which an appointing authority is given specific statutory authority to set compensation are within the current law list of positions that are in the unclassified civil service.[117] Because the bill gives the Executive Director (who is the appointing authority under the bill) specific authority to set compensation of Board staff, the bill places Board staff into the unclassified civil service.

### 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.

[117] R.C. 124.11(A)(30).

# DEPARTMENT OF HEALTH

## General and city health districts

- Authorizes the Ohio Department of Health (ODH) to require general or city health districts to enter into shared services agreements, and authorizes ODH to offer financial and technical assistance to boards of health to encourage the sharing of services.
- Authorizes ODH to reassign substantive authority for mandatory programs from a general or city health district to another general or city health district under certain circumstances.
- Authorizes the ODH Director to require general or city health districts to apply for accreditation by July 1, 2018, and to be accredited by July 1, 2020, as a condition precedent to receiving funding from the ODH.
- Requires the ODH Director, by July 1, 2016 to conduct an evaluation of health districts' preparation for accreditation.
- Eliminates a requirement that two or more city health districts be contiguous to form a single city health district.
- Eliminates the requirements (1) that two or more general health districts be contiguous to form a combined general health district and (2) that not more than five contiguous general health districts may combine to form a general health district.
- Requires the ODH Director to adopt rules to assure annual completion of two hours of continuing education by each member of a board of health and specifies the topics of education.
- Eliminates the Public Health Standards Task Force that assists and advises the ODH Director in the adoption of standards for boards of health.
- Requires the ODH Director, not later than July 1, 2014, to establish by rule a standardized process by which all general and city health districts must collect and report to the Director information about public health quality indicators, and a policy and procedures for sharing the reported health data with other specified persons.

## Patient Centered Medical Home Program

- Establishes in ODH the Patient Centered Medical Home Program (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

- Specifies in statute provisions 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.
- Prohibits an ASF in which abortions are performed or induced from having a written transfer agreement with a public hospital or entering into a contract or similar agreement with a physician who has staff membership or professional privileges at a public hospital.
- Requires the ODH Director 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 ODH Director within certain time frames when it modifies its most recent written transfer agreement or operating procedures or protocols, or becomes aware of an event that adversely affects a consulting physician's ability to practice or admit patients to a local hospital.

## Prioritized distribution of funds for family planning

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

## Management of resident's financial affairs

- Increases the maximum amount that a home that manages a resident's financial affairs may keep in a noninterest bearing account.

## Nursing facilities' plans of correction

- Requires a nursing facility's plan of correction regarding certain findings to include an explanation of how actions taken to correct the finding are part of the nursing facility's actions to meet the standards and implement best practices established under the Quality Assurance and Performance Improvement program.

## 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.

## 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.

- 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 ODH for ODH to serve as the Board's fiscal agent.

- 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.

## 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.

### Zoonotic disease program

- Authorizes the ODH Director, if a zoonotic disease program is administered by ODH, to charge a local board of health a fee for each service the program provides to the board.

### Other provisions

- Requires the ODH Director to adopt rules governing the distribution of funds in fiscal years 2014 and 2015 to assist families in purchasing hearing aids for children.

- Eliminates the January 1 deadline for the ODH Director to determine the 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.

- Requires ODH to process an application for a Women, Infants, and Children (WIC) vendor contract within 45 days if the applicant already has a WIC vendor contract.

## General and city health districts

### Expansion of ODH'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 law[118] that permits a political subdivision to enter into an agreement with another political subdivision whereby a contracting political subdivision agrees to exercise any power, perform any function, or render any service for another recipient political subdivision that the recipient political subdivision is otherwise legally authorized to exercise, perform, or render. ODH must prepare and offer to boards of health a model contract and memorandum of understanding that are easily adaptable for use by the boards when entering into shared services agreements. ODH also may offer financial and other technical assistance to boards of health to encourage the sharing of services.

The 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 and 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 apply for accreditation by July 1, 2018, and to be accredited by July 1, 2020, by an accreditation body approved by the ODH Director. By July 1, 2016, the ODH Director must conduct an evaluation of general and city health district preparation for accreditation, including an evaluation of each district's reported public health quality indicators.

### 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

[118] R.C. 9.482, not in the bill.

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 hours of continuing education by each member of a board of health. The standards must provide that continuing education credits earned for license renewal or certification by licensed health professionals serving on boards of health may be counted to fulfill the two-hour continuing education requirement. The minimum standards must provide that the continuing education credits shall pertain to ethics, public health principles, and a member's responsibilities. Credits may be earned in these topics at pertinent presentations that may occur during regularly scheduled board meetings throughout the calendar year or at other programs available for continuing education credit. The ODH Director may assist local boards of health of general and city health districts in coordinating approved continuing education programs sponsored by health care licensing boards, commissions, or associations.

The minimum standards also shall provide that continuing education credits earned for the purpose of license renewal or certification by licensed health professionals serving on boards of health may be counted to fulfill the two-hour education requirement.

## 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.

## Standardized reporting of public health data

(R.C. 3701.98)

The bill requires the ODH Director, not later than July 1, 2014, to establish both of the following by rule adopted under the Administrative Procedure Act:[119]

(1) A standardized process by which all general and city health districts must collect and report to the Director information regarding public health quality indicators.

(2) A policy and procedures for the sharing of health data reported under (1), above, with payers, providers, general and city health districts, and public health professionals.

The rules must identify the public health quality indicators that are to be a priority for general and city health districts, and the information to be collected and reported regarding those indicators. The Director must work with the Association of County Health Commissioners in identifying the indicators.

## Patient Centered Medical Home Program

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

The 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.

---

[119] Rulemaking under the Administrative Procedure Act, R.C. Chapter 119., requires notice and a public hearing.

### 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;[120]

(3) Implement and maintain health information technology that meets the requirements of federal law;[121]

(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 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;

---

[120] 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/).

[121] 42 U.S.C. 300jj.

(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 to 3702.308)

### Overview

The bill requires each ambulatory surgical facility (ASF) to (1) maintain an infection control program and (2) in general, have a written transfer agreement with a local hospital that specifies an effective procedure for the transfer of patients from the facility to the hospital when medical care beyond the care that can be provided at the ASF is necessary. These requirements are similar to those in current rules the ODH Director has adopted establishing quality standards for specified types of health care facilities subject to ODH licensure.[122] 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

---

[122] 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)).

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.[123]

## 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 medical complications arise. A copy of the agreement must be filed with the ODH Director and an ASF must update an agreement every two years and file the updated agreement with the Director.

The 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

[123] O.A.C. 3701-83-09(D).

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.)[124]

(2) The ODH 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.[125]

#### Public hospital exclusion regarding abortion

The bill prohibits an ASF in which abortions are performed or induced from having a written transfer agreement with a public hospital or entering into a contract or similar agreement with a physician who has been granted staff membership or professional privileges by the governing body of a public hospital. The bill defines "public hospital" as a hospital registered with ODH that is owned, leased, or controlled by the state or any agency, institution, instrumentality, or political subdivision of the state. A public hospital includes any state university, state medical college, health district, joint hospital, or public hospital agency.

#### Variances

***Application.*** The bill authorizes the ODH Director to grant a variance from the written transfer agreement requirement if the ASF submits to the Director a complete variance application prescribed by the Director and the Director determines (after reviewing the application) that the ASF is capable of achieving the purpose of the written transfer agreement in the absence of one. The bill specifies that the Director's determination is final.

A variance application is complete if it contains or includes as attachments all of the following:

---

[124] 42 C.F.R. 413.65(a)(2).

[125] 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 that the physician possesses a valid certificate to practice medicine and surgery or osteopathic medicine and surgery;
- Documented verification that each hospital at which the physician has admitting privileges has been informed in writing by the physician that the physician is a consulting physician for the ASF and has agreed to provide back-up coverage for the ASF when medical care beyond the care the ASF can provide is necessary;
- A copy of the ASF's operating procedures or protocols that, at a minimum, do all of the following: (1) address how back-up coverage by consulting physicians is to occur, including how back-up coverage is to occur when consulting physicians are temporarily unavailable, (2) specify that each consulting physician is required to notify the ASF, without delay, when the physician is unable to expeditiously admit patients to a local hospital and provide for continuity of care, and (3) specify that a patient's medical record maintained by the ASF must be transferred contemporaneously with the patient when the patient is transferred from the ASF to a hospital;
- Any other information the 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.[126]

***Decision.*** The bill specifies that the ODH Director's decision to grant, refuse, or rescind a variance is final. The Director must consider each application for a variance independently without regard to any decision the Director may have made on a prior occasion to grant or deny a variance to that ASF or another ASF.

The bill's requirement is similar to one in current rule. The rule:[127]

--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 ODH Director to impose conditions on any variance the Director has granted. The Director may at any time rescind the variance for any reason, including a determination by the Director that the ASF is failing to meet one or more of the conditions or no longer adequately protects public health and safety. The bill specifies that the Director's decision to rescind a variance is final.

Similar authorizations are incorporated in current rule.[128]

***Duration.*** The bill specifies that a variance is effective for the period of time specified by the ODH Director, except that it cannot be effective beyond the date the ASF's license expires. If a variance is to expire on the date the ASF's license expires, the ASF may submit to the Director an application for a new variance with its next license renewal application.

---

[126] O.A.C. 3701-83-14(B).

[127] O.A.C. 3701-83-14(C), (F), and (G).

[128] O.A.C. 3701-83-14(E).

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.[129]

### Inspections

The bill requires that rules the ODH 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.[130]

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

(1) The inspector completes each item on the inspection form that must be used during ASF inspections (the form approved by the Director on the bill's effective date is to be used until rules are adopted under the bill specifying the form to be used);

(2) The inspection demonstrates that the ASF complies with all quality standards established by the Director in rules;

(3) The Director determines that the most recent version of the updated written transfer agreement that the ASF files with the Director is satisfactory, unless the Director has granted a variance from the written transfer agreement requirement.

### Notifications

The bill requires an ASF to notify the ODH Director under all of the following circumstances:

---

[129] O.A.C. 3701-83-14(D).

[130] O.A.C. 3701-83-06(A) and (E).

(1) When the ASF modifies any provision of the most recent written transfer agreement it has filed with the Director. Notification under these circumstances must occur not later than the business day after the modification is finalized.[131]

(2) When the ASF modifies it operating procedures or protocols that address back-up coverage for consulting physicians and medical record maintenance and transfers. Notification under these circumstances must occur not later than 48 hours after the modification is made.

(3) When the ASF becomes aware of an event, including disciplinary action by the State Medical Board, that may affect a consulting physician's certificate to practice or the physician's ability to admit patients to a hospital identified in a variance application. Notification under these circumstances must occur not later than one week after the ASF becomes aware of the event's occurrence.

Current rules do not contain similar requirements.

### Severability clause

If any provision of the new sections of law the bill enacts regarding ASFs (R.C. 3702.302 to 3702.307) are enjoined, the bill specifies that the injunction does not affect any remaining provision of those sections, any provision of the current law section governing ASFs (R.C. 3702.30), or any provision of the rules adopted under that section.

## Prioritized distribution of funds for family planning

(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;

---

[131] The bill defines "business day" as a day of the week excluding Saturday, Sunday, and a legal holiday (see R.C. 1.14).

(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.

## Management of resident's financial affairs

(R.C. 3721.15)

Under current law, a home (including a nursing home, assisted living facility, and veterans' home) that manages a resident's financial affairs must deposit any amount in excess of $100 in an interest-bearing account, separate from any of the home's operating accounts. Under the bill, a home is not required to place a resident's funds in an interest-bearing account unless the funds exceed $1,000.

## Nursing facilities' plans of correction

(R.C. 5165.69)

Nursing facilities are required to undergo surveys to determine whether they continue to meet the requirements for certification to participate in the Medicaid program. Continuing law requires a nursing facility that receives a statement of deficiencies following a survey to submit to ODH a plan of correction for each finding cited in the statement. The bill requires a nursing facility's plan of correction to include additional information.

Under continuing 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. Beginning one year after the effective date of the first federal regulation promulgated under a provision of the Patient Protection and Affordable Care Act regarding a quality assurance and performance improvement (QAPI) program, a plan of correction for a finding assigned a severity level indicating that a resident was harmed or immediate jeopardy exists is required to include an explanation of how actions to correct the finding are part of the nursing facility's actions to meet the standards and implement the best practices established under the QAPI program.

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.

## 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.

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

(R.C. 4751.01 to 4751.08 and 4751.10 to 4751.13; 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. The bill defines "long-term services and supports settings" as any institutional or community-based setting in which medical, health, psycho-social, habilitative, rehabilitative, or personal care services are provided to individuals on a post-acute care basis.

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 ODH, designated by the ODH Director, who is involved in the nursing home survey and certification process;

- One member who is a representative of the Office of the State Long-Term Care Ombudsman, designated by the State Long-Term Care Ombudsman.

The 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 ODH and the 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 ODH and the Ombudsman. The initial terms for these members will end on May 27, 2014. After this initial term, the terms are to be for the duration provided above.

### Board member compensation

(R.C. 4751.03(E))

The 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 ODH Director and the member designated by the Ombudsman, are to be paid in

accordance with the salaries or wages designated by the Department of Administrative Services.[132]

### 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 ODH to provide administrative, technical, or other services to the Board.

### 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.

### ODH 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 ODH for ODH to serve as the Board's fiscal agent.

---

[132] R.C. 124.15(J), not in the bill.

### Requirements under the written agreement

Under the bill, ODH 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 ODH for services performed under the agreement. The bill provides that such fees must be in proportion to the services performed for the Board by ODH. The bill specifies that ODH, 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 ODH 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 ODH considers appropriate to achieve efficiency.

### Permitted terms of the written agreement

Under the bill, the written agreement between the Board and ODH may include provisions for the following:

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

### Board responsibilities regarding fiscal and administrative matters

The bill provides that the Board 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 must inform ODH fully of any financial transactions to ensure compliance with fiscal regulations.

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.

### 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.[133]

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.

---

[133] *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.

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

## Zoonotic disease program

(R.C. 3701.96)

The bill specifies that if ODH administers a zoonotic disease program, the ODH Director is authorized to charge a local board of health a fee for each service the program provides to the board.[134] The fee amount must be determined by the Director and be commensurate with ODH's cost to provide the service. The board must pay the fee associated with a service at the time the service is provided.

According to the federal Centers for Disease Control and Prevention (CDC), zoonotic diseases are diseases caused by germs that can be spread between animals and humans. Such germs have been responsible for illnesses and outbreaks, including *Salmonella*, *E. coli* O157:H7, and *Cryptosporidium*. The germs may come from many types of animals, including pets, wild animals, and farm animals.[135]

## 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 sliding scale of disbursements based on family income. The bill authorizes the Director to adopt any other rules necessary to distribute these funds.

---

[134] According to an ODH representative, ODH has been administering some form of a zoonotic disease program since 1965. Prior to 2005, the program operated as two separate programs—the Rabies Program and the Vectorborne Disease Program. In 2005, these two programs merged to become the Zoonotic Disease Program. (Electronic correspondence from ODH (May 30, 2013).)

[135] U.S. Centers for Disease Control and Prevention, *Zoonotic Diseases* (Diseases from Animals) available at www.cdc.gov/zoonotic/gi/.

## Charges for copies of medical records

(R.C. 3701.741 and 3701.742)

The bill eliminates a requirement that adjustment to changes 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.

### Women, Infants, and Children (WIC) vendor contracts

(R.C. 3701.132)

In Ohio, ODH administers the federal Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). The bill requires ODH to review and process an application for a new contract to act as a WIC vendor not later than 45 days after it is received if on that date the applicant has a contract with ODH to act as a WIC vendor.

# OHIO HISTORICAL SOCIETY

- Repeals provisions that require the Ohio Historical Society to maintain a State Registry of Archaeological Landmarks and a State registry of Historic Landmarks.
- Exempts purchases from and payments to the Society from the prohibition of certain purchases and leases unless they are made by competitive selection or with the approval of the Controlling Board.
- Establishes the Ohio History License Plate Program.
- Contributions collected by the Registrar of Motor Vehicles from applicants who choose to obtain the special license plate must be used by the Society to provide grants to historical organizations located in Ohio.
- Establishes the Ohio Cemetery Law Task Force to develop recommendations on modifications of Ohio laws relating to cemeteries.

## Repeal of state registries of archaeological and historic landmarks

(R.C. 149.54, 317.08, 1506.30, and 3714.03; Section 747.20; R.C. 149.51 and 149.55 (repealed))

The bill repeals provisions that require the Ohio Historical Society to maintain a State Registry of Archaeological Landmarks and a State Registry of Historic Landmarks. In consequence of this repeal, the bill makes conforming changes that do the following:

- Eliminates the duty of county recorders to record agreements for the registration of lands as archaeological or historic landmarks in the record of deeds but requires the recorders to keep such existing records.
- Eliminates a requirement that a person who engages in archaeological survey or salvage work at any registered state archaeological landmark first obtain written permission from the Director of the Ohio Historical Society.
- Eliminates, from the definition of "historical value" in the Submerged Lands Preservation Act, the inclusion of an object, structure, site, or district that is included in or eligible for inclusion in either the State Registry of Archaeological Landmarks or the State Registry of Historic Landmarks.

- Eliminates a prohibition against the Director of Environmental Protection or a board of health issuing a permit to establish a new construction and demolition debris facility when the horizontal limits of construction and demolition debris placement at the facility are proposed to be located within 500 feet of land that has been placed on the State Registry of Historic Landmarks.

### Historical Society exempted from Controlling Board oversight

(R.C. 127.16)

The bill exempts purchases from, and payments to, the Society from the provision of continuing law that prohibits certain purchases and leases unless they are made by competitive selection or with the approval of the Controlling Board.

### Ohio History License Plate Program

(R.C. 149.307 and 4503.95)

The bill establishes the Ohio History License Plate Program. Contributions collected by the Registrar of Motor Vehicles from applicants who choose to obtain the special license plate must be used by the Society to provide grants to historical organizations located in Ohio. An organization that receives a grant must use the grant only to host exhibits and increase access to its collection by the public.

The owner or lessee of any passenger car, noncommercial motor vehicle, recreational vehicle, or other vehicle of a class approved by the Registrar may apply to the Registrar for registration of the vehicle and issuance of "Ohio History" license plates. The application for "Ohio History" license plates may be combined with a request for a special reserved license plate. The Registrar must issue "Ohio History" license plates and validation stickers upon receipt of a completed application, and upon payment of the regular license tax, applicable motor vehicle taxes, a Bureau of Motor Vehicles administrative fee of $10, and a contribution of $20. The Registrar must deposit the $10 administrative fee in the Bureau of Motor Vehicles Fund, to compensate the Bureau for additional services required in issuing "Ohio History" license plates. The Registrar must transmit the $20 contribution to the Treasurer of State for deposit in the Ohio History License Plate Contribution Fund, which the bill creates in the state treasury.

"Ohio History" license plates must be inscribed with words and markings selected and designed by the Society and approved by the Registrar.

The Society must establish and administer all aspects of the Ohio History License Plate Grant Program, including eligibility requirements for receiving a grant under the

program. The Society must, not later than the last business day of January of each year, prepare and submit to the General Assembly a written report detailing all aspects of the Grant Program during the immediately preceding calendar year.

## Ohio Cemetery Law Task Force

(Section 747.10)

The bill establishes the Ohio Cemetery Law Task Force to develop recommendations on modifications of Ohio laws relating to cemeteries.

The Task Force is to consist of the following eleven members: a representative of local government, other than townships, appointed by the President of the Senate; a representative of the Ohio Township Association appointed by the President of the Senate; a representative of Native Americans appointed by the President of the Senate; a representative of private cemeteries appointed by the Speaker of the House of Representatives; a representative of the Ohio Historical Society appointed by the Speaker of the House of Representatives; a representative of archeologists appointed by the Speaker of the House of Representatives; a representative of the Ohio Genealogical Society appointed by the Governor; a representative of the Ohio Cemetery Dispute Resolution Commission appointed by the Governor; a representative of the Division of Real Estate and Professional Licensing in the Department of Commerce appointed by the Governor; a representative of the Department of Transportation appointed by the Governor; and a representative of the Department of Natural Resources appointed by the Governor. Initial appointments are to be made not later than 30 days after the effective date of the bill. Vacancies are to be filled in the manner provided for original appointments.

The task force is to elect two of its members to serve as co-chairpersons of the Task Force. The Task Force is to meet as often as necessary to carry out its duties and responsibilities. Members of the Task Force are to serve without compensation.

The Task Force must issue a report of its recommendations to the President of the Senate, the Speaker of the House of Representatives, and the Governor not later than one year after the effective date of the bill.

The Task Force ceases to exist upon submitting its report.

# OHIO HOUSING FINANCE AGENCY

- Requires the Ohio Housing Finance Agency (OHFA) to submit its annual financial report and report of programs to the chairs of the committees dealing with housing issues in the Ohio House of Representatives and Ohio Senate.
- Requires the Executive Director of OHFA to give testimony in person regarding the annual reports.

## OHFA annual reporting

(R.C. 175.04)

Continuing law requires the Ohio Housing Finance Agency (OHFA) to prepare and submit an annual financial report describing its activities during the reporting year, including OHFA's audited financial statements, and an annual report of its programs describing how the programs have met Ohio's housing needs to the Governor, Speaker of the House of Representatives, and the President of the Senate within three months after the end of the reporting year. The bill requires OHFA to also submit the annual financial report and annual report of programs to the chairs of the committees dealing with housing issues in the Ohio House of Representatives and the Ohio Senate (the committees) within a time frame agreed to by OHFA and the chairs.

Under the bill, within 45 days of issuance of the annual financial report, OHFA must cause its Executive Director to appear in person before the committees to testify in regard to both the annual financial report and report of programs. The testimony must include (1) an overview of the annual plan to address Ohio's housing needs, which plan is required by continuing law, (2) an evaluation of whether the objectives in the annual plan were met through a comparison of the annual plan with the annual financial report and report of programs, and (3) a complete listing of all business and contractual relationships between OHFA and other entities and organizations that participated in OHFA's programs during the fiscal year reported by the annual financial report and report of programs.

## OFFICE OF INSPECTOR GENERAL

- Provides that a deputy inspector general, who has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission, is to be considered a peace officer during the term of the deputy inspector general's appointment for the purpose of maintaining a current and valid basic training certificate.
- Extends the position of the Deputy Inspector General for funds received through the American Recovery and Reinvestment Act of 2009, which currently expires on September 30, 2013, through June 30, 2014.

### Deputy inspector general – powers and authority to act as peace officer

(R.C. 121.483)

The bill provides that a deputy inspector general, who has been awarded a certificate by the Executive Director of the Ohio Peace Officer Training Commission, is to be considered a peace officer during the term of the deputy inspector general's appointment for the purpose of maintaining a current and valid basic training certificate. The certificate attests to the deputy inspector general's satisfactory completion of an approved state, county, or municipal peace officer basic training program.

### Deputy Inspector General for funds received through the American Recovery and Reinvestment Act

(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.[136]

[136] R.C. 121.53, not in the bill.

## DEPARTMENT OF INSURANCE

- Limits agent appointment and agent appointment renewal fees charged by the Department of Insurance to not more than $20 and terminates the $5 agent appointment termination fee.

### Agent appointment fees

(R.C. 3905.40 and 3905.862)

Continuing law prescribes fees for services and certifications provided by the Department of Insurance (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.

- Exempts preschool programs operated by nonchartered, nontax-supported schools from child day-care licensing requirements, provided the programs meet specified conditions.

- Requires ODJFS to establish the Ohio Electronic Child Care System to track attendance and calculate payments for publicly funded child care and requires all publicly funded child care providers to participate in the system.

## Child welfare

- Requires a private child placing agency or private noncustodial agency seeking renewal of a certificate of fitness issued by ODJFS to provide ODJFS evidence of an independent financial statement audit performed by a licensed public accounting firm 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

- Permits an individual who quits work to accompany the individual's spouse on a military transfer to be eligible for unemployment compensation benefits under certain cirmumstances.

### 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

- Clarifies that therapeutic wilderness camps must be certified 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.[137]

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.

[137] 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:<br>--For 13 or more children at one time; or<br>--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:<br>--For 7-12 children at one time; or<br>--For 4-12 children at one time if 4 or more are under age 2.<br><br>**Type B home** – a permanent residence of the provider in which child care is provided as follows:<br>--For 1-6 children at one time; and<br>--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.<br><br>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.

### Exemption for preschools operated by nonchartered, nontax-supported schools

(R.C. 5104.02)

The bill exempts preschool programs operated by nonchartered, nontax-supported schools from child care licensure under specified conditions. Current law

exempts certain programs from licensure; however, preschool programs operated by a nonchartered, nontax-supported school are not presently exempt. The bill exempts those preschool programs from licensure if the following conditions are satisfied:

(1) The program complies with state and local health, fire, and safety laws;

(2) The program annually certifies in a report to the parents of its pupils that the school is in compliance with state and local health, fire, and safety laws, and a copy of the report is filed with ODJFS on or before September 30 of each year;

(3) The program complies with all applicable reporting requirements in the same manner as required by the State Board of Education for nonchartered, nonpublic primary and secondary schools;

(4) The program is associated with a nonchartered, nontax-supported primary or secondary school.

## Publicly funded child care

### Ohio Electronic Child Care System

(R.C. 5104.32 (primary), 5104.11, and 5104.12; Sections 110.20, 110.21, and 110.22)

During fiscal years 2012 and 2013, H.B. 153 of the 129th General Assembly (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)

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.[138] 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

[138] R.C. 5103.03, not in the bill.

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

### Spousal unemployment benefits – military transfer

(R.C. 4141.29(D) and (H))

The bill adds the following as a nondisqualifying reason for separation from employment, and therefore permits an individual who otherwise qualifies to be eligible for unemployment compensation benefits: the individual's spouse is a member of the United States armed forces who is on active duty, the spouse is the subject of a military transfer, the individual left employment to accompany the spouse to a location from which it is impractical to commute to the individual's place of employment, and upon arrival at the new place of residence, the individual in all respects able and available for suitable work.[139]

If the individual was previously employed by a contributory employer (most private sector employers), the benefits are paid from the mutualized account in the Unemployment Compensation Fund and are not charged to the employer. The mutualized account is a separate account in the Fund that is primarily used to pay benefits when an individual employer's account cannot be charged for those benefits for a variety of reasons. If the employer was a reimbursing employer (most public sector employers and nonprofit organizations), the employer pays the benefits by reimbursing the Fund.

## 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,

---

[139] R.C. 4141.29(D)(2)(a)(v).

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 clarifies that therapeutic wilderness camps must 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, 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 expressly provides that therapeutic wilderness camps are subject to this requirement.

# JUDICIARY/SUPREME COURT

## Court of claims

### Wrongful imprisonment

- Requires a copy of a complaint in an action to declare a person a wrongfully imprisoned individual to be served on the prosecuting attorney and requires the prosecuting attorney to defend a civil action brought by a person to be declared a wrongfully imprisoned individual in the court of common pleas in the county where the underlying criminal action was initiated.
- Provides that if an individual at the time of the wrongful imprisonment was serving concurrent sentences on other convictions that were not vacated, dismissed, or reversed on appeal, the individual is not eligible for compensation for any portion of wrongful imprisonment that occurred during such a concurrent sentence.
- Allows a prosecuting attorney or the Attorney General, or their assistants, to inspect sealed conviction and bail forfeiture records for the purpose of defending or participating in a civil action to determine if a person is a wrongfully imprisoned individual.

### Commissioner; awards of reparations; other procedures

- Abolishes the office of Court of Claims commissioner.
- Provides that appeals from decisions of the Attorney General on applications for awards of reparations to crime victims go directly to the Court of Claims.
- Transfers most functions with regard to reparations from a single judge of the Court of Claims to the court.
- Authorizes the Chief Justice to appoint magistrates (rather than referees) in Court of Claims cases and authorizes a magistrate to disclose or refer to certain records or reports in reparations hearings.
- Modifies the Attorney General's annual report on the reparations program.
- Conforms the time period within which adult crime victims must file reparations claims to other existing law.

## Interpreter's fees and qualifications

- Prohibits the taxation of interpreter's fees as court costs if the party to be taxed is indigent and requires payment of the fees by the county or the legislative authority of the court.
- Eliminates the requirement that a court of common pleas evaluate the qualifications of an interpreter for a mentally retarded or developmentally disabled person before appointing the interpreter.

## Franklin County Probate Court Mental Health Fund

- Authorizes the Franklin County Probate Court to accept funds or other program assistance from the Board of Alcohol, Drug Addiction, and Mental Health Services (ADAMH) of Franklin County or the Franklin County Board of Developmental Disabilities (BDD), to be paid into the Franklin County treasury and credited to the Franklin County Probate Court Mental Health Fund.
- Requires the moneys in the Fund to be used for services, including involuntary commitment proceedings and the establishment and management of adult guardianships, to ensure the treatment of persons who are under the care of ADAMH of Franklin County or the Franklin County BDD.
- Permits some of the moneys in the Fund to be used for specified court purposes, such as equipment purchases, staff hiring, and volunteer guardianship training, if the Franklin County probate judge determines that such use is needed for the court's efficient operation.

## Common pleas special projects funds

- Provides that if the court of common pleas requires a special program or additional services in cases of a specific type, the court by rule may assess an additional charge in a case of that type, over and above court costs, to cover the special program or service.

## Affidavit of disqualification of judges

- Eliminates the procedure for filing an affidavit of disqualification for a judge of a municipal or county court and instead includes the disqualification of a judge of a municipal or county court or a judge of the court of claims within the procedure for filing an affidavit of disqualification for a probate judge, judge of a court of appeals, and a judge of the court of common pleas.

## Court reporters

- Defines "transcript" as a verbatim record of a proceeding prepared and certified by a reporter and requires that a transcript but not a duplicate be received as prima facie evidence of its correctness.
- Requires a court of common pleas to grant any party's request for a reporter's services at a hearing in an action and requires the reporter carefully preserve the proceeding on an appropriate medium.
- Requires a reporter to provide additional copies of any portion of a transcript, when requested by a prosecuting attorney, the Attorney General, a chief legal officer of a public office, or an indigent defendant in an appeal at actual cost or, if in electronic form, for free, and authorizes the court to fix the reporter's compensation in all other circumstances at not more than half the compensation for the first transcript.
- Provides that a reporter who takes the testimony of grand jury witnesses receives the same compensation for the transcript, and be paid in the same manner, as for other transcripts.
- Requires a court of common pleas clerk or reporter to provide transcript duplicates at actual cost, but allows the addition of personnel cost by a reporter who is not paid for a nonelectronic duplicate by a public entity.
- Requires that a criminal defendant in a common pleas or municipal court be credited with any prepayment or deposit for a transcript if costs are taxed against the defendant or be refunded any amount paid for a transcript if costs are taxed against the state.
- Makes conforming changes and repeals a statute relating to the appointment of reporters as referees and to the reporter's office space.

## "Assigned" and "acting" municipal and county judges

- Modifies existing law regarding a vacancy in the office of a judge of a municipal court or county court or the incapacitation or unavailability of the judge due to certain circumstances by allowing for the assignment or appointment of an "assigned judge" or "acting judge" depending on the number of judges on the court and the circumstances of the vacancy.
- Modifies existing law regarding the per diem compensation of an "assigned judge" or "acting judge" and modifies existing law regarding the reimbursement of an

"assigned judge" or "acting judge" by allowing for reimbursement by the Supreme Court of a portion of the costs of the local funding authority.

- Modifies existing law regarding the information a county treasurer must include in the reimbursement requests submitted to the administrative director of the Supreme Court.

## Addiction treatment pilot program

- Requires the Ohio Supreme Court to conduct a pilot program to provide addiction treatment to offenders participating in certified drug court programs in certain counties.

## Court of Claims

### Wrongful imprisonment

(R.C. 2743.48 and 2953.32)

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

Under existing law, a person may file a civil action to be declared a wrongfully imprisoned individual in the court of common pleas in the county where the underlying criminal action was initiated. That civil action is separate from the underlying finding of guilt by the court of common pleas. Upon the filing of a civil action to be determined a wrongfully imprisoned individual, the Attorney General must be served with a copy of the complaint and be heard. The bill requires the prosecuting attorney of the county to be served with a copy of the complaint and to defend all civil actions to determine a person to be a wrongfully imprisoned individual.

The bill also provides that if an individual was serving at the time of the wrongful imprisonment concurrent sentences on other convictions that were not vacated, dismissed, or reversed on appeal, the individual is not eligible for compensation for any portion of that wrongful imprisonment that occurred during a concurrent sentence of that nature.

#### Inspection of sealed records of wrongfully imprisoned individual

Under existing law, inspection of sealed conviction or bail forfeiture records may be made only by certain persons or for certain purposes, including by a law enforcement officer or prosecutor, or the assistants of either, to determine whether the nature and character of the offense with which the person is to be charged would be affected by virtue of the person's previously having been convicted of a crime, by a law enforcement officer who was involved in the case, for use in the officer's defense of a civil action arising out of

the officer's involvement in that case, or by any law enforcement agency or any authorized employee of a law enforcement agency or by the Department of Rehabilitation and Correction as part of a background investigation of a person who applies for employment with the agency as a law enforcement officer or with the Department as a corrections officer. The bill provides that a prosecuting attorney or the Attorney General, or the assistants of either, may inspect sealed records of conviction or bail forfeiture for the purpose of defending or participating in a civil action brought by a person in the court of common pleas in the county where the underlying criminal action was initiated in order to determine if the person is a wrongfully imprisoned individual.

### Commissioner; awards of reparations; other procedures

(R.C. 2743.03, 2743.09, 2743.121, 2743.20, 2743.52, 2743.53, 2743.531, 2743.54, 2743.55, 2743.60, 2743.601, 2743.61, 2743.62, 2743.63, 2743.64, 2743.65, 2743.66, 2743.67, 2743.68, 2743.69, and 2743.71)

The bill abolishes the office of Court of Claims commissioner and provides that appeals from decisions of the Attorney General on applications for awards of reparations to crime victims that under current law go to a panel of commissioners instead go directly to the court. The bill also provides that most functions with regard to reparations that under current law are performed by a single judge of the Court of Claims be performed by the court. The bill authorizes the Chief Justice to appoint magistrates (rather than referees) to expedite the equitable resolution of cases in the Court of Claims and authorizes a magistrate (rather than a panel of commissioners) to disclose or refer to certain records or reports in reparations hearings. The bill removes from the Attorney General's annual report on the reparations program the administrative costs incurred by panels of commissioners and the compensation of judges and court personnel. It deletes language that conflicts with another statute by requiring adult victims to file reparations claims within two years of the criminally injurious conduct.

## Interpreters' fees and qualifications

(R.C. 2301.14, 2311.14, 2335.09, and 2335.11)

The bill prohibits the taxation of interpreter's fees as court costs if the party to be taxed is indigent and requires payment of the fees by the county or legislative authority of the court. The bill eliminates the requirement that a court of common pleas evaluate the qualifications of an interpreter for a mentally retarded or developmentally disabled person before appointing the interpreter.

## Franklin County Probate Court Mental Health Fund

(R.C. 2101.026)

The bill authorizes the Probate Court of Franklin County to accept funds or other program assistance from the Board of Alcohol, Drug Addiction, and Mental Health Services of Franklin County (ADAMH) or the Franklin County Board of Developmental Disabilities (BDD). Any such funds received by that Probate Court must be paid into the Franklin County treasury and credited to a fund to be known as the Franklin County Probate Court Mental Health Fund. The moneys in the Fund must be used for services to help ensure the treatment of any person who is under the care of ADAMH of Franklin County or the Franklin County BDD. These services include involuntary commitment proceedings and the establishment and management of adult guardianships, including all associated expenses, for wards who are under the care of the ADAMH or BDD.

If the judge of the Probate Court of Franklin County determines that some of the moneys in the Fund are needed for the efficient operation of that court, the moneys may be used for the acquisition of equipment, the hiring and training of staff, community services programs, volunteer guardianship training services, the employment of magistrates, and other related matters.

## Common pleas special projects funds

(R.C. 2303.201)

Under 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.

## Affidavit of disqualification of judges

(R.C. 2701.03, 2701.031, and 2743.041)

Under current law, there is a specific procedure that a party to a court proceeding uses to disqualify a judge of a municipal or county court. The bill eliminates this procedure and instead includes the disqualification of a judge of a municipal or county court and a judge of the court of claims within the procedure for filing an affidavit of disqualification for a probate judge, judge of a court of appeals, and a judge of the common pleas court.

Under the bill, if a judge of the probate court, court of appeals, court of common pleas, municipal court, county court, or court of claims is interested in a proceeding pending before the court, allegedly is related to or has a bias or prejudice for or against a party to a proceeding pending before the court or a party's counsel, or allegedly otherwise is disqualified to preside in a proceeding pending before the court, any party to the proceeding or the party's counsel may file an affidavit of disqualification with the Clerk of the Supreme Court.

The affidavit of disqualification must be filed with the Clerk of the Supreme Court not less than seven calendar days before the day on which the next hearing on the proceeding is scheduled and must include all of the following:

(1) The specific allegations on which the claim of interest, bias, prejudice, or disqualification is based and the facts to support each of those allegations or, in relation to an affidavit filed against a judge of a court of appeals, a specific allegation that the judge presided in the lower court in the same proceeding and the facts to support that allegation;

(2) The jurat of a notary public or another person authorized to administer oaths or affirmations;

(3) A certificate indicating that a copy of the affidavit has been served on the probate judge, judge of a court of appeals, judge of a court of common pleas, judge of a municipal or county court, or judge of the court of claims against whom the affidavit is filed and on all other parties or their counsel;

(4) The date of the next scheduled hearing in the proceeding or, if there is no hearing scheduled, a statement that there is no hearing scheduled.

When an affidavit of disqualification is presented to the Clerk of the Supreme Court for filing, all of the following apply:

(1) The Clerk of the Supreme Court accepts the filing and forwards the affidavit to the Chief Justice of the Supreme Court.

(2) The Supreme Court sends notice of the filing of the affidavit to the probate court served by the judge if the affidavit is filed against a probate judge, or to the clerk of the respective court if the affidavit is filed against a judge of that court.

(3) Upon the receipt of the notice, the probate court or the clerk of the respective court must enter the fact of the filing of the affidavit on the docket of the probate court, the docket of the court of appeals, the docket in the proceeding in the court of common pleas, the docket of the proceeding in the municipal or county court, or the docket of the proceeding in the court of claims.

The Clerk of the Supreme Court cannot accept an affidavit of disqualification for filing presented for filing if it is not timely presented for filing or does not satisfy the requirements described in (2), (3), and (4) in the second preceding paragraph.

If the Clerk of the Supreme Court accepts an affidavit of disqualification, the affidavit deprives the judge against whom the affidavit was filed of any authority to preside in the proceeding until the Chief Justice of the Supreme Court, or a justice of the Supreme Court designated by the Chief Justice, rules on the affidavit. However, there are certain specified circumstances where a judge may continue to preside in the proceeding.

If the Clerk of the Supreme Court accepts an affidavit of disqualification for filing and if the Chief Justice of the Supreme Court or designated justice determines that the interest, bias, prejudice, or disqualification alleged in the affidavit does not exist, the Chief Justice or designated justice must issue an entry denying the affidavit of disqualification. If the Chief Justice or designated justice determines that the interest, bias, prejudice, or disqualification alleged in the affidavit exits, the Chief Justice or the designated judge must issue an entry that disqualifies that judge from presiding in the proceeding and either order that the proceeding be assigned to another judge of the court of which the disqualified judge is a member, to a judge of another court, or to a retired judge.

## Court reporters

(R.C. 1901.33, 2101.08, 2301.19, 2301.20, 2301.23, 2301.24, 2301.25, 2301.26, and 2501.16)

The bill defines "transcript" as "an official verbatim record of a proceeding that is prepared by a reporter and that is certified to be correct by the reporter." It specifies that a transcript, *but not a duplicate copy of a transcript*, must be received as prima facie evidence of its correctness. Instead of requiring that the reporter for a court of common

pleas take accurate notes of or electronically record all civil and criminal actions, as under existing law, the bill requires that the court grant a request by any party to have a reporter's services at a hearing in an action and that the reporter carefully preserve the proceeding on an appropriate medium.

The bill modifies the provisions governing the compensation of a reporter in the court of common pleas for making a written transcript. Under both existing law and the bill, the court fixes the reporter's compensation for an initial transcript. When another transcript of the same testimony is ordered, existing law requires the reporter to make copies "at cost" or provide an electronic copy free of charge. Under the bill, when a transcript of any portion of a proceeding is ordered by the prosecuting attorney, the Attorney General, a municipal director of law, or a similar chief legal officer of a public office in an appeal of any civil, criminal, or juvenile case or by the indigent defendant in an appeal of any criminal or juvenile case, the reporter must provide any additional transcript of the same portion of the proceeding "at actual cost." "Actual cost" means the cost of depleted supplies; records storage media costs; actual mailing and alternative delivery costs, or other transmitting costs; and any direct equipment operating and maintenance costs, including actual costs paid to private contractors for copying services." In all other circumstances, the court must fix the reporter's compensation for making additional transcripts, but the compensation may not exceed one-half the compensation allowed for the first transcript made of the portion of the proceeding.

The bill provides that a reporter who takes the testimony of witnesses before a grand jury receives the same compensation for the transcript, and is paid in the same manner, as for other transcripts.

The bill requires that a duplicate copy of a transcript be provided by the clerk of court, if the transcript has been filed, or by the reporter, if the transcript has not been filed, at actual cost. Personnel cost may be added to the actual cost if the time of a reporter who makes a duplicate copy or an additional transcript is not paid for by a public entity. The reporter must provide an electronic copy of a transcript at actual cost.

Under existing law, the cost of a transcript in a criminal case in the court of common pleas is taxed as part of the costs. If the costs are adjudged against the defendant, the defendant is allowed a credit for any amount already paid; if the costs are adjudged against the state, the defendant gets a refund of any deposit. Under the bill, if the costs are adjudged against the defendant and the defendant has prepaid for the cost of a transcript or has paid a deposit toward the cost of the transcript, the defendant receives credit for the amount prepaid or deposited and may not be charged again for that amount. If the costs are adjudged against the state, the defendant must be refunded the amount prepaid or deposited toward the transcript. These provisions

apply to transcripts of proceedings that are recorded on or after the effective date of the bill.

The bill requires that the cost of transcripts in municipal courts be determined as provided in the foregoing paragraph.

The bill makes conforming changes to several Revised Code sections and repeals a section relating to the appointment of reporters as referees and the reporter's office space.

## "Assigned" and "acting" municipal and county judges

(R.C. 1901.10, 1901.12, 1901.121, 1901.122, 1901.123, 1907.14, 1907.141, 1907.142, and 1907.143)

### Existing law – one-judge municipal courts and county courts

There is a procedure under current law for the appointment of an acting judge in the event that a judge of a municipal court that has only one judge is temporarily absent, incapacitated, or otherwise unavailable. The judge may appoint a substitute who meets certain specified qualifications or a retired judge of a court of record who is a qualified elector and a resident of the territory of the court. If the judge is unable to make the appointment, the Chief Justice of the Supreme Court shall appoint a substitute. If a judge of a county court is temporarily absent, incapacitated, or otherwise unavailable, the judge may appoint a substitute who meets certain specified qualifications or may appoint a retired judge of a court of record in Ohio who is a qualified elector and a resident of the county court district. If the judge is unable to make the appointment, the administrative judge of the county court district or the administrative judge of the court of common pleas of the county appoints the substitute. The bill modifies this procedure as described below.

### The bill – one-judge municipal and county courts

Under the bill, if a vacancy occurs in the office of a judge of a municipal court or county court that consists of only one judge or if the judge of a municipal court or county court of that nature is incapacitated or unavailable due to disqualification, suspension, or recusal, the Chief Justice of the Supreme Court may assign a sitting judge of another court of record or a retired judge of a court of record to temporarily serve on the court in accordance with rules adopted by the Supreme Court. The assignee is styled "assigned judge" and serves for any period of time the Chief Justice may prescribe.

If a judge of a municipal court or county court that consists of only one judge is otherwise temporarily absent for a reason other than as specified in the previous paragraph, the judge may do either of the following:

(1) Appoint a substitute who is a resident of the territory of the court or, if the territory of the court has a population of less than 25,000 according to the latest federal decennial census and the judge is unable to appoint a substitute who is a resident of the territory of the court, appoint a substitute who is a resident of the territory of a municipal or county court that is contiguous to the court. The appointee must either be admitted to the practice of law in Ohio and have been, for a total of at least six years preceding appointment, engaged in the practice of law in Ohio or a judge of a court of record in any jurisdiction in the United States or be a retired judge of a court of record. The appointee is styled "acting judge" and temporarily serves on the court during the temporary absence of the incumbent judge.

(2) Request the Chief Justice to assign a sitting judge of another court of record or a retired judge of a court of record to temporarily serve on the court in accordance with rules adopted by the Supreme Court. The assignee is styled "assigned judge" and serves for any period of time the Chief Justice may prescribe.

### The bill – two-judge municipal and county courts

If a vacancy occurs in the office of a judge of a municipal court or county court that consists of two judges or if a judge of a municipal court or county court of that nature is incapacitated, unavailable, or temporarily absent, the presiding judge may do either of the following:

(1) Appoint a substitute who is a resident of the territory of the court or, if the territory of the court has a population of less than 25,000 according to the latest federal decennial census and the judge is unable to appoint a substitute who is a resident of the territory of the court, appoint a substitute who is a resident of the territory of a municipal or county court that is contiguous to the court. The appointee must either be admitted to the practice of law in Ohio and have been, for a total of at least six years preceding appointment, engaged in the practice of law in Ohio or a judge of a court of record in any jurisdiction in the United States or be a retired judge of a court of record. The appointee is styled "acting judge" and temporarily serves on the court during the vacancy or the incapacity, unavailability, or temporary absence of the incumbent judge.

(2) Request the Chief Justice to assign a sitting judge of another court of record or a retired judge of a court of record to temporarily serve on the court in accordance with rules adopted by the Supreme Court. The assignee is styled "assigned judge" and serves for any period of time the Chief Justice may prescribe.

### The bill – three or more judge municipal or judge county courts

If a vacancy occurs in the office of a judge of a municipal court or county court that consists of three or more judges or if a judge of a municipal court or county court of that nature is incapacitated, unavailable, or temporarily absent, the presiding judge may do either of the following:

(1) If no other judge of the court is available to person the duties of the judge, appoint a substitute who is a resident of the territory of the court. The appointee must either be admitted to the practice of law in Ohio and have been, for a total of at least six years preceding appointment, engaged in the practice of law in Ohio or a judge of a court of record in any jurisdiction in the United States or be a retired judge of a court of record. The appointee is styled "acting judge" and temporarily serves on the court during the vacancy or the incapacity, unavailability, or temporary absence of the incumbent judge.

(2) Request the Chief Justice to assign a sitting judge of another court of record or a retired judge of a court of record to temporarily serve on the court in accordance with rules adopted by the Supreme Court. The assignee is styled "assigned judge" and serves for any period of time the Chief Justice may prescribe.

### Volume of cases

When the volume of cases pending in any municipal court necessitates an additional judge, the judge, if the court consists of a single judge, or the presiding judge, if the court consists of two or more judges, may request the Chief Justice to assign a sitting judge of another court of record or a retired judge of a court of record to temporarily serve on the court in accordance with rules adopted by the Supreme Court. The appointee is styled "assigned judge" and serves for any period of time the Chief Justice may prescribe.

### Jurisdiction and adjudicatory powers

An acting judge and an assigned judge of a municipal court or county court have the jurisdiction and adjudicatory powers conferred upon the judge of the municipal court or county court. During the time of service, the acting judge or assigned judge signs all process and records and performs all acts pertaining to the office, except that of removal and appointment of officers of the municipal court or county court. All courts must take judicial notice of the selection and powers of the acting judge or assigned judge.

### Reimbursement and per diem compensation

The bill repeals the existing procedure for compensating the acting judges in the municipal and county courts and creates a new procedure for reimbursing and compensating acting and assigned municipal and county court judges.

### Reimbursement and per diem compensation – acting municipal court judges

Under the bill, an acting judge of a municipal court receives reimbursement for actual and necessary expenses and a per diem compensation established by the incumbent judge, subject to the following limitations:

(1) If the incumbent judge receives compensation as a full-time judge, the per diem compensation of the acting judge cannot exceed the per diem compensation paid to the incumbent judge based upon a work year of 250 days.

(2) If the incumbent judge receives compensation as a part-time judge, the per diem compensation of the acting judge cannot exceed the per diem compensation paid to the incumbent judge based upon a work year of 130 days.

The per diem compensation of the acting judge is payable in the same manner as the compensation paid to the incumbent judge during the same period.

### Reimbursement and per diem compensation – acting county court judges

An acting county court judge receives reimbursement for actual and necessary expenses and a per diem compensation established by the incumbent judge, provided the per diem compensation of the acting judge does not exceed the per diem compensation paid to the incumbent judge based upon a work year of 130 days. The per diem compensation of the acting judge is payable in the same manner as the compensation paid to the incumbent judge during the same period.

### Reimbursement and per diem compensation – assigned municipal court and county court judges

An assigned municipal court judge or county court judge receives reimbursement for actual and necessary expenses and a per diem compensation as follows:

(1) If the assigned judge receives compensation as a full-time judge, $30;

(2) If the assigned judge receives compensation as a part-time judge, the per diem compensation of a judge of a municipal court compensated as a full-time judge less the

per diem compensation of the assigned judge, each calculated on the basis of 250 working days per year;

(3) If the assigned judge is a retired judge of a municipal or county court or a court of common pleas, the established per diem compensation for a full-time municipal court judge, calculated on the basis of 250 working days per year, in addition to any retirement benefits to which the assigned judge may be entitled.

(4) If the assigned judge is a sitting judge of the court of appeals or a court of common pleas, $50.

### Payment by treasurer

Subject to the reimbursement described below, the treasurer of the county in which a county-operated municipal court, other municipal court, or county court is located must pay the per diem compensation to which an acting judge is entitled (described above).

Subject to the reimbursement described below, the treasurer of the county in which a county-operated municipal court, other municipal court, or county court is located must pay the per diem compensation to which an assigned judge is entitled (described above).

The treasurer of a county that is required to pay any compensation to which an acting judge or assigned judge is entitled must submit to the administrative director of the Supreme Court quarterly requests for reimbursements of the per diem so paid. The requests must include verifications of the payment of those amounts and an affidavit from the acting judge or assigned judge stating the days and hours worked. The administrative director must cause reimbursements of those amounts to be issued to the county if the administrative director verifies that those amounts were, in fact, so paid.

### Vacation

Under current law and continued under the bill, a municipal judge is entitled to 30 days of vacation each calendar year. Existing law also provides that when a court consists of a single judge, a qualified substitute may be appointed to serve during the 30-day vacation period, who must be paid in the same manner and at the same rate as the incumbent judge, except that if the substitute judge is entitled to compensation as a full-time or part-time judge, then R.C. 1901.121 governs its payment. The bill removes this provision.

Under current law, if a municipal court consists of two judges, one of the judges must be in attendance at the court at all times, and the presiding judge has the authority

to designate the vacation period for each judge, and when necessary, to appoint a substitute for the judge when on vacation or not in attendance. If a court consists of more than two judges, two-thirds of the court must be in attendance at all times, and the presiding judge has the authority to designate the vacation period of each judge, and, when necessary, to appoint a substitute for any judge on vacation or not in attendance. The bill modifies this provision to say that if the municipal court consists of two or more judges, the presiding judge has the authority to designate the vacation period for each judge.

## Supreme Court addiction treatment pilot program

(Section 307.20)

### Participating courts

The bill requires the Ohio Supreme Court to conduct a pilot program in the courts of certain counties with certified drug court programs to provide addiction treatment to criminal offenders selected to participate in the program who are dependent on opioids, alcohol, or both. "Certified drug court program" is defined by the bill as a session of a common pleas court, municipal court, or county court (or a division of one of those courts) that holds certification from the Supreme Court as a specialized docket program for drugs.

The pilot program is to be conducted in the courts of Crawford, Franklin, Hardin, Mercer, and Scioto counties that are conducting certified drug court programs. If in any of these counties there is no drug court program, the Supreme Court must conduct the pilot program in a court that is conducting a certified drug court program in another county. In addition, the Supreme Court may conduct the pilot program in any other court that is conducting a drug court program.

### Collaboration

In conducting the pilot program, the Supreme Court is to collaborate with the Department of Mental Health and Addiction Services, Department of Rehabilitation and Correction, and any other state agency that it determines may be of assistance in accomplishing the objectives of the pilot program. The Supreme Court may also collaborate with the boards of alcohol, drug addiction, and mental health services that serve the counties in which the courts participating in the pilot program are located.

### Evaluation plan

The Supreme Court must select a nationally recognized criminal justice research institute with extensive experience in the evaluation of criminal justice and substance

abuse projects to develop an evaluation plan for the pilot program. The selection must be made not later than 60 days after the bill's effective date.

The evaluation plan is to include performance measures that reflect the purpose of the pilot program, which is to assist participants in addressing their dependence on opioids, alcohol, or both, by maintaining abstinence from the use of those substances and reducing recidivism. The evaluation plan must be put in place with each of the certified drug court programs included in the pilot program and the community addiction services providers that will provide treatment to participants.

Once the evaluation plan has been put in place, the certified drug court programs are to select criminal offenders to be participants in the pilot program. To be selected, an offender must meet the legal and clinical eligibility criteria for the certified drug court program and be an active participant in the program.

The total number of persons participating in the pilot program at any one time is not to exceed 500, but the Supreme Court may authorize the maximum number to be exceeded in circumstances the Court considers appropriate.

### Treatment

Treatment may be provided under the pilot program only by community addiction services providers certified by the Director of Mental Health and Addiction Services. A treatment provider must do all of the following:

(1) Provide treatment based on an integrated service delivery model that consists of the coordination of care between the doctor or other person who prescribes a drug and the treatment provider;

(2) Conduct professional, comprehensive substance abuse and mental health diagnostic assessment of each person under consideration for selection as pilot program participant; determine, based on the assessment, the treatment needs of each participant; and develop individualized goals and objectives for each participant;

(3) Provide access to the long-acting antagonist therapies, partial agonist therapies, or both that are included in the pilot program's medication-assisted treatment;

(4) Provide other types of therapies, including psychosocial therapies, for substance abuse and any disorders that are considered by the treatment provider to be co-occurring disorders;

(5) Monitor pilot program compliance through the use of regular drug testing, including urinalysis, of the participants being served by the treatment provider.

The bill does not define "antagonist therapies" or "partial agonist therapies." Generally available information describes an antagonist as a substance that acts against and blocks the action of another substance, while an agonist mimics the action of another substance.

Treatment under the pilot program may include medication-assisted treatment. All of the following apply to medication-assisted treatment:

(1) A drug may be used only if it has been approved by the U.S. Food and Drug Administration for use in treating dependence on opioids, alcohol, or both, or for preventing relapse into the use of opioids, alcohol, or both;

(2) Each drug used must constitute long-acting antagonist therapy or partial agonist therapy;

(3) If a drug constituting partial agonist therapy is used, the pilot program must provide safeguards to minimize abuse and diversion of the drug, such as routine drug testing of participants.

### Report

The research institute selected by the Supreme Court to develop the evaluation plan is to prepare a report of the findings obtained from the pilot program. The report must include data derived from the drug testing and performance measures used in the pilot program. In preparing the report, the research institute is to obtain assistance from the Supreme Court.

The research institute must complete its report not later than six months after the conclusion of the pilot program. On completion, the report is to be submitted to the Governor, Chief Justice of the Supreme Court, President of the Senate, Speaker of the House of Representatives, Department of Mental Health and Addiction Services, Department of Rehabilitation and Correction, and any other state agency the Supreme Court collaborates with in conducting the pilot program.

- Specifies that beginning in 2014, the General Assembly members of the Ohio Constitutional Modernization Commission must elect one of the Commission's co-chairs from each house of the General Assembly.

## Ohio Constitutional Modernization Commission

(R.C. 103.63)

The bill specifies that beginning in 2014, the General Assembly members of the Ohio Constitutional Modernization Commission must elect one of the Commission's co-chairs from each house of the General Assembly. Under continuing law, every two years, the 12 General Assembly members of the Commission must elect two co-chairs who are members of different political parties.

# STATE LIBRARY BOARD

- Revises the manner that the State Library Board may forward legislative documents to depository libraries, by permitting the documents to be sent in a paper or electronic format.

## Forwarding of legislative documents by the State Library Board

(R.C. 149.12)

The bill revises the manner in which the State Library Board must forward certain legislative documents to depository libraries, by permitting the documents to be sent in a paper or electronic format. The legislative documents thus forwarded are the Legislative Bulletin, the House and Senate journals, pamphlet laws, and the Summary of Enactments. Continuing law requires the State Library Board to forward these legislative documents to libraries that have been designated as depositories for state documents and to other designated libraries in counties that do not have depository libraries. The House and Senate journals must be forwarded on a weekly basis, and bulletins, pamphlet laws, and the Summary of Enactments must be forwarded as they are published.

Current law does not specify the manner in which the documents must be forwarded. Since the documents traditionally are published in paper form, they have been forwarded as paper documents. Under the bill, the documents may be forwarded either in a paper or electronic format.

## 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.

### 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.

# 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 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.

#### 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 begins to participate 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.

- Repeals a provision that gives ODJFS a right of subrogation for workers' compensation benefits payable to a person who is subject to a child or spousal support order and who is a Medicaid recipient.

### Provider agreements

- Requires all Medicaid provider agreements to be time-limited.
- Eliminates the phase-in period for subjecting Medicaid provider agreements to time limits.
- Provides that Medicaid provider agreements expire after a maximum of five (rather than seven) years.
- Requires that rules regarding time-limited Medicaid provider agreements be consistent with federal regulations governing provider screening and enrollment and include a process for revalidating providers' continued enrollment as providers rather than a process for re-enrolling providers.
- Requires ODM to refuse to revalidate a Medicaid provider agreement if the provider fails to file a complete application for revalidation within the time and in the manner required by the revalidation process.
- Provides that, if a provider continues operating under an expired Medicaid provider agreement while waiting for ODM to 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.
- Expressly permits the ODM Director to deny, refuse to revalidate, or terminate a Medicaid provider agreement for any type of provider, rather than only nursing facilities and intermediate care facilities for individuals with intellectual disabilities

(ICFs/IID), when the Director determines that the action is in the best interests of Medicaid recipients or the state.

- Permits the ODM Director to exclude an individual, provider of services or goods, or other entity from participation in the Medicaid program when the Director determines that the exclusion is in the best interests of Medicaid recipients or the state.

- Permits the ODM Director to suspend a Medicaid provider agreement for any reason permitted or required by federal law and when the Director determines that the suspension is in the best interests of Medicaid recipients or the state.

- Eliminates a requirement that ODM issue an order pursuant to an adjudication conducted in accordance with the Administrative Procedure Act when entering into or revalidating a Medicaid provider agreement but maintains a requirement for such an order when ODM refuses to enter into or revalidate a provider agreement.

- Permits a nursing facility provider to exclude one or more parts of the nursing facility from a Medicaid provider agreement if (1) the nursing facility initially obtained its license and Medicaid certification on or after January 1, 2008, (2) the nursing facility is located in a county that has, according to the Director of the Ohio Department of Health (ODH), more long-term care beds than it needs at the time the provider excludes the parts from the provider agreement, (3) federal law permits the provider to exclude the parts from the provider agreement, and (4) the provider gives ODM written notice of the exclusion not less than 45 days before the first day of the calendar quarter in which the exclusion is to occur.

- Permits a nursing facility to refuse to admit a person because the person is or may, as a resident of the nursing facility, become a Medicaid recipient if at least 25% of its Medicaid-certified beds are occupied by Medicaid recipients at the time the person would otherwise be admitted.

## Criminal records checks

- Permits an individual to be any of the following despite having been found eligible for intervention in lieu of conviction for certain disqualifying offenses: (1) a Medicaid provider, (2) an owner, officer, or board member of a Medicaid provider, and (3) with certain exceptions, an employee of a Medicaid provider.

- Permits certain individuals receiving or deciding whether to receive services from the subject of a criminal records check to receive the results of that records check.

- Provides that a Medicaid provider is not required to pay interest on the amount of an excess payment received without intent if the excess payment is identified under the state's Recovery Audit Contractor program and the provider repays the excess payment in full not later than 30 days after receiving notice of the excess payment.

### Dispensing fee; generic drug copayments

- Sets the Medicaid dispensing fee for noncompounded drugs at $1.80 for the period beginning July 1, 2013, and ending on the effective date of a rule changing the amount of the fee.

- Effective July 1, 2014, provides that the survey used under 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.

- Authorizes the ODM Director to reduce the amount of a terminal distributor's Medicaid dispensing fee if it fails to fully comply with the requirement to participate in the biennial survey of dispensing costs.

- 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

- Requires that the Medicaid payment rates for certain services provided by physician practice groups meeting requirements regarding hospital outpatient clinic services be determined in accordance with an existing Medicaid rule, and requires ODM to report to the General Assembly on this provision within four years.

- Provides for the Medicaid payment rates for hospital inpatient services to be the same as the Medicaid payment rates for the services in effect on June 30, 2013, until the effective date of the first of any ODM rules establishing new diagnosis-related groups for the services.

- Requires the ODM Director to increase the Medicaid payment rates for certain hospital outpatient and laboratory services provided during fiscal years 2014 and 2015 to the highest amount that it is possible to raise the rates using the amount, if any, by which the actual amount spent for hospital outpatient services for the

preceding fiscal year is less than the amount the Director projected would be spent but not to an amount exceeding the rates 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, oxygen, and resident transportation services

- Excludes, beginning January 1, 2014, custom wheelchair costs, repairs to and replacements of custom wheelchairs and parts, oxygen (other than emergency oxygen), and resident transportation services from the costs for bundled services

included in the direct care costs that are part of nursing facilities' Medicaid-allowable costs and (2) beginning January 1, 2014, reduces to 86¢ (from $1.88) the amount added, because of bundled services, to Medicaid rates paid for direct care costs.

- Requires the ODM Director, for the period beginning January 1, 2014, and ending June 30, 2015, to implement strategies for purchasing custom wheelchairs, oxygen (other than emergency oxygen), and resident transportation services for Medicaid recipients residing in nursing facilities.

## Nursing facility services

- To determine the Medicaid payment rates for nursing facilities in Mahoning and Stark counties for services provided during the period beginning October 1, 2013, and ending on the first day of the first rebasing of the rates, provides that the facilities be treated as if they were in the peer group that includes such urban counties as Cuyahoga, Franklin, and Montgomery.

- Provides for nursing facilities located in Mahoning and Stark counties to be placed in the peer groups that include such urban counties as Cuyahoga, Franklin, and Montgomery counties when ODM first rebases nursing facilities' Medicaid payment rates.

- Revises the accountability measures that are used in determining nursing facilities' quality incentive payments under the Medicaid program for fiscal year 2015 and thereafter.

- Specifies a lower maximum quality incentive payment ($13.16 rather than $16.44 per Medicaid day) starting in fiscal year 2015 for nursing facilities that fail to meet at least one of the accountability measures regarding pain, pressure ulcers, physical restraints, urinary tract infections, and vaccinations.

- 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.

- Permits ODM to terminate a nursing facility's Medicaid participation if the nursing facility is placed on the federal Special Focus Facility (SFF) list and fails to make improvements or graduate from the SFF program within certain periods of time.

- 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

- Eliminates a requirement that ODM prepare and submit to the General Assembly an annual report on the Medicaid care management system.

- Beginning January 1, 2014, prohibits the hospital inpatient capital payment portion of the payment made to Medicaid managed care organizations from exceeding any maximum rate that the ODM Director may establish in rules, and prohibits the organizations from compensating hospitals for inpatient capital costs in an amount that exceeds that rate.

- Provides that an agreement entered into between a Medicaid managed care participant, a participant's parent, or a participant's legal guardian that violates Ohio law regarding payment for emergency services is void and unenforceable.

- Beginning January 1, 2014, modifies provisions governing Medicaid payments for graduate medical education (GME) costs by (1) requiring the ODM Director to adopt rules that govern the allocation of payments for GME costs, and (2) eliminating provisions specifying how payments for GME costs are made under the Medicaid managed care system.

- Establishes 2% (an increase from 1%) as the maximum total amount of all Medicaid managed care premiums that may be withheld for the purpose of making performance payments to Medicaid managed care organizations through the Medicaid Managed Care Performance Fund.

- Modifies the uses of the Medicaid Managed Care Performance Payment Fund by (1) permitting, rather than requiring, amounts in the fund to be used to make performance payments and (2) permitting amounts to be used to meet provider

agreement obligations or to pay for Medicaid services provided by a Medicaid managed care organization.

- For fiscal years 2014 and 2015, permits ODM to provide performance payments to Medicaid managed care organizations that provide care to participants of the 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.

- Excludes (until July 1, 2014) certain recipients of services through ODH's Bureau for Children with Medical Handicaps who have cystic fibrosis, hemophilia, or cancer from any required participation in the Medicaid care management system.

### Sources of Medicaid revenues

- Replaces the specific dollar amounts used for the franchise permit fee on nursing homes and hospital long-term care units with a formula for determining the amount of the franchise permit fee rate.

- Continues, for two additional years, both of the following: (1) the Hospital Care Assurance Program (HCAP) and (2) the assessments imposed on hospitals for purposes of obtaining funds for the Medicaid program.

- Requires ODM to continue the 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 collaboration between certain state agencies referred to as "participating agencies" for health transformation purposes, authorize the exchange of personally identifiable information between participating agencies regarding a health transformation initiative, and require the use and disclosure of such information in accordance with operating protocols adopted by the OHT Executive Director.

- Includes the Department of Administrative Services (ODAS) and ODM as participating agencies.

## Health information exchanges

- Includes ODAS and ODM as state agencies to which covered entities may disclose certain protected health information.

- Transfers from the ODJFS Director to the ODM Director rule-making authority pertaining to (1) a standard authorization form for the use and disclosure of protected health information and substance abuse records by covered entities and (2) the operation of health information exchanges in Ohio.

## Direct Care Worker Advisory Workgroup

- Creates the Direct Care Worker Advisory Workgroup with the OHT Executive Director serving as chairperson.

- Specifies the Workgroup's responsibilities, including determining core competencies for direct care workers, designating which direct care workers should meet core competencies, and recommending policies to be incorporated in legislation the General Assembly intends to enact in the future regarding direct care worker certification.

- Requires the Workgroup to submit a report to the General Assembly not later than December 31, 2013, describing its findings and recommendations.

### Medicaid data

- Authorizes the ODM Director to enter into contracts with one or more persons to receive and process, on the Director's behalf, certain requests for Medicaid data by persons who intend to use the data for commercial or academic purposes.

### Long-term services

- Continues the Joint Legislative Committee for Unified Long-Term Services and Supports.

- Requires ODM, Ohio Department of Aging, and Ohio Department of Developmental Disabilities to have, by June 30, 2015 (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.

- 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.

## Health home services

- Authorizes the ODM Director, in consultation with the Director of ODODD, to develop and implement a system within the Medicaid program to provide health home services to Medicaid-eligible individuals with chronic health conditions and developmental disabilities.

## Telemedicine policy workgroup

- Creates a workgroup to study telemedicine.

## 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.

- Requires the ODM Director, if the ICDS is implemented, to conduct an annual evaluation of the ICDS unless the same evaluation is conducted for that year by an organization under contract with the U.S. Department of Health and Human Services.

## 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.[140] 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

[140] 42 U.S.C. 1396a(a)(5).

Office and creates the Ohio Department of Medicaid (ODM).[141] 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.

### 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,

---

[141] 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.

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.[142] 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 arrested for, convicted of, or pleaded guilty to any offense.[143] 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 ODM.

(1) Employees of the Office of Medical Assistance are transferred to ODM.

(2) The vehicles and equipment assigned to the Office's employees are transferred to ODM.

[142] R.C. 124.30.

[143] R.C. 109.5721, not in the bill.

(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.

(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.[144] The actions of the ODM Director or ODJFS Director must comply with the requirements of a federal regulation establishing standards for a merit system of personnel administration. If an employee in the E-1 pay range is to be assigned, reassigned, classified, reclassified, transferred, reduced, or demoted to a position in a lower classification, the ODM Director or ODJFS Director, or in the case of a transfer outside ODM or ODJFS, the ODAS Director, must assign the employee to the appropriate classification and place the employee in Step X. The employee is not to receive any increase in compensation until the maximum rate of pay for that classification exceeds the employee's compensation. Actions the ODM Director, ODJFS Director, and ODAS Director take under this provision of the 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.

[144] 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, not in the bill.)

## 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.[145] 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.

---

[145] R.C. 5101.09, not in the bill.

### 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.[146]

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, 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.[147]

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.[148] 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.[149]

### 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

---

[146] R.C. 5101.10, not in the bill.

[147] R.C. 5101.111, not in the bill.

[148] R.C. 5101.11.

[149] R.C. 5101.12, not in the bill.

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.[150] 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 mileage provided for by the Administrative Procedure Act (R.C. Chapter 119.). ODJFS has this authority under continuing law.[151]

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.[152]

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.[153]

The bill gives the State Auditor authority to take actions on ODM's behalf as the Auditor may do under continuing law for ODJFS.[154] 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

---

[150] R.C. 5101.38, not in the bill.

[151] R.C. 5101.37(A), not in the bill.

[152] R.C. 5101.37(C), not in the bill.

[153] R.C. 5101.37(D), not in the bill.

[154] R.C. 5101.181(E).

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.[155] The Auditor and Attorney General must (1) provide safeguards that restrict access to the records to purposes directly connected with an audit or investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of the programs and (2) comply, and ensure that their designees comply, with state law restricting the disclosure of information regarding medical assistance recipients. Any person who fails to comply with the restrictions is disqualified from acting as an agent or employee or in any other capacity under appointment or employment of any state board, commission, or agency.

The 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.[156]

### 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 requires third parties to cooperate with ODJFS in identifying individuals for the purpose of establishing third party liability for Medicaid only.[157] The bill requires instead that third parties cooperate with ODM in identifying individuals for the purpose of establishing third party liability regarding all medical assistance programs that ODM administers.[158]

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.

---

155 R.C. 5101.181(G).

156 R.C. 5101.181(H).

157 R.C. 5101.572.

158 R.C. 5160.39.

### 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.[159]

### 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.[160]

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

---

[159] R.C. 5101.273.

[160] R.C. 5101.47.

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 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.[161]

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;

(3) Delegate authority to hear appeals to an exchange or exchange appeals entity.[162]

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:

---

[161] R.C. 5101.35.

[162] 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.)

(1) Chapter 5124. (the Ohio Department of Developmental Disabilities' (ODODD's) administration of Medicaid's coverage of intermediate care facility for individuals with intellectual disabilities (ICF/IID) 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/IID and nursing facility services, and general Medicaid provider issues);

(7) Chapter 5165. (Medicaid's coverage of nursing facility services);

(8) Chapter 5166. (Federal Medicaid waiver programs);

(9) Chapter 5167. (Medicaid managed care);

(10) Chapter 5168. (Hospital Care Assurance Program and other health care provider assessments and fees).

The 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.[163]

## 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.

[163] Similar authority is given to the Ohio Department of Aging (ODA) and ODODD Directors regarding updating citations to authorizing statutes in their rules.

### 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 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/IID 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/IID 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/IID" refers to provisions regarding intermediate care facilities for individuals with intellectual disabilities 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 |
| 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 |

| R.C. section number under current law | R.C. section number under the bill |
|---|---|
| 5101.502 | 5161.02 |
| 5101.51 | 5161.10 |
| 5101.511 | 5161.11 |
| 5101.5110 | 5161.35 |
| 5101.512 | 5161.12 |
| 5101.513 | 5161.30 |
| 5101.516 | 5161.22 |
| 5101.517 | 5161.24 |
| 5101.519 | 5161.27 |
| 5101.52 | 5161.15 |
| 5101.521 | 5161.16 |
| 5101.522 | 5161.17 |
| 5101.524 | 5161.20 |
| 5101.527 | 5161.25 |
| 5101.571 | 5160.35 |
| 5101.572 | 5160.39 |
| 5101.573 | 5160.40 |
| 5101.574 | 5160.41 |
| 5101.575 | 5160.42 |
| 5101.58 | 5160.37 |
| 5101.59 | 5160.38 |
| 5101.591 | 5160.43 |
| 5111.01 | 5162.03 |
| 5111.011 | 5163.02 |
| 5111.013 | 5163.40 |
| 5111.016 | 5164.26 |
| 5111.018 | 5164.07 |
| 5111.0112 | 5162.20 |
| 5111.0114 | 5164.754 |
| 5111.0116 | 5163.30 |
| 5111.0117 | 5163.31 |
| 5111.0118 | 5163.32 |
| 5111.0119 | 5163.45 |

| R.C. section number under current law | R.C. section number under the bill |
|---|---|
| 5111.02 | 5164.02 |
| 5111.021 | 5164.70 |
| 5111.022 | 5164.56 |
| 5111.023 | 5164.15 |
| 5111.024 | 5164.08 |
| 5111.025 | 5164.76 |
| 5111.027 | 5164.20 |
| 5111.028 | 5164.32 |
| 5111.029 | 5164.06 |
| 5111.0210 | 5164.92 |
| 5111.0211 | 5165.48 |
| 5111.0212 | 5164.80 |
| 5111.0213 | 5164.77 |
| 5111.0214 | 5164.82 |
| 5111.0215 | 5164.93 |
| 5111.03 | 5164.35 |
| 5111.031 | 5164.37 |
| 5111.032 | 5164.34 |
| 5111.033 | 5164.342 |
| 5111.034 | 5164.341 |
| 5111.035 | 5164.36 |
| 5111.04 | 5164.05 |
| 5111.042 | 5164.25 |
| 5111.05 | 5164.45 |
| 5111.051 | 5164.48 |
| 5111.052 | 5164.46 |
| 5111.053 | 5164.301 |
| 5111.054 | 5164.47 |
| 5111.06 | 5164.38 |
| 5111.061 | 5164.57 |
| 5111.062 | 5164.39 |
| 5111.063 | 5164.31 |
| 5111.07 | 5164.752 |

| R.C. section number under current law | R.C. section number under the bill |
| --- | --- |
| 5111.071 | 5164.753 |
| 5111.08 | 5164.759 |
| 5111.081 | 5164.755 |
| 5111.082 | 5164.751 |
| 5111.083 | 5164.757 |
| 5111.084 | 5164.7510 |
| 5111.085 | 5164.758 |
| 5111.086 | 5164.75 |
| 5111.09 | 5162.13 |
| 5111.091 | 5162.131 |
| 5111.092 | 5162.132 |
| 5111.10 | 5162.10 |
| 5111.101 | 5162.15 |
| 5111.102 | 5162.04 |
| 5111.11 | 5162.21 |
| 5111.111 | 5162.211 |
| 5111.112 | 5162.212 |
| 5111.113 | 5162.22 |
| 5111.114 | 5163.33 |
| 5111.12 | 5162.23 |
| 5111.121 | 5162.24 |
| 5111.13 | 5164.85 |
| 5111.14 | 5164.88 |
| 5111.141 | 5164.89 |
| 5111.15 | 5163.20 |
| 5111.151 | 5163.21 |
| 5111.16 | 5167.03 |
| 5111.161 | 5167.031 |
| 5111.162 | 5167.20 |
| 5111.163 | 5167.201 |
| 5111.17 | 5167.10 |
| 5111.171 | 5167.31 |
| 5111.172 | 5167.12 |

| R.C. section number under current law | R.C. section number under the bill |
|---|---|
| 5111.173 | 5167.40 |
| 5111.174 | 5167.41 |
| 5111.175 | 5167.26 |
| 5111.177 | 5167.11 |
| 5111.178 | 5167.25 |
| 5111.179 | 5167.13 |
| 5111.1710 | 5167.14 |
| 5111.1711 | 5167.30 |
| 5111.18 | 5164.86 |
| 5111.181 | 5163.22 |
| 5111.19 | 5164.74 |
| 5111.191 | 5164.741 |
| 5111.20 | 5165.01 |
| 5111.201 | 5165.011 |
| 5111.202 | 5165.03 |
| 5111.203 | 5165.031 |
| 5111.204 | 5165.04 |
| 5111.21 | 5165.06 |
| 5111.212 | 5165.35 |
| 5111.22 | 5165.07 |
| 5111.221 | 5165.37 |
| 5111.222 | 5165.15 |
| 5111.223 | 5165.071 |
| 5111.224 | 5124.15 |
| 5111.225 | 5165.155 |
| 5111.226 | 5124.02 |
| 5111.23 | 5124.19 |
| 5111.231 | 5165.19 |
| 5111.232 | 5165.192 |
| 5111.233 | 5124.194 |
| 5111.235 | 5124.23 |
| 5111.24 | 5165.16 |
| 5111.241 | 5124.21 |

| R.C. section number under current law | R.C. section number under the bill |
|---|---|
| 5111.242 | 5165.21 |
| 5111.244 | 5165.25 |
| 5111.245 | 5165.26 |
| 5111.246 | 5165.23 |
| 5111.25 | 5165.17 |
| 5111.251 | 5124.17 |
| 5111.254 | 5165.151 |
| 5111.255 | 5124.151 |
| 5111.257 | 5165.28 |
| 5111.258 | 5165.153 |
| 5111.259 | 5165.156 |
| 5111.26 | 5165.10 |
| 5111.261 | 5165.107 |
| 5111.262 | 5165.47 |
| 5111.263 | 5124.29 |
| 5111.264 | 5165.30 |
| 5111.265 | 5165.29 |
| 5111.266 | 5165.101 |
| 5111.27 | 5165.108 |
| 5111.271 | 5165.1010 |
| 5111.28 | 5165.40 |
| 5111.29 | 5165.38 |
| 5111.291 | 5124.154 |
| 5111.30 | 5165.073 |
| 5111.31 | 5165.08 |
| 5111.32 | 5165.081 |
| 5111.33 | 5124.34 |
| 5111.331 | 5165.34 |
| 5111.35 | 5165.60 |
| 5111.36 | 5165.61 |
| 5111.37 | 5165.62 |
| 5111.38 | 5165.63 |
| 5111.39 | 5165.64 |

| R.C. section number under current law | R.C. section number under the bill |
|---|---|
| 5111.40 | 5165.65 |
| 5111.41 | 5165.66 |
| 5111.411 | 5165.67 |
| 5111.42 | 5165.68 |
| 5111.43 | 5165.69 |
| 5111.44 | 5165.70 |
| 5111.45 | 5165.71 |
| 5111.46 | 5165.72 |
| 5111.47 | 5165.73 |
| 5111.48 | 5165.74 |
| 5111.49 | 5165.75 |
| 5111.50 | 5165.76 |
| 5111.51 | 5165.77 |
| 5111.511 | 5165.78 |
| 5111.52 | 5165.79 |
| 5111.53 | 5165.80 |
| 5111.54 | 5165.81 |
| 5111.55 | 5165.82 |
| 5111.56 | 5165.83 |
| 5111.57 | 5165.84 |
| 5111.58 | 5165.85 |
| 5111.59 | 5165.86 |
| 5111.60 | 5165.87 |
| 5111.61 | 5165.88 |
| 5111.62 | 5162.66 |
| 5111.63 | 5165.89 |
| 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 |

| R.C. section number under current law | R.C. section number under the bill |
|---|---|
| 5111.675 | 5165.515 |
| 5111.676 | 5165.516 |
| 5111.677 | 5165.517 |
| 5111.68 | 5165.52 |
| 5111.681 | 5165.521 |
| 5111.682 | 5165.522 |
| 5111.683 | 5165.523 |
| 5111.684 | 5165.524 |
| 5111.685 | 5165.525 |
| 5111.686 | 5165.526 |
| 5111.687 | 5165.527 |
| 5111.688 | 5165.528 |
| 5111.689 | 5165.53 |
| 5111.70 | 5163.09 |
| 5111.701 | 5163.091 |
| 5111.702 | 5163.092 |
| 5111.703 | 5163.093 |
| 5111.704 | 5163.094 |
| 5111.705 | 5163.095 |
| 5111.706 | 5163.096 |
| 5111.707 | 5163.097 |
| 5111.708 | 5163.098 |
| 5111.709 | 5163.099 |
| 5111.7011 | 5163.0910 |
| 5111.71 | 5162.36 |
| 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 |

| R.C. section number under current law | R.C. section number under the bill |
|---|---|
| 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 |
| 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 |

| R.C. section number under current law | R.C. section number under the bill |
|---|---|
| 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 |
| 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 |

| R.C. section number under current law | R.C. section number under the bill |
|---|---|
| 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 |
| 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 |
| 5101.32 | 5160.052 |
| 5101.36 | 5160.36 |
| 5101.37 | 5160.20 |
| 5101.38 | 5160.16 |
| 5101.47 | 5160.30 |

| Where the provision is found in current law | Where the provision is found in the bill |
|---|---|
| 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/IID) | 5124.01 |
| 5111.21 (ICFs/IID) | 5124.06 |
| 5111.21(C) (NFs) | 5165.082 |
| 5111.212 (ICFs/IID) | 5124.35 |
| 5111.22 (other than the last sentence of (A), the last sentence of the second-to-last paragraph, and the last paragraph) (ICFs/IID) | 5124.07 |
| 5111.22 (last sentence of (A)) (ICFs/IID) | 5124.33 |
| 5111.22 (last sentence of (A)) (NFs) | 5165.33 |
| 5111.22 (last sentence of the second-to-last paragraph and the last paragraph) (ICFs/IID) | 5124.072 |
| 5111.22 (last sentence of the second-to-last paragraph and the last paragraph) (NFs) | 5165.072 |

| Where the provision is found in current law | Where the provision is found in the bill |
|---|---|
| 5111.211 (ICFs/IID) | 5124.37 |
| 5111.222(A) (NFs) | 5165.01(Y) |
| 5111.222(C) (NFs) | 5165.152 |
| 5111.223 (ICFs/IID) | 5124.071 |
| 5111.225 (part of (A)) (NFs) | 5160.01(A) |
| 5111.232 (first paragraph of (C)) (ICFs/IID) | 5124.191 |
| 5111.232 ((B), second paragraph of (C), (D), and (E)) (ICFs/IID) | 5124.192 |
| 5111.232 (first paragraph of (C) and (E)(1) and (2)) (NFs) | 5165.191 |
| 5111.251(G) (ICFs/IID) | 5124.28 |
| 5111.258(A) (ICFs/IID) | 5124.152 |
| 5111.258(B) (ICFs/IID) | 5124.153 |
| 5111.258(B) (NFs) | 5165.154 |
| 5111.26(A)(1)(a), (b), and (c) (other than the second and sixth sentences of (A)(1)(a)) (ICFs/IID) | 5124.10 |
| 5111.26 (second sentence of (A)(1)(a)) (ICFs/IID) | 5124.103 |
| 5111.26 (second sentence of (A)(1)(a)) (NFs) | 5165.103 |
| 5111.26 (sixth sentence of (A)(1)(a)) (ICFs/IID) | 5124.104 |
| 5111.26 (sixth sentence of (A)(1)(a)) (NFs) | 5165.104 |
| 5111.26(A)(2) (ICFs/IID) | 5124.106 |
| 5111.26(A)(2) (NFs) | 5165.106 |
| 5111.26(B) (ICFs/IID) | 5124.102 |
| 5111.26(B) (NFs) | 5165.102 |
| 5111.26(C) (ICFs/IID) | 5124.105 |
| 5111.26(C) (NFs) | 5165.105 |
| 5111.264 (ICFs/IID) | 5124.30 |
| 5111.27(A) (ICFs/IID) | 5124.108 |
| 5111.27(B) and (D) (ICFs/IID) | 5124.109 |
| 5111.27(B) and (D) (NFs) | 5165.109 |
| 5111.27(C) and (D) (ICFs/IID) | 5124.193 |
| 5111.27(C) and (D) (NFs) | 5165.193 |

| Where the provision is found in current law | Where the provision is found in the bill |
|---|---|
| 5111.27(E) (ICFs/IID) | 5124.32 |
| 5111.27(E) (NFs) | 5165.32 |
| 5111.27(F) (ICFs/IID) | 5124.31 |
| 5111.28(A) (ICFs/IID) | 5124.40 |
| 5111.28(B) (ICFs/IID) | 5124.41 |
| 5111.28(B) (NFs) | 5165.41 |
| 5111.28(C) (ICFs/IID) | 5124.42 |
| 5111.28(C) (NFs) | 5165.42 |
| 5111.28(D) (ICFs/IID) | 5124.44 |
| 5111.28(D) (NFs) | 5165.44 |
| 5111.28(E) (ICFs/IID) | 5124.45 |
| 5111.28(E) (NFs) | 5165.45 |
| 5111.28(F) (ICFs/IID) | 5124.43 |
| 5111.28(F) (NFs) | 5165.43 |
| 5111.29(A) (ICFs/IID) | 5124.38 |
| 5111.29(B) (ICFs/IID) | 5124.46 |
| 5111.29(B) (NFs) | 5165.46 |
| 5111.31 (ICFs/IID) | 5124.08 |
| 5111.32 (other than part of the second sentence of the first paragraph) (ICFs/IID) | 5124.081 |
| 5111.32 (part of the second sentence of the first paragraph) (ICFs/IID) | 5124.01(WW) |
| 5111.32 (part of the second sentence of the first paragraph) (NFs) | 5165.01(PP) and (RR) |
| 5111.65(A) (ICFs/IID) | 5124.01(A) |
| 5111.65(A) (NFs) | 5165.01(A) |
| 5111.65(B) (ICFs/IID) | 5124.01(E) |
| 5111.65(B) (NFs) | 5165.01(G) |
| 5111.65(C) (ICFs/IID) | 5124.01(N) |
| 5111.65(C) (NFs) | 5165.01(N) |
| 5111.65(D) (ICFs/IID) | 5124.01(O) |
| 5111.65(D) (NFs) | 5165.01(O) |
| 5111.65(E) (ICFs/IID) | 5124.01(P) |
| 5111.65(E) (NFs) | 5165.01(P) |

| Where the provision is found in current law | Where the provision is found in the bill |
|---|---|
| 5111.65(F) (ICFs/IID) | 5124.01(Q) |
| 5111.65(G) (NFs) | 5165.01(Q) |
| 5111.65(H) (ICFs/IID) | 5124.01(R) |
| 5111.65(H) (NFs) | 5165.01(R) |
| 5111.65(I) (ICFs/IID) | 5124.01(S) |
| 5111.65(I) (NFs) | 5165.01(S) |
| 5111.65(J) (ICFs/IID) | 5124.01(U) |
| 5111.65(J) (NFs) | 5165.01(T) |
| 5111.65(L) (ICFs/IID) | 5124.01(CC) |
| 5111.65(L) (NFs) | 5165.01(X) |
| 5111.65(M) (ICFs/IID) | 5124.01(ZZ) |
| 5111.65(N) (NFs) | 5165.01(VV) |
| 5111.66 (ICFs/IID) | 5124.50 |
| 5111.67 (ICFs/IID) | 5124.51 |
| 5111.671 (ICFs/IID) | 5124.511 |
| 5111.672 (ICFs/IID) | 5124.512 |
| 5111.673 (ICFs/IID) | 5124.513 |
| 5111.674 (ICFs/IID) | 5124.514 |
| 5111.675 (ICFs/IID) | 5124.515 |
| 5111.676 (ICFs/IID) | 5124.516 |
| 5111.677 (ICFs/IID) | 5124.517 |
| 5111.68 (ICFs/IID) | 5124.52 |
| 5111.681 (ICFs/IID) | 5124.521 |
| 5111.682 (ICFs/IID) | 5124.522 |
| 5111.683 (ICFs/IID) | 5124.523 |
| 5111.684 (ICFs/IID) | 5124.524 |
| 5111.685 (ICFs/IID) | 5124.525 |
| 5111.686 (ICFs/IID) | 5124.526 |
| 5111.687 (ICFs/IID) | 5124.527 |
| 5111.688 (ICFs/IID) | 5124.528 |
| 5111.689 (ICFs/IID) | 5124.53 |
| 5111.71(A) | 5162.01(B)(12) |
| 5111.85(A) | 5166.01 |

| Where the provision is found in current law | Where the provision is found in the bill |
|---|---|
| 5111.851(A) | 5166.01 |
| 5111.874(A) (ICFs/IID) | 5124.01(X), (Y), (BB), and (VV) |
| 5111.89(A) | 173.51 |
| 5111.89(D) | 173.543 |
| 5111.90(A)(1) | 5162.01(B)(10) |
| 5111.90(A)(2) | 5162.01(B)(13) |
| 5111.91 (third paragraph) | 5162.62 |
| 5111.94(A) | 5162.01(B)(14) |
| 5111.944 (definition of "dual eligible individual") | 5160.01(A) |
| 5111.944 (definition of "Medicare program") | 5162.01(A)(2) |
| 5111.981 (definition of "dual eligible individual") | 5160.01(A) |
| 5111.981 (definition of "Medicare program") | 5162.01(A)(2) |

## Medicaid eligibility

(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), 5163.01, 5163.03, 5163.04, 5163.05, 5163.06, 5163.061, 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;[164]

(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.

### 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.[165] 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.

---

[164] 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.

[165] The bill maintains a requirement that the Medicaid program include a Medicaid Buy-In for Workers with Disabilities program that covers the following two federal optional eligibility groups: (1) employed individuals with disabilities and (2) employed individuals with medically improved disabilities.

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. 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) Independent foster care adolescents;

(4) Women in need of treatment for breast or cervical cancer;

(5) Low income, nonpregnant individuals who may receive family planning services and supplies;

(6) Pregnant women who may be determined presumptively eligible for Medicaid;

(7) Children who may be determined presumptively eligible for Medicaid;

(8) Low income parents.

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.[166] 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

[166] 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.

to the eligibility standards, methodologies, and procedures for individuals under age 19 (or a higher age as the state may have elected).[167] 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; 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

---

[167] 42 U.S.C. 1396a(gg).

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).[168]

### 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 Medicaid, and (6) have incomes not exceeding 133% (138% after using individuals' modified adjusted gross incomes) of the federal poverty line.[169] 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.[170]

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 begins to participate 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

---

[168] 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.

[169] 42 U.S.C. 1396a(a)(10)(A)(i)(VIII) and (e)(14).

[170] *National Federation of Independent Business v. Sebelius* (2012), 132 S. Ct. 2566.

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.[171] 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.

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.

---

[171] 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.

### 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 subrogation for workers' compensation benefits

(R.C. 5101.36)

The bill repeals a provision that gives ODJFS a right of subrogation for workers' compensation benefits payable to a person who is subject to a child or spousal support order and who is a Medicaid recipient (to the extent Medicaid payments were made on the recipient's behalf). The bill does not modify current law that gives ODJFS a right of subrogation for workers' compensation benefits payable to a person who is subject to a child or spousal support order and who is a recipient of public assistance under the Ohio Works First Program, the Prevention, Retention, and Contingency Program, or the Disability Financial Assistance Program.

## Medicaid services

### Mandatory and optional services

(R.C. 5164.03 (primary) and 5164.01)

As with eligibility groups, federal law requires a state's Medicaid program to cover certain health care services and permits the program to cover other health care services. The services that must be covered are called mandatory health care services and the services that may be covered are optional services.

Continuing state law specifies certain services that the Medicaid program must, may, or cannot cover. Generally, however, whether Ohio's Medicaid program covers a service is specified in rules authorized by continuing law that 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/IID, 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/IID, 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 file a complete application for revalidation within the time and in the manner required under the revalidation process.

(2) If a provider files an application for revalidation within the required time and in the required manner, but the provider agreement expires before ODM acts on the application or before the effective date of ODM's decision on the application, the provider may continue operating under the terms of the expired provider agreement until the effective date of ODM's decision. However, if ODM denies the provider's application, Medicaid payments cannot be made for Medicaid services provided during the period beginning on the date the provider agreement expired and ending on the effective date of a subsequent provider agreement, if any, that ODM enters into with the provider.

### Adjudications regarding provider agreements

(R.C. 5164.38)

Generally, ODM is required to issue an order pursuant to an adjudication conducted in accordance with the Administrative Procedure Act (R.C. Chapter 119.) when taking various actions regarding Medicaid provider agreements, such as entering into or refusing to enter into a provider agreement. The bill eliminates the requirement to issue an order pursuant to an adjudication when ODM enters into a provider agreement.

Renewing or refusing to renew a provider agreement is another action that generally requires an adjudication under current law. The bill replaces references to renewal with references to revalidation to conform with the changes discussed above (see "**Time limit on provider agreements**") and eliminates the requirement to issue an order pursuant to an adjudication when revalidating a provider agreement. Therefore, an adjudication is required when ODM refuses to revalidate a provider agreement but not when ODM agrees to revalidate a provider agreement.

The 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/IID, refuses to revalidate a provider agreement because the provider fails to file a complete application for revalidation within the required time and in the required manner.

### Application fees for provider agreements

(R.C. 5164.31)

ODM 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.

### Denying, terminating, and suspending provider agreements

(R.C. 5164.33 (primary), 5164.38, and 5165.07)

Continuing law provides that a Medicaid provider agreement may be denied or terminated for any reason permitted or required by federal law. Also, an individual, provider of services or goods, or other entity may be excluded from participating in Medicaid for any reason permitted or required by federal law. Current law provides that a provider agreement for a nursing facility or ICF/IID may be denied, not renewed, or terminated when ODM determines that the provider agreement would not be in the best interests of Medicaid recipients or the state. The bill permits the ODM Director to deny, refuse to revalidate, or terminate a Medicaid provider agreement for any type of provider, rather than only nursing facilities and ICFs/IID, when the Director determines that the action is in the best interests of Medicaid recipients or the state. The bill also permits the Director to exclude an individual, provider of services or goods, or other entity from participation in the Medicaid program when the Director determines that the exclusion is in the best interests of Medicaid recipients or the state. The ODM Director is permitted by the bill to suspend a Medicaid provider agreement for any reason permitted or required by federal law and when the Director determines that the suspension is in the best interests of Medicaid recipients or the state.

### Nursing facilities' provider agreement terms

(R.C. 5165.08, 5165.513, and 5165.515)

The bill revises the terms that must be included in a provider agreement for a nursing facility. Under current law, every provider agreement with a nursing facility must include any part of the facility that meets standards for certification of compliance with federal and state laws and rules for participation in the Medicaid program. However, beds added during the period beginning July 1, 1987, and ending July 1, 1993, are not required to be included in a provider agreement unless otherwise required by federal law. If a nursing facility chooses to include such a bed in a provider agreement, the bed may not be removed from the provider agreement unless the nursing facility withdraws entirely from the Medicaid program.

The bill eliminates the current law provisions described above and provides instead that a nursing facility may exclude one or more of its parts from the provider agreement even though those parts meets federal and state standards for Medicaid certification if all of the following apply:

(1) The nursing facility initially obtained both its nursing home license and Medicaid certification on or after January 1, 2008.

(2) The nursing facility is located in a county that has, according to the Director of the Ohio Department of Health (ODH), more long-term care beds than it needs at the time the nursing facility excludes the parts from the provider agreement.

(3) Federal law permits the provider to exclude the parts from the provider agreement.

(4) The provider gives ODM written notice of the exclusion not less than 45 days before the first day of the calendar quarter in which the exclusion is to occur.

The bill provides that a nursing facility that so excludes one or more of its parts from a provider agreement does not violate continuing law that prohibits a person who is granted a certificate of need (CON) from carrying out the reviewable activity authorized by the CON in a manner that is not in substantial accordance with the approved application for the CON.

Another term of a provider agreement for a nursing facility that the bill revises concerns denials of admission on the basis that an individual is or may become a Medicaid recipient. Under current law, a provider agreement must prohibit a nursing facility from failing or refusing to accept an individual because the individual is, or as a resident of the nursing facility may become, a Medicaid recipient if less than 80% of its

residents are Medicaid recipients or the nursing facility is subject to an order denying Medicaid payments for new residents due to failure to comply with certification requirements. Under the bill, a nursing facility may fail or refuse to admit such an individual if at least 25% (rather than 80%) of its Medicaid-certified beds are occupied by Medicaid recipients at the time the individual would otherwise be admitted.

## 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 individuals 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.

## Recovery Audit Contractor program

(R.C. 5164.60)

Current law provides that any Medicaid provider who, without intent, obtains Medicaid payments in excess of the amount to which the provider is entitled is liable for

payment of interest on the amount of the excess payments at the maximum interest rate allowable for real estate mortgages on the date the payment was made to the provider for the period from the date on which payment was made to the date on which repayment is made to the state. The bill provides that this not apply to an excess payment identified under the Recovery Audit Contractor program if the Medicaid provider who obtains the excess payment repays the excess payment in full not later than 30 days after receiving notice of the excess payment. A state is required by the Patient Protection and Affordable Care Act to establish a Recovery Audit Contractor program for its Medicaid program not later than December 31, 2010. Under its Recovery Audit Contractor program, the state must contract with at least one recovery audit contractor for the purpose of identifying underpayments and overpayments under the Medicaid program and recouping overpayments.

## 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.

If a terminal distributor fails to fully comply with the requirement to participate in the survey, the bill permits the ODM Director to reduce the amount of the dispensing fee provided to the terminal distributor. In establishing the amount of the reduction, the Director is permitted to take into account the extent to which the terminal distributor failed to fully participate in the survey.

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 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.[172]

## Miscellaneous payment rates

### Physician groups acting as outpatient hospital clinics

(R.C. 5164.78)

An existing administrative rule[173] requires different Medicaid payment amounts (generally the regular Medicaid payment multiplied by 1.4) for physician group practices that meet both of the following criteria:

[172] 42 C.F.R. 440.120.

[173] See O.A.C. 5101:3-1-60.1.

(1) The physician group practice is physically attached to a hospital that does not provide physician clinic outpatient services and the hospital and physician group practice have signed a letter of agreement indicating that the physician group practice provides the outpatient hospital clinic service for that hospital;

(2) The state Medicaid provider utilization summary for calendar year 1990 establishes that the physician group practice, in that year, provided at least 40% of the total number of Medicaid physician visits provided in the county in which the physician group practice is located and an aggregate total of at least 10% of the physician visits provided in the contiguous counties.

The bill requires that the Medicaid payment rates for physician, pregnancy-related, evaluation, and management services provided by a physician group practice meeting those requirements be determined in accordance with the rule discussed above as the rule is in effect on the day immediately preceding the effective date of this provision of the bill. ODM is required, not later than four years after that date, to submit a report regarding this provision to the General Assembly.

### Medicaid rates for hospital inpatient services

(Section 323.103)

The bill requires that the Medicaid payment rates for Medicaid-covered hospital inpatient services be the same as the Medicaid payment rates for the services in effect on June 30, 2013, until the effective date of the first of any ODM rules establishing new diagnosis-related groups for the services.

### Medicaid rates for hospital outpatient and laboratory services

(Section 323.105)

The bill requires the ODM Director, on July 1, 2013, or as soon as possible thereafter, to determine whether the amount of hospital outpatient savings for fiscal year 2013 is greater than zero. The Director must make the same determination on July 1, 2014, or as soon as possible thereafter, regarding hospital outpatient savings for fiscal year 2014. Hospital outpatient savings are the amount, if any, by which the actual amount expended and encumbered under the Medicaid program for hospital outpatient services for a fiscal year is less than the amount the Director, before the beginning of that fiscal year, projected would be expended and encumbered under the Medicaid program for hospital outpatient savings for that fiscal year.

If the Director determines that the amount of hospital outpatient services for fiscal year 2013 or 2014 is greater than zero, the Director must increase the Medicaid

payment rates for certain hospital outpatient services provided during fiscal year 2014 (in the case of savings for fiscal year 2013) and fiscal year 2015 (in the case of savings for fiscal year 2014). The rate requirement applies to hospital outpatient services paid at hospital-specific costs and hospital laboratory services paid in excess of Medicare rates.

The fiscal year 2014 rates are to be increased to the highest amount possible using the amount of fiscal year 2013's hospital outpatient savings. The fiscal year 2015 rates are to be increased to the highest amount possible using the amount of fiscal year 2014's hospital outpatient savings. However, the rates for neither year can be greater than the rates for the services in effect on June 30, 2013.

### Medicaid payment rate adjustments

(Sections 323.250, 323.260, and 323.270)

The ODM Director is required by the 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 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 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, oxygen, and transportation

(R.C. 5165.01 and 5165.19; Section 323.236)

### Services removed from bundling

H.B. 1 of the 128th General Assembly (the main operating appropriations act for 2009-2011) included the costs of wheelchairs, oxygen, and resident transportation services among the costs included in nursing facilities' Medicaid allowable costs.[174] The inclusion of wheelchair, oxygen, and resident transportaion costs in nursing facilities' costs is part of what has been called "bundling." Other costs that are part of bundling include, over-the-counter pharmacy products, physical therapy, occupational therapy, speech therapy, and audiology. Bundling affects nursing facilities' Medicaid payments.

The bill removes custom wheelchairs from nursing facilities' Medicaid-allowable costs, as well as repairs to and replacements of custom wheelchairs and parts that are made in accordance with the instructions of the physician of the individual who uses the custom wheelchair. "Custom wheelchair" is defined as a wheelchair that (1) has been measured, fitted, or adapted in consideration of the body size or disability of the individual who is to use the wheelchair or the individual's period of need for, or intended use of, the wheelchair and (2) has customized features, modifications, or components that the supplier or manufacturer added or made in accordance with the instructions of the individual's physician. The bill also removes oxygen (other than emergency oxygen) and resident transportation services from nursing facilities' Medicaid-allowable costs. All of the removals take effect January 1, 2014.

Continuing law provides for a portion of nursing facilities' Medicaid payment rates for direct care costs to be based on their costs for bundled services. Under 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, oxygen (other than emergency oxygen), and resident transportation costs, this amount is reduced to 86¢ beginning January 1, 2014.

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.

---

[174] Emergency oxygen had already been a Medicaid-allowable cost for nursing facilities.

### Purchasing strategies

The bill requires the ODM Director to implement, for the period beginning January 1, 2014, and ending June 30, 2015, strategies for purchasing custom wheelchairs, oxygen (other than emergency oxygen), and resident transportation services for Medicaid recipients residing in nursing facilities. In implementing the purchasing strategies, the Director is to seek to achieve a more efficient allocation of resources and price and quality competition among providers of the goods and services. The Director must consider one or more of the following when determining the purchasing strategies:

(1) Establishing competitive bidding;

(2) Establishing manufacturers rebate programs;

(3) Another purchasing strategy that saves the Medicaid program an amount equivalent to the savings that would be realized from one or both of the purchasing strategies specified above.

## Nursing facility services

### Nursing facilities' peer groups

(R.C. 5165.15, 5165.16, 5165.17, and 5165.19)

Nursing facilities are placed into various peer groups for the purposes of determining their Medicaid payment rates for ancillary and support costs, capital costs, and direct care costs. The 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;[175]

(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;

---

[175] The minimum data set is the standardized, uniform, and comprehensive assessment of nursing facility residents that is used to identify potential problems, strengths, and preferences of residents and is part of the resident assessment instrument required by federal Medicaid law.

(3) Not more than 1.52% of a nursing facility's long-stay residents were physically restrained as reported during the minimum data set assessment process;

(4) Less than 7.78% of a nursing facility's long-stay residents had a urinary tract infection as reported during the minimum data set assessment process.

#### Fiscal year 2015 and thereafter accountability measures

The 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.[176]
>
> (b) It had neither of the following on its most recent standard survey conducted not later than the last day of the calendar year immediately preceding the fiscal year for which the point is to be awarded or any complaint surveys conducted in the calendar year immediately preceding the fiscal year for which the point is to be awarded: (i) A health deficiency with a scope and severity level greater than F, or (ii) A deficiency that constitutes a substandard quality of care.

(5) It does all of the following:

> (a) Offers at least 50% of its residents at least one of the following dining choices for at least two meals each day: restaurant-style dining, buffet-style dining, family-style dining, open dining, or 24-hour dining;

---

[176] See "**Special Focus Facility Program**," in this analysis for a discussion of the Special Focus Facility list and its tables.

(b) Maintains a written policy specifying the manner or manners in which residents' dining choices for meals are offered;

(c) Communicates the policy to its staff, residents, and families of residents.

(6) It does all of the following:

(a) Enables at least 50% of its residents to take a bath or shower when they choose;

(b) Maintains a written policy regarding residents' choices in bathing;

(c) Communicates the policy to its staff, residents, and families of residents.

(7) It has at least both of the following scores on its resident satisfaction survey:

(a) With regard to the question in the survey regarding residents' ability to choose when to go to bed in the evening, at least 89;

(b) With regard to the question in the survey regarding residents' ability to choose when to get out of bed in the morning, at least 76.

(8) It has at least both of the following scores on its family satisfaction survey:

(a) With regard to the question in the survey regarding residents' ability to choose when to go to bed in the evening, at least 88;

(b) With regard to the question in the survey regarding residents' ability to choose when to get out of bed in the morning, at least 75.

(9) Not more than 13.35% of its long-stay residents report severe to moderate pain during the minimum data set assessment process.

(10) Not more than 5.16% of its long-stay, high-risk residents have been assessed as having one or more stage two, three, or four pressure ulcers during the minimum data set assessment process.

(11) Not more than 1.52% of its long-stay residents were physically restrained as reported during the minimum data set assessment process.

(12) Less than 7% of its long-stay residents had a urinary tract infection as reported during the minimum data set assessment process.

(13) It does both of the following:

(a) Uses a tool for tracking residents' admissions to hospitals;

(b) Annually reports to ODM data on hospital admissions by month for all residents.

(14) Both of the following apply:

(a) At least 95% of its long-stay residents are vaccinated against pneumococcal pneumonia, decline the vaccination, or are not vaccinated because the vaccination is medically contraindicated;

(b) At least 93% of its long-stay residents are vaccinated against seasonal influenza, decline the vaccination, or are not vaccinated because the vaccination is medically contraindicated.

(15) An average of at least 50% of its Medicaid-certified beds are in either, or in a combination of both, of the following:

(a) Private rooms;

(b) Semi-private rooms to which all of the following apply: (i) each room provides a distinct territory for each resident occupying the room, (ii) each distinct territory has a window and is separated by a substantial wall from the other distinct territories in the room,[177] (iii) each resident is able to enter and exit the distinct territory of the resident's room without entering or exiting another resident's distinct territory, and (iv) complete visual privacy for each distinct territory may be obtained by drawing a curtain or other screen.

(16) It obtains at least a 95% compliance rate with requesting resident reviews required by a federal regulation for individuals who are exempted hospital discharges.[178]

---

[177] 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.

[178] 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)).

(17) It does both of the following:

(a) Maintains a written policy that requires consistent assignment of nurse aides and specifies the goal of having a resident receive nurse aide care from not more than 12 different nurse aides during a 30-day period;

(b) Communicates the policy to its staff, residents, and families of residents.

(18) Its staff retention rate is at least 75%.

(19) Its turnover rate for nurse aides is not higher than 65%.

(20) For at least 50% of its resident care conferences, a nurse aide who is a primary caregiver for the resident attends and participates in the conference.

(21) All of the following apply:

(a) At least 75% of its residents have the opportunity, following admission and before completing or quarterly updating their individual plans of care, to discuss their goals for the care they are to receive there, including their preferences for advance care planning, with a member of the resident's health care teams that the facility, its residents, and residents' sponsors consider appropriate.

(b) It records the residents' care goals, including their advance care planning preferences, in their medical records.

(c) It uses the residents' care goals, including their advance care planning preferences, in the development of their individual plans of care.

(22) It does both of the following:

(a) Maintains a written policy that prohibits the use of overhead paging systems or limits their use to emergencies, as defined in the policy;

(b) Communicates the policy to its staff, residents, and families of residents.

Points may be awarded for the accountability measures specified in (21) and (22), above, only for fiscal year 2015. Not later than July 1, 2014, ODM is required to submit recommendations to the General Assembly for accountability measures to replace the accountability measures specified in (21) and (22) above.

As with the accountability measures to be used until fiscal year 2015, to be awarded a point for meeting an accountability measure for fiscal year 2015 and thereafter (other than the accountability measure specified in (4)(b), above), a nursing facility must meet the accountability measure in the calendar year immediately preceding the fiscal year for which the point is to be awarded. A nursing facility is to be awarded points for meeting accountability measures regarding resident satisfaction surveys or family satisfaction surveys only if a resident satisfaction survey or family satisfaction survey, as appropriate, was initiated for the nursing facility in the calendar year immediately preceding the fiscal year for which the points are to be awarded.

### Nursing facilities' quality bonuses

(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 Focus Facility Program

(R.C. 5165.771 and 5165.80)

The bill permits ODM to terminate a nursing facility's Medicaid participation if the nursing facility is placed on the federal Special Focus Facility (SFF) list and fails to make improvements or graduate from the SFF program within certain periods of time. The SFF list is part of the SFF program that federal law requires the U.S. Department of Health and Human Services to create for nursing facilities identified as having

substantially failed to meet applicable requirements of the Social Security Act.[179] 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 may 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 18 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 30 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 18 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 30 months after the placement.

An order terminating a nursing facility's Medicaid participation is subject to appeal under the Administrative Procedure Act (R.C. Chapter 119.).

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.

[179] 42 U.S.C. 1396r(f)(10).

### 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.[180] 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 (the PASSPORT program, Choices program, Ohio Home Care program, and Ohio Transitions II Aging Carve-Out program) regardless of whether the participant prefers to remain enrolled or be enrolled in the other Medicaid waiver program administered by ODM or the Ohio Department of Aging (ODA). A dual eligible individual who is eligible for another ODM- or ODA-administered Medicaid waiver program may enroll in that waiver program before the individual begins to participate in ICDS. But the dual eligible individual must disenroll from the other ODM- or ODA-administered Medicaid waiver program and enroll in the ICDS Medicaid waiver program once the individual becomes an ICDS participant and it is possible to enroll the individual in the ICDS Medicaid waiver program. This requirement applies regardless of whether the dual eligible individual prefers to remain enrolled in the other ODM- or ODA-administered Medicaid waiver program.

[180] See "**Integrated Care Delivery System evaluation**" below for information about the ICDS.

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.

### Annual report

(R.C. 5167.03)

The bill eliminates a requirement that ODM prepare and submit to the General Assembly an annual report on the Medicaid care management system. The requirement for the annual report, which must address ODM's ability to implement the system, was established when the Medicaid managed care system was expanded by the main operating budget for fiscal years 2006 and 2007 (H.B. 66 of the 126th General Assembly). The first report was due by October 1, 2007.

### 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 (discussed below) is not subject to the withholding attributed to Project participants for fiscal years 2014 and 2015.

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.[181] 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)

Until July 1, 2014, the bill excludes from any required participation in the Medicaid care management system certain recipients of services through ODH's Bureau for Children with Medical Handicaps (BCMH). The exclusion applies to BCMH

---

[181] The state Medicaid agency has not yet adopted rules to develop the recognition system.

recipients who have one or more of the following: cystic fibrosis, hemophilia, or cancer. The bill provides, however, that such a BCMH recipient may be designated for participation in the Medicaid care management system if the individual was receiving services through the system immediately before April 1, 2013.[182]

## 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 percentage[183] 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;

---

[182] Similar exclusions were granted by the 129th General Assembly. (*See* Section 309.30.53 of H.B. 153 (the main operating appropriations act), as amended by H.B. 487 (the mid-biennium budget review).)

[183] 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).

(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 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, to continue the Medicaid Managed Care Hospital Incentive Payment Program, and to pay the Medicaid rates for hospital inpatient services required by the bill. Under the first program, supplemental payments are made to hospitals for Medicaid-covered inpatient and outpatient services. Under the second program, additional funds are provided to Medicaid managed care organizations to be used by the organizations to increase payments to hospitals for providing services to Medicaid recipients who are enrolled in the Medicaid managed

care organizations. See "**Medicaid rates for hospital impatient services**," above, for a discussion of the bill's provision regarding that issue.

## 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.[184] 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)

In place of the ODJFS Director's authority to establish an e-prescribing system for Medicaid, the bill authorizes the ODM Director to acquire or specify technologies to give information regarding Medicaid eligibility, claims history, and drug coverage to Medicaid providers through electronic health record and e-prescribing applications.

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

---

[184] R.C. 5160.45.

system to electronically monitor Medicaid recipients' medical history, drug regimen compliance, and fraud and abuse.

Associated with the elimination of the authority to establish an e-prescribing system, the 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 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. 191.01, 191.02, 191.04, and 191.06; Section 323.10.63)

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 certain state agencies ("participating 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 participating agencies and that permitted or required an interagency agreement. For each health transformation initiative identified, the OHT Executive Director or the Executive Director's designee had to, in consultation with each participating agency, adopt one or more operating protocols.

H.B. 487 also authorized a participating agency to exchange, during fiscal year 2013 only, personally identifiable information with another participating agency for purposes related to or in support of a health transformation initiative that has been identified as described above. If a participating agency used or disclosed personally identifiable information during fiscal year 2013, it was required to do so in accordance with all operating protocols adopted as described above that applied to the use or disclosure.

The bill extends the authorizations and requirement regarding the use and disclosure of personally identifiable information, described above, to fiscal years 2014 and 2015. It also includes ODAS and ODM as participating agencies effective immediately.

## Health information exchanges

(R.C. 3798.01, 3798.10, 3798.13, 3798.14, 3798.15, and 3798.16)

H.B. 487 of the 129th General Assembly enacted provisions, largely consistent with those in the HIPAA Privacy Rule,[185] governing the disclosure of protected health information.[186] Two of those do the following:

(1) Prohibit a covered entity[187] from disclosing protected health information without patient authorization (meeting requirements set forth in the HIPAA Privacy Rule) unless the disclosure is to a health information exchange approved by the ODJFS Director and certain conditions are satisfied. Those conditions do not, however, render unenforceable or restrict in any manner a continuing provision of Ohio law that existed before the effective date of H.B. 487 and requires a person or governmental entity to disclose protected health information to a state agency, political subdivision, or other governmental entity.

(2) Specify that, in general, H.B. 487's provisions are to be supreme if they conflict with any of the following pertaining to the confidentiality, privacy, security, or privileged status of protected health information transacted, maintained in, or accessed through a health information exchange: a section of the Revised Code not in R.C. Chapter 3798., a rule, an internal management rule, guidance issued by an agency, orders or regulations of a local board of health, an ordinance or resolution adopted by a political subdivision, or a professional code of ethics. The supremacy policy does not

---

[185] The HIPAA Privacy Rule, otherwise known as the "standards for privacy of individually identifiable health information," provides federal protections for personal health information held by covered entities and gives patients an array of rights with respect to that information while at the same time permitting the disclosure of personal health information needed for patient care and other important purposes. U.S. Department of Health and Human Services, *Understanding Health Information Privacy*, accessible at www.hhs.gov/ocr/privacy/hipaa/understanding/index.html>.

[186] "Protected health information" is defined in federal regulations (45 C.F.R. 160.103) generally as individually identifiable health information that is transmitted or maintained in electronic media or any other form or medium. "Individually identifiable health information" (also defined in federal regulations (45 C.F.R. 160.103)) is health information, including demographic information collected from an individual, that meets all of the following criteria: (1) it is created or received by a health care provider, a health plan, an employer, or a health care clearinghouse, (2) it relates to (a) the past, present, or future physical or mental health or condition of an individual, (b) the provision of health care to an individual, or (c) the past, present, or future payment for the provision of health care to an individual, and (3) it identifies the individual, or there is reasonable basis to believe it could be used to identify the individual.

[187] "Covered entity" is defined in federal regulations (45 C.F.R. 160.103) as a health plan, a health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a transaction covered by the HIPAA Privacy Rule.

apply, however, to a continuing provision of the Revised Code that existed before the effective date of H.B. 487 and requires a person or governmental entity to disclose protected health information to a state agency, political subdivision, or other governmental entity.

The bill includes ODAS and ODM as "state agencies" for purposes of the two provisions described above. As a result, the bill authorizes covered entities to disclose protected health information in accordance with state law to these additional two state agencies notwithstanding H.B. 487's provisions pertaining to conditions on the disclosure of protected health information and supremacy, described above.

The bill also transfers to the ODM Director from the ODJFS Director rule-making authority pertaining to (1) a standard authorization form for the use and disclosure of protected health information and substance abuse records by covered entities, and (2) the operation of health information exchanges in Ohio.

## Direct Care Worker Advisory Workgroup

(Section 323.234)

### Creation and membership

The bill creates the Direct Care Worker Advisory Workgroup. The Workgroup consists of the following members:

--The ODA Director or the Director's designee.

--The ODODD Director or the Director's designee.

--The ODH Director or the Director's designee.

--The ODM Director or the Director's designee.

--The OHT Executive Director or the Executive Director's designee.

--Two representatives from each of the following organizations, appointed by the organization's chief executive officer or the individual serving in an equivalent capacity for the organization:

- The Ohio Council for Home Care and Hospice;
- The Ohio Health Care Association;
- The Ohio Provider Resource Association;

- The Ohio Nurses Association;
- The Midwest Care Alliance;
- The Ohio Assisted Living Association;
- LeadingAge Ohio.

--Two members of the House of Representatives, one from the majority party and the other from the minority party, appointed by the Speaker of the House of Representatives.

--Two members of the Senate, one from the majority party and the other from the minority party, appointed by the President of the Senate.

The bill specifies that the OHT Executive Director or the Executive Director's designee must serve as the Workgroup's chairperson and that ODH and ODM must provide staff and other support services for the Workgroup. Members must be appointed not later than 15 days after the bill's effective date. Vacancies must be filled in the same manner as the original appointments. Each member must serve without compensation or reimbursement for expenses incurred while serving on the Workgroup, except to the extent that serving on the Workgroup is considered to be among the member's employment duties.

### Responsibilities

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

--Determine core competencies.[188]

--Designate which direct care workers[189] should meet core competencies.

---

[188] "Core competencies" are the minimum standards a direct care worker must meet when providing direct care services and engaging in any one or more of the following activities associated with care for a Medicaid recipient: maintaining a clean and safe environment, ensuring recipient-centered care, promoting the recipient's development, assisting the recipient with activities of daily living, communicating with the recipient, completing administrative tasks, and participating in professional activities.

[189] A "direct care worker" is an individual who, for direct or indirect payment, provides direct care services to a Medicaid recipient in the recipient's home or other place of residence. "Direct care services" are health care services, ancillary services, or services related to or in support of the provision of health care or ancillary services. A "direct payment" is a Medicaid payment made directly to a direct care worker for the worker's provision of direct care services to a Medicaid recipient. An "indirect payment" is a

--Determine whether existing regulatory requirements are equivalent or similar to core competencies.

--Identify funding sources that could be used to assist direct care workers in meeting core competencies.

--Recommend policies that may be incorporated in legislation the General Assembly intends to consider regarding certification of direct care workers and Medicaid payments for direct care services provided by those workers.

Not later than December 31, 2013, the Workgroup must submit a report to the General Assembly describing its findings and recommendations.[190]

### General Assembly's intent to enact future legislation

The bill specifies that it is the General Assembly's intent to enact legislation in the future that takes into account the Workgroup's recommendations regarding certification of direct care workers and Medicaid payments for direct care services provided by those workers. The legislation is intended to:

--Require the ODH Director to establish, not later than October 1, 2014, a direct care worker certification program that applies to the workers designated by the Workgroup; and

--Prohibit ODM, beginning October 1, 2015, from allowing a direct or indirect payment to be made for direct care services provided by a direct care worker to whom the certification program applies unless the worker is appropriately certified by that program.

### Termination

The Workgroup ceases to exist on submission of the report it must submit as described above.

---

Medicaid payment made to a third party who pays a direct care worker for the worker's provision of direct care services to a Medicaid recipient.

[190] In submitting the report to the General Assembly, the Workgroup must provide it to the Senate President, Senate Minority Leader, Speaker of the House of Representatives, House Minority Leader, and the Director of the Legislative Service Commission (R.C. 101.68(B), not in the bill).

## 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.[191]

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.

--An item prepared pursuant to a request may be provided to ODM and is confidential and not subject to disclosure under Ohio's Public Records Law[192] or the statute governing the confidentiality of personal information held by state and local agencies.[193]

### 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

[191] R.C. 5162.56.

[192] R.C. 149.43.

[193] R.C. 1347.08.

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.[194]

## 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;

(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;

---

[194] R.C. 191.06(D).

(2) Implementing the unified long-term services and support Medicaid waiver component;

(3) Providing consumers choices regarding a continuum of services that meet their health care needs, promote autonomy and independence, and improve quality of life;

(4) Ensuring that long-term care services and supports are delivered in a cost effective and quality manner;

(5) Subjecting county homes, county nursing homes, and district homes to the nursing home franchise permit fee;

(6) Other issues of interest to the Committee.

The act requires the Committee's co-chairpersons to provide for the ODM Director to testify before the Committee at least quarterly regarding the issues that the Committee examines.

### Rebalancing long-term care

(Section 323.160)

The 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.[195]

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.

(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.

### 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

[195] Section 10202 of the Patient Protection and Affordable Care Act (Public Law 111-148).

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.

## Health home services

(R.C. 5164.881)

The bill authorizes the ODM Director, in consultation with the Director of ODODD, to develop and implement a system within the Medicaid program under which Medicaid-eligible individuals with chronic conditions and mental retardation or other developmental disabilities may receive health home services.

Federal law defines an "eligible individual with chronic conditions" as someone who is eligible for assistance and has at least two chronic conditions, one chronic condition and is at risk for another, or one serious and persistent mental health condition. It further defines "chronic condition" as a mental health condition, substance use disorder, asthma, diabetes, heart disease, or being overweight. "Health home services" are defined as comprehensive and timely high-quality services that are furnished by a designated provider, a team of health care professionals operating with a provider, or a health team.[196]

Under the bill, when developing a health home services system, the ODM and ODODD Directors must consult with representatives of (1) county boards of developmental disabilities, (2) the Ohio Provider Resource Association, and (3) the ARC of Ohio. The bill also permits the Directors to consult with other individuals or entities that have an interest in the well-being of those with developmental disabilities.

If the Medicaid Director develops and implements the system the bill authorizes, the bill requires that it focus on the needs of individuals and aim to improve Medicaid services and outcomes by better integrating long-term care and supportive services with primary and acute health care services.

## Telemedicine policy workgroup

(Section 737.20)

The bill authorizes the Executive Director of the OHT to convene a workgroup of state agency directors to study policy matters regarding the potential benefits from implementing telemedicine as a means of increasing the quality and availability of health care services in Ohio. If established, the workgroup must include at least the Medicaid Director and Superintendent of Insurance and may include others at the Executive Director's discretion. The bill requires a study conducted by the workgroup to focus on developing a comprehensive statewide policy that encourages the use of

[196] 42 U.S.C. 1396w-4(h).

telemedicine as an integral component of Ohio's health care system. The workgroup is to focus on telemedicine practice, technology, implementation, and reimbursement.

## 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.[197] 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.

---

[197] 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).

### 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:

(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.

## Integrated Care Delivery System Evaluation

(R.C. 5164.911 (primary), 5164.01, and 5166.01)

Current law permits the ODM Director to implement a demonstration project called the Integrated Care Delivery System (ICDS) to test and evaluate the integration of the care that individuals who are eligible for the Medicaid and Medicare programs (dual eligible individuals) receive under the programs. The bill requires the Director, if the ICDS is implemented, to conduct an annual evaluation of the ICDS unless the same evaluation is conducted by an organization under contract with the U.S. Department of Health and Human Services.

All of the following are to be examined as part of the evaluation:

(1) The health outcomes of ICDS participants;

(2) How changes to the administration of the ICDS effect claims processing, the appeals process, the number of reassessments requested, and prior authorization requests for services;

(3) The provider panel selection process used by Medicaid managed care organizations participating in the ICDS.

When conducting the evaluation, the Director must do all of the following:

(1) Compare the health outcomes of ICDS participants to the health outcomes of individuals who are not ICDS participants;

(2) Use a control group consisting of ICDS participants who receive health care services from providers not participating in the ICDS and a control group consisting of ICDS participants who receive health care services from alternative providers that are not part of a Medicaid managed care organization's provider panel but provide health care services in the geographic service area in which ICDS participants receive health care services;

(3) To the extent the data is available, use data from the fee-for-service component of Medicaid, Medicaid managed care organizations, and managed care organizations participating in the Medicare Advantage Program;

(4) Identify (a) changes in the amount of time it takes to process claims and the number of claims denied and the reasons for the changes, (b) the impact that changes to the administration of the ICDS had on the appeals process and number of reassessments requested, and (c) the number of prior authorization denials that were overturned and the reasons for the overturned denials;

(5) Require Medicaid managed care organizations participating in the ICDS to submit to the Director any data the Director needs for the evaluation.

The bill requires the Director to complete a report of the evaluation not later than the first day of each July. The Director must provide a copy of the report to the General Assembly and make it available to the public.

## OHIO STATE MEDICAL BOARD

### Temporary hearing examiners

- Allows the State Medical Board to enter into a personal service contract with an attorney to serve as a temporary hearing examiner subject to the Controlling Board's continuing law authority to approve a purchase without competitive selection, rather than subject to only Controlling Board approval as under current law.

### Internal management and assessment

- Requires the State Medical Board to adopt internal management rules setting forth criteria for assessing the Board's accomplishments.
- Requires the Board to include data gleaned from the assessments in the annual report of the Board's transactions and proceedings.
- Requires the rules adopted by the Board, as well as the annual report generated by the Board, to be publicly accessible on the Board's web site.
- Creates an expedited certificate to practice medicine surgery or osteopathic medicine and surgery by endorsement for certain physicians who are already licensed in another state or in Canada.
- Provides that an individual who meets all other genetic counselor licensure requirements is eligible for a license by attaining a master's or higher degree in education or in a field that the State Medical Board considers to be closely related to genetic counseling and requires the individual to apply for licensure by December 31, 2013.

### Approval of temporary hearing examiners

(R.C. 4731.23, by reference to R.C. 127.16)

The 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.

## Internal management and assessment

(R.C. 4731.05)

The bill requires the State Medical Board to adopt internal management rules that set forth criteria for assessing the Board's accomplishments, activities, and performance data, including metrics detailing the following:

(1) Revenues and reimbursements;

(2) Budget distribution;

(3) Investigation and licensing activity, including processing time frames;

(4) Enforcement data, including processing time frames.

Under the bill, the Board must include the data gleaned from the assessment in the annual report of the Board's transactions and proceedings, which is required by continuing law. Under continuing law, the annual report must be made at the end of each fiscal year, in quadruplicate; must include a record of transactions and proceedings, excepting receipts and disbursements unless otherwise specifically required by law; and must contain a summary of the official acts of the Board and any suggestions and recommendations that are proper. On the first day of August of each year, the Board must file one of the reports with the Governor, one with the Secretary of State, one with the State Library, and one in the office of the Board.

The bill requires the Board to cause the internal management rules and the annual report described above, which includes data from the assessment, to be publicly accessible on the Board's web site.

## Expedited certificate to practice medicine

(R.C. 4731.299)

The bill creates an expedited certificate to practice medicine and surgery or osteopathic medicine and surgery by endorsement for certain physicians who are already licensed in another state or in Canada. The bill permits the State Medical Board

to issue the certificate, without examination, to an applicant who meets the bill's requirements.

Existing law unchanged by the bill permits the Board to issue a different certificate to practice medicine and surgery or osteopathic medicine and surgery for physicians who are already licensed in another state or in Canada and meet specified requirements.[198]

### Eligibility

To be eligible for the expedited certificate by endorsement the bill creates, the bill requires an applicant to do both of the following:

(1) Provide evidence satisfactory to the Board that the applicant meets all of the following requirements:

- Has passed Steps One, Two, and Three of the United States Medical Licensing Examination; Levels One, Two, and Three of the Comprehensive Osteopathic Medical Licensing Examination of the United States; or any other medical licensing examination recognized by the Board;
- For at least five years immediately preceding the date of application, has held a current, unrestricted license to practice medicine and surgery or osteopathic medicine and surgery issued by the licensing authority of another state or a Canadian province;
- For at least two years immediately preceding the date of application, has actively practiced medicine and surgery or osteopathic medicine and surgery in a clinical setting.

(2) Certify to the Board that all of the following are the case:

- Not more than two malpractice claims have been filed against the applicant within a period of ten years and no malpractice claim against the applicant has resulted in total payment of more than $500,000;
- The applicant does not have a criminal record according to the criminal records check required by the bill;

---

[198] R.C. 4731.29, not in the bill.

- The applicant does not have a medical condition that could affect the applicant's ability to practice according to acceptable and prevailing standards of care;
- No adverse action has been taken against the applicant by a health care institution;
- To the applicant's knowledge, no federal agency, medical society, medical association, or branch of the U.S. military has investigated or taken action against the applicant;
- No professional licensing or regulatory authority has filed a complaint against, investigated, or taken action against the applicant and the applicant has not withdrawn a professional license application;
- The applicant has not been suspended or expelled from any institution of higher education or school, including a medical school.

### Application and issuance

The bill requires a person seeking an expedited certificate by endorsement to file with the Board a written application on a form prescribed and supplied by the Board, pay a nonrefundable and nontransferable application fee of $1,000, and submit to a criminal records check. The application must include all the information the Board considers necessary to process the application.

The Board must review all applications received by it. After review, if the Board determines that an applicant meets the requirements for an expedited certificate by endorsement, the Board must issue a certificate to the applicant.

## Educational requirements for genetic counselor licensure

(R.C. 4778.02 and 4778.03)

The bill establishes a limited exception to the educational requirements that currently must be met to be eligible for a genetic counselor license. Continuing law requires an applicant for a genetic counselor license to have attained a master's degree or higher from a genetic counseling graduate program accredited by the American Board of Genetic Counseling, its successor, or an equivalent organization recognized by the State Medical Board.

The bill provides that an individual who meets all other genetic counselor licensure requirements is eligible for a license by attaining a master's or higher degree in education or in a field that the Board considers to be closely related to genetic

counseling. An individual seeking a license under this provision must file a license application with the Board not later than December 31, 2013.

In addition to the educational requirements described above, law unchanged by the bill provides that to be eligible for a genetic counselor license, an applicant must meet all of the following requirements:

(1) Be at least 18 years old and of good moral character;

(2) Be a certified genetic counselor, which means that an individual has met the requirements for national certification from either of two organizations specified by in current law, as follows:

(a) The individual possesses the certified genetic counselor credential from the American Board of Genetic Counseling, its successor, or an equivalent organization recognized by the Board;

(b) The individual is a diplomate of the American Board of Medical Genetics, its successor, or an equivalent organization recognized by the Board.

(3) Satisfy any other requirements established in rules adopted by the Board.

# 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).
- Authorizes the issuance of bonds to finance capital facilities for the housing of people with substance abuse disorders.
- 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. 340.09 and 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.

The bill adds approved continuum of care related activities to the list of activities for which ODMHAS is required to provide assistance to any county for the operation of boards of alcohol, drug addiction, and mental health services.

### 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 (renumbered 5119.186(A)))

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.
- Expands the type of information that can be collected by ODMHAS: from information on services provided under a contract with a local board to information on services provided generally.
- 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 revisal 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.

## Capital funding for substance use facilities

(R.C. 154.20)

Continuing law unchanged by the bill enables the state to issue bonds in order to pay the costs of capital facilities for mental hygiene and retardation, including housing for mental hygiene and retardation patients. The bill expands the type of facility that can be financed in this manner to include housing for persons with substance use disorders.

### 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 of state hospital services. 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, creed, sex, national origin, developmental disability, age, or disability. 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

which 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.

Continuing law enables a services provider to be certified by standards other than the standard standards that the Department uses. The bill authorizes the ODMHAS to certify services providers according to other, unspecified, alternative standards in addition to those already listed.

### 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.

## Residential state supplement

(Section 327.100)

The bill specifies the criteria to be used for the Residential State Supplement Program when determining whether a resident is eligible for payment and the monthly payment amount that such a resident is to receive. A resident is eligible for Residential State Supplement payments if the resident's monthly income meets the following criteria:

- Up to $927 for a residential care facility;

- Up to $927 for a residential facility that provides accommodations, supervision, and personal care services for six to 16 unrelated adults;
- Up to $824 for a residential facility that provides accommodations, supervision, and personal care services for one or two unrelated adults;
- Up to $824 for a residential facility providing accommodations, supervision, and personal care services to three to five unrelated adults;
- Up to $824 for a residential facility that provides accommodations, supervision, and personal care services for one or two unrelated persons with mental illness or persons with severe mental disabilities who are referred by or are receiving mental health services from a community mental health services provider or a hospital;
- $618 for community mental health housing services.

The bill requires ODMHAS to reflect these amounts in applicable rules adopted by ODMHAS.

The bill requires ODMHAS to, with the input of stakeholders and impacted state agencies, conduct a review of the state and federal rules and statutes governing the Residential State Supplement Program and report on potential improvements to be made in governing the program not later than January 1, 2014.

## 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 |

| R.C. section number under current law | R.C. section number under the bill |
|---|---|
| 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 |
| 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 |

| R.C. section number under current law | R.C. section number under the bill |
|---|---|
| 5119.012 | 5119.141 |
| 5119.013 | 5119.10(B)(8) |
| 5119.02 | 5119.14 |
| 5119.03 | 5119.14 |
| 5119.04 | 5119.04 |
| 5119.05 | 5119.10 |
| 5119.06 | 5119.21 |
| 5119.06(B) | 5119.14 |
| 5119.061 | 5119.40 |
| 5119.07 | 5119.11 |
| 5119.071 | 5119.18 |
| 5119.072 | 5119.181 |
| 5119.08 | 5119.182 |
| 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 |

| R.C. section number under current law | R.C. section number under the bill |
|---|---|
| 5119.30 | 5119.09 |
| 5119.31 | Repealed |
| 5119.33 | 5119.54 |
| 5119.34 | 5119.50 |
| 5119.35 | 5119.56 |
| 5119.351 | 5119.55 |
| 5119.36 | 5119.52 |
| 5119.37 | 5119.201 |
| 5119.39 | 5119.201 |
| 5119.42 | 5119.07 |
| 5119.43 | 5119.06 |
| 5119.44 | 5119.051 |
| 5119.46 | 5119.60<br>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<br>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 |

| R.C. section number under current law | R.C. section number under the bill |
| --- | --- |
| 5119.65 | Repealed |
| 5119.66 | Repealed |
| 5119.67 | Repealed |
| 5119.68 | Repealed |
| 5119.69 | 5119.41 |
| 5119.691 | 5119.411 |
| 5119.99 | 5119.99 |

## New location to current location

| R.C. section number under the bill | R.C. section number under current law |
| --- | --- |
| 5119.01 | 3793.01<br>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<br>5119.01<br>5119.05 |
| 5119.10(B)(8) | 5119.013 |
| 5119.11 | 5119.07 |
| 5119.14 | 5119.011<br>5119.02<br>5119.03<br>5119.06<br>5119.47 |
| 5119.141 | 5119.012 |
| 5119.15 | 5119.24 |
| 5119.161 | 3793.051 |
| 5119.17 | 3793.15 |

| R.C. section number under the bill | R.C. section number under current law |
|---|---|
| 5119.18 | 5119.071 |
| 5119.181 | 5119.072 |
| 5119.182 | 5119.08 |
| 5119.184 | 5119.10 |
| 5119.186 | 5119.11 |
| 5119.187 | 5119.12 |
| 5119.188 | 3793.16 |
| 5119.20 | 5119.39 |
| 5119.201 | 3793.031<br>5119.37 |
| 5119.21<br>5119.21 | 3793.02<br>5119.06 |
| 5119.22(D) | 3793.04<br>3793.041<br>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) |

| R.C. section number under the bill | R.C. section number under current law |
|---|---|
| 5119.341 | 5119.22(E)<br>5119.46 |
| 5119.342 | 5119.221 |
| 5119.36<br>5119.36 | 3793.06<br>5119.611 |
| 5119.361 | 5119.613 |
| 5119.37<br>5119.37 | 3793.061<br>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<br>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<br>5119.46 |
| 5119.61 | 3793.12 |
| 5119.70 | 5119.50 |
| 5119.71 | 5119.51 |
| 5119.72 | 5119.52 |

| R.C. section number under the bill | R.C. section number under current law |
|---|---|
| 5119.73 | 5119.53 |
| 5119.90 | 3793.31 |
| 5119.91 | 3793.32 |
| 5119.92 | 3793.33 |
| 5119.93 | 3793.34 |
| 5119.94 | 3793.35 |
| 5119.95 | 3793.36 |
| 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<br>3793.19<br>5119.09<br>5119.31<br>5119.64<br>5119.65<br>5119.66<br>5119.67<br>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.

### Alcohol, drug addiction, and mental health services boards

The bill permits ADAMHS boards, with the approval of the board of county commissioners of the county in which the alcohol, drug addiction, and mental health service district is located, to elect to decrease its membership from 18 members, as required by current law, to 14 members. If an ADAMHS board elects to remain at 18 members, neither the ADAMHS board nor the board of county commissioners is required to take any action. If, however, the ADAMHS board elects a recommendation to become a 14-member board, that recommendation must be approved by the board of county commissioners in order for the transition to a 14-member board to occur. Not later than September 30, 2013, each ADAMHS board that wishes to become a 14-member board must notify the board of county commissioners of that recommendation. If a board of county commissioners fails to take action within 30 days after receipt of the recommendation, that failure is deemed agreement by the board of county commissioners for the ADAMHS board to transition to a 14-member board. If the board of county commissioners rejects the recommendation, the board of county commissioners is required to adopt a resolution stating that rejection within 30 days after receipt of the recommendation. Upon adoption of the resolution, the board of county commissioners must meet with the ADAMHS board to discuss the matter. After the meeting, the board of county commissioners is required to notify ODMHAS of its election not later than January 1, 2014. In a joint-county district, a majority of the boards of county commissioners must not reject the recommendation of a joint-county ADAMHS board to become a 14-member board in order for the transition to a 14-member board to occur. If a joint-county district has an even number of counties, and the boards of county commissioners of these counties tie in terms of whether or not to accept the recommendation of the ADAMHS board, the recommendation of the ADAMHS board will prevail, and the ADAMHS board will transition to a 14-member board. 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 |

| 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 |
|---|---|
| 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 permits 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 will 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. Continuing law requires that six members of 18-member ADAS and CMH boards be appointed by the Director of ODMHAS and that 12 members be appointed by the board of county commissioners. The bill provides that for 14-member boards, the Director is required to appoint six members and the board of county commissioners is required to appoint eight members.

The 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.

Continuing law unchanged by the bill requires that state funds for local boards are deposited with the relevant county treasurer and are then disbursed on order of the relevant county auditor. The bill clarifies that, of the payments made by the county auditor on behalf of a local board, those payments made from funds distributed to a local board by ODMHAS must be made in compliance with a board's budget statement.

### Other duties

The 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. In continuity of care agreements between local boards and state institutions designated as the institution service the local board's service district must not be construed as requiring a board of county commissioners to provide resources beyond the total amount set forth in a local board's budget statement.

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.

Current law requires local boards of alcohol, drug addiction, and mental health services to audit programs and services provided under contract with the board at least once a year. To this end, local boards are authorized to contract with private auditors. The bill removes this requirement and the associated authority and instead requires local boards to obtain a copy of the fiscal audit report of all provider organizations under contract with the board. The bill maintains the current law requirement that such a fiscal audit report be provided to the Director of Mental Health and Addiction Services, the Auditor of State, and the county auditor of each county in the board's district. The bill specifies that this change in auditing requirements is not to be interpreted as prohibiting or requiring the inclusion of provisions in contracts between services providers and local boards that require performance audits or periodic fiscal reports. However, the bill specifies that any such provision included in a contract is to relate only to programs and services paid for with local funds.

#### 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.

### 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<br>Agency, corporation, or association<br>Agency, corporation, or individual | Services provider<br>Provider |
| Client<br>Consumer<br>Patient | Person receiving services |
| Alcohol and drug addiction services | Addiction services<br>Alcohol, drug, and gambling addiction services |
| Programs | Services<br>Services and facilities |
| Comprehensive community mental health plan | Comprehensive community addiction and mental health services budget<br>Budget<br>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 non-Medicaid services. The ODMHAS and ODM Directors must agree on an amount that represents the savings realized from decreased nursing facility utilizations as a result of the program. The savings are to be transferred, within the 2014 and 2015 biennium, from ODM to ODMHAS to support nonMedicaid program costs for individuals moving into community settings.

## DEPARTMENT OF NATURAL RESOURCES

### Oil and Gas Law

- Revises the restrictions in current law regarding the disposal of brine, crude oil, natural gas, or other fluids associated with the exploration or development of oil and gas resources, and applies the restrictions to such fluids associated with well stimulation, production operations, and plugging.

- Prohibits a person, beginning January 1, 2014, from storing, recycling, treating, processing, or disposing of brine or other waste substances associated with the exploration, development, well stimulation, production operations, or plugging of oil and gas resources unless the person has been issued a specified order or permit under the bill or current law, but excludes from the prohibition a person who disposes of such waste substances other than brine in accordance with the Solid, Hazardous, and Infectious Wastes Law.

- Requires the Chief of the Division of Oil and Gas Resources Management to adopt rules regarding recycling, treatment, and processing of brine and other waste substances in addition to storage and disposal as in current law.

- Requires the rules to establish procedures and requirements in accordance with which a person must apply for a permit or order to store, recycle, treat, process, or dispose of brine and other waste substances that are not subject to a permit for drilling or plugging or a permit for secondary or additional recovery operations, and establishes a nonrefundable $2,500 application fee for such a permit.

- States that the recycling, treatment, and processing of brine and other waste substances and the Chief's rules regarding those activities, in addition to storage and disposal as in current law, are subject to statutory standards.

- Allows disposal of brine by any method not specified in the statutory standards governing disposal of brine that is approved by a permit or order of the Chief rather than by methods approved by the Chief for testing or implementing a new technology or method of disposal as in current law.

- With regard to impoundments used for temporary storage:

  --Refers to impoundments rather than earthen impoundments;

  --Specifies that impoundments must be constructed utilizing a synthetic liner; and

--Adds that impoundments may be used for the temporary storage of waste substances, rather than fluids as in current law, used in the construction or plugging of a well in addition to the stimulation of a well as in current law.

- Requires the Chief, when determining the contamination of a water supply resulting from an oil or gas operation, to review any baseline water supply test data that are available, and authorizes the Chief to apply the primary drinking water standards established under the Safe Drinking Water Act when making that determination.
- Precludes brine that is produced from a horizontal well from being allowed to be spread on a road.
- 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 an owner of a well to file with the Division of Oil and Gas Resources Management a disclosure form that specifies the country in which each oil country tubular good initially used in a production operation on or after the provision's effective date was manufactured unless that country cannot be determined by the owner, and defines "oil country tubular goods."
- Requires the Division to perform specified duties, including prescribing the disclosure form in consultation with certain industry representatives and using the information specified on the form to establish a quality well infrastructure catalog.
- Requires the term "material safety data sheet," as used in the statute governing well completion records in the Oil and Gas Law, to conform to any changes in the term by the Occupational Safety and Health Administration.

### Technologically enhanced naturally occurring radioactive material and other material from horizontal wells

- Does all of the following with regard to material that results from the construction, operation, or plugging of a horizontal well:

  --Generally requires the owner of a well or a person that is an authorized agent of the owner (hereafter owner) to determine the concentration level of radium in representative samples of the material if it is technologically enhanced naturally

occurring radioactive material (TENORM), and generally prohibits the material from being removed from the location associated with the production operation of the well until an analysis of the material is complete and the results are available;

--Specifies that the owner is not required to determine the concentration level of radium in TENORM if specified circumstances apply, including that the material is reused in the horizontal well from where it originated or is transferred to another site for reuse in a horizontal well;

-- Requires the owner to transport and dispose of TENORM in accordance with all applicable laws;

--If the material is not TENORM and the material has come in contact with a refined oil-based substance, requires the owner to dispose of it at a solid waste facility, beneficially use it, or recycle it; and

--If the material is not TENORM and has not come in contact with a refined oil-based substance, allows the material to be used at the location associated with the production operation of the horizontal well or at another location associated with a production operation.

- Prohibits the owner or operator of a solid waste facility from accepting for transfer or disposal TENORM if that material contains or is contaminated with a specified concentration level of radium (hereafter contaminated TENORM).
- Generally authorizes the owner or operator of a solid waste facility to receive and process contaminated TENORM for purposes other than transfer or disposal.
- Authorizes the Director of Environmental Protection to adopt rules regarding the receipt, acceptance, processing, handling, management, and disposal by solid waste facilities of material that contains or is contaminated with radioactive material, including contaminated TENORM.
- Authorizes the rules to include, at a minimum, requirements in accordance with which the owner or operator of a solid waste facility must perform specified activities, including monitoring leachate and ground water for radionuclides.
- Prohibits the owner or operator of a solid waste facility from receiving, accepting, processing, handling, managing, or disposing of TENORM associated with drilling operations without first obtaining representative analytical results to determine compliance with the bill and applicable rules adopted under it.

- Authorizes the Director of Environmental Protection to adopt rules establishing requirements governing the beneficial use of material from a horizontal well that has come in contact with a refined oil-based substance and that is not TENORM.

- Requires the Director of Health to adopt rules establishing requirements governing TENORM and requiring the maintenance of certain records regarding TENORM, and states that the rules must not apply to naturally occurring radioactive material.

- Defines "technologically enhanced naturally occurring radioactive material" as naturally occurring radioactive material with radionuclide concentrations that are increased by or as a result of past or present human activities, excluding drill cuttings, natural background radiation, byproduct material, or source material.

- Defines "naturally occurring radioactive material" as material that contains any nuclide that is radioactive in its natural physical state, excluding source material, byproduct material, or special nuclear material.

### Clean Ohio Trail Fund

- Requires the Director of Natural Resources to establish a policy that requires an applicant for a matching grant for a recreational trail project from the existing Clean Ohio Trail Fund to submit a study that includes specified information, including information on the use of any existing trails in the applicable county.

- Allows the Director to use up to 25% of money in the Fund to provide grants to nonprofit organizations and local political subdivisions for the purpose of maintaining recreational trails, and requires the Director to establish procedures and eligibility criteria governing the awarding of such grants.

### State Recreational Vehicle Fund and Advisory Board

- Requires Controlling Board approval for the Department of Natural Resources to use money in the State Recreational Vehicle Fund for trail development purposes.

- Creates the State Recreational Vehicle Fund Advisory Board consisting of nine members appointed by the Director of Natural Resources, each of whom must represent specified organizations related to recreational vehicles, and requires the Board to advise and make recommendations to the Department of Natural Resources on the use of State Recreational Vehicle Fund money.

## Watercraft and waterways

- Exempts sailboards, kiteboards, paddleboards, and belly boats or float tubes from the requirement to be registered under the Watercraft and Waterways Law, and defines those terms.

- Requires a livery owner to be issued a tag for each watercraft that has been registered in accordance with current law governing liveries, and requires the tag to be affixed to each such watercraft in accordance with the bill prior to the watercraft's being rented to the public.

- Revises the current requirement that a livery watercraft registration number be displayed on each watercraft in the fleet for which an annual certificate of livery registration has been issued by requiring a livery owner, not later than March 15, 2015, to identify each watercraft in the owner's fleet in one of two specified ways.

- Requires each watercraft in a livery fleet to be identified in a uniform and consistent manner.

- Specifies that rental agreements, rather than rental receipts as in current law, are subject to inspection by Division of Watercraft personnel.

- Eliminates the authority of the Chief of the Division of Watercraft to permanently restrict or suspend a certificate of livery registration and the privileges associated with it without a hearing if the Chief finds that the certificate holder has violated the Watercraft and Waterways Law, but retains the Chief's authority to temporarily do so.

- Revises the requirements regarding completion of a safe boater course or proficiency examination for persons operating a powercraft powered by more than ten horsepower on Ohio waters by requiring only the following to complete such a course or examination:

  --A person less than 18 years old; and

  --A person 18 years of age or older who was born on or after January 1, 1982, and who is supervising another person operating a personal watercraft who is between 12 and 15 years old.

- Revises the requirements regarding age and supervision restrictions applicable to youth operating powercraft, including personal watercraft, on Ohio waters.

- Revises certain requirements regarding the rental of powercraft to individuals who are less than 18 years old or supervising the operation of personal watercraft.

### 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.

### Ohio Lake Erie Commission

- Adds the Director of Development Services as a member of the Ohio Lake Erie Commission.

### Brine and other waste substances

(R.C. 1509.22 and 1509.226)

The bill revises the restrictions in the Oil and Gas Law regarding the disposal of brine, crude oil, natural gas, or other fluids by prohibiting a person from doing any of the following with brine, crude oil, natural gas, or other waste fluids associated with the exploration, development, well stimulation, production operations, or plugging of oil and gas resources except when acting in accordance with the statute governing the surface application of brine to roads, if any of the following acts causes or could reasonably be anticipated to cause damage or injury to public health or safety or the environment:

(1) Placing or causing them to be placed in ground water;

(2) Placing or causing them to be placed in or on the land; or

(3) Discharging or causing them to be discharged in surface water.

Current law instead prohibits anyone, except when acting in accordance with the statute governing the surface application of brine to roads, from placing or causing to be placed brine, crude oil, natural gas, or other fluids associated with the exploration or development of oil and gas resources in surface or ground water or in or on the land in such quantities or in such manner as actually causes or could reasonably be anticipated to cause either water used for consumption by humans or domestic animals to exceed the standards of the Safe Drinking Water Act or damage or injury to public health or safety or the environment.

The bill also prohibits a person, beginning January 1, 2014, from storing, recycling, treating, processing, or disposing of brine or other waste substances associated with the exploration, development, well stimulation, production operations, or plugging of oil and gas resources unless the person has been issued a permit or order authorizing those activities under the bill or current law, a permit for drilling or plugging, or a permit for secondary or additional recovery operations. It states that for purposes of that prohibition, a permit or other form of authorization issued by another state agency or a political subdivision cannot be considered a permit or order issued by the Chief of the Division of Oil and Gas Resources Management under the Oil and Gas Law. The bill then excludes from the prohibition a person who disposes of such waste substances other than brine in accordance with the Solid, Hazardous, and Infectious Wastes Law and rules adopted under it.

The bill requires the Chief of the Division to adopt rules regarding storage, recycling, treatment, processing, and disposal of brine and other waste substances. The rules must establish procedures and requirements in accordance with which a person must apply for a permit or order to store, recycle, treat, process, or dispose of brine and other waste substances that are not subject to a permit for drilling or plugging or a permit for secondary or additional recovery operations and in accordance with which the Chief may issue such a permit or order. The bill establishes a nonrefundable $2,500 application fee for such a permit. Current law instead requires the Chief to adopt rules and issue orders regarding storage and disposal of brine and other waste substances.

The bill states that the storage, recycling, treatment, processing, and disposal of brine and other waste substances and the Chief's rules regarding those activities, rather than only storage and disposal as in current law, are subject to statutory standards that currently are applicable only to the disposal and storage of brine. The bill revises one of those standards by allowing the disposal of brine by any method not specified in the statutory standards governing disposal of brine that is approved by a permit or order of the Chief rather than by other methods approved by the Chief for testing or implementing a new technology or method of disposal as in current law.

With regard to impoundments used for temporary storage, the bill does all of the following:

(1) Refers to impoundments rather than earthen impoundments as in current law;

(2) Specifies that impoundments must be constructed utilizing a synthetic liner; and

(3) Adds that impoundments may be used for the temporary storage of waste substances, rather than fluids as in current law, used in the construction or plugging of a well in addition to the stimulation of a well as in current law.

Additionally, the bill requires the Chief, when determining the contamination of a water supply resulting from an oil or gas operation, to review any baseline water supply test data that are available. It authorizes the Chief to apply the primary drinking water standards established under the Safe Drinking Water Act when making that determination.

Finally, the bill precludes brine that is produced from a horizontal well from being allowed to be spread on a road.

## Definition of "production operation" in Oil and Gas Law

(R.C. 1509.01)

The 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.

## Country of origin disclosure form for certain steel products used in oil and gas production

(R.C. 1509.16)

The bill requires an owner of a well to file with the Division of Oil and Gas Resources Management a disclosure form that specifies the country in which each oil country tubular good initially used in a production operation on or after the provision's effective date was manufactured unless that country cannot be determined by the owner. Under the bill, oil country tubular goods are circular steel pipes that are seamless or welded and used in drilling for oil or natural gas, including casing, tubing, and drill pipe, whether finished or unfinished, and steel couplings and drill collars used with the pipes.

The Division must do all of the following:

(1) Prescribe the disclosure form and consult with representatives from the natural gas, oil, and steel industries when developing it;

(2) Determine the date on which the disclosure form must be filed; and

(3) Use the information specified on the form to establish a quality well infrastructure catalog.

## Material safety data sheet

(R.C. 1509.10)

The 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.

## Technologically enhanced naturally occurring radioactive material and other material from horizontal wells

(R.C. 1509.074, 3734.01, 3734.02, 3734.125, 3748.01, and 3748.04)

The bill establishes requirements and procedures governing technologically enhanced naturally occurring radioactive material as defined by the bill (hereafter TENORM) (see below) and other material from horizontal wells. It assigns to the Departments of Natural Resources and Health and the Environmental Protection Agency specific functions and responsibilities regarding those requirements and procedures. Under the Oil and Gas Law, a horizontal well is a well that is drilled for the production of oil or gas in which the wellbore reaches a horizontal or near horizontal position in the Point Pleasant, Utica, or Marcellus formation and the well is stimulated.

### Department of Natural Resources

With regard to material, presumably any material, that results from the construction, operation, or plugging of a horizontal well, the bill establishes all of the following requirements and procedures in the Oil and Gas Law:

(1) Except as discussed below, the owner of a well or a person that is an authorized agent of the owner (hereafter owner) must determine the concentration of radium-226 and radium-228 in representative samples of the material if the material is TENORM. The owner must provide for the collection and analysis of the representative samples of the material, which must be performed in accordance with requirements approved by the Chief of the Division of Oil and Gas Resources Management. The bill does not specify under what authority or in accordance with what procedures the Chief approves those requirements.

Additionally, the owner cannot remove the material from the location associated with the production operation of the horizontal well until the analysis is complete and the results are available. However, the owner may do one of the following:

--Temporarily store the material in an area adjacent to that location while the results from the analysis are pending if the material is located in an area that is designated by the Division of Oil and Gas Resources Management and the owner complies with all conditions imposed by the Chief;

--Prior to the collection of representative samples, transport the material to a location for which a permit or order has been issued under the bill for the storage, recycling, treatment, processing, or disposal of brine or other waste substances (see "**Brine and other waste substances**," above). The owner must provide for the collection of representative samples of the material at that location in the same manner as discussed above and must temporarily store the material at that location while the results from the analysis are pending.

The bill does not specify any other purpose of the analysis or use of the results.

An owner who has obtained results from the collection and analysis must keep and maintain the results for a period of three years. The owner must provide a copy of the results to the Chief upon request.

(2) The owner is not required to determine the concentration of radium-226 and radium-228 of the TENORM if any of the following applies:

--The material is reused in the horizontal well from where it originated or is transferred to another site for reuse in a horizontal well. For purposes of that provision, a material is reused if the material is used in a substantially similar manner as it was originally used.

--The owner disposes of the material at an injection well for which a permit has been issued under current law;

--The owner uses the material in association with a method of enhanced recovery for which a permit has been issued under current law; or

--The material is transported out of the state for lawful disposal, in which case the owner must retain records that substantiate the lawful disposal and provide them to the Chief upon request.

(3) Except as discussed above in item (2), the owner must transport and dispose of TENORM in accordance with all applicable laws.

(4) If the material is not TENORM and the material has come in contact with a refined oil-based substance, the owner must do one of the following:

--If the material is removed from the location associated with the production operation of the well or from a location specified in a permit or order issued under the bill for the storage, recycling, treatment, processing, or disposal of brine or other waste substances (see "**Brine and other waste substances**," above), dispose of the material at a solid waste facility that is authorized to accept the material in accordance with the Solid, Hazardous, and Infectious Wastes Law and rules adopted under it, or beneficially use the material in accordance with rules adopted by the Director of Environmental Protection under the bill (see below); or

--If the material is not removed from the location associated with the production operation of the well, recycle or reuse it with the approval of the Chief.

(5) If the material is not TENORM and the material has not come in contact with a refined oil-based substance, the material may be used at the location associated with the production operation of the horizontal well or at another location associated with a production operation.

### Environmental Protection Agency

The bill prohibits the owner or operator of a solid waste facility licensed under the Solid, Hazardous, and Infectious Wastes Law (hereafter licensed solid waste facility) from accepting for transfer or disposal TENORM if that material contains or is contaminated with radium-226, radium-228, or both (hereafter contaminated TENORM) at concentrations equal to or greater than five picocuries per gram above natural background. It defines "natural background" as two picocuries per gram or the actual number of picocuries per gram as measured at an individual licensed solid waste facility, subject to verification by the Director of Health. The bill does not specify who is required to take the measurements or how it is determined if the two picocuries level or the actual number of picocuries level applies.

The owner or operator of a licensed solid waste facility may receive and process, for purposes other than transfer or disposal, contaminated TENORM at concentrations equal to or greater than five picocuries per gram above natural background, provided that the owner or operator has obtained and maintains all other necessary authorizations, including any authorization required by rules adopted by the Director of Health under the Radiation Control Program Law.

Under the bill, the Director of Environmental Protection may adopt rules in accordance with the Administrative Procedure Act governing the receipt, acceptance,

processing, handling, management, and disposal by licensed solid waste facilities of material that contains or is contaminated with radioactive material, including contaminated TENORM at concentrations less than five picocuries per gram above natural background. The rules may include, at a minimum, requirements in accordance with which the owner or operator of a licensed solid waste facility must do both of the following:

(1) Monitor leachate and ground water for radium-226, radium-228, and other radionuclides; and

(2) Develop procedures to ensure that TENORM accepted at the facility neither contains nor is contaminated with radium-226, radium-228, or both at concentrations equal to or greater than five picocuries per gram above natural background.

Additionally, the bill prohibits the owner or operator of a licensed solid waste facility from receiving, accepting, processing, handling, managing, or disposing of TENORM associated with drilling operations without first obtaining representative analytical results to determine compliance with the above provisions and rules adopted by the Director under them. The bill defines "drilling operation" to include a production operation as that term is defined in the Oil and Gas Law, which defines "production operation" in part as all operations and activities and all related equipment, facilities, and other structures that may be used in or associated with the exploration and production of oil, gas, or other mineral resources that are regulated under that Law.

Under the bill, the Director may adopt rules in accordance with the Administrative Procedure Act establishing requirements governing the beneficial use of material from a horizontal well that has come in contact with a refined oil-based substance and that is not TENORM. The bill expands the definition of "beneficially use" in the Solid, Hazardous, and Infectious Wastes Law to mean, with regard to material from a horizontal well as described above, to use the material in any manner authorized as a beneficial use in rules adopted by the Director under the bill.

### Department of Health

The bill requires the Director of Health to adopt rules in accordance with the Administrative Procedure Act establishing requirements governing TENORM and requiring the maintenance of records on the receipt, use, storage, transfer, and disposal of TENORM. It stipulates that the rules must not apply to naturally occurring radioactive material. The bill defines "technologically enhanced naturally occurring radioactive material" as naturally occurring radioactive material with radionuclide concentrations that are increased by or as a result of past or present human activities, excluding drill cuttings, natural background radiation, byproduct material, or source

material. "Naturally occurring radioactive material" is defined by the bill to mean material that contains any nuclide that is radioactive in its natural physical state, excluding source material, byproduct material, or special nuclear material. "Drill cuttings" means the soil, rock fragments, and pulverized material that are removed from a borehole and that may include a de minimus amount of fluid that results from a drilling process. "Byproduct material," "source material," and "special nuclear material" are defined in the existing Radiation Control Program Law.

### Clean Ohio Trail Fund

(R.C. 1519.05)

The bill adds a requirement that the Director of Natural Resources establish a policy in accordance with which an applicant for a matching grant for a recreational trail project from the existing Clean Ohio Trail Fund must submit a study on the current use of existing trails in the county in which the proposed project will be located if there is an existing trail in that county. The study must include a report on the maintenance needs and a plan for use of the proposed project.

The bill also allows the Director, at the Director's discretion, to use up to 25% of money in that Fund to provide grants to nonprofit organizations and local political subdivisions for the purpose of maintaining recreational trails. The Director must establish procedures and eligibility criteria governing the awarding of such grants.

### State Recreational Vehicle Fund and Fund Advisory Board

(R.C. 1541.50 and 4519.11)

Under the bill, Controlling Board approval is required when the State Recreational Vehicle (SRV) Fund is used by the Department of Natural Resources (DNR) for the existing purposes of (1) expanding DNR activities to provide trails and other areas for the operation of snowmobiles, off-highway motorcycles, and all-purpose vehicles on state-controlled land and waters, (2) purchasing additional land to be used for such purposes, and (3) the development and implementation by DNR of programs relating to the safe use and enjoyment of snowmobiles, off-highway motorcycles, and all-purpose vehicles.

The SRV Fund consists of fees, taxes, and fines related to the registration and operation of snowmobiles, off-highway motorcycles, and all-purpose vehicles. In addition to those fund purposes that the bill makes subject to Controlling Board approval, the SRV Fund also is used for the purpose of enforcing and administering the law relative to the registration and operation of snowmobiles, off-highway motorcycles,

and all-purpose vehicles, but such use is not made subject to Controlling Board approval.

The bill creates the State Recreational Vehicle Fund Advisory Board consisting of the following nine members, who must be appointed by the Director of Natural Resources within 60 days after the bill's effective date: (1) two members representing snowmobile users, (2) two members representing all-purpose vehicle users, (3) two members representing off-highway motorcycle users, (4) one member representing full-size four wheel drive users, and (5) two members representing power sport dealers.

Members are appointed to the Board for staggered three-year terms of office. For public officers or employees, serving as a Board member does not constitute holding a public office or position of employment and does not constitute grounds for removal from their offices or positions of employment. Board members must be reimbursed for actual and necessary expenses incurred in the discharge of Board duties and may be reappointed to the Board.

The Board must advise with and make recommendations to DNR regarding the use of State Recreational Vehicle Fund money and DNR must give primary consideration to the Board's advice and recommendations.

## Exemption of certain watercraft from registration

(R.C. 1547.532)

The bill exempts sailboards, kiteboards, paddleboards, and belly boats or float tubes from the requirement to be registered under the Watercraft and Waterways Law. It defines all of those terms as follows:

(1) "Belly boat" or "float tube" as a vessel that is inflatable, propelled solely by human muscular effort without using an oar, paddle, or pole, and designed to accommodate a single individual as an operator in such a manner that the operator remains partially submerged in the water;

(2) "Kiteboard" as a recreational vessel that is inherently buoyant, has no cockpit, and is operated by an individual who is standing on the vessel while using a kite as a means of propulsion and lift;

(3) "Paddleboard" as a recreational vessel that is inherently buoyant, is propelled by human muscular effort using a pole or single- or double-bladed paddle, and is operated by an individual who is kneeling, standing, or lying on the vessel; and

(4) "Sailboard" as a recreational vessel that is inherently buoyant, has no cockpit, has a single sail mounted on a mast that is connected to the vessel by a free-rotating, flexible joint, and is operated by an individual who is standing on the vessel.

## Registration and identification of watercraft owned by liveries

(R.C. 1547.542)

The bill revises the law governing the registration of liveries and the identification of watercraft owned by liveries. It requires a livery owner to be issued a tag for each watercraft that has been registered in accordance with current law, requires the tag to be affixed to each such watercraft in accordance with the bill prior to the watercraft's being rented to the public, and requires the Chief of the Division of Watercraft to prescribe the content and form of the tag in rules.

The bill revises the current requirement that a livery watercraft registration number be displayed on each watercraft in the fleet for which an annual certificate of livery registration has been issued by requiring a livery owner, not later than March 15, 2015, to identify each watercraft in the owner's fleet in one of the following ways:

(1) By displaying the livery watercraft registration number assigned to the livery owner on the forward half of both sides of the watercraft in block characters that are of a single color that contrasts with the color of the hull and are at least three inches in height. The registration number must be displayed in such a manner that it is visible under normal operating conditions. In addition, the tag that has been issued to the watercraft must be placed not more than six inches from the registration number on the port side of the watercraft.

(2) By displaying the livery name on the rear half of the watercraft in such a manner that it is clearly visible under normal operating conditions. However, if there is insufficient space or it is impractical to display the livery name on the sides of the watercraft, the name may be displayed on the rear half of the watercraft's deck, provided that the display of the name does not interfere with the placement of the tag that has been issued to the watercraft. In addition, the tag must be placed in one of the following locations:

--In the upper right corner of the transom so that the tag does not interfere with the legibility of the hull identification number of the watercraft;

--Six inches from the stern on the outside of the watercraft below the port side gunwale;

--On the inside of the watercraft on the upper portion of the starboard side gunwale so that the tag is visible from the port side of the watercraft; or

--On a deck on the rear half of the watercraft.

The bill requires each watercraft in a livery fleet to be identified in a uniform and consistent manner. It specifies that rental agreements, rather than rental receipts as in current law, are subject to inspection at any time at the livery's place of business by any authorized representative of the Division of Watercraft or any law enforcement officer.

Finally, the bill eliminates the Chief's authority to issue an order permanently restricting or suspending a watercraft livery certificate of registration and the privileges associated with it without a hearing if the Chief finds that the holder of the certificate has violated the Watercraft and Waterways Law. It retains the Chief's authority to temporarily restrict or suspend a registration and privileges without a hearing.

### Watercraft operation requirements

(R.C. 1547.05, 1547.051, 1547.052, and 1547.06)

The bill revises the requirements regarding completion of a safe boater course or proficiency examination for persons operating a powercraft powered by more than ten horsepower on Ohio waters by requiring only the following persons to successfully complete such a course or examination:

(1) A person under 18 years of age; and

(2) A person 18 years of age or older who was born on or after January 1, 1982, and who is supervising a person operating a personal watercraft who is between 12 and 15 years old (see below).

Current law instead requires any person born on or after January 1, 1982, to successfully complete a safe boater course or proficiency examination.

The bill also prohibits a person under the age of 12 from operating a personal watercraft on Ohio waters. It allows a person between the ages of 12 and 15 to operate a personal watercraft if a supervising person at least 18 years old is aboard the personal watercraft who meets one of the following requirements:

(1) Was born before January 1, 1982;

(2) Was born on or after January 1, 1982, and holds a certificate indicating that the person has successfully completed a safe boater course or proficiency examination; or

(3) In the case of a rented powercraft, meets the requirements of the law governing such rentals (see below).

Under current law, a person under the age of 16 is prohibited from operating a personal watercraft on Ohio waters unless the person is between the ages of 12 and 15 and a supervising person at least 18 years old is aboard the personal watercraft, and, in the case of a supervising person born on or after January 1, 1982, the supervising person either holds a certificate indicating that the person has successfully completed a safe boater course or proficiency examination or, in the case of a rented powercraft, meets the requirements of the law governing such rentals.

In addition, the bill retains an existing prohibition against anyone under 12 years old operating a powercraft, other than a personal watercraft, powered by more than ten horsepower unless the person is under the direct visual and audible supervision of a person who is at least 18 years old and aboard the powercraft. However, it removes the requirement that such a supervisor who was born on or after January 1, 1982, either must hold a certificate indicating successful completion of a safe boater course or proficiency examination or, in the case of a rented powercraft, meet the requirements of the law governing such rentals.

Finally, the bill prohibits a rental business from leasing, hiring, or renting a powercraft powered by more than ten horsepower for operation on Ohio waters to a person less than 18 years old, or to a person who will be supervising a person operating a personal watercraft as discussed above, unless the person to whom the powercraft will be leased, hired, or rented meets one of the following requirements:

(1) The person signs a statement that the person has successfully completed a safe boater course or proficiency examination as discussed above; or

(2) The person receives educational materials from the rental business and successfully passes an abbreviated examination given by the business.

Current law instead applies those restrictions to a person born on or after January 1, 1982.

## 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.

## Ohio Lake Erie Commission

(R.C. 1506.21)

The bill adds the Director of Development Services as a member of the Ohio Lake Erie Commission.

## OCCUPATIONAL THERAPY, PHYSICAL THERAPY, AND ATHLETICS TRAINERS BOARD

- Permits each section of the Occupational Therapy, Physical Therapy, and Athletic Trainers Board, when determining whether to issue a summary suspension of a license or limited permit under continuing law, to review the allegations and vote on the suspension by telephone conference call.
- Exempts that meeting from the requirements of the Open Meetings Law.
- Prohibits a court of common pleas from suspending a summary suspension issued by the respective section during an appeal of that summary suspension under the Administrative Procedure Act.
- Requires a summary suspension to remain in effect, unless reversed on appeal, until a final adjudication order is issued by the appropriate section.
- Requires a section to issue its final adjudication order regarding an order of summary suspension not later than 90 days after completion of its hearing.
- Dissolves the suspension order if the section fails to issue the final adjudication order within 90 days, but states that the failure does not invalidate any subsequent, final adjudication order.

### Procedures for summary suspensions

(R.C. 121.22, 4755.11, 4755.47, and 4755.64)

Under continuing law, each section of the Occupational Therapy, Physical Therapy, and Athletic Trainers Board, on receipt of a complaint that a person who holds a license or limited permit issued by the appropriate section has committed any of the prohibited actions listed in continuing law, the appropriate section may immediately suspend the license or limited permit prior to holding a hearing in accordance with the Administrative Procedure Act if it determines, based on the complaint, that the licensee or limited permit holder poses an immediate threat to the public. The bill permits the appropriate section to review the allegations and vote on the suspension by telephone conference call. This meeting, under the bill, is exempt from the requirements of the Open Meetings Law.

The bill prohibits a court of common pleas granting a suspension of the appropriate section's summary suspension order pending the determination of an

appeal filed under the Administrative Procedure Act (currently, a court may grant a suspension and fix its terms if it appears to the court that an unusual hardship to the appellant will result from the execution of the agency's order pending determination of the appeal). Any summary suspension order issued under the bill remains in effect, unless reversed on appeal, until a final adjudication order issued by the appropriate section pursuant to continuing law becomes effective. The bill requires the section to issue its final adjudication order regarding an order of summary suspension not later than 90 days after completion of its hearing. Failure to issue the order within 90 days results in immediate dissolution of the suspension order, but does not invalidate any subsequent, final adjudication order.

## OPPORTUNITIES FOR OHIOANS WITH DISABILITIES AGENCY

- Replaces the Rehabilitation Services Commission (RSC) with the Opportunities for Ohioans with Disabilities Agency (OODA), and generally requires the OODA to perform the duties and exercise the responsibilities assigned to the RSC under current law.
- Replaces the Administrator of the RSC with the Executive Director of the OODA, and generally requires the Executive Director to perform the duties and exercise the responsibilities assigned to the Administrator under current law.
- Requires the Governor to appoint the Opportunities for Ohioans with Disabilities Commission (OODC), and provides that members serving on the RSC immediately prior to the provision's effective date are to continue serving on the new OODC.
- Requires the OODC to do all of the following:

  --approve the state vocational rehabilitation plan and, with the Ohio State Independent Living Council, the state plan for independent living;

  --appoint a consumer advisory committee, which is a continuation of the consumer advisory committee appointed by the RSC under current law; and

  --review and analyze the effectiveness of and consumer satisfaction with the functions performed by the OODA, vocational rehabilitation services provided by state agencies and other entities, and employment outcomes achieved by individuals receiving services.
- Revises several definitions in the law governing the OODA, including replacing "handicapped person" with "person with a disability."
- Eliminates the Governor's Program on Employment Initiatives in the RSC.

### Replacement of the Rehabilitation Services Commission

(R.C. 121.35, 121.37, 123.01, 124.11, 125.602, 125.603, 126.45, 127.16, 191.02, 2151.83, 3303.41, 3304.12, 3304.13, 3304.14 (3304.15), 3304.15 (3304.16), 3304.16 (3304.14), 3304.17, 3304.18, 3304.181, 3304.182, 3304.20, 3304.21, 3304.22, 3304.231, 3304.25, 3304.26 (repealed), 3304.28, 3304.41, 3501.01, 3798.01, 4112.31, 4115.32, 4121.69, 4123.57, 4503.44, 4511.191, 5107.64, 5120.07, 5123.022, 5123.023, and 5126.051; Sections 259.90, 327.80, 327.90, 340.10, 515.30, 610.20 ,610.21, and 815.20)

The bill replaces the Rehabilitation Services Commission (RSC) with the Opportunities for Ohioans with Disabilities Agency (OODA), generally requires the OODA to perform the duties and exercise the responsibilities assigned to the RSC under current law (see below), and makes conforming changes. The bill states that the OODA is the designated state unit authorized under the federal Rehabilitation Act of 1973 to provide vocational rehabilitation to eligible persons with disabilities. Under law revised by the bill, the OODA is required to provide vocational rehabilitation services to all eligible persons with disabilities, including any person with a disability who is eligible under the terms of an agreement or arrangement with another state or with the federal government. Under the bill, the OODA may establish up to five positions in the unclassified civil service. Current law does not provide for such positions.

### Executive Director; functions and responsibilities

The bill replaces the Administrator of the RSC with the Executive Director of the OODA and generally requires the Executive Director to perform the duties and exercise the responsibilities assigned to the Administrator under current law. In addition, the bill requires the Executive Director, rather than the RSC as in current law, to establish administrative subdivisions as necessary or appropriate to carry out the OODA's functions and duties. The Executive Director also is required to appoint deputy directors of the Bureau of Services for the Visually Impaired and Bureau of Vocational Rehabilitation, but, unlike the Administrator as in current law, does not need to obtain the approval of the RSC (OODA).

Additionally, the bill states that the Executive Director of the OODA is the executive and administrative officer of the OODA. The bill authorizes the Executive Director to establish procedures for the governance of the OODA, the conduct of OODA employees and officers, the performance of OODA business, and the custody, use, and preservation of OODA records, papers, books, documents, and property. Under the bill, the Executive Director of the OODA, like the Administrator of the RSC, is appointed by the Governor, and the Governor may grant the Executive Director authority to appoint, remove, and discipline staff as necessary to carry out the functions of the OODA. In exercising exclusive authority to administer the daily operation and provision of vocational rehabilitation services under the Worker Retraining Law, the Executive Director may perform specified activities.

As discussed in the table below, a number of those activities currently are assigned to the RSC. The bill instead assigns them to the Executive Director. In addition, several of the activities currently specified in statute instead are incorporated in the bill's broad directive that the Executive Director must administer the provision of rehabilitation services to eligible persons with disabilities. Finally, although several current activities are specifically eliminated by the bill, it appears that they may

continue to be performed by the Executive Director under other authority established by the bill.

| Responsibility of RSC under current law | Responsibility under the bill |
|---|---|
| Adopt all necessary rules | Executive Director |
| Prepare and submit annual reports to the Governor | Executive Director |
| Certify disbursement of funds | Executive Director |
| Take appropriate action to guarantee rights of services to handicapped persons (see below) | Executive Director |
| Consult with and advise other state agencies and coordinate applicable programs | Executive Director |
| Establish an administrative division of consumer affairs and advocacy to promote and help guarantee rights of handicapped persons | Eliminated |
| Maintain an inventory of state services available to handicapped persons | Specifically eliminated, but may be undertaken by the Executive Director under the authority to adopt rules or to take appropriate action to guarantee rights of persons with disabilities to services |
| Utilize, support, assist, and cooperate with the Governor's committee on employment of the handicapped | Specifically eliminated, but may be performed by the Executive Director under the authority to consult with and advise other state agencies and coordinate programs for persons with disabilities |
| Take any other necessary or appropriate action for cooperation with public and private agencies and organizations, which may include reciprocal agreements with other states, contracts with public and other nonprofit agencies, cooperative agreements with the federal government, and functions and services for the federal government | Executive Director |
| Conduct research and demonstration projects | Executive Director |
| Accept, hold, invest, reinvest, or otherwise use gifts to further vocational rehabilitation | Executive Director |
| Ameliorate the condition of the aged, blind, or other severely disabled individuals by establishing a program of home visitation by Commission employees for the purpose of instruction | Specifically eliminated, but may be undertaken by the Executive Director under the authority to adopt rules or to take appropriate action to guarantee rights of persons with disabilities to services |
| For purposes of the Business Enterprise Program, establish and manage small businesses owned or operated by visually impaired persons, purchase insurance, and accept computers | Executive Director |
| Enter into contracts | Executive Director |

## Opportunities for Ohioans with Disabilities Commission (OODC)

(R.C. 3304.12, 3304.13, 3304.16 (3304.14), 3304.22, and 3304.24 (repealed); Section 803.40)

The bill requires the Governor to appoint the Opportunities for Ohioans with Disabilities Commission (OODC) within the OODA, applies the membership qualifications of the RSC to the OODC, and provides that members serving on the RSC immediately prior to the provision's effective date are to continue serving on the new OODC until the end of their terms. The bill thus continues staggered seven-year terms.

The bill requires the OODC to approve the state vocational rehabilitation plan and, with the Ohio State Independent Living Council, the state plan for independent living; appoint a consumer advisory committee, which the bill states is a continuation of the consumer advisory committee appointed by the Rehabilitation Services Commission under current law; and to the extent feasible, review and analyze the effectiveness of and consumer satisfaction with the functions performed by the OODA, vocational rehabilitation services provided by state agencies and other entities responsible for providing such services under federal law, and employment outcomes achieved by individuals receiving services.

## Definitions

(R.C. 3304.11, 3304.12, 3304.17, 3304.19, 3304.27, and 4503.44)

The bill replaces the term "handicapped person" or "disabled person" with "person with a disability" in the Worker Retraining Law and defines it to mean any person with a physical or mental impairment that is a substantial impediment to employment who can benefit in terms of an employment outcome for the provision of vocational rehabilitation services. It also changes "physical or mental disability" to "physical or mental impairment" and "substantial handicap to employment" to "substantial impediment to employment" in that Law, but retains the definitions in current law. The bill then makes conforming changes throughout that Law. The bill also replaces the term "handicapped person" with "person with a disability" in the Licensing of Motor Vehicles Law and makes conforming changes.

## Governor's Program on Employment Initiatives

(R.C. 3304.38, repealed)

The bill eliminates the Governor's Program on Employment Initiatives in the RSC. The purpose of the Program is to create employment opportunities for persons with disabilities by providing equipment or supplies to businesses in consideration for job slots being reserved by the businesses for persons with disabilities referred by the RSC.

## 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)

- Generally requires information that must be submitted to the Ohio Automated Rx Reporting System (OARRS) under current law be submitted to the system not less than once each day that a pharmacy, prescriber, or wholesale distributor of dangerous drugs conducts business.
- 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 institutional facilities

- Authorizes a pharmacy licensed as a terminal distributor of dangerous drugs to use a remote dispensing system in certain circumstances to assist in the distribution of dangerous drugs at an institutional facility, which includes a hospital, ambulatory surgical facility, nursing home, residential care facility or facility operated or maintained by the Department of Developmental Disabilities or Rehabilitation and Correction where medical care is provided.
- Requires that a pharmacist maintain supervision and control of a remote dispensing system, but specifies that a pharmacist does not have to 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

### Frequency of information submission

(R.C. 4729.77(B)(3), 4729.78(B)(3), and 4729.79(B)(3))

The bill generally requires information that a pharmacy, prescriber, or wholesale distributor of dangerous drugs must submit to the Ohio Automated Rx Reporting System (OARRS) under current law be submitted to the system not less than once each day that the pharmacy, prescriber, or wholesale distributor conducts business. Under current law unchanged by the bill, the State Board of Pharmacy may grant an extension to a pharmacy, prescriber, or wholesale distributor for submission if any of the following is true:

--In the case of a pharmacy or wholesale distributor, the pharmacy or distributor (1) suffers a mechanical or electronic failure, or cannot meet the deadline for other reasons beyond the pharmacy's or distributor's control, or (2) the Board is unable to receive electronic submissions.

--In the case of a prescriber, (1) the prescriber's transmission system suffers a mechanical or electronic failure, or (2) the prescriber cannot meet the deadline for other reasons beyond the prescriber's control.

In contrast to the bill existing law requires that information be submitted to OARRS in accordance with time limits, if any, specified by the Board. The Board has adopted rules specifying the following time limits for information submission:[199]

- Pharmacies and prescribers: At least weekly.
- Wholesale distributors: Monthly. Information must be (1) submitted during the first through fifteenth day of the month, (2) consecutive and inclusive from the last date and time information was submitted, and (3) reported not later than 45 days after the date of the wholesale sale.

### Access to information

(R.C. 4729.80 and 4729.81)

Information contained in 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

[199] O.A.C. 4729-37-07(A) and (D).

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 institutional facilities

(R.C. 4729.542 (primary), 4729.01, 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 certain institutional facilities. "Remote dispensing system" is defined as a mechanical system for dispensing drugs that is installed in a facility and communicates electronically with a pharmacy. "Institutional facility" is defined as any of the following at which medical care is provided and a medical record documenting episodes of care (including dangerous drugs prescribed, dispensed, or administered) is maintained:

- A hospital classified as such by the Department of Health or licensed by the Department of Mental Health;

- A facility licensed by the Department of Health, including a nursing home, residential care facility, ambulatory surgical facility, freestanding inpatient rehabilitation facility, freestanding cardiac catheterization facility, freestanding birthing center, freestanding dialysis center, freestanding or mobile diagnostic imaging center, freestanding radiation therapy center, or any other facility licensed by the Department at which medical care is provided;

- A facility maintained or operated by the Department of Rehabilitation and Correction or the Department of Developmental Disabilities at which medical care is provided.

Under the bill, 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. As part of this program, the institutional facility where the system is located must complete periodic audits of controlled substances dispensed through the system.

(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 requires that a pharmacist maintain supervision and control of a remote dispensing system; however, it specifies that a pharmacist is not required to be physically present at the facility where the system is used to dispense drugs. In a corresponding provision, the bill specifies that the practice of pharmacy includes electronic supervision and control of and communication with a remote dispensing 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.

## STATE BOARD OF PSYCHOLOGY

- Prohibits, beginning one year after the provision's effective date, an individual from practicing applied behavior analysis in Ohio or holding the individual's self out to be a certified Ohio behavior analyst without a certificate from the State Board of Psychology.
- Subjects an individual who violates the prohibition to a fine of not less than $100 nor more than $500, imprisonment for not less than six months nor more than one year, or both.
- Defines the practice of applied behavior analysis.
- Lists the requirements an applicant must satisfy to receive a certificate.
- Makes a certificate valid for two years and lists renewal requirements, including a renewal fee of $150 and continuing education requirements.
- Lists the disciplinary actions and the reasons for which the Board may impose discipline.

### Certified Ohio behavior analysts

(R.C. 109.572, 4732.06, 4732.07, 4732.08, 4776.01, 4783.01 to 4783.05, 4783.09 to 4783.13, and 4783.99; Sections 747.30 and 812.10)

#### Certification requirement

(R.C. 4783.02, 4783.01, and 4783.99; Section 812.10)

The bill defines the "practice of applied behavior analysis" as the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The practice of applied behavior analysis includes the following:

- The empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis;
- Interventions based on scientific research and the direct observation and measurement of behavior and the environment;

- Utilization of contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.

The "practice of applied behavior analysis" does not include psychological testing, diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities.

The bill, beginning one year after the provision's effective date, prohibits any person from doing either of the following:

(1) Engage in the practice of applied behavior analysis in Ohio without holding a certificate issued by the State Board of Psychology (Board);

(2) Hold the person's self out to be a certified Ohio behavior analyst unless the person holds a certificate issued by the Board.

Under the bill whoever violates these prohibitions must be fined not less than $100 nor more than $500, imprisoned for not less than six months nor more than one year, or both. Each violation is a separate offense. Currently, Ohio does not license, certify, or register behavior analysts.

### Exceptions to certification requirement

(R.C. 4783.02(B) and (C))

The requirement to obtain a certification to practice applied behavior analysis does not apply to any of the following individuals:

(1) An individual licensed under the Psychologist Law to practice psychology, if the practice of applied behavior analysis engaged in by the licensed psychologist is within the licensed psychologist's education, training, and experience;

(2) An individual acting under the authority and direction of a licensed psychologist as described in (1) above, if the licensed psychologist signs an attestation stating that the licensed psychologist is responsible for the care provided by the individual;

(3) An individual practicing applied behavior analysis who is supervised by a certified Ohio behavior analyst and acting under the authority and direction of that certified Ohio behavior analyst, if the certified Ohio behavior analyst signs an

attestation stating that the certified Ohio behavior analyst is responsible for the care provided by the individual;

(4) The delivery of interventions by a direct care provider or family member to implement components of an applied behavior analysis treatment plan;

(5) A behavior analyst who practices with nonhuman or nonpatient clients or consumers, including applied animal behaviorists and practitioners of organizational behavior management;

(6) A licensed professional authorized to practice in Ohio who, in the offering or rendering of services, does not represent oneself in any printed materials or verbally by incorporating the term "applied behavior analyst," if the services of the licensed professional are within the scope of practice of the licensing law governing the licensed professional and the services performed are commensurate with the licensed professional's education, training, and experience;

(7) A matriculated graduate student or postdoctoral trainee whose activities are part of a defined program of study or professional training;

(8) An individual employed by an agency that falls under the jurisdiction of the Department of Developmental Disabilities when the individual is acting in the scope of that employment;

(9) A professional employed in a school or other setting that falls under the regulation of the State Board of Education when the professional is acting within the scope of that employment.

## Requirements to obtain a certificate

(R.C. 4732.07, 4783.04, and 4783.01)

Under the bill, except as described under "**Grandfathering provision**," below, an individual seeking a certificate to practice as a certified Ohio behavior analyst must file with the Board a written application on a form prescribed and supplied by the Board. To be eligible for a certificate, the individual must do all of the following:

(1) Demonstrate that the applicant is of good moral character and conducts the applicant's professional activities in accordance with accepted professional and ethical standards;

(2) Comply with the continuing law requirements to obtain a criminal records check through the Bureau of Criminal Identification and Investigation (the Board must

adopt rules under the Administrative Procedure Act establishing administrative and procedural requirements for the criminal records checks);

(3) Demonstrate an understanding of the law regarding behavioral health practice;

(4) Demonstrate current certification as a Board Certified Behavior Analyst by the Behavior Analyst Certification Board (BACB) or its successor organization or demonstrate completion of equivalent requirements and passage of a psychometrically valid examination administered by a nationally accredited credentialing organization;

(5) Pay the fee established by the Board.

The Board must review all applications received and keep a register of applicants for a certificate. The bill prohibits the Board from granting a certificate to an applicant for an initial certificate unless the applicant complies with the criminal records check requirement and the Board, in its discretion, decides that the results of the criminal records check do not make the applicant ineligible for a certificate. If the Board determines that an applicant satisfies the requirements for a certificate to practice as a certified Ohio behavior analyst, the Board must issue the applicant a certificate. A person who obtains a certificate is a "certified Ohio behavior analyst."

### Grandfathering provision

(Section 747.30)

Under the bill, if an individual certified as a board certified behavior analyst by BACB or its successor organization can demonstrate active practice in a manner prescribed in rules adopted by the Board within one year after the effective date of those rules, the individual may apply for immediate certification as a certified Ohio behavior analyst without paying a fee or satisfying other requirements specified in the bill (see "**Requirements to obtain a certificate**," above) or requirements prescribed by the Board. The Board, under the bill, must provide Internet access to the study guide produced by the Board that summarizes the applicable laws and rules. An individual issued a certificate pursuant to the grandfathering provision is responsible for knowledge of Ohio law based on self-study of these documents.

Following initial certification under the grandfathering provision, a certified Ohio behavior analyst must comply with the bill with respect to biennial registration, payment of fees, and continuing education requirements (see "**Certification renewal**," below).

## Certification renewal

(R.C. 4783.05)

Except as otherwise provided below, a certificate issued under the bill is valid for a period of two years. On or before August 31 of each even-numbered year, each certified Ohio behavior analyst must do both of the following:

(1) Register with the Board on a form prescribed by the Board, giving the certified Ohio behavior analyst's name, address, certificate number, the continuing education information required under the bill, and any other reasonable information as the Board requires;

(2) Pay to the Board secretary a biennial registration fee of $150.

If an individual is issued a certificate for the first time on or before August 31 of an even-numbered year, the individual is next required to register on or before August 31 of the next even-numbered year.

Every two years a certified Ohio behavior analyst who wishes to renew the certified Ohio behavior analyst's certificate must produce proof of not less than 23 hours of continuing education, including not less than four hours in ethics, professional conduct, or cultural competency. Continuing education hours may be earned through providers of continuing education approved by the BACB or its successor organization or other organizations approved by the Board as providers of continuing education.

## Discipline

### Disciplinary actions

(R.C. 4732.06 and 4783.09(A) and (D))

The bill allows the Board to empower any one or more of its members to conduct any proceeding, hearing, or investigation necessary to its purposes, including the administration and enforcement of the certification of certified Ohio behavior analysts. Under the bill, the Board may refuse to issue a certificate to any applicant, may issue a reprimand, or suspend or revoke the certificate of any certified Ohio behavior analyst, on any of the grounds discussed under "**Reasons for discipline**," below. Except as provided under "**Summary suspensions**," below, before the Board may discipline the holder of a certificate, written charges must be filed with the Board by the secretary and a hearing must be had thereon in accordance with the Administrative Procedure Act.

**Reasons for discipline**

(R.C. 4783.09)

The Board may impose discipline against a certified Ohio behavior analyst for any of the following reasons:

(1) Conviction of a felony, or of any offense involving moral turpitude, in a court of Ohio or any other state or in a federal court;

(2) Using fraud or deceit in the procurement of the certificate to practice applied behavior analysis or knowingly assisting another in the procurement of that certificate through fraud or deceit;

(3) Accepting commissions or rebates or other forms of remuneration for referring persons to other professionals;

(4) Willful, unauthorized communication of information received in professional confidence;

(5) Being negligent in the practice of applied behavior analysis;

(6) Using any controlled substance or alcoholic beverage to an extent that such use impairs the person's ability to perform the work of a certified Ohio behavior analyst with safety to the public;

(7) Violating any rule of professional conduct promulgated by the Board;

(8) Practicing in an area of applied behavior analysis for which the person is clearly untrained or incompetent;

(9) An adjudication by a court that the person is incompetent for the purpose of holding the certificate (a person may have the person's certificate issued or restored only upon determination by a court that the person is competent for the purpose of holding the certificate and upon the decision by the Board that the certificate be issued or restored; the Board may require an examination prior to that issuance or restoration);

(10) Waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers applied behavior analysis services, would otherwise be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from that provider;

(11) Advertising that the person will waive the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers applied behavior analysis services, would otherwise be required to pay.

The bill prohibits, for purposes of the reasons listed in (10) and (11) above, sanctions from being imposed against any certificate holder who waives deductibles and copayments in compliance with the health benefit plan that expressly allows such a practice (waiver of the deductibles or copays must be made only with the full knowledge and consent of the plan purchaser, payer, and third-party administrator, and that consent must be made available to the Board upon request), or for professional services rendered to any other person holding a certificate as a certified Ohio behavior analyst to the extent allowed by the bill and the Board's rules.

### Summary suspensions

(R.C. 4783.10)

On receipt of a complaint that any of the grounds listed under "**Reasons for discipline**," above exist, the Board may suspend the certificate of the certified Ohio behavior analyst prior to holding a hearing in accordance with the Administrative Procedure Act if it determines, based on the complaint, that an immediate threat to the public exists. After suspending a certificate pursuant to this provision, the Board must notify the certified Ohio behavior analyst of the suspension in accordance with the Administrative Procedure Act (the notice must state the reasons for the Board's action, cite the law or rule directly involved, and state that the party will be afforded a hearing if the party requests it within 30 days of the time of mailing the notice). If the individual whose certificate is suspended fails to make a timely request for an adjudication, the Board must enter a final order permanently revoking the individual's certificate.

### Discipline for actions involving sexual conduct or contact

(R.C. 4783.11)

Except as described below, under the bill if, at the conclusion of a hearing required by the bill, the Board determines that a certified Ohio behavior analyst has engaged in sexual conduct or had sexual contact with the certified Ohio behavior analyst's patient or client in violation of any prohibition contained in Ohio law governing sex offenses, the Board must do one of the following:

(1) Suspend the certified Ohio behavior analyst's certificate;

(2) Permanently revoke the certified Ohio behavior analyst's certificate.

If the Board determines at the conclusion of the hearing that neither of the sanctions described above is appropriate, the Board must impose another sanction it considers appropriate and issue a written finding setting forth the reasons for the sanction imposed and the reason that neither of the sanctions described above is appropriate.

### Child support orders

(R.C. 4783.12, by reference to R.C. 3123.41 to 3123.50)

On receipt of a notice that a certified Ohio behavior analyst is in default under a child support order under the procedures established under existing law, the bill requires the Board to comply with the requirements of that law or rules adopted pursuant to it with respect to a certificate issued under the bill.

### Human trafficking

(R.C. 4783.13, by reference to R.C. 4776.20)

Upon receipt of a notice that a certified Ohio behavior analyst has been convicted of, pleaded guilty to, or a judicial finding of guilt of or judicial finding of guilt resulting from a plea of no contest was made to the offense of trafficking in persons, the bill requires the Board to immediately suspend the certified Ohio behavior analyst's certificate in accordance with continuing law requirements.

## Administration

(R.C. 4732.06, 4732.08, and 4783.03)

The Board must administer and enforce the bill's provisions governing certified Ohio behavior analysts and may employ assistants and clerical help as necessary. The bill requires the Board to adopt rules under the Administrative Procedure Act establishing all of the following:

(1) Procedures and requirements for applying for a certificate;

(2) Fees for issuance of a certificate;

(3) Reductions of the required hours of continuing education for persons in their first certificate period.

The bill permits the Board to adopt additional rules in accordance with the Administrative Procedure Act as the Board determines are necessary to implement and enforce the bill's provisions governing certified Ohio behavior analysts.

Similar to current law Board receipts, the bill requires moneys collected with respect to certified Ohio behavior analysts to be deposited in the state treasury to the credit of the Occupational Licensing and Regulatory Fund.

## OHIO PUBLIC DEFENDER COMMISSION

- Requires the State Public Defender, effective July 1, 2013, to provide legal representation to a child confined in a Department of Youth Services facility on administrative issues that may extend the period of the child's confinement when designated by the court or requested by a county public defender, joint county public defender, the Director of Rehabilitation and Correction, or the Director of Youth Services, unless the child is financially able to retain the child's own counsel.

- Authorizes the State Public Defender, effective July 1, 2013, to conduct a legal assistance referral service for children committed to the Department of Youth Services relative to conditions of confinement claims.

- Requires the Department, effective July 1, 2013, to provide the State Public Defender reasonable 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 the child access to the courts.

### Representation of a child committed to the Department of Youth Services

(R.C. 120.06(A)(6) and (G) to (J) and 5139.04(H))

The bill requires the State Public Defender, when designated by the court or requested by a county public defender, joint county public defender, the Director of Rehabilitation and Correction, or the Director of Youth Services, to provide legal representation to a child confined in a facility operated, or contracted for, by the Department of Youth Services, on administrative issues that may extend the period of the child's confinement in a facility operated, or contracted for, by the Department, unless the State Public Defender finds that the child has the financial capacity to retain the child's own counsel.

The bill permits the State Public Defender to conduct a legal assistance referral service for children committed to the Department relative to conditions of confinement claims. If the legal assistance referral service receives a request for assistance from a child confined in a facility operated, or contract for, by the Department and the State Public Defender determines that the child has a conditions of confinement claim that has merit, the State Public Defender may refer the child to a private attorney. If no private attorney who the child has been referred to accepts the case within a reasonable time, the State Public Defender is authorized to prepare, as appropriate, pro se pleadings in the form of a complaint regarding the conditions of confinement at the

facility where the child is confined with a motion for appointment of counsel and other applicable pleadings necessary for the child to act on the child's own behalf.

"Conditions of confinement," 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.

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 grants the State Public Defender the right of reasonable 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 also requires that the Department provide the State Public Defender the reasonable access 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.

The bill prohibits the State Public Defender from undertaking the representation of a child in court based on a conditions of confinement claim arising from the legal assistance referral service. The bill provides that the authority granted to the State Public Defender with regard to the operation of the legal assistance referral service does not authorize the State Public Defender to represent a child committed to the Department in general civil matters arising solely out of state law.

These provisions take effect July 1, 2013.

# DEPARTMENT OF PUBLIC SAFETY

## Deputy registrars

### Appointment of deputy registrars

- Allows an individual or a nonprofit corporation to be designated as a deputy registrar, rather than "other persons" in current law, and makes conforming changes.
- Modifies the requirement that there must be at least one deputy registrar designated for each county, by allowing the registrar to determine whether a deputy registrar is needed in each county.
- Requires that in each county containing a deputy registrar (rather than each county as under current law) at least one office must be open for at least four hours each weekend and at least one office must possess the necessary equipment to accept reinstatement fees.

### Terms of deputy registrar contracts

- Modifies the limitation on the operation of more than one office by a deputy registrar to allow the Registrar to award a contract to a deputy registrar to operate more than one office if such operation is determined by the Registrar to be practical.
- Requires each deputy registrar, during the duration of the deputy registrar's contract, to occupy a primary residence in a location that is within a one-hour commute time from the deputy registrar's office or offices.
- Requires deputy registrar contracts entered into on or after June 29, 2014, to be for five years (rather than for two to three years as under current law), unless the contract is for an interim period or is otherwise terminated, the Registrar determines that a shorter contract term is appropriate for a particular deputy registrar, or a one-year contract extension is granted to a deputy registrar for exemplary service.
- Eliminates the requirement that every deputy registrar must display the toll-free telephone number for the Bureau of Motor Vehicles.

## Updated speed limits

- For all vehicles at all times on all portions of freeways that are not part of the interstate system but are built to the standards and specifications applicable to interstate freeways, establishes the following speed limits:

--60 miles per hour on all such freeways that had a speed limit of 55 miles per hour immediately prior to the bill's effective date; and

--70 miles per hour on all such freeways that had a speed limit of 65 miles per hour immediately prior to the bill's effective date.

### 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, irrespective of whether or not the space is metered.

- Permits motorcycles to face any direction when so parked in any such parking space.

### License plate provisions

- Creates the "Truth, Justice, and the American Way" license plate and requires the contributions that persons pay when obtaining the license plate to be paid to the Siegel and Shuster Society, a nonprofit organization dedicated to commemorating and celebrating the creation of Superman in Cleveland.

- Creates the "Kiwanis Club" license plate and requires the contributions that persons pay when obtaining the license plate to be paid to the Ohio District Kiwanis Foundation of the Ohio District of Kiwanis International, to be used by that organization to pay the costs of its educational and humanitarian activities.

- Creates the "Massillon Tiger Football Booster Club" license plate and requires the club to use the contributions that persons pay when obtaining the license plate only to promote and support the football team of Washington High School of the Massillon City School District.

- Creates the Ohio Coal license plate.

## 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.

- Allows the operator of a chauffeured limousine to: (1) provide transportation to passengers who arrange for the transportation through an intermediary, including a digital dispatching service, and (2) establish the fare and method of fare calculation for such transportation so long as the method of fare calculation is provided to the passenger upon request.

- Delays, from July 1, 2013, to January 1, 2014, the effective date of Revised Code section 4503.192, which generally permits a person who is replacing motor vehicle license plates to retain the distinctive combination of letters and numerals on the person's current license plates upon payment of a $10 fee.

- Directs to the Highway Operating Fund proceeds from: (1) the lease or sale of transportation facilities, (2) commercial advertising at roadside rest areas (proceeds of which currently go to the Roadside Rest Area Improvement Fund), and (3) public private partnership agreements.

## Deputy registrars

(R.C. 4503.03 and 4507.01)

### Appointment of deputy registrars

The bill alters who may be appointed to the position of deputy registrar. The bill does this by eliminating the authority of the Registrar of Motor Vehicles to appoint "any person" as a deputy registrar and instead authorizes the appointment of only an

"individual" or "nonprofit corporation." The bill retains the Registrar's authority to appoint a county auditor or clerk of a court of common pleas as a deputy registrar.

The bill modifies the requirement that there must be at least one deputy registrar designated for each county in the state, by allowing the Registrar to determine whether a deputy registrar is needed in each county and appoint such deputy registrars as are necessary. If the Registrar determines that deputy registrar services are adequately provided either by a deputy registrar in a county or a deputy registrar in an adjoining county, no additional person will be designated as a deputy registrar. However, if the Registrar determines that deputy registrar services are not adequately provided in a county, the Registrar may appoint one or more deputy registrars as necessary to provide adequate services. The bill also requires that in each county that contains a deputy registrar, rather than every county as under current law, at least one deputy registrar must be open to the public for at least four hours each weekend and at least one deputy registrar must have the necessary equipment to process license reinstatement fees.

The bill also eliminates a provision of current law that specifies that if the county auditor is designated as a deputy registrar in a county, no other person must be designated as a deputy registrar in that county if the population of the county is 40,000 or less.

### Terms of deputy registrar contracts

The bill allows the Registrar to award a contract to any deputy registrar to operate more than one office if it is determined to be practical, and retains a provision of current law that allows a nonprofit corporation formed for the purposes of providing automobile-related services to its members or the public and that provides such services from more than one location in the state to operate a deputy registrar office at any location. However, the bill requires each deputy registrar, during the duration of a contract for deputy registrar services, to occupy a primary residence in a location that is within a one-hour commute time from the deputy registrar's office or offices. Under current law, a deputy registrar is prohibited from operating more than one deputy registrar's office, unless the deputy registrar fits within the nonprofit corporation exception discussed above. Further, current law includes no residency requirements with respect to deputy registrars.

Under the bill, deputy registrar contracts entered into on or after June 29, 2014, must be for five years unless: (1) the contract is otherwise terminated, (2) the contract is an interim contract, or (3) the Registrar determines that a shorter term is appropriate for a particular deputy registrar. Additionally, the Registrar, with the approval of the Director of Transportation, may award a one-year contract extension to any deputy

registrar who has provided exemplary service based upon objective performance evaluations. Under current law, all contracts effective on or after July 1, 1996, must be for a term of at least two years but not more than three years, unless the contract is for an interim period of less than one year or is otherwise terminated. The bill retains the limitations in current law for contracts entered into between July 1, 1996, and June 29, 2014.

The bill also removes the requirement that every deputy registrar must display the toll-free telephone number for the Bureau of Motor Vehicles and makes organizational changes to the rules that must be adopted by the Registrar.

### Updated speed limits

(R.C. 4511.21)

The bill establishes speed limits for all vehicles at all times on all portions of freeways that are not part of the interstate system but are built to the standards and specifications applicable to interstate freeways, as follows:

(1) A speed limit of 60 miles per hour on all such freeways that had a speed limit of 55 miles per hour immediately prior to the bill's effective date;

(2) A speed limit of 70 miles per hour on all such freeways that had a speed limit of 65 miles per hour immediately prior to the bill's effective date.

The bill also prohibits any person from operating a motor vehicle, trackless trolley, or streetcar in excess of either of the speed limits established by the bill at any applicable location.

### 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, irrespective of whether or not the space is metered. All such parked motorcycles may face any direction.

## "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 (BMV) 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 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.

## "Kiwanis Club" license plate

(R.C. 4501.21 and 4503.526)

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 may apply to the Registrar for the registration of the vehicle and issuance of "Kiwanis Club" license plates. The application for "Kiwanis 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 "Kiwanis 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, "Kiwanis Club" license plates must be inscribed with the words and markings selected and designed by the Ohio District of Kiwanis International. The Registrar must approve the final design. "Kiwanis Club" license plates must bear county identification stickers that identify the county of registration by name or number.

"Kiwanis 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 BMV 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 "Kiwanis Club" license plates is combined with a request for a special reserved license plate, the applicant also must pay the applicable additional special reserved license plate fee.

The Registrar must pay the $25 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 Ohio District Kiwanis organization of the Ohio District of Kiwanis International, to be used by that organization to pay the costs of its educational and humanitarian activities.

The bill requires the Registrar to pay the $10 BMV administrative fee, the purpose of which is to compensate the BMV for additional services required in issuing "Kiwanis Club" 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. 4501.21 and 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 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 BMV 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.

## Ohio Coal license plate

(R.C. 4503.96)

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 the issuance of "Ohio Coal" license plates. Such plates must be issued by the Registrar upon the payment of the regular vehicle registration tax, any applicable local motor vehicle tax, an additional special reserved license plate fee (if applicable), and an administrative fee of $10 for the purpose of compensating the Bureau of Motor Vehicles for additional services necessary to the issuance of the special plate. The "Ohio Coal" license plates will be inscribed with identifying words or markings that are designed by the Ohio Coal Association and approved by the Registrar.

## 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."

### Chauffeured limousines

(R.C. 4511.85)

The bill allows the operator of a chauffeured limousine to provide transportation to passengers who arrange for the transportation through an intermediary, specifically including a digital dispatching service. The bill also allows, notwithstanding any law to

the contrary, the operator of a chauffeured limousine to establish the fare and method of fare calculation for such transportation so long as the method of fare calculation is provided to the passenger upon request. Under current law, the operator of a chauffeured limousine is only permitted to accept passengers on the basis of a prearranged contract, which is defined as an agreement, made in advance of boarding, to provide transportation from a specific location in a chauffeured limousine at a fixed rate per hour or trip.

### Delayed effective date for Revised Code section 4503.192

(Sections 803.210 and 812.20)

The bill delays the effective date of R.C. 4503.192 from July 1, 2013, to January 1, 2014. That section, which was enacted as part of the Transportation Appropriations Act of the 130th General Assembly,[200] generally permits a person who is replacing motor vehicle license plates to retain the distinctive combination of letters and numerals on the person's current license plates upon payment of a $10 fee.

### Highway Operating Fund designations

(R.C. 5501.311, 5501.312, 5501.73, and 5515.08)

The bill directs to the Highway Operating Fund proceeds from the lease or sale of transportation facilities, commercial advertising at roadside rest areas, and public private partnership agreements. Current law does not specify the funds into which proceeds from the lease or sale of transportation facilities or proceeds from public private partnership agreements should be directed; however, proceeds from commercial advertising at roadside rest areas are currently directed into the Roadside Rest Area Improvement Fund.

---

[200] Am. Sub. H.B. 51.

# PUBLIC UTILITIES COMMISSION

## Wind farm setback

- Changes, from 750 feet to 1,125 feet, the minimum setback distance for wind turbines of an economically significant wind farm (5-50 megawatts) beginning on the effective date of the setback distance change.

- Applies the minimum setback requirements established in Power Siting Board (PSB) rules, including the 1,125-foot minimum setback distance, also to wind farms that are major utility facilities (50 megawatts or more).

- Maintains the current 750-foot distance for both types of wind farms (economically significant and major utility facilities) for any existing certificates and amendments thereto, and any existing certification applications found to be in compliance with PSB application requirements before the effective date of the change.

## Railroad audible warnings

- Changes the railroad audible-warning requirement to a horn-sounding requirement rather than a requirement to sound a whistle and ring a bell.

- Applies the horn-sounding requirement only to public highways and grade crossings rather than to private crossings and crossings at a turnpike, highway, street, or other traveled place.

- Establishes that the sounding of a locomotive horn at a private crossing or the failure to sound a locomotive horn at a private crossing is not a basis for a civil action against the railroad, a board of county commissioners, or any local authority, or against any of their agents or employees.

- Establishes a criminal penalty of a fourth degree misdemeanor for a violation of the bill's horn-sounding requirement, and a third degree misdemeanor if a person is physically harmed, but provides an affirmative defense if an alternative audible warning system was activated.

- Repeals a provision that makes it a fourth degree misdemeanor for a person to fail to sound a locomotive whistle when approaching and passing through a grade crossing or a third degree misdemeanor if a person is physically harmed because of the failure.

- Removes a provision specifying that railroad audible-warning requirements do not interfere with local ordinances.

## Telecommunications transition to Internet-protocol network

- Requires the Public Utilities Commission (PUCO) to use part of appropriation item 870622, Utility and Railroad Regulation, to plan for the transition to an Internet-protocol network.
- Requires the plan to (1) include a review of law that may prevent or delay the transition and (2) address consumer protection issues, including the availability and reliability of alternatives to basic local exchange service.
- Requires PUCO to report to the General Assembly by December 31, 2013, on any action to be taken by the General Assembly for the transition.

## Recovery of environmental remediation costs

- Permits the PUCO to authorize a natural gas company or gas company to recover environmental remediation costs that are (1) prudently incurred before 2025, and (2) related to real property that, at the time recovery is authorized, is or was used for the provision of public utility service.
- Requires, if recovery is authorized, the company to, upon the sale of the real property, return to customers the difference between the sale price, minus reasonable sale expenses, and the property's fair market value prior to remediation.
- Declares that certain rate-making provisions do not preclude recovery of the environmental remediation costs.

## Wind farm setback

(R.C. 4906.20 and 4906.201)

The bill increases the minimum setback distance for wind turbines of an economically significant wind farm from at least 750 feet to at least 1,125 feet beginning on the provision's effective date. Under continuing law, an economically significant wind farm is defined as wind turbines and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of at least 5 but less than 50 megawatts.[201] The bill also applies the minimum setback requirements established in Power Siting Board (PSB) rules, including the 1,125-foot distance, to an electric generating plant that consists of wind

---

[201] R.C. 4906.13, not in the bill.

turbines and associated facilities with a single interconnection to the electrical grid that is designed for, or capable of, operation at an aggregate capacity of *50 megawatts or more*. Under continuing law, an electric generating plant of this capacity is known as a major utility facility.[202] Neither a major utility facility[203] nor an economically significant wind farm may be constructed without a certificate from the PSB.

The bill maintains the current setback distance of at least 750 feet for both types of wind farms for "existing" certification applications that have been found by the Chairperson of the PSB to be in compliance with PSB application requirements before the effective date of the setback distance change. The bill also states, for both types of wind farms, that the 750-foot distance applies for any existing certificates and "amendments thereto." This provision could retroactively apply a 750-foot minimum setback to wind farms that are major utility facilities (50 megawatts or more) that currently have no setback to comply with. This is because under current law, the 750-foot setback applies only to economically significant wind farms (5-50 megawatts). No setback requirement is imposed on a major utility facility wind farm in the Revised Code currently. The bill's provision is also unclear as to what is meant by "amendments thereto." Finally, the provision appears unnecessary as it applies to existing certificates for economically significant wind farms. Presumably, these wind farms should already have setbacks that are consistent with the 750-foot requirement under their certificates, since those certificates are issued under current law.

The standard for measuring the minimum footage 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 continuing law governing economically significant wind farms, the setback does not apply to the following:

- Cases in which all owners of property adjacent to the wind farm property waive application of the setback to that property according to a procedure established by PSB rule; and
- Cases in which the PSB determines that a setback greater than the minimum is necessary.

---

[202] R.C. 4906.01(B)(1)(a), not in the bill.

[203] R.C. 4906.04, not in the bill.

## Railroad audible warnings

(R.C. 4955.32, 4955.322, 4955.34, and 4999.04; conforming changes in R.C. 4955.321, 4955.44, and 4955.47)

### Horn-sounding requirement

The bill requires the engineer or person in charge of the locomotive in the lead of a train, a lite locomotive consist, or an individual locomotive to sound the locomotive horn in accordance with federal law when approaching a public highway or a grade crossing. This requirement does not apply if an alternative audible warning system, approved by the Public Utilities Commission (PUCO) as provided for in current law, is activated. The bill defines a "lite locomotive consist" as a consist of locomotives not attached to any piece of equipment or attached only to a caboose.

The current audible-warning requirement that is replaced by these provisions requires that when an engine is in motion and approaching a turnpike, highway, or street crossing or private crossing where the view of the crossing is obstructed by embankment, trees, curve, or other obstruction, upon the same line with the crossing, and in like manner where the railroad crosses any other traveled place, the engineer or person in charge of the engine must (1) sound the locomotive whistle at a distance of 80 to 100 rods from the crossing and (2) ring the engine's bell continuously until the engine passes the crossing. This current requirement also does not apply if an alternative audible warning system, approved by PUCO, is activated. The bill also removes a requirement that companies must attach to each locomotive engine on their railroads a bell and a steam or compressed-air whistle.

The bill removes a provision that states that the whistle-and-bell requirement does not interfere with the proper observance of an ordinance passed by the legislative authority of a municipal corporation regulating the management of railroads, locomotives, and steam whistles on locomotives within the municipal corporation.

The bill modifies a provision of current law to state that the establishment of an alternative audible warning system does not preclude the sounding of a locomotive horn in an emergency situation. Current law states that the establishment of an alternative audible warning system does not preclude the sounding of a *whistle* in an emergency.

### Crimes for failure to comply with audible-warning requirements

The bill repeals a provision that makes it a fourth degree misdemeanor for a person to fail to sound a locomotive whistle at frequent intervals when approaching (at least 1,320 feet before) and passing through a grade crossing. The bill likewise repeals a

provision that makes it a third degree misdemeanor to fail to sound a whistle in this manner if a person is physically harmed because of the failure.

The bill makes it a fourth degree misdemeanor for a person to fail to comply with the bill's horn-sounding requirement, and a third degree misdemeanor if the failure causes physical harm to any person. But, the bill establishes an affirmative defense to these crimes if a PUCO-approved alternative audible warning system was activated.

### Civil penalties for failure to comply with audible-warning requirements

The bill applies the current civil penalty of $50 to $100 for a failure to comply with current audible-warning requirements to an engineer or person who fails to comply with the bill's audible-warning requirements. Likewise, the company that employs the engineer or person remains liable in damages to a person or company injured in person or property by a failure to comply with the audible-warning requirements.

### Civil actions for horn sounding at private crossings

The bill establishes that the sounding of a locomotive horn at a private crossing or the failure to sound a locomotive horn at a private crossing is not a basis for a civil action against the railroad company that operated the locomotive, a board of county commissioners, or any local authority, or against their employees or agents.

## Telecommunications transition to Internet-protocol network

(Section 357.10)

The bill requires that PUCO use part of appropriation item 870622, Utility and Railroad Regulation, to plan for the transition, consistent with the directives and policies of the Federal Communications Commission, from the current public switched telephone network to an Internet-protocol network that will stimulate investment in the Internet-protocol network in Ohio and expand the availability of advanced telecommunications services to all Ohioans. The transition plan must include a review of statutes or rules that may prevent or delay an appropriate transition. It also must address consumer protection issues, including the availability and reliability of alternatives to basic local exchange service.

PUCO is required to report to the General Assembly by December 31, 2013, on any further action required to be taken by the General Assembly to ensure a successful and timely transition.

## Recovery of environmental remediation costs

(R.C. 4909.157)

The bill permits the PUCO to authorize a natural gas company or gas company to recover environmental remediation costs that are (1) prudently incurred before January 1, 2025, and (2) related to real property that, at the time recovery is authorized, is or was used for the provision of public utility service. Such recovery may be provided for through the establishment of a mechanism by the PUCO. The mechanism must set forth the specific terms of the recovery and cause recovery to occur through a uniform percentage applied to base distribution revenue. The bill declares that the following required rate-making determinations do not preclude recovery of these environmental remediation costs:

(1) The valuation of the utility's property used and useful in rendering the public utility service;

(2) The cost to the utility of rendering the public utility service.

If the PUCO authorizes recovery, the bill requires the company, upon the sale of the real property, to return to the company's customers the difference between the sale price of the property (minus any reasonable expenses related to the sale) and the fair market value of the property prior to remediation.

# STATE RACING COMMISSION

- Requires, instead of permits, the State Racing Commission to direct through rule that a percentage of a video lottery sales agent's commission be paid to the State Racing Commission for the benefit of breeding and racing in Ohio.
- Specifies that the percentage (not less than 9% or more than 11% of the video lottery terminal income) must be a sliding scale based upon capital expenditures necessary to build the video lottery sales agent's facility.

## Video lottery sales agent commission percentage to the Commission

(R.C. 3769.087 and 3770.21)

Unless otherwise agreed to by a video lottery sales agent and the applicable horsemen's association recognized by the State Racing Commission to represent such persons, the bill requires the State Racing Commission to direct through rule that a percentage of the video lottery sales agent's commission, as determined by the State Lottery Commission, for conducting video lottery terminal gaming on behalf of the state (currently set at 66.5%) be paid to the State Racing Commission for the benefit of breeding and racing in Ohio. This provision is permissive under current law.

The bill adds to the requirement that the percentage directed through State Racing Commission rule must be not less than 9% or more than 11% of the video lottery terminal income, that the percentage also must be a sliding scale based upon capital expenditures necessary to build the video lottery sales agent's facility. Under continuing law, video lottery terminal income means credits played, minus approved video lottery terminal promotional gaming credits, minus video lottery prize awards.[204]

---

[204] O.A.C. 3770:2-3-08.

## OHIO REAL ESTATE COMMISSION

### Brokers and salespersons appraiser education

- Exempts certain applicants for a real estate broker license, and applicants for a real estate salesperson license, from the requirement that the applicant complete classroom instruction in real estate appraisal, if the applicant holds a valid Ohio real estate appraiser license or certificate.

### Consumer guide to agency relationships

- Limits the transactions for which a real estate broker or salesperson must provide a written brokerage policy on agency to a seller or purchaser to the sale or lease of vacant land and certain sales and leases of residential units and premises.

### Brokers and salespersons appraiser education

(R.C. 4735.07, 4735.09, 4735.10, and 4735.142)

The bill exempts a licensed real estate salesperson who is a new applicant for a real estate broker license, who holds a valid Ohio real estate appraiser license or certificate, from the requirement that the person complete classroom instruction in real estate appraisal. Current law requires a licensed real estate salesperson who applied for a real estate broker license prior to August 1, 2001, to complete 30 hours of classroom instruction and a licensed real estate salesperson who applied for a real estate broker license on or after August 1, 2001, to complete 20 hours of classroom instruction in real estate appraisal, regardless of whether the applicant is an Ohio-licensed or -certified real estate appraiser. Similarly, if a person applying for a real estate salesperson license also holds a valid Ohio real estate appraiser license or certificate, the bill exempts the person from a requirement that the person complete 20 hours of classroom instruction in real estate appraisal.

### Consumer guide to agency relationships

(R.C. 4735.56)

The bill limits the transactions for which a brokerage must provide a written brokerage policy on agency. Continuing law requires the policy to be provided for the leasing of residential premises if the rental or lease agreement is for a term of more than 18 months. "Residential premises" is as defined in the Landlord/Tenant Law and includes a dwelling unit for residential use and occupancy and the structure of which it

is a part, the facilities and appurtenances in it, and the grounds, areas, and facilities for the use of tenants generally or the use of which is promised the tenant. The bill limits the requirement of provision of a brokerage policy on agency to two other situations: (1) the sale or lease of vacant land and (2) the sale of a parcel of real estate containing one to four residential units. Current law requires a brokerage to provide the policy to all prospective sellers and purchasers of real estate, **except** for the leasing of residential premises as described above and (1) the referral of a prospective purchaser or seller to another licensee, (2) transactions involving the sale, lease, or exchange of foreign real estate, or (3) transactions involving the sale of a cemetery lot or a cemetery interment right.

## 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.

- Allows a one-time *per cohort* increase of general and instructional fees that is the sum of the five-year rate of inflation plus the amount of the General Assembly-imposed tuition cap rate.

- Allows boards of trustees participating in the tuition guarantee program to request to the Chancellor an increase in the percentage charged to a cohort, if a board determines that the university's general and instructional fees have fallen significantly lower than those of other state universities.

- 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.

## Strategic completion plans

- Requires the board of trustees of each state institution of higher education to adopt, by June 30, 2014, an institution-specific strategic completion plan designed to increase the number of degrees and certificates awarded to students and to submit a copy of it to the Chancellor.

- Requires a board of trustees to update its completion plan at least once every two years and submit a copy of the update to the Chancellor.

## Certificates of value and technical credit articulation

- Authorizes the Chancellor to designate "certificates of value" for certificate programs at adult career-technical education institutions and state institutions of higher education and requires the Chancellor to develop quality standards for those designations.

- Requires the Chancellor to establish a One-Year Option credit articulation system for technical center graduates in the state to receive college credit for a technical degree.

## Northeast Ohio Medical University Partnership

- Allows the Northeast Ohio Medical University to enter into a partnership with Cleveland State University to establish an academic campus at Cleveland State University to enable students enrolled under the partnership to receive at least 50% of their training in the Cleveland area.

## Scholarship 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.
- Changes some of the criteria by which the Chancellor uses in determining Ohio Co-Op/Internship Program awards to align with policies of the Governor's Office of Workforce Transformation.
- Authorizes a state university to admit resident individuals for enrollment who have graduated from high school after 2014 without completing the Ohio Core Curriculum, if they successfully complete topics or courses lacked from the Ohio Core Curriculum either at any post-secondary institution or at a summer program offered by the state university.
- Creates the Youth STEM Commercialization and Entrepreneurship Program to develop new entrepreneurs; to create jobs through the application of science, technology, engineering, and mathematics; and to innovate new products and services.
- Exempts from liability for breach of confidentiality a nonprofit private university or college for submitting student information to the Board of Regents or any other state agency under certain specified circumstances.
- Eliminates the requirement that the Chancellor submit an annual report to the Governor and the General Assembly on (1) the status of implementation of faculty improvement programs, (2) the number and types of biobased products purchased by state institutions of higher education, as well as the amount of money spent on these products, and (3) the academic and economic impact of the Ohio Innovation Partnership.
- Eliminates 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.
- Requires the Chancellor to establish an efficiency advisory committee to generate optimal efficiency plans for campuses.
- Permits the President of Ohio University to create an advisory committee to review the comprehensive land use plans and any update of those plans prepared by the

University, and to comment on and periodically review the progress on the implementation of those plans, for the property known as "The Ridges" (formerly the Athens Mental Health Center).

- Changes references to the Ohio Cooperative Extension to OSU Extension throughout the Revised Code, and defines "OSU Extension."

### Cap on undergraduate tuition increases

(Section 363.220)

For fiscal years 2014 and 2015 (the 2013-2014 and 2014-2015 academic years), the 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 university[205] to establish an undergraduate tuition guarantee program, which affords eligible students in the same

[205] State university includes University of Akron, Bowling Green State University, Central State University, University of Cincinnati, Cleveland State University, Kent State University, Miami University,

cohort a guarantee to pay a fixed rate for general and instructional fees for four years, in exchange for the possibility of a one-time increase in those fees. The 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),[206] (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 the student complies with the requirements of the program, except that the board may increase the guaranteed amount by up to 6% above what has been charged in the previous academic year one time for the first cohort of the tuition guarantee program. If the board of trustees determines that economic conditions or other circumstances require that the increase be higher than 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. Thereafter, the board may increase the guaranteed amount by the sum of the 60-month (five-year) rate of inflation as measured by the Consumer Price Index plus the amount of the General Assembly-imposed limit on the increase of in-state, undergraduate general and instructional fees (tuition increase cap) once per each cohort. (Under the bill, that rate is the greater of $108 or 2%, for the next two fiscal years.)[207] If the General Assembly does

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.)

[206] Benchmarks are subject to approval by the Chancellor.

[207] Section 363.220.

not enact a tuition increase cap, then no limit under the guarantee will apply for a cohort that first enrolls in such an academic year.

The bill also allows the boards of trustees of a state university that participates in the tuition guarantee program to submit a request to the Chancellor for an increase of the amount it may charge a cohort higher than the amount specified under the bill, if the board determines that the general and instructional fees charged under the tuition guarantee have fallen significantly lower than those of other state universities. The request must specify the percentage by which the board would like to increase the amount of fees charged. The Chancellor must approve or disapprove any such request.

Finally, a board's rules must include consequences to the university for students unable to complete a degree program within four years. Rules must specify that if a student could not complete the degree program in four years due to a lack of available classes or space in classes provided by the university, the university will provide the necessary course or courses for completion to the student free of charge. If a student could not complete the degree program in four years because of military service or other circumstances beyond the student's control, the university must provide the necessary course or courses to the student at the student's initial cohort rate. The board 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.

## Strategic completion plans for institutions of higher education

(New R.C. 3345.81)

The bill requires the board of trustees of each state institution of higher education to adopt, by June 30, 2014, an institution-specific strategic completion plan designed to increase the number of degrees and certificates awarded to students. Each completion plan must be consistent with the mission and priorities of the specific institution and must include measureable completion goals. Additionally, the plan must align with Ohio's workforce development priorities.

The bill requires the board of trustees to submit a copy of its plan to the Chancellor. The board also must update its plan at least once every two years and, submit a copy of the update to the Chancellor.

## Certificates of value

(R.C. 3333.342)

The bill authorizes the Chancellor to issue the designation as a "certificate of value" to a certificate program at any adult career-technical education institution or state institution of higher education. A certificate program is a series of one or more non-degree courses that focus on a particular area specifically designed for employment in that area. Under the 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.

### One-Year Option credit articulation system

(Section 363.120.)

The bill requires the Chancellor to establish a One-Year Option credit articulation system in which graduates of Ohio technical centers who complete a 900-hour program of study and obtain an industry-recognized credential approved by the Chancellor receive 30 college technical credit hours toward a technical degree upon enrollment in an institution of higher education. The system must be established by June 30, 2014.

The Chancellor must also report to the General Assembly, by that date, recommendations for a process to award proportional credit toward a technical degree for students who complete a program of study between 600 and 899 hours and obtain an industry-recognized credential approved by the Chancellor.

### Northeast Ohio Medical University Partnership

(R.C. 3350.15)

The 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 University, 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.[208]

---

[208] 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.)

## 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 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.

### 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 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 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 off 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 plans[209] 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.

### 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 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

---

[209] 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 loses 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.

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).

## Ohio/Co-Op Internship Program

(R.C. 3333.73)

The bill changes some of the criteria for the Chancellor to consider in determining which submitted proposals will receive Ohio Co-Op/Internship Awards to align with policies of the Governor's Office of Workforce Transformation. First, under the bill, the Chancellor must consider the extent to which a proposal supports the workforce policies of the Governor's Office of Workforce Transformation to meet the workforce needs of the state and to provide a student participating in the program with the skills needed for workplace success.

Under current law the Chancellor must consider the extent to which a proposal is aligned with the Chancellor's report issued in 2007 on higher education and the state economy.[210] The bill removes this requirement.

Finally, the bill requires the Chancellor to consider the extent to which a proposal is responsive to the needs of employers and aligns with the skills identified by employers as necessary to fill high-demand job openings, particularly job openings in targeted industry sectors identified by the Governor's Office of Workforce Transformation.

### Background

The Ohio Co-Op Internship Program was created "to promote and encourage cooperative education programs and internship programs at Ohio institutions of higher education . . . in order to support the growth of Ohio's businesses by providing businesses with Ohio's most talented students and providing Ohio graduates with job opportunities with Ohio's growing companies."[211] The program must recruit both Ohio residents who have remained in the state and those who have left Ohio to attend out-of-state institutions. It must either, or both, (1) "support the creation and maintenance of high quality academic programs that utilize an intensive cooperative education or internship experience for students" or (2) "assign a number of scholarships to

[210] Section 4 of Sub. H.B. 2 of the 127th General Assembly.

[211] R.C. 3333.72 (first paragraph), not in the bill.

institutions to recruit Ohio residents as students in a high quality academic program." If scholarships are included in an award to an institution of higher education, they are to be awarded as grants to the institutions and then reflected on the students' tuition bills.[212]

## 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 described above.

---

[212] R.C. 3333.72 (second paragraph).

## 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 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 or the other state agency.

## Annual reports by the Chancellor

(R.C. 3333.041)

Currently, the Chancellor 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.

## Efficiency advisory committee

(Section 363.550)

The bill requires the Chancellor to establish an efficiency advisory committee to generate optimal efficiency plans for college and university campuses, identify shared services opportunities, and share best practices. The committee must also explore methods for reducing the costs for students for textbooks and other education resource materials. The committee must meet at the call of the Chancellor or the Chancellor's designee, which must be at least quarterly. Each state institution of higher education must designate an employee to serve as its efficiency officer responsible for the evaluation and improvement of operational efficiencies on campus. Each efficiency officer, then, must serve on the efficiency advisory committee.

By December 31 of each year, the committee must provide a report to the Office of Budget and Management, the Governor, and the General Assembly compiling the operational efficiency plans for all institutions of higher education and benchmarking efficiency gains realized over the preceding year and progress in implementing the prior year's efficiency plan. The report must also be made available to the public on the Board of Regents' web site.

## Ohio University advisory committee

(R.C. 3337.16)

The bill authorizes the President of Ohio University to create an advisory committee to review the comprehensive land use plans and any updates of those plans prepared by the University, and to comment on and periodically review the progress on

the implementation of those plans, for the property known as "The Ridges" (formerly the Athens Mental Health Center).[213]

If the committee is created, it must consist of the following members:

(1) The President of Ohio University or the president's designee, who must serve as chairperson of the committee;

(2) The mayor of the City of Athens or the mayor's designee;

(3) One Athens County Commissioner appointed by the President of the University;

(4) One to three individuals appointed by the President of the University who reside in Athens county and have special knowledge and experience in land use planning, preservation, or economic development.

The bill provides that vacancies on the committee must be filled in the same manner as the original appointments.

### Repeal of provision for charter university proposal

(R.C. 3345.81 (repealed))

The bill repeals a provision that required the Chancellor, by August 15, 2011, to develop a plan for designating public institutions of higher education as charter universities for consideration by the General Assembly. The Chancellor issued the report required by this provision.

### OSU Extension

(R.C. 1.611, 124.57, 307.07, 903.11, 905.06, 1511.02, 1511.022, 1711.07, 3335.35, 3335.36, 3335.37, 3335.38, 3345.05, 3717.08, 4123.32, and 5705.19)

The 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."

---

[213] This property was conveyed to the University by the state in 1988. The conveyance was authorized in Sub. H.B. 576 of the 117th General Assembly.

# DEPARTMENT OF REHABILITATION AND CORRECTION

## Office of Enterprise Development Advisory Board

- Creates the Office of Enterprise Development Advisory Board to advise and assist the Department of Rehabilitation and Correction (DRC) in implementing the DRC's job training and employment program.
- Eliminates the Advisory Council of Directors for Prison Labor that currently provides some services that are similar to those that will be provided by the Office of Enterprise Development Advisory Board.

## DRC study

- Requires the DRC to convene a committee to study assaults and other violence within state correctional institutions.

## 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 Department of Rehabilitation and Correction (DRC) with the creation of training programs and jobs for inmates and releasees through partnerships with private sector businesses. The 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.

## DRC study

(Section 701.40)

The bill requires the DRC to convene a committee to study assaults and other violence within state correctional institutions. The committee is required to meet, discuss, and share all relevant information and to publish a report that includes, but is not limited to, all of the following:

(1) Staffing rates per state correctional institution, including vacancy rates;

(2) Recommendation of acceptable staffing levels per state correctional institution, including vacancy rates;

(3) Current relief factor ratios per state correctional institution, including the methodology used to calculate the relief factor;

(4) Recommendations of acceptable relief factor ratios per state correctional institution;

(5) Correctional officer to inmate ratio per state correctional institution, excluding vacancy rates;

(6) Numbers and details of incidents of violence per state correctional institution;

(7) A definition of what the DRC includes in the assault and other violence statistics;

(8) The number of days off from employment due to violence in the state correctional institution;

(9) Recommendations to reduce violence in state correctional institutions.

The committee is required to submit a copy of the committee's report to the Governor, Speaker and Minority Leader of the House of Representatives, and President and Minority Leader of the Senate no later than December 31, 2013.

- Provides that state-issued payment cards used by the General Assembly or any legislative agency of the state are subject to a $10,000 single-item purchase limit and the monthly spending limit imposed by the Office of Budget and Management on all other payment cardholders.
- States that payment on a card used by the General Assembly or a legislative agency is not required earlier than 30 days after the date of a transaction.

## Use of state-issued payment cards

(R.C. 103.83)

The bill subjects state-issued payment cards used by the General Assembly or any legislative agency of the state to a single-item purchase limit of $10,000. It also provides that such cards are subject to the monthly spending limit imposed on all other payment cardholders by the Office of Budget and Management. Payment on a card used by the General Assembly or a legislative agency cannot be required earlier than 30 days after the date of a transaction.

# SECRETARY OF STATE

## Gifts to political entities

- Expands the permitted recipients and uses of a gift, which is exempt from the limits on campaign contributions and expenditures, that any person may give to a political entity for the purpose of funding an office facility.
- Allows a legislative campaign fund to receive such a gift, in addition to a state or county political party, as under continuing law.
- Eliminates the requirement that such a gift be used for an office facility that is not used solely for the purpose of directly influencing the election of any individual candidate in any particular election for any office.
- Exempts a gift made by a corporation for these purposes from the general prohibition against a corporation using its money in support of or opposition to a candidate.
- Permits such a gift to be used for the lease of an office facility; for furniture, fixtures, equipment, and supplies to be used in an office facility; and for the operating costs, maintenance, and repair of an office facility, in addition to the construction, renovation, or purchase of an office facility, as under continuing law.
- Applies all of the continuing administrative requirements for office facility gifts to legislative campaign funds.
- Modifies those administrative requirements to include references to the expanded permitted uses of an office facility gift.

## Source of political publication

- Eliminates the requirement that a candidate or legislative campaign fund include the residence or business address of the candidate or of the chairperson, treasurer, or secretary of the legislative campaign fund in its disclaimer on a political publication.
- Requires the disclaimer for a candidate, legislative campaign fund, or campaign committee only to include the words "paid for by" followed by the name of the entity.

## Miscellaneous Federal Grants Fund

- Creates the Miscellaneous Federal Grants Fund to be credited with grants the Secretary of State receives from federal sources for which continuing law does not designate a fund.
- Requires the Secretary of State to use the moneys credited to the fund for the purposes and activities required by the federal grant agreements.
- Specifies that all investment earnings of the fund are to be credited to the fund.

## Other provisions

- Eliminates the forms for financing statements and financing statement amendments prescribed in current law and instead requires a filing office to accept forms promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws.
- Eliminates the requirement that the Secretary of State establish a minimum number of direct recording electronic voting machines for each county that chooses to use those machines as the primary voting system in the county.
- Eliminates provisions of the Campaign Finance Law that were permanently enjoined due to their unconstitutionality, which govern the expenditure of personal funds by candidates and permit the opponents of personal funds candidates to accept contributions in excess of the contribution limits.

## Gifts to political entities for office facilities

(R.C. 3517.01, 3517.101, 3517.992, and 3599.03)

### General provisions

The bill allows a legislative campaign fund (LCF) to accept a gift for an office facility from any person, including a corporation, but not a public utility. (An LCF is a fund that is established as an auxiliary of a state political party and is associated with one of the houses of the General Assembly.) Currently, only a state or county political party may accept such a gift. Under continuing law, office facility gifts are exempt from the limits on campaign contributions and expenditures.

Further, the bill permits an eligible entity to use office facility gift for any of the following purposes:

- Leasing an office facility;
- Furniture and fixtures to be installed in an office facility;
- Equipment and supplies to be used in an office facility;
- The operating costs, maintenance, and repair of an office facility.

Under continuing law, such a gift may be used for the construction, renovation, or purchase of an office facility. The gift must be specifically designated and used to defray the permitted costs. A monetary gift from a corporation engaged in business in Ohio must not exceed 10% of the costs incurred for office facility purposes.

The bill eliminates the requirement that an office facility gift be used for a facility that is not used solely for the purpose of directly influencing the election of any individual candidate in any particular election for any office. Consequently, under the bill, a corporation's office facility gift is exempt from the general prohibition against a corporation using its money in support of or opposition to a candidate.

### Administrative requirements

The bill modifies the administrative requirements concerning office facility gifts to include references to the expanded permitted uses of such a gift. The bill also specifies that all of those requirements apply to LCFs.

Under continuing law, an entity that receives an office facility gift must file an annual statement containing certain details with the Secretary of State. The entity must appoint a treasurer for that purpose.

An entity that receives monetary gifts for an office facility also must deposit those funds in a separate account. When an entity sells an office facility or its furniture, fixtures, equipment, or supplies, the entity must deposit in the account an amount that is the same percentage of the proceeds of the sale as the monetary gifts were of the total cost of those goods or services. The money in the account may be used only for permitted office facility purposes.

The bill applies the continuing law penalties to an LCF that commits certain violations concerning an office facility gift. An entity that fails to file a required statement concerning an office facility gift must be fined not more than $100 for each day of violation. And, an entity that knowingly fails to report, or knowingly misrepresents, an office facility gift must be fined not more than $10,000. Finally, an entity that expends an office facility gift for a purpose other than the permitted

purposes listed above must be fined not more than twice the amount of the improper expenditure.

### Identification of source of political publication

(R.C. 3517.20)

The bill eliminates some of the information that a candidate or a legislative campaign fund must include in its disclaimer on a political publication. Under the bill, such an entity must include only the words "paid for by" followed by the name of the entity. Current law requires a candidate also to include the candidate's residence or business address and requires a legislative campaign fund also to include the residence or business address of the fund's chairperson, treasurer, or secretary.

The bill also clarifies that a campaign committee's disclaimer must include only the words "paid for by" followed by the name of the committee. Under continuing law, a campaign committee must include only the committee's name in its political publications.

### Miscellaneous Federal Grants Fund

(R.C. 111.28)

The 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.

### Forms for UCC filing statements and amendments

(R.C. 1309.521)

Under continuing law, to claim an interest in collateral for a loan under the Uniform Commercial Code (UCC), generally a person must file a financing statement with the Secretary of State's office or the appropriate county recorder's office (referred to as the filing office). The bill eliminates the forms for financing statements and amendments to financing statements prescribed in current law that a filing office cannot refuse to accept unless an exception applies. Instead, under the bill, a filing office cannot refuse to accept a written record in the form and format set forth in the official text of

the 2010 amendments to Article 9 of the UCC promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws for financing statements or, for amendments, as set forth as form UCC3 and form UCC3Ad in the final official text of the 2010 amendments to Article 9 of the UCC promulgated by those entities. The most significant difference between these forms and the forms prescribed under current law is that the UCC forms have a place to indicate the filer's electronic mail address. The forms also are organized slightly differently.

### Minimum number of direct recording electronic voting machines

(R.C. 3506.22 (repealed); Section 514.03 of H.B. 66 of the 126th General Assembly (repealed))

The bill eliminates the requirement that the Secretary of State establish a minimum number of direct recording electronic voting machines for each county that chooses to use those machines as the primary voting system in the county.

Under current law, every eight years, the Secretary of State must establish that minimum number based on a ratio of 175 registered electors to each machine. For the purposes of the formula, the number of registered electors in the county is the higher of (1) the total number of registered voters in the county as of the October deadline for voter registration for the last presidential election, or (2) the average of that total for the last two presidential elections.

### Repeal of permanently enjoined provisions governing personal funds in campaigns

(R.C. 3517.10, 3517.102, 3517.103, 3517.153, 3517.154, 3517.155, and 3517.992; R.C. 3517.1010 (repealed))

The bill eliminates provisions of the Campaign Finance Law that (1) regulate the ability of candidates and their family members to expend their personal funds for campaign purposes and (2) allow the opponents of personal funds candidates to accept contributions in excess of the contribution limits. These laws currently are not enforced because they have been ruled unconstitutional.[214]

Under the existing statute, when a candidate for statewide office or for the office of member of the General Assembly has received or expended, or expects to expend, more than a specified amount of personal funds during a primary or general election period, the candidate must file a personal funds notice. "Personal funds" includes

[214] *Buckley v. Valeo*, 424 U.S. 1 (1976); *Davis v. Federal Election Commission*, 554 U.S. 724 (2008); and *O'Brien v. Brunner*, Case No. 2:09-CV-733 (S.D. Ohio 2009).

contributions by certain members of the candidate's family. When a candidate has filed a personal funds notice, the candidate's opponent may file a declaration of no limits, and the contribution limits no longer apply to the opponent.

Current law also details procedures for an opponent to dispose of excess funds after the election period has ended and for a personal funds candidate to dispose of excess personal funds in order to avoid being classified as a personal funds candidate in future election periods.

The bill repeals these provisions, all of which are currently unenforceable as they are the subject of a permanent injunction. Under continuing law, a candidate who spends personal funds for campaign purposes generally must deposit the funds in the candidate's campaign fund before expending them. And, while the bill removes family contributions from the definition of "personal funds," the standard limits and reporting requirements continue to apply to contributions by a candidate's family.

# DEPARTMENT OF TAXATION

## Income tax

- Creates a new income tax deduction for individuals receiving business income as a sole proprietor or through a pass-through entity whereby 50% of such income is deductible, with the deduction limited to $375,000 (or $187,500 for each spouse if spouses file separately), 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 and the Commissioned Corps of the Public Health Service.
- 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 and use taxes

- 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 new Ohio use tax collections by remote sellers for deposit in the Income Tax Reduction Fund (in excess of refunds and deposits to the Remote Seller Administration Fund).

- Specifies that Ohio sales tax does not apply to sales that are not within the taxing power of the state according to federal law, the U.S. Constitution, or the Ohio Constitution.

- Authorizes a sales and use tax exemption for goods and services used in aerospace vehicle research and development.

- Allows the Tax Credit Authority to enter into a single agreement authorizing a sales and use tax exemption for computer data center equipment purchased by multiple businesses operating at a single data center.

- Authorizes a business to join an existing computer data center equipment exemption agreement between the Tax Credit Authority and another business.

- Allows a business to receive the computer data center equipment exemption if the business leases a facility to a person that qualifies as a "computer data center business" under current law.

- Provides that, in order to qualify for the computer data center equipment exemption, a business or group of businesses need only maintain an annual payroll at the data center of $1.5 million, instead of the $5 million required in current law.

- Authorizes a sales and use tax exemption for purchases made by a nonprofit organization that leases a professional or minor league sports facility from Lucas County and that remits its net revenue from operating the facility to the county.

## Other excise taxes

- Extends through June 30, 2015, the extra 2¢ per-gallon earmark of wine tax revenue that is credited to the Ohio Grape Industries Fund.

- 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.

- Increases the motor fuel tax reimbursement for school districts and educational service centers from 6¢ per gallon to 10¢ per gallon.

- 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.

## 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 CAT exclusion for "qualified distribution center" (QDC) receipts, and instead requires the operator of such a QDC to pay the total supplier tax liability.

- Authorizes the Tax Commissioner to request from a distribution center that improperly qualified as QDC a list of all suppliers of the distribution center along with the corresponding costs of property that is used to determine the improper exclusion.

- Beginning July 1, 2014, replaces the CAT as it applies to receipts from the sale or exchange of motor fuel with a separate tax, the motor fuel receipts tax (MFRT), that is modeled on the CAT and that applies solely to such receipts.

- Provides that the MFRT is measured by the gross receipts that a supplier receives from the first transaction in which motor fuel is sold for delivery to a location in Ohio.

- Defines a supplier as a person that imports motor fuel for sale or distribution by the person within the state or that acquires motor fuel from a terminal or refinery rack and distributes that fuel within the state.

- Imposes a tax rate equal to 0.65% on a supplier's gross receipts and, similar to the CAT, requires suppliers to pay the tax on a quarterly basis.

- Requires suppliers to obtain a license from the Tax Commissioner and to renew the license annually.

- Prescribes several procedures and requirements for the MFRT that are similar to the CAT, including provisions related to assessments, refunds, penalties, joint liability, and the electronic filing of returns.

- Specifies that MFRT revenue, and CAT liability accruing before July 1, 2014, arising from the sale of motor fuel used on public highways may be credited first to the GRF to pay debt service on state-issued bonds whose proceeds the Ohio Public Works Commission (OPWC) awarded to fund local highway-related infrastructure projects, and the balance to the Highway Operating Fund.

- Excludes from the gross premiums of a mutual or stock insurance company for the purposes of the franchise tax workers' compensation insurance premium deposits exceeding the cost of the insurance if the excess is returned to policyholders.

- Creates a temporary committee of General Assembly members, the Tax Commissioner or the Commissioner's designee, and the Director of Budget and Management or the Director's designee to review and recommend reforms and improvements to the 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.

- Authorizes school districts to levy a property tax exclusively for school safety and security purposes.

- Creates a tax exemption for real property used primarily for meetings and administration of long-standing fraternal organizations that provide financial support for charitable purposes.

- Extends by 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.

- Limits Hamilton County from extending a partial property or manufactured home tax exemption, authorized by virtue of the county's approval of a 1996 "piggyback" sales and use tax, to a homestead or manufactured home that is tax-delinquent or subject to pending foreclosure proceedings.

- Increases the maximum amount of income that may be generated by a veterans' organization's real property before the property becomes disqualified from property tax exemption, from $10,000 to $36,000, and specifies that only rental income counts towards the maximum income limit.

- Authorizes the transfer of a tax-delinquent cemetery to a county, municipal corporation, or a township if foreclosed through an expedited nonjudicial foreclosure procedure currently allowed for disposing of abandoned lands.

- Prohibits the sale by public auction of any tax-delinquent cemeteries foreclosed through the expedited nonjudicial foreclosure procedure.

- Specifies that a political subdivision, school district, or county land reutilization corporation that obtains tax-forfeited land takes title to the land free and clear of all taxes, assessments, charges, penalties, interest, and costs.

### Local Government Fund and other revenue distributions

- Clarifies the method of calculating the tax revenue credited to the General Revenue Fund for the purposes of determining Local Government Fund and Public Library Fund allocations.

- Requires that, for fiscal year 2014 and thereafter, distributions to each county from the Local Government Fund must be at least $750,000 or the amount distributed to the county in FY 2013, whichever is less.

- Authorizes the Director of Budget and Management (OBM) to use revenue from the new motor fuel receipts-based tax or from the CAT revenue derived from receipts from the sale of motor fuel to compensate the GRF for GRF-sourced debt service on state-issued bonds whose proceeds the OPWC awarded to fund local infrastructure projects that are highway-related.

- Requires the 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.

- Allows CAT taxpayers to claim a historic rehabilitation tax credit of up to $5 million against the CAT.

- Permits corporations to claim the credit against the CAT for calendar year 2013 or 2014 so long as the credit could have been claimed against the corporation franchise tax for 2014 or 2015 under the law prior to H.B. 510 of the 129th General Assembly.

- Eliminates the requirement that the owner of a historic building who has entered into a pass-through agreement with a qualified lessee for purpose of the federal rehabilitation tax credit must attribute qualified rehabilitation expenditures to the qualified lessee.

- Extends the date by which a county and a business may enter into an agreement under which the business agrees to construct an "impact facility" and the county agrees to remit to the business up to 75% of the revenue from certain county sales taxes collected on retail sales made at the facility.

- Modifies two of the criteria a facility must meet to qualify as an "impact facility."

- Modifies the existing relocation prohibition to prohibit any relocation of full-time equivalent positions or any tangible personal property to the impact facility from another Ohio location.

- Allows credit eligible investments to be made in low-income community businesses that derive 15% or more of their annual revenue from renting or selling real estate.

- Eliminates the requirement that a taxpayer receive a federal New Markets Tax Credit in order to qualify for the state New Markets Tax Credit.

- 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 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."
- Specifies that the "first" 2% of motor fuel tax revenue generated each month is credited to the Highway Operating Fund only after enough revenue is transferred to the Tax Refund Fund to cover motor fuel tax refunds.
- Changes the date for crediting the first 2% of motor fuel tax revenue to the Highway Operating Fund from the first to the last day of each month.

## Income tax

The bill creates a new deduction for business income, bars the same person from claiming more than one personal income tax 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.

### Business income deduction

(R.C. 5747.01(A)(32), 5747.22, and 5748.01; Section 803.80)

The bill creates a new state income tax deduction for individuals receiving business income as a sole proprietor or as an owner of a pass-through entity. The deduction equals 50% of business income included in a taxpayer's federal adjusted gross income and not otherwise deducted in computing Ohio taxable income, and to the extent apportioned to Ohio. The amount of the deduction is limited to $375,000 per taxpayer per year, except for spouses who file separately and who each report business income; in that case, each spouse's separate deduction is limited to $187,500. The deduction may first be applied to taxable years that begin in 2013. The deduction is not available to estates or trusts subject to the income tax, and is not available to pass-through entities as such.

The deduction does not affect the school district income tax base. Any taxpayer making the deduction for state income tax purposes must add the deducted amount back into the taxpayer's school district taxable income if the school district's income tax base is based on state taxable income.

Under ongoing law, "business income" is income from the regular conduct of a trade or business, including gains or losses, and includes gains or losses from liquidating a business or from selling goodwill.

### 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 2014, only one taxpayer – the taxpayer who may claim an individual as a dependent – may receive the personal exemption and exemption credit for that individual.

### Composite returns of pass-through entities

(R.C. 5747.08(D); Section 803.80)

The 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 (NOAA) and to retirees of the Commissioned Corps of the Public Health Service (PHS) by permitting retirees of all the "uniformed services" to claim the deduction. Surviving spouses and former spouses covered by a survivor benefit plan of such retirees also qualify for the deduction.

In the bill, "uniformed services" has the same meaning as in federal law: the Armed Forces, NOAA Commissioned Corps, and PHS Commissioned Corps. Under federal law, "Armed Forces" means the Army, Navy, Air Force, Marine Corps, and Coast Guard.

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 and use taxes

### "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.[215] 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.

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 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."

---

[215] *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).

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 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 of 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 Ohio use tax collections by out-of-state sellers that currently are not legally

required to collect the tax (i.e., "remote sellers"). The treasurer of state must transfer this amount to the Fund before July 31 each year.

### Use tax collections by remote sellers for Income Tax Reduction Fund

(R.C. 5741.03)

The bill earmarks new Ohio use tax collections by remote sellers (except for the portion deposited to the Remote Seller Administration Fund or refunded to remote sellers) for deposit in the Income Tax Reduction Fund. The deposit is required semiannually by January 1 and by July 1 each year. The "new" remote seller use tax collections are the collections remitted by remote sellers in excess of such remittances during fiscal year 2013 by remote sellers that voluntarily registered to collect use taxes under continuing law. 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 and reserves are made.

Under current law, all use tax collections are deposited to the state General Revenue Fund, and a portion of such revenue is earmarked for the Local Government Fund and Public Library 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. (See R.C. 5741.17.)

### Sales tax exemption for sales not taxable under federal law or the Ohio Constitution

(R.C. 5739.02(B)(10))

The 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.

### Sales and use tax exemption for items used in aerospace vehicle research

(R.C. 5739.02(B)(49) and Section 803.190)

The bill authorizes a sales and use tax exemption for goods and services used in aerospace vehicle research and development. Under the bill, an "aerospace vehicle" is any manned and unmanned airplane, helicopter, missile, rocket, space vehicle, or similar aviation device. To qualify for the exemption, the purchased services or items must be used in the research or development of such vehicles, human performance equipment and technology associated with operating such vehicles, or the parts and components of such vehicles. Exempt items may include, among other items, materials, parts, equipment, software, tools, and fuel.

### Computer data center equipment sales and use tax exemption

(R.C. 122.175)

Continuing law authorizes a sales and use tax exemption for purchases of certain personal property that will be used at an eligible computer data center. Under current law, a business qualifies for the exemption if the business agrees (1) to invest at least $100 million in the computer data center or in equipment for use at the center and (2) to maintain an annual payroll of at least $5 million at the center. To receive the exemption, the business must submit an application and enter into an agreement with the Tax Credit Authority authorizing the exemption.

#### Eligibility for the exemption

The bill makes several changes to the requirements for receiving the computer data center equipment exemption. First, the bill allows multiple businesses that operate

at the same computer data center to submit a single exemption application. For the purposes of meeting the capital investment and annual payroll requirements, the total investment and payroll of all of the participating businesses are combined.

Second, the bill lowers the annual payroll requirement, from $5 million to $1.5 million, and provides that the recipient or recipients of the exemption are not required to meet this lower threshold until the third year of the exemption agreement.

Third, the bill allows a person to receive the exemption if the person leases a computer data center to other businesses that operate at the center. Under current law, a business qualifies for the exemption only if the business itself provides "electronic information services," which involves providing access to computer equipment for the purpose of acquiring, examining, or placing data.

#### Exemption application

Under current law, the Tax Credit Authority may enter into an agreement authorizing a sales and use tax exemption only if it determines all of the following: (1) the business' capital investment in the proposed computer data center will increase payroll and the amount of Ohio income taxes that will be withheld from the compensation paid to employees of the center, (2) the business has the ability to complete the proposed capital investment, (3) the business intends to and has the ability to maintain operations at the eligible computer data center for the term of the agreement, and (4) receiving the exemption is a major factor in the business' decision to begin, continue, or complete the capital investment.

The bill specifies that, if multiple businesses apply to enter into a single exemption agreement, only the business that submits the application is required to meet the requirements described in (2), (3), and (4) above. The requirement described in (1) applies to the combined capital investment made by all of the businesses.

#### Agreement with Tax Credit Authority

Continuing law requires that an agreement for a computer data center equipment sales and use tax exemption describe the proposed data center project, state the percentage of the approved exemption and length of time the exemption will apply, and include other provisions related to annual reporting, a limit on employment relocations, and a requirement that the business waive any limitations periods applicable to tax assessments payable if the business does not comply with the agreement. The bill specifies that, if multiple businesses enter into a single exemption agreement, these requirements must apply to all businesses subject to the agreement.

Under current law, an exemption agreement must also require that the business maintain operations at the eligible computer data center for the term of the agreement. The bill provides that, if an agreement covers multiple businesses, this requirement applies only to the business that submitted the exemption application. In addition, the bill modifies the requirement to allow such a business to cease operations at the computer data center for up to 18 months. In such a case, the exemption agreement is not void, but no business may claim the sales and use tax exemption allowed under the agreement during the period the applicant business ceased operations.

#### Addition of businesses to existing agreement

The bill allows a business to be made a party to an existing exemption agreement between the Tax Credit Authority and another business. In such a case, the business is entitled to the exemption authorized in the existing agreement and bound by all requirements specified in law and the agreement.

#### Agreement compliance

Under continuing law, the Tax Credit Authority may terminate an agreement if a business does not meet the capital investment and annual payroll requirements specified in the agreement. In such instances, the Authority may require the business to pay all or a portion of the sales and use taxes that would have been owed on equipment exempted under the agreement.

The bill provides that, if a terminated agreement covered multiple businesses, the Tax Credit Authority may require each of the businesses to pay a portion of the taxes that would have been owed. When determining the amount of unpaid taxes to charge each business, the Authority may consider the level of each business' responsibility for the noncompliance.

#### Direct payment permit

The bill specifies that, if multiple businesses enter into a single exemption agreement, the Tax Commissioner must provide direct payment permits to each of the businesses. Under continuing law, the Tax Commissioner must grant a direct payment permit to a business that enters into an agreement for a computer data center equipment sales or use tax exemption. This permit allows the business to pay directly to the Department of Taxation any sales and use taxes due on computer data center equipment (if the business has a partial exemption) or other nonexempt goods or services purchased for use at an eligible computer data center.

### Sales and use tax exemption for sales to a nonprofit sports facility operator

(R.C. 5739.02(B)(52); Section 803.230)

The bill authorizes a sales and use tax exemption for purchases made by a nonprofit corporation that satisfies all of the following criteria:

(1) The nonprofit corporation leases a sports facility used by a professional athletic team or minor league affiliate from an "eligible county." An "eligible county" is a county that had a population of between 400,000 and 800,000 according to the 2000 federal census and that borders another state. (Lucas County is the only county that satisfies these criteria.)

(2) The lease requires that substantially all of the net revenue from the nonprofit corporation's operations at the facility be paid to the county at least once per year.

(3) Upon dissolution of the corporation, all of the corporation's net assets are distributable to the county's board of commissioners.

The exemption applies both to sales that occurred before the provision's effective date and to sales that occur on or after that effective date. The bill does not expressly state whether a refund must be issued for prior sales or how that refund would be administered.

## Other excise taxes

### Wine tax diversion to Ohio Grape Industries Fund

(R.C. 4301.43)

The 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 on January 1, 2014.

### Motor fuel tax refund for school districts

(R.C. 5735.142; Section 803.270)

The bill increases the motor fuel tax reimbursement for city, local, exempted village, and joint vocational school districts and educational service centers for motor fuel purchased and used for school district and service center operations from 6¢ per gallon to 10¢ per gallon. Under continuing law, the overall motor fuel tax rate is 28¢ per gallon.

### 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.

## Commercial activity tax (CAT)

### 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 "ineligible operator's supplier tax liability," which equals the CAT that would have been owed by the suppliers of the distribution center had the distribution center not been improperly issued a QDC certificate. The penalty is substantially similar to the penalty imposed under the law prior to S.B. 28 of the 130th General Assembly. The difference is that, prior to S.B. 28, the law required ineligible QDC operators to pay all tax, interest, and penalties on the improperly excluded receipts of the QDC's suppliers. Under the bill, the ineligible operator's supplier tax liability explicitly excludes any interest or penalties on the amount that would have been owed by the suppliers.

The 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 ineligible operator's supplier tax liability. The operator of such a distribution center is required to provide such information within 60 days of the Commissioner's request.

#### Existing QDC exclusion

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 "situsing" 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 sitused outside Ohio, using existing CAT situsing 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.

### Motor fuel receipts tax

(R.C. 113.061, 715.013, 5703.052, 5703.053, 5703.19, 5703.50, 5703.70, 5736.01 to 5736.14, 5736.99, 5751.01, 5751.02, 5751.051, and 5751.20; Sections 395.10 and 803.120)

Beginning July 1, 2014, the bill replaces the CAT as it applies to receipts from the sale or exchange of motor fuel with a separate tax – the "motor fuel receipts tax" (MFRT). The MFRT is modeled on the CAT, but is based solely on receipts from one sale or exchange of motor fuel.

Under current law, the CAT applies to receipts from most transactions involving the sale or exchange of motor fuel. Certain receipts from exchanges between licensed motor fuel dealers are excluded from the CAT base; in addition, a taxpayer may deduct state and federal excise taxes paid on motor fuel.

Unlike the CAT, which may apply to multiple transactions involving the same motor fuel, the MFRT is designed to apply to only one transaction in the motor fuel distribution chain – the first transaction in which motor fuel is sold for delivery to a location in the state. Because the MFRT applies to fewer transactions, the rate of the MFRT, 0.65% of a taxpayer's receipts, is higher than the current CAT rate of 0.26%.

### Taxpayers

The MFRT is imposed on "suppliers." A supplier is any person that:

(1) Sells, transfers, or otherwise distributes motor fuel from a terminal or refinery "rack" to a point outside of a "distribution system," if the person distributes that motor fuel within the state;

(2) Imports motor fuel for sale, transfer, or other distribution by the person to a point outside of a distribution system in the state.

A "rack" is a mechanism that transfers motor fuel from a refinery, terminal, or marine vessel into a truck, supply tank, railroad car, or other point outside of a distribution system. A "distribution system" is a bulk transfer or terminal system that consists of refineries, terminals, marine vessels that transport motor fuel to a refinery or terminal, and pipelines; motor fuel that is not in any of those locations is outside of a distribution system.

### Tax base

The MFRT is measured by the gross receipts that a supplier receives from the first transaction in which motor fuel is sold for delivery to a location in Ohio. As with the CAT, "gross receipts" generally includes all amounts received from the transaction, without deduction for the cost of the goods sold or the supplier's expenses.

The bill excludes four specific items from the MFRT base, which are also excluded from the CAT base:

(1) Receipts from the sale of motor fuel exported to another state;

(2) An amount equal to the state and federal excise taxes paid by a supplier on any motor fuel that contributed to the supplier's gross receipts;

(3) Bad debts on the basis of which the supplier paid the MFRT in a previous tax period;

(4) Receipts from the sale of an account receivable, to the extent that the gross receipts from the transaction that gave rise to the account receivable are already included in the supplier's gross receipts.

### Tax rate

The MFRT rate equals 0.65% of a supplier's gross receipts. The rate is higher than the CAT rate of 0.26%; however, the structure of the MFRT is designed to require the taxation of motor fuel only once as it is distributed throughout the state, whereas the CAT may apply to multiple transactions occurring in the state. Consequently, the higher rate is expected to apply to a lower amount of gross receipts.

### Allocation of tax revenue

The bill segregates MFRT revenue attributable to sales of motor fuel used for propelling vehicles on public highways and waterways from other gross receipts and requires the Director of Budget and Management to credit the revenue attributable to those receipts to a separate fund. In general, receipts in that fund – the Motor Fuel Receipts Tax Public Highways Fund – must be used solely to maintain the state highway system, fund traffic law enforcement, and cover the costs of hospitalization of indigent persons injured in motor vehicle accidents on public highways.

Under the bill, all revenue from the MFRT is initially deposited in the Motor Fuel Receipts Tax Fund. On or before the last date of March, June, September, and December of each year, the Director of Budget and Management, after deducting an amount from the Motor Fuel Receipts Tax Fund to cover the Department's administrative costs and refunds of tax overpayments, must transfer an amount to the Motor Fuel Receipts Tax Public Highways Fund that is equal in proportion to the proportion of total MFRT revenue that is attributable to motor fuel used for propelling vehicles on public highways and waterways. Any revenue remaining after that transfer is credited to the General Revenue Fund.

#### Allocation of motor-fuel related CAT revenue

On December 7, 2012, the Ohio Supreme Court held that spending motor fuel-related CAT revenue on nonhighway purposes violates the constitutional provision prohibiting money derived from excises relating to motor vehicle fuel from being spent on nonhighway purposes (Ohio Constitution, Article XII, Section 5a).[216] Under prior

[216] *Beaver Excavating Co. v. Testa*, 134 Ohio St.3d 565 (2012).

law, all revenue from the CAT was credited to the GRF and to two other funds to provide tangible personal property tax replacement payments to some local governments and school districts. The Court enjoined CAT motor fuel revenue from being spent for those purposes after December 7, 2012.

To address the disposition of motor fuel-related CAT taxes imposed since the Supreme Court's decision, the General Assembly enacted H.B. 51 of the 130th General Assembly. That act requires that Department of Taxation to determine the amount of such taxes that were remitted between December 7, 2012, the date of the Court's decision, and June 30, 2013. The Director of OBM must transfer the certified amount from the GRF to the Commercial Activity Tax Motor Fuel Receipts Fund, which the act creates. After June 30, 2013, the act provides for quarterly transfers of motor fuel-related CAT revenue to the Commercial Activity Tax Motor Fuel Receipts Fund.

The bill requires the continued transfer of motor fuel-related CAT revenue from tax periods ending before July 1, 2014, to be transferred to the Commercial Activity Tax Motor Fuel Receipts Fund. Thereafter, receipts from the MFRT are distributed in accordance with the Supreme Court's decision as provided above.

#### Use of tax revenue for Ohio Public Works Commission bond payments

Under the bill, tax revenue allocated to either the Commercial Activity Tax Motor Fuel Receipts Fund or the Motor Fuel Receipts Tax Public Highways Fund may first be used to compensate the GRF for debt service paid from the GRF for state-issued bonds whose proceeds are used by the Ohio Public Works Commission (OPWC) to fund local highway-related infrastructure projects.

For each fiscal year beginning with fiscal year 2013, the bill requires the Director of OPWC to certify the amount of debt service paid from the GRF for bonds issued to finance or assist in the financing of local subdivision public infrastructure capital improvement projects that were used for highway purposes – i.e. the construction or repair of public highways and bridges. The infrastructure bonds are or have been issued under Sections 2k, 2m, and 2p of Article VIII, Ohio Constitution.[217] The OPWC is required to categorize the amount of such debt service according to the section of the Ohio Constitution under which the particular bond was issued.

---

[217] 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 bill authorizes the Director of OBM, on or before the last day of each fiscal year, to transfer the amount so certified from the Commercial Activity Tax Motor Fuel Receipts Fund or Motor Fuel Receipts Tax Public Highways Fund to the GRF, presumably compensating the GRF for GRF money that had been used to service such bonds.[218] (The transfer for fiscal year 2014 will be made solely from the Commercial Activity Tax Motor Fuel Receipts Fund; transfers for subsequent fiscal years may be made from either Fund, to the extent that any revenue remains in the Commercial Activity Tax Motor Fuel Receipts Fund.)

The OBM Director must, by the end of each fiscal year, credit any money remaining in the Commercial Activity Tax Motor Fuel Receipts Fund or Motor Fuel Receipts Tax Public Highways Fund after making the GRF transfers described above to the Highway Operating Fund. Under continuing law, money in the Highway Operating Fund supports the operations of the Department of Transportation and may be used solely for highway purposes.

### Tax returns and payment

Each supplier subject to the MFRT must file quarterly returns. Similar to the CAT, returns are due on the tenth day of May, August, November, and February. Each return must state the supplier's gross receipts and indicate the portion of those gross receipts, if any, that are attributable to motor fuel used to propel vehicles on public highways.

As with the CAT, suppliers must pay the MFRT electronically and, if required by the Tax Commissioner, file electronic returns. The Commissioner may excuse a supplier from the electronic payment or filing requirement for good cause.

### Licensing

Under the bill, a person may not engage in business activities that subject the person to the MFRT without a supplier's license. To obtain the license, a supplier must apply to the Tax Commissioner on or before March 1, 2014, or thirty days after the supplier becomes subject to the tax, whichever is earlier. After obtaining a license, the supplier must renew the license annually. Renewal applications are due March 1 of each year.

---

[218] 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.

If a supplier is engaged only in the importation of motor fuel that the supplier itself will sell or distribute, the fee for each initial or renewal application is $300. The application fee for all other suppliers is $1,000. However, if a supplier files an initial license application after September 1 of any year, the fee is reduced by one-half.

The Tax Commissioner may deny a license application if (1) the applicant has previously had a license cancelled for cause by the Commissioner, (2) the Commissioner believes that the application was not filed in good faith or was filed as a subterfuge in an attempt to procure a license for another person, or (3) the applicant has violated any provision of the MFRT law. If the Commissioner denies an applicant's license, the applicant is entitled to a refund of the application fee.

The Commissioner may revoke a supplier's license if the supplier files a false return, fails to file a return, or fails to pay the tax. The Commissioner must notify the supplier of the revocation by certified mail. In addition, if a person engages in activities that subject the person to the MFRT without holding a supplier's license, the person is subject is a penalty of up to $1,000 or up to 180 days of imprisonment.

If a supplier is no longer subject to the tax, the supplier may request the cancellation of the supplier's license. In such a case, the supplier must first pay any tax, penalty, and interest due at the time of the cancellation.

### Administration and enforcement

The act includes provisions for the administration and enforcement of the MFRT that are substantially the same as similar provisions under the CAT. Those provisions cover the following topics:

- Penalties for failure to report or pay the tax as required by law.
- Tax refunds and the application of a taxpayer's refund to offset a debt the taxpayer owes to the state.
- Interest on unpaid taxes and refund payments.
- Assessments to collect unpaid tax, penalty, or interest.
- Procedures for tax payment by taxpayers that discontinue operations in the state.
- The cancellation of the authority of a noncompliant taxpayer to continue doing business in Ohio, including through a quo warranto action.
- Records retention and inspection.

### Officer and employee liability

Under the bill, the employees or officers of a supplier can be held personally liable for the supplier's failure to file returns or pay the MFRT if the officer is responsible for the supplier's fiscal responsibilities or if the employee is responsible for, or has control or supervision of, the filing of returns or the payment of taxes. The dissolution or bankruptcy of the supplier does not discharge such liability.

### Tax avoidance provision

The bill prohibits any person from avoiding the MFRT by receiving motor fuel outside of the state and transferring the motor fuel into the state within one year. In such a case, the person is considered to have received the fuel in this state and must include as gross receipts the value of the motor fuel transferred into the state within the one year. This analogous to an anti-avoidance provision of the CAT (see R.C. 5751.013).

### Municipal taxing authority

The act specifies that municipal corporations may not levy a tax that is "the same as or similar to" the MFRT. Continuing law prohibits municipal corporations from levying most of the kinds of taxes the state currently levies (although the CAT is not currently included on that list). If there were no such prohibition, municipal corporations would be authorized to levy taxes under their home rule authority, without authorization from the General Assembly.[219]

## Tax on mutual and stock insurance company premium deposits

(R.C. 5729.04; Section 803.260)

Under continuing law, foreign and domestic insurance companies, including mutual or stock insurance companies, are subject to a franchise tax based on the company's gross premiums, subject to certain exclusions. A mutual insurance company is an insurance company owned by its policyholders. A stock insurance company is an insurance company owned by investors who have purchased company stock, and profits of the company are generally distributed to the investors without necessarily benefiting the policyholders.

Beginning for calendar year 2013, the bill authorizes a mutual or stock insurance company to exclude from its taxable gross premiums any workers' compensation

---

[219] The doctrine of implied pre-emption was abandoned by the Ohio Supreme Court in 1998. Before then, if the state levied a certain kind of tax, municipal corporations were held to be impliedly preempted from levying the same kind of tax unless the General Assembly expressly authorized them to levy the tax.

insurance premium deposits, if (1) the company distributes a portion of the premiums it collects during a policy year back to its policyholders, (2) the deposits exceed the net cost of the insurance to the insured, and (3) the excess is returned ratably to the company's policyholders at the end of the policy year. A similar exclusion applies under continuing law to premium deposits received for fire and allied lines insurance and inland marine insurance provided by mutual and stock insurance companies.

## CAT review committee

(R.C. 757.30)

The bill creates a temporary committee composed of eight members of the General Assembly, the Tax Commissioner or the Commissioner's designee, and the Director of Budget and Management or the Director's designee to review and recommend reforms and improvements to the CAT. The legislative 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 levy for school safety

(R.C. 5705.21(A))

The bill authorizes school districts to levy a property tax exclusively for school safety and security purposes. The levy must comply with the same requirements that apply to general school district levies in excess of the 10-mill limitation.

Under continuing law, school district boards of education may propose a levy in excess of the 10-mill limitation for any of the following purposes: (1) current expenses, (2) general permanent improvements, (3) specific improvements or a class of improvements that may be included in a single bond issue, (4) the support of a public library, (5) parks and recreational purposes, (6) the construction and operation of a community center, (7) the operation of a cultural center, (8) education technology, or (9) if the district is a municipal school district, for the current operating expenses of both the district and "partnering" community schools. The resolution to levy the tax must be limited to only one of these purposes. If voters approve the levy, revenue from the tax must be used solely for that purpose.

There is a five-year limit on the term of such levies unless the levy is for current expenses or general improvements. The five-year limit applies to the newly authorized school safety levy. The levy may be renewed or replaced as may any other school district levy.

### 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.

### Eligibility for Hamilton County partial property tax exemption

(R.C. 323.158 and 4503.0610; Section 803.250)

Under continuing law, a county that is home to a major league professional athletic team that, in 1996, approved a county "piggyback" sales and use tax for any of several specified purposes, including constructing a major league sports facility, may offer a partial property and manufactured home tax exemption for homesteads and manufactured homes located in the county. The percentage of exempted value is fixed by and may be adjusted by, the board of county commissioners. Hamilton County is the only county that offers such a partial exemption by virtue of the county's voters, in 1996, approving such a sales and use tax.

Beginning tax year 2013 for homesteads and tax year 2014 for manufactured homes, the bill limits eligibility for the partial exemption in two respects. First, the bill disallows Hamilton County from offering the partial exemption to a homestead or manufactured home against which foreclosure or other action to take possession of the homestead or manufactured home has been initiated during any tax year in which such proceedings are pending. This includes foreclosures for property taxes, mortgages, or other security interests enforceable by foreclosure.

Second, the bill disallows Hamilton County from offering the partial exemption to a homestead or manufactured home for any tax year the homestead or manufactured home is listed on the delinquent tax list or delinquent manufactured home tax list for failure to pay property tax or manufactured home tax and related charges.

### Income limit on veterans' organization property tax exemption

(R.C. 5709.17(B); Section 803.170)

Current law exempts property held or occupied by a veterans' organization from property taxation if the organization is exempt from federal income taxation under section 501(c)(19) or (23) of the Internal Revenue Code and if the property is not held for the production of rental or "other income" in excess of $10,000.[220] The bill increases this income limit to $36,000 and removes the reference to "other income." Consequently,

---

[220] 26 U.S.C. 501(c)(19) and (23) provide tax-exempt status to an organization if at least 75% of its members are past or present members of the Armed Forces, among other qualifying criteria.

only income arising directly from renting the property to others counts towards the income limit. The income limit increase applies to tax year 2013 and thereafter.

### Transfer of tax-delinquent cemeteries

(R.C. 1721.10)

Continuing law authorizes a county Board of Revision, on its own initiative or on the complaint of a tax lien holder, to foreclose the lien of the state or the lien holder against tax-delinquent, unoccupied real property ("abandoned" land). The Board is required to order disposition of foreclosed abandoned land by public auction. If the land does not sell at a public auction, a community development organization, school district, municipal corporation, county, or township may request that the property be transferred to the requesting corporation or political subdivision. Under current law, a cemetery, except for certain private cemeteries, may not be transferred or sold to satisfy a judgment or tax lien, and may thus not be foreclosed and transferred by a Board of Revision using the foreclosure process described above.

The bill authorizes a county Board of Revision to transfer a tax-delinquent cemetery to a county, municipal corporation, or township using continuing law's expedited nonjudicial foreclosure process. However, the bill prohibits such a foreclosed cemetery from being sold at a public auction, as is allowed for abandoned lands.

### Title of transferred tax-forfeited lands

(R.C. 5723.01)

Continuing law requires title to real property that has been foreclosed through a tax foreclosure proceeding, but that has not been purchased by a bidder at public auction, to be forfeited to the state or, alternatively, to be transferred to a political subdivision, school district, or county land reutilization corporation (CLRC) upon the request of the subdivision, district, or CLRC. Real property forfeited to the state is exempt from taxation from the date of forfeiture, and no taxes or assessments may be assessed against the property while the state holds title to the property.[221]

The bill specifies that a political subdivision, school district, or CLRC that obtains tax-forfeited real property takes title to the property free and clear of all taxes, assessments, charges, penalties, interest, and costs and that all subordinate liens are considered fully and permanently discharged.

---

[221] R.C. 5723.02, not in the bill.

## Local Government Fund and other revenue distributions

### Local Government Fund and Public Library Fund allocations

(R.C. 131.51 and 5747.501; Sections 757.10 and 812.20)

Continuing law requires that monthly allocations to the Local Government Fund (LGF) and the Public Library Fund (PLF) be made from any or all GRF tax sources. Beginning with FY 2014, the percentage of GRF tax revenue allocated to the LGF and the PLF is whatever percentage of those revenues are required to freeze the allocation at each fund's respective FY 2013 level (including the amount of the minimum distributions to county undivided LGF's receiving guaranteed minimum distributions). For example, if the total FY 2013 LGF allocation is 1.7% of the total FY 2013 GRF revenue, 1.7% of monthly FY 2014 GRF revenue is to be credited each month of FY 2014 to the LGF (*see* R.C. 131.51).

The bill clarifies that the preceding month's GRF revenue allocations to the LGF and the PLF are not deducted in calculating the amount of tax revenue credited to the GRF during the preceding month for the purposes of determining the monthly allocation to the LGF and the PLF. The bill does not change the percentage of GRF revenue allocated to either the LGF or the PLF.

### Minimum distributions to county LGFs

Continuing law provides that LGF funds are distributed to the county undivided LGFs of every county. Local governments in each county agree on how money in the county LGF is allocated among the various political subdivisions within each county. (In the several counties where an allocation formula has not been agreed on, a default statutory formula determines the allocation.) The amounts disbursed are to be used for the current operating expenses of the subdivisions. In addition, more than 500 municipal corporations receive direct distributions from the LGF. Such distributions are made to a municipal corporation's general fund.

During FY 2013, LGF and PLF distributions were reduced by 50% compared to FY 2011 amounts for almost all counties and for all municipal corporations receiving direct distributions. But the proportionate share of the reduced LGF received by these counties and municipal corporations was held at the FY 2011 level. A few counties that received relatively little in LGF distributions in FY 2011 were guaranteed a minimum distribution: if the county LGF was less than $750,000, that county's distribution was not reduced; if the 50% reduction would reduce a county's LGF below $750,000, the county received $750,000.

The 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.

### 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.

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 against the income tax, the financial institutions tax, and the insurance premiums taxes; 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; and allows historic rehabilitation tax credit certificate owners to claim up to a $5 million credit against the CAT.

Continuing law establishes the historic building rehabilitation tax credit, which is a refundable credit equal to 25% of the qualified expenditures made for rehabilitating a building of historical significance in accordance with preservation criteria as

determined by the State Historic Preservation Officer. A person seeking the credit is required to apply to the 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 against the income tax, the financial institutions tax, and the insurance premiums taxes, from $5 million to $10 million. Continuing law allows a refund of up to $3 million if the credit exceeds the tax otherwise due for any year and permits any balance in excess of the credit claimed to be carried forward for up to five years.

### Application to CAT

(R.C. 149.311, 5751.55, and 5751.98)

The bill allows historic rehabilitation tax credit certificate owners to claim a historic building rehabilitation tax credit of up to $5 million against the CAT. A certificate owner claiming the credit against the CAT may receive a refund up to the full $5 million if the credit exceeds the tax otherwise due. The $60 million annual cap on all historic rehabilitation tax credits is not changed.

As part of replacing the corporation franchise tax (CFT) on financial institutions with the new financial institutions tax, H.B. 510 of the 129th General Assembly prohibited corporations from claiming any CFT credit for tax years 2014 and thereafter. The law prior to H.B. 510 permitted corporations to claim the credit against the CFT even if the certificate owner was no longer liable for the CFT. (The CFT was completely phased out for most corporations in 2010, but continues to apply to financial institutions and certain other financial-related corporations through 2013.) Financial institutions will continue to be eligible for the credit under the financial institutions tax.

By permitting corporations that are not financial institutions to claim the credit against the CAT, the bill preserves credit availability for corporations that are now subject to the CAT. The bill also extends eligibility for the credit to noncorporate CAT taxpayers.

The bill allows corporations that could claim the credit against the CFT for tax year 2014 or 2015 to claim the credit against the CAT for calendar year 2013 or 2014 so long as the credit could have been claimed against the CFT under the law prior to H.B. 510. Continuing law generally requires that the tax credit certificate be claimed in the

calendar year or taxable year in which the certificate is issued. This provision of the bill prevents a CAT taxpayer issued a certificate before the effective date of H.B. 510 from losing the benefit of the credit due to the amendments to the CFT.

The bill specifies that a pass-through entity claiming a historic rehabilitation tax credit certificate against the CAT may allocate the credit among the entity's owners in any way they mutually agree. A similar provision applies with respect to certificate owners claiming the credit against the income tax. However, given that the CAT is owed at the entity-level rather than by the shareholders of a pass-through entity, it is unclear why such a provision is necessary in this context.

#### 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.

### Sales and use tax subsidy for retail "impact facilities"

(R.C. 333.01, 333.02, 333.03, 333.04, and 333.05)

The bill modifies several provisions of an existing law authorizing counties and businesses to enter into an agreement under which the business agrees to construct an "impact facility" in the county and the county agrees to remit to the business up to 75% of the revenue from certain county sales taxes collected on retail sales made at the facility. Under continuing law, an "impact facility" is a facility that meets five criteria, including that at least 150 new jobs will be maintained at the facility.

The bill extends, from June 1, 2007, to June 1, 2015, the date by which such impact facility agreements may be entered into. The bill also modifies two of the criteria a facility must meet to qualify as an impact facility. Under current law, at least $50 million must be invested in the land, building, infrastructure, and equipment at the facility over a two-year period, and at least 50% of the expected customers of the facility

must live within 100 miles of the facility. The bill lowers the investment requirement to $30 million and decreases the area in which at least 50% of the facility's expected customers must live to 50 miles.

The bill modifies the existing prohibition against relocating property or employment positions to prohibit any relocation of full-time equivalent positions or any tangible personal property to the impact facility from another Ohio location. If the prohibition is violated, remittances to the business are terminated regardless of whether the board of county commissioners consents to the relocation. Current law prohibits relocation of more than ten full-time equivalent positions or more than $2 million in "taxable assets" unless the board of county commissioners consents. (A full-time equivalent position equals the number of employee-hours in a week divided by 40; "taxable assets" is not defined, but presumably the term refers to tangible personal property.)

### New Markets Tax Credit

(R.C. 5725.33, 5726.54, 5729.16, and 5733.58)

The bill makes several changes to the New Markets Tax Credit. Continuing law authorizes a nonrefundable New Markets Tax Credit against the insurance premiums taxes and the financial institutions tax for entities that purchase and hold securities to finance investments in businesses located in low-income communities in Ohio. The credit is based largely on the federal New Markets Tax Credit.

#### Federal credit

Federal law provides a New Markets Tax Credit against the federal income tax, totaling 39% of the cost of the investment at original issue, for making qualified equity investments in investment vehicles known as Community Development Entities (CDEs). A CDE is a U.S. corporation or partnership with the primary mission of serving or providing investment capital for businesses in low-income communities, that maintains accountability to residents of low-income communities through representation by them on the CDE's governing board or an advisory board, and that is certified as a CDE by the Secretary of the Treasury.

A qualified equity investment is the purchase of capital stock or capital interest in a partnership. The credit provided to the investor is applied over a seven-year period. Substantially all of the taxpayer's investment must in turn be used by the CDE to make qualified investments in "low-income communities." Federal regulations require CDEs to make the qualified investments within one year after receiving the taxpayer's investment.

### Ohio credit

The current Ohio New Markets Tax Credit totals 39% of the "adjusted purchase price" of qualified equity investments in CDEs that use substantially all of the proceeds to make investments in qualified active low-income community businesses. Under the federal program, a CDE may make qualified investments in any state. For purposes of the Ohio credit, the "adjusted purchase price" of qualified investments is the percentage of those investments that are made in businesses located in Ohio.

To be a qualified equity investment, the equity investment must be acquired after October 16, 2009, for cash, and at least 85% of the purchase price must be used by the issuer to make qualified low-income community investments. Credits must be applied over a seven-year period beginning on the date a qualified equity investment is made and continuing for the next six anniversary dates.

### Qualified active low-income community businesses

Under federal law, a "qualified active low-income community business" is any partnership or corporation that, for any tax year, satisfies all of the following:

(1) At least 50% of total gross income the entity is derived from the active conduct of qualified business within a low-income community;

(2) A substantial portion of the use of the tangible property of the entity (whether owned or leased) is within a low-income community;

(3) A substantial portion of the services performed for the entity by its employees are performed in a low-income community;

(4) Less than 5% of the average of the aggregate unadjusted bases of the property of the entity is attributable to collectibles (other than collectibles held primarily for sale in the ordinary course of business);

(5) Less than 5% of the average of the aggregate unadjusted bases of the property of the entity is attributable to nonqualified financial property.

Current Ohio law also requires that the business derive less than 15% of its annual revenue from the rental or sale of real property. The bill removes this requirement so that the state law definition of "qualified active low-income community business" is identical to the federal definition.

### Pairing state and federal credits

Under current law, to obtain the Ohio New Markets Tax Credit, a person must have qualified for the federal credit by holding a qualified equity investment. The bill eliminates this requirement that the investor qualify for the federal credit in order to receive the Ohio credit. The bill retains continuing law's requirement that the CDE into which the investment is made enter into an allocation agreement with the Community Development Financial Institutions Fund of the U.S. Department of the Treasury with respect to the federal New Markets Tax Credit.

In effect, the bill allows an investor to obtain the state credit so long as the CDE previously designated a qualified equity investment for the purposes of the federal credit. Investors would no longer be required to pair the federal and state New Markets Tax Credits.

## 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 fees and taxes and the penalties and interest thereon. Unless the taxpayer files a petition for reassessment within 60 days after notice of the assessment is served, the amount due on the assessment becomes final and is due and payable from the taxpayer to the Treasurer of State. Under 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.

## 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, the CAT, the financial institutions tax (FIT), and the MFRT created in the bill. 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 a 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 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 Superintendant 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 Superintendant 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.[222] The bill

[222] R.C. 5731.02, not in 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.[223] 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 (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.

---

[223] R.C. 5507.42, 5507.53, 5507.54, 5507.55, and 5507.57, not in the bill.

### Motor fuel tax refunds and revenue distribution

(Section 605.10)

Under current law, the Treasurer of State is required to credit the "first" 2% of revenue generated from motor fuel tax each month to the Highway Operating Fund on the first day of every month beginning in July 2013.[224]

The bill specifies that the crediting is to occur only after enough revenue is transferred to the Tax Refund Fund to cover motor fuel tax refunds. The bill also changes the date the crediting is to occur from the first to the last day of each month.

---

[224] Section 755.30 of Am. Sub. H.B. 51 of the 130th General Assembly.

## TREASURER OF STATE

- Modifies the interest rate of loans made under the Housing Linked Deposit Program.
- Modifies the classifications of obligations in which the Treasurer of State may invest or execute transactions for interim funds of the state and expands the types of obligations in which those interim funds may be invested.
- Extends the allowable maturity for securities and obligations in which a county may invest its inactive and public library fund money from five to ten years from the settlement date.
- Permits an investment with a maturity date later than ten years from the settlement date for up to 25% of a county's total average portfolio of inactive and public library fund investments upon a majority vote of the county's investment advisory committee.
- Adds a definition of "loan" for purposes of the existing Small Business Linked Deposit Program, the Agricultural Linked Deposit Program, and the Housing Linked Deposit Program.
- Changes the filing date for the Treasurer of State's annual report of the transactions and proceedings of the Treasurer of State's office to December 31.
- Authorizes the Treasurer of State to include in the annual continuing education program for treasurers, education regarding the collection of taxes and in any other subject area that the Treasurer of State determines is reasonably related to treasurers' duties.
- Adds to the list of investments for which a treasurer is exempt from the annual continuing education program, any treasurer who deposits interim moneys in a public depository that is authorized to re-deposit the interim moneys into deposit accounts, under certain conditions.

### Housing Linked Deposit Program interest rate

(R.C. 135.81 and 135.85)

The bill specifies that, under the Housing Linked Deposit Program, loans must be made at a fixed interest rate of <u>up to</u> 300 basis points below the present borrowing

rate, rather than at a rate of 300 basis points below the present borrowing rate, as is required under current law.

## Investment of state interim funds

(R.C. 135.143)

The bill expands the types of obligations in which the Treasurer of State may invest or execute transactions for state interim funds to include: (1) bonds, notes, and other obligations issued by the Ohio water development authority and the Ohio Turnpike and Infrastructure Commission, and (2) bonds, notes, and other obligations of any state or political subdivision, as long as they are rated at the time of purchase within the three highest categories by at least two nationally recognized rating agencies and purchased through a recognized securities dealer.

The bill also makes the following changes regarding obligations eligible for interim investment:

- Requires, with respect to written repurchase agreements with a recognized U.S. government securities dealer, that the dealer be recognized as a primary dealer by the federal reserve bank of New York;

- Increases the limit on the amount of state interim funds that may be invested in certain forms of commercial paper, from 25% to 40% of the state's total average portfolio;

- Provides that the forms of commercial paper eligible for investment must be issued by an entity organized under U.S. law or the law of a state, instead of corporations incorporated under those laws;

- Removes the condition that bankers acceptances, to be allowable investments of state interim funds, must be eligible for purchase by the federal reserve system;

- Modifies the limitation on investment of state interim funds in debt interests, other than commercial paper, as follows:

  --Requires the debt interests to be issued by entities organized under U.S. law or the law of a state, instead of corporations incorporated under those laws;

  --Changes current law's limitation of ½% of the state's portfolio to 5% of the state's portfolio when the debt interests of a single issuer are added to the state's investment in commercial paper;

--Removes the 1% limitation on investment of state interim funds in debt interests of a single issuer that is a foreign nation.

- Requires money market mutual funds to be rated at the time of purchase in the highest category by at least one nationally recognized rating agency and removes the requirement that those funds consist of certain types of U.S. government obligations and certain forms of commercial paper.

## Investment of county inactive moneys and public library fund money

(R.C. 135.35)

The bill extends the allowable maturity for securities and obligations in which a county may invest its inactive and public library fund money from five to ten years from the settlement date. The bill also permits a county, upon a majority vote of its investment advisory committee, to invest up to 25% of its total average portfolio of inactive and public library fund money investments in securities and obligations with a maturity date later than ten years from the date of settlement.

## Linked deposit programs

(R.C. 135.61, 135.71, and 135.81)

The bill adds a definition of "loan" to the laws governing the Small Business Linked Deposit Program, the Agricultural Linked Deposit Program, and the Housing Linked Deposit Program. For these programs, "loan" is defined as "a contractual agreement under which an eligible lending institution agrees to lend money in the form of an upfront lump sum, a line of credit, or any other reasonable arrangement approved by the treasurer of state."

## Treasurer of State annual report

(R.C. 149.01)

The 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.

## Continuing education for treasurers

(R.C. 135.22)

The bill authorizes the Treasurer of State to include in the annual continuing education program for treasurers, education regarding the collection of taxes and in any other subject area that the Treasurer of State determines is reasonably related to the duties of a treasurer. Subject areas covered under continuing law, to which the bill adds, are investments, cash management, and ethics.

Under continuing law, a treasurer is any officer exercising the functions of a treasurer[225] or any person whose duties include making investment decisions with respect to the investment or deposit of interim moneys, but does not include a county treasurer or the Treasurer of State. A treasurer is required to annually complete the continuing education program, unless the treasurer qualifies for an exemption because the treasurer invests or deposits public moneys only in investments specified by law.

The bill adds to the list of investments that exempt a treasurer from existing law's annual continuing education program, any treasurer who deposits interim moneys in a public depository that is authorized to re-deposit the interim moneys into deposit accounts in federally insured banks, savings banks, or savings and loan associations, under certain conditions.[226]

[225] R.C. 135.01, not in the bill.

[226] R.C. 135.145, not in the bill.

# 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.

- Delays until August 8, 2014 (from August 7, 2014), the date by which an individual must submit to the Public Employees Retirement System (PERS) a request for PERS to determine whether the individual should have been classified as a public employee for purposes of PERS membership.

## 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.

## PERS membership determinations

(R.C. 145.037)

The bill delays until August 8, 2014 (from August 7, 2014), the date by which an individual must submit to the Public Employees Retirement System (PERS) a request for PERS to determine whether the individual should have been classified as a public employee for purposes of PERS membership.

In the law governing PERS, the definition of "public employee" generally determines who is subject to compulsory PERS membership. "Public employee" includes almost all state and local government employees who are not members of one of Ohio's other four state retirement systems or the Cincinnati Retirement System. In all

cases of doubt, the PERS Board is to determine who is a public employee. Its decision is final.

S.B. 343 of the 129th General Assembly created a procedure under which individuals who provided personal services to a public employer on or before January 7, 2013, but were not included in PERS may request a determination of whether they are public employees and should be in PERS. As part of this procedure, each employer must send a notice of the right to seek a determination to each individual providing personal services who was not classified as a public employee.

H.B. 67 of the current General Assembly delayed the date for certain employer notification requirements and employee membership determination requests that are authorized or required by S.B. 343. It changes certain deadlines as follows:

(1) Delayed until September 7, 2013 (from March 7, 2013), the date by which each employer must send notices of the right to seek a determination;

(2) Delayed until August 7, 2014 (from January 7, 2014), the date by which an individual must submit to PERS a request for PERS to determine whether the individual should have been classified as a public employee.

The bill further delays until August 8, 2014 (from August 7, 2014), the date by which an individual must submit to PERS a request for an employee membership determination.

# DEPARTMENT OF TRANSPORTATION

## Aluminum coil permit

- With regard to vehicle weight limits, requires the Director of Transportation to adopt rules establishing requirements for an aluminum coil permit that would allow the transportation of three or fewer aluminum coils while exceeding the 80,000 pound legal load limits with a maximum vehicle weight of up to 120,000 pounds.
- Requires the rules related to an aluminum coil permit to be substantially similar to the current requirements for a steel coil permit.
- Specifies that three or fewer aluminum coils, transported by a vehicle, are deemed a nondivisible load for purposes of obtaining a permit to operate a vehicle in excess of legal maximum size, weight, or load restrictions.

## Other provisions

- Authorizes a Transportation Improvement District (TID) to enter into an agreement and undertake a project located in a contiguous county other than the county that created the TID and authorizes a board of county commissioners that did not create the TID to enter into such an agreement with a contiguous TID if the board of county commissioners that created the TID also enters into the agreement.
- Specifies that it is not a violation of an approved route established in the terms of an overweight or oversize vehicle permit if a route change is ordered by an authorized agent of the permit issuing authority (Department of Transportation or a local authority).
- Requires the Director of Transportation, within 90 days of the bill's effective date, to establish a county bridge program to assist counties with monetary or other resources for bridge maintenance.

## Aluminum coil permit

(R.C. 4513.34)

The bill deems three or fewer aluminum coils, being transported by a vehicle, a nondivisible load for purposes of obtaining a permit to operate a vehicle in excess of legal maximum size, weight, or load restrictions. The bill then requires the Director of Transportation to establish requirements for an aluminum coil permit that are

substantially similar to the requirements for a steel coil permit under Chapter 5501:2-1 of the Administrative Code. Such a permit would generally allow for the transportation of three or fewer aluminum coils between two specific points and along a prescribed route while exceeding the 80,000 pound vehicle weight limit, so long as the maximum vehicle weight does not exceed 120,000 pounds. Permits could be issued for a single trip, as a continuing permit (allowing unlimited movement of one vehicle from an approved facility along an approved route to another specified point for a period of 90 days), or as an annual trip permit (allowing unlimited movement of one vehicle from an approved facility along an approved route to another specified point for a period of 365 days).

## Transportation improvement district projects outside district

(R.C. 5540.03 and 5540.18)

Generally, the bill establishes procedures for a mutual agreement allowing a transportation improvement district (TID) to exercise its powers outside the county that created it. A TID may be formed by the board of county commissioners of any county for the purpose of financing and managing specified transportation-related projects. A TID may issue bonds, levy special assessments, impose a motor vehicle license tax by a vote of the electors, and establish a toll road; in exercising its powers, a TID is exempt from all of the following: (1) Department of Administrative Services (DAS) authority over public works, (2) DAS requirements governing personnel, (3) DAS authority over office services, including competitive bidding requirements, affirmative action, and minority business enterprise requirements, (4) public improvement law, (5) prevailing wage requirements, (6) construction management service, and (7) county competitive bidding law.

The bill first authorizes a TID to enter into an agreement with a contiguous board of county commissioners (other than the board of county commissioners that created the TID), for the TID to exercise all or any portion of its powers with respect to a project that is located wholly or partially within the county that is party to the agreement. Next, the bill expressly authorizes a board of county commissioners to enter into an agreement with a contiguous TID that the board of county commissioners did not create for the TID to undertake a project that is located wholly or partially within that county provided that, the board of county commissioners of the county that created the TID also must enter into the agreement. Lastly, the bill prohibits a TID from undertaking a project in a county that did not create the TID except: (1) by a mutual agreement as described above, (2) a project being undertaken by two or more TIDs, or (3) as otherwise provided by law.

## Overweight and oversize vehicle permit violations

(R.C. 4513.34)

The bill specifies that it is not a violation of an approved route established in the terms of an overweight or oversize vehicle permit if a route change is ordered by an authorized agent of the permit issuing authority (Department of Transportation or a local authority). This specification is in addition to a provision of current law stating that it is not an approved route permit violation if law enforcement orders a route change.

## Department of Transportation county bridge program

(Section 755.10)

The bill requires the Director of Transportation, within 90 days of its effective date, to establish a county bridge program to assist counties with the maintenance of bridges. The program may provide monetary and other resources, and must address infrastructure needs related to county-maintained bridges, including bridge embankments, drainage bridge repair, and other related conditions. The Director may consult with affected political subdivisions in assessing needs and in developing the program. Upon establishing the program, the Director must notify affected political subdivisions in an appropriate manner of its availability.

## OHIO TUITION TRUST AUTHORITY

- Requires that all funds of the Ohio College Savings Program and the Variable College Savings Program, rather than just those funds not needed for immediate use, are to be deposited by the Treasurer of State in the same manner provided under the Uniform Depository Law for public moneys of the state.

- Requires that contracts with financial institutions or securities dealers for the management and operation of the Programs be approved by the Controlling Board rather than simply filed with it, as under current law.

### Fund deposits and management

(R.C. 3334.08)

The bill requires that *all* funds of the Ohio College Savings Program and the Variable College Savings Program, rather than just those funds not needed for immediate use as provided under current law, be deposited by the Treasurer of State in the same manner provided under the Uniform Depository Law (R.C. Chapter 135.) for public moneys of the state.

The bill also requires that the contract the Ohio Tuition Trust Authority enters into with a bank, trust company, savings and loan association, insurance company, or licensed securities dealer for the management and operation of the Programs be approved by the Controlling Board. Under current law, the Authority need only file information about the contract with the Controlling Board.

## DEPARTMENT OF VETERANS SERVICES

- Requires a veterans organization that receives state funding to submit its annual report to the Director of Veterans Services by July 30.
- Prohibits the Director of Budget and Management from releasing funds to a veterans organization until the Director of Veterans Services has advised the Director that a satisfactory report has been submitted by the organization.
- Requires the Director of Veterans Services to furnish a copy of all satisfactory reports to the finance committees of the Senate and House of Representatives.

### Director of Veterans Services

(R.C. 126.211 and 5902.02)

The bill specifies that annual reports, which under current law must be submitted by veterans organizations that receive funding from the state, must be submitted not later than July 30 each year. The bill requires the Director of Veterans Services to review the reports with 30 days of receipt, and to inform the veterans organizations of any deficiencies that exist in the organization's report and that funding will not be released until the deficiencies have been corrected and a satisfactory report submitted. The Director must advise the Director of Budget and Management when a satisfactory report has been submitted. The bill prohibits the Director of Budget and Management from releasing funds to a veterans organization until the Director of Veterans Services has advised the Director of Budget and Management that a satisfactory report has been submitted by the organization.

The bill also requires the Director of Veterans Services to furnish a copy of all satisfactory reports to the chairpersons of the finance committees of the Senate and House of Representatives.

## BUREAU OF WORKERS' COMPENSATION

- Allows the Administrator of Workers' Compensation, with the advice and consent of the Bureau of Workers' Compensation (BWC) Board of Directors, to adopt rules to provide for a system of prospective payment of workers' compensation premiums.

- Requires, if the Administrator establishes a prospective payment system, all private sector employers and all public employers other than state agencies and state universities and colleges to pay premiums in accordance with the requirements for that system.

- Requires, if the Administrator adopts rules to establish a prospective payment system, the rules to include requirements to convert to that system, requirements for payroll reports and payment due dates, penalties for late payroll reconciliation payments, payroll estimates, and payroll reconciliation reports; and penalties for inaccurate payroll estimates.

- Statutorily allows BWC to enter into a contract with a managed care organization (MCO) to provide medical management and cost containment services in the Health Partnership Program.

- Requires a contract with an MCO to include incentives that may be awarded based on the MCO's compliance and performance and penalties, including contract termination, that may be imposed based on the MCO's failure to reasonably comply with or perform terms of the contract.

- Permits a contract entered into with an MCO to include provisions limiting, restricting, or regulating any marketing or advertising by the MCO, or by any individual or entity that is affiliated with or acting on behalf of the MCO, under the Health Partnership Program.

- Lists reasons for which an MCO may be decertified.

- Requires the Administrator to adopt rules establishing the criteria a private sector employer must satisfy to have specified requirements, which the Administrator may waive under current law, waived, potentially enabling the employer to self-insure workers' compensation claims.

- Allows the Administrator to include in the waiver rules a requirement that the employer must pay a security in accordance with continuing law requirements in addition to the employer's contribution to the Self-Insuring Employers' Guaranty Fund.

## Prospective payment of workers' compensation premiums

(R.C. 4123.322, 4123.35, and 4123.41)

Current law requires the Administrator, with the advice and consent of the Bureau of Workers' Compensation (BWC) Board of Directors, to adopt specific rules with respect to the collection, maintenance, and disbursement of the State Insurance Fund. Among the rules the Administrator must adopt is a rule providing for premium payments by each employer that are due on or before the end of the employer's coverage period.[227] Because these payments are made at the end of the period for which corresponding workers' compensation coverage is granted, they are often referred to as "retrospective payments" or "payments in arrears."

The bill allows the Administrator, with the Board's advice and consent, to adopt rules to provide for a system of prospective payment of workers' compensation premiums notwithstanding the current law requirements described above. If the Administrator elects to establish a prospective payment system, the bill requires the Administrator to include in those rules several specific provisions. If the Administrator adopts rules to implement the system, private sector employers, publicly owned utilities, and public employers other than state agencies or state universities or colleges, must pay premiums fixed for the employment or occupation of the employer, determined by the classifications, rules, and rates made and published by the Administrator and based upon estimates and reconciliations required by rules the Administrator adopts.

### Rules – payroll estimates

Under the rules adopted under the bill, a private sector employer must file payroll estimates with BWC on or before June 30 of each year for the upcoming year (under continuing law, every employer must file a payroll report with BWC each January). A public employer, other than a state agency or a public university or college, under the rules must file payroll estimates with BWC on or before January 1 of each year for the upcoming year. The Administrator may establish alternative due dates for these payroll estimates.

The rules must also provide that upon initial application for coverage, a private sector employer must file with the application an estimate of the employer's payroll for the unexpired period from the date of the application to the period ending on the following June 30. A public employer, other than a state agency or state university or college, must file the estimate from the date of the application to the period ending on

[227] R.C. 4123.32.

the following December 31. Alternative dates may be established by the Administrator. Employers must then pay an amount that the Administrator determines by rule in order to establish coverage under a written binder (temporary coverage while the application is being processed) for the employer.

### Reconciliation

The rules also must require that every employer complete periodic payroll reports of actual expenditures for previous coverage periods for reconciliation with the estimated payroll reports.

The bill requires, for purposes of reconciliation, an employer to make timely payment of any premium owed when the employer's actual payroll expenditures exceed estimated payroll. If estimated payroll exceeds actual payroll, the employer will receive a premium credit.

### Penalties

The rules adopted by the Administrator must establish the assessment of penalties for payroll estimates, payroll reconciliation reports, and reconciliation premium payments that are not timely filed or paid. Additionally, the bill allows the Administrator to assess additional penalties on a reconciliation premium if the employer's actual payroll substantially exceeds the employer's estimated payroll.

### Transition

The rules adopted by the Administrator must also establish a transition period, during which time BWC must determine all of the following:

- The adequacy of employers' existing premium security deposits;
- The establishment of provisions for additional premium payments during the transition;
- The provision of a credit of employers' existing premium security deposits toward the first premium due from an employer under the prospective payment rules;
- The establishment of penalties for late payment or failure to comply with the rules.

## Health Partnership Program

(R.C. 4121.44 and 4121.441, with a conforming change in R.C. 4123.93)

### Managed care organization contracts

(R.C. 4121.44 and 4121.441)

The Health Partnership Program (HPP) is the medical management portion of Ohio's workers' compensation system. Under current law, BWC certifies managed care organizations (MCO; also referred to as vendors and external vendors in the Workers' Compensation Law) to provide medical management and cost containment services in the HPP. The bill statutorily permits BWC, to implement the HPP, as under current law, and to ensure the efficiency and effectiveness of the public services provided through the HPP, as added by the bill, to enter into a contract with any MCO that is certified by the BWC, pursuant to continuing law, to provide medical management and cost containment services in the HPP. The bill expands the Administrator's rule-making authority with respect to implementing the HPP to include regulating contracts with MCOs pursuant to the Workers' Compensation Law.

A contract entered into pursuant to the bill must include both of the following:

(1) Incentives that may be awarded by the Administrator, at the Administrator's discretion, based on the MCO's compliance and performance;

(2) Penalties that may be imposed by the Administrator, at the Administrator's discretion, based on the MCO's failure to reasonably comply with or perform terms of the contract, which may include termination of the contract.

Under the bill, a contract entered into pursuant to the bill, and rules adopted to implement the HPP, may include provisions limiting, restricting, or regulating any marketing or advertising by the MCO, or by any individual or entity that is affiliated with or acting on behalf of the MCO, under the HPP. Currently, Ohio's Administrative Procedure Act prohibits an agency from making rules that would limit or restrict the right of any person to advertise in compliance with law.

The bill prohibits an MCO from receiving compensation under the HPP unless the MCO has entered into a contract with the BWC pursuant to the bill.

The bill also makes consistent the terminology used to refer to MCOs under the Workers' Compensation Law, eliminating references to "vendor" or "external vendor."

### MCO decertification

(R.C. 4121.44(G) and 4121.441(A))

The bill statutorily permits the Administrator to decertify a MCO if the MCO does any of the following:

- Fails to maintain any of the requirements set forth continuing law to obtain certification;
- Fails to reasonably comply with or to perform in accordance with the terms of a contract entered into under the bill;
- Violates a rule adopted under continuing law with respect to HPP implementation.

The Administrator must provide each MCO that is being decertified with written notice of the pending decertification and an opportunity for a hearing pursuant to rules adopted by the Administrator. Currently, under rules adopted by the Administrator, the Administrator provides a notice and conducts a hearing in accordance with the Administrative Procedure Act.

The bill eliminates the current law requirement that the Administrator adopt rules to establish criteria for BWC to utilize in penalizing or decertifying a health care provider from participating in the HPP and rules establishing standards and criteria for BWC to utilize in penalizing or decertifying an MCO.

## Self-insurance eligibility

(R.C. 4123.35(B))

In Ohio, an employer may cover the employer's workers' compensation obligations in one of two ways: (1) by paying premiums into the State Insurance Fund (see "**Prospective payment of workers' compensation premiums**," above), or (2) by being granted the privilege to pay claims directly, referred to as self-insurance. Continuing law lists requirements that a private sector employer must satisfy to be allowed to self-insure. Currently, the following requirements may be waived by the Administrator:

(1) The employer employs a minimum of 500 employees in Ohio;

(2) The employer has operated in Ohio for a minimum of two years or has purchased, acquired, or otherwise succeeded to the operation of a business, or any part thereof, situated in Ohio that has operated for at least two years in Ohio;

(3) The employer's financial records, documents, and data must be certified by a certified public accountant.

With respect to (3) above, currently the Administrator must adopt rules to establish criteria that an employer must meet in order for the Administrator to waive the requirement. The bill requires the Administrator also to adopt rules to establish criteria that an employer must meet in order for the Administrator to waive the requirements under (1) and (2) above. Similar to the current law authority for waiving the requirement under (3) above, the bill allows the Administrator to include in the waiver rules adopted under the bill a requirement that the employer must pay a security in accordance with continuing law requirements in addition to the employer's contribution to the Self-Insuring Employers' Guaranty Fund.

# LOCAL GOVERNMENT

## Open Meetings

- Allows a public body subject to the Open Meetings Law to hold an executive (i.e., closed) session to consider the terms of an application for economic development assistance to be provided or administered by a local government.

## Municipal watershed management

- Prohibits a municipal corporation that has established and implemented a watershed management program with regard to reservoirs for drinking water from including in the program any prohibition against maintenance of property that constitutes a buffer around a body of water that is part of such a reservoir by the owner of property that is contiguous to the buffer.

- Prohibits a municipal corporation from including in its watershed management program, with regard to its reservoirs for drinking water, a prohibition against mowing grass, weeds, or other vegetation by an owner of property that is contiguous to reservoir buffer property.

- Provides that no peace officer or other official with authority to cite trespassers on such municipal property may issue a civil or criminal citation to any individual who enters that property for the sole purpose of mowing grass, weeds, or other vegetation in an effort to beautify the municipal property that is contiguous to property owned by the individual.

## County recorder funding for technology needs

- Changes the name of the special fund used by the county recorder for equipment needs to the "county recorder's technology fund."

- Revises the proposal procedure by which, and the purposes for which, a county recorder may request funding from the board of county commissioners for imaging and other technological equipment needs.

- Changes from mandatory to permissive the board's authority to approve funding requests for reserving funds for future imaging and technology needs.

- Increases from $7 to $8 the total maximum dollar amount of specific filing fees that the county recorder may request for funding technology needs.

- Reduces the amount of fees the county recorder receives for technology needs for recording and indexing the first two pages of certain instruments if the technology

fund has been established; of the $28 fee charged for recording and indexing the first two pages of the instrument, $14 must be deposited into the technology fund and $14 must be deposited into the county general fund, rather than depositing the entire $28 fee in the technology fund as required by current law.

- Requires that if no technology fund has been established, the $28 fee charged for recording and indexing the first two pages of certain instruments must be deposited into the county general fund.

- Extends to January 1, 2019, the term of a funding proposal in effect on the bill's effective date, regardless of the number of years specified in the approved proposal.

- Establishes a four-year window during which a county recorder may request each year that an amount not to exceed $3 be placed into the technology fund, and requires the board of county commissioners to approve the amount requested, if the amount, when added to any amount previously approved under a proposal in effect on the bill's effective date, does not exceed the $8 cap.

- Limits the use of the county recorder's technology fund when paying expenses for personnel, to those personnel directly related to imaging and other technological equipment.

- Allows the board of county commissioners, as it deems necessary, to transfer moneys from the county recorder's technology fund if the county is under a fiscal caution, fiscal watch, or fiscal emergency.

- Requires that the cost a county recorder must incur for training programs and continuing education be paid from the county recorder's technology fund if one has been established.

## Regional transit authority facilities

- Provides that a regional transit authority (RTA) cannot acquire, construct, improve, extend, repair, lease, operate, maintain, or manage a transit facility that is located outside the RTA's territorial boundary until:

  (1) It has provided written notice of its proposed action to each affected political subdivision; and

  (2) Has received from each such political subdivision an agreement containing the terms and conditions for the RTA action.

## Regarding registered land

- Authorizes county recorders who maintain registered land records by nonpaper means to use an electronic facsimile of the recorder's signature and seal on a certificate of title or on a duplicate of it.

- Requires a county recorder to record the court order canceling a certificate of title and surrendering a registration certificate in the recorder's unregistered land official records, rather than recording all previously filed deeds and mortgages conveying the registered land for which the registration certificate is being surrendered.

## County hospital trustees

- Requires county hospital trustees to be representative of the areas served by the hospital.

- Removes a criterion that prohibits more than one half of the members of a board of county hospital trustees from being independents or from being members of any one political party.

- Authorizes the board of county commissioners to provide a stipend for service on the board of county hospital trustees.

- Requires a board of county hospital trustees to hold meetings at least quarterly, rather than once a month.

- Authorizes boards of county hospital trustees to adopt annual leasing policies provided through a joint purchasing arrangement sponsored by a nonprofit organization, for certain services, supplies, and equipment.

- Exempts from competitive bidding, with a unanimous vote of the board of county hospital trustees, emergency purchases that are under $100,000 or when there is actual physical damage to structures or equipment.

- Requires a board of county hospital trustees, whenever a contract of purchase, lease, or construction is exempt from competitive bidding, to solicit at least three informal estimates when the estimated cost is $50,000 or more, but less than $100,000.

- Permits the board of county hospital trustees to delegate its management and control of the county hospital to the hospital administrator through a written delegation.

- Requires the board of county hospital trustees to provide for management and control of the county hospital, in addition to providing for government of, and 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.

### Disposition of body at local government expense

- Permits a political subdivision to provide a metal grave marker, instead of a stone or concrete marker, when the political subdivision buries a body or cremated remains that are unclaimed or that an indigent person has claimed.

- Defines an indigent person as a person whose income does not exceed 150% of the federal poverty line, for purposes of the continuing requirement that a political subdivision pay to bury or cremate a body that an indigent person has claimed.

### Recovery of township-owned cemetery

- Permits the company, association, or religious society that most recently owned and operated a cemetery now owned by a board of township trustees to petition a probate court to restore ownership of the cemetery to the petitioner.

- Requires the court, if the petitioner meets all applicable requirements, to transfer to the petitioner ownership of the cemetery and all necessary records and documents.

- Requires that the petitioner have the financial resources necessary to operate and maintain the cemetery, that the petitioner be in compliance with all applicable laws and rules concerning cemeteries, and that the petitioner owe no delinquent taxes.

### Community reinvestment areas

- Specifies the types of amendments that, if made to a community reinvestment area (CRA) ordinance or resolution adopted before July 22, 1994, causes the CRA to lose its grandfathered status exempt from various limitations and requirements that apply to CRAs created after that date.

### New community authorities

- Requires the organizational board of commissioners of a new community district that is located entirely within the boundaries of a municipal corporation to be the legislative authority of that municipal corporation.

- Permits the organizational board of commissioners of any new community authority (NCA) to adopt an alternative method of selecting or electing successor members of a board of trustees.

- Limits the authority of a board of trustees of an NCA organized before March 22, 2012, which adopts an alternative method of subsequent selection for the board of trustees, to collect community development charges and issue bonds or notes to the amount permitted for a board of trustees whose members are not resident-elected.

- Expands the factors upon which a community development charge may be based for an NCA that is established within three years after March 22, 2012, to include all or part of the income of persons employed within the new community district.

### Tax levy for fairs and other purposes

- Allows a board of county commissioners to place on a ballot a tax levy in excess of ten mills for the purpose of operating expenses of an agricultural fair that is operated by a county or independent agricultural society.

- Allows a board of county commissioners to place on a ballot a tax levy in excess of ten mills for any combination of agricultural fairs, soil and water conservation district program funding, and the OSU Extension Fund.

### Township use of joint economic development zone income tax revenue

- Authorizes municipal corporations and townships that enter into a joint economic development zone contract to use income tax revenue collected 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 in Muskingum County to allocate a portion of lodging tax revenue (not exceeding 15% of the total revenue from the tax in the preceding year) to county and municipal tourism facilities and programs and to county fair purposes.

- Requires that lodging tax revenue distributed by a county to a convention and visitors' bureau in existence as of the effective date of the bill be used solely for tourism sales, marketing and promotion, and their associated costs.

- Limits the amount of county lodging tax revenue that a convention and visitors' bureau may retain for administrative purposes.

## Use of oil and gas money for local park maintenance and acquisition

- Requires royalties and other moneys from the sale or lease of mineral rights regarding parks within township or metropolitan park districts or land within municipal parks to be deposited into special funds and used for park maintenance and acquisition of new park lands.

## Township use of tax increment financing revenue

- Authorizes townships that have, at any time, adopted a resolution exempting real property from taxation using a TIF (tax increment financing) to borrow unencumbered money in the TIF fund to pay for current public safety expenses.

- Allows a township to use its distribution of motor fuel tax revenue to service bonds issued to pay for the purchase of road machinery and equipment, the planning, construction, and maintenance of buildings that house such equipment, and other highway improvement projects.

## Other provisions

- Authorizes a joint board of county commissioners to conduct hearings regarding existing joint county ditch improvements by teleconference or video conference.

- 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.

## Open Meetings Law exception for economic development applications

(R.C. 121.22(G))

Under current law, the Open Meetings Law permits members of a public body to hold an executive (i.e., closed) session for the sole purpose of considering one of seven permissible matters, such as the employment, dismissal, or discipline of public employees or matters that are required to be kept confidential under federal law. The bill adds an eighth purpose for which a public body may hold an executive session, namely the consideration of an application for economic development assistance to be provided or administered by a local government. Such applications may include, for example, applications related to tax increment financing (TIF) incentives or incentives related to an enterprise zone, community reinvestment area, or joint economic development district.

## Municipal watershed management program

(R.C. 743.50)

The bill prohibits a municipal corporation that has established and implemented a watershed management program with regard to reservoirs for drinking water from including in the program any prohibition against maintenance of property that constitutes a buffer around a body of water that is part of such a reservoir by an owner of property that is contiguous to the buffer.

## Prohibition against trespassing charges for contiguous property owners beautifying city-owned reservoir property

(R.C. 743.50)

The bill provides that a municipal corporation that has established and implemented a watershed management program with regard to reservoirs for drinking water must not include in the program any prohibition against mowing grass, weeds, or other vegetation on municipal property that constitutes a buffer around a body of water that is part of such a reservoir by owners of property contiguous to the buffer. Similarly, no peace officer or other official with authority to cite trespassers on such municipal property may issue a civil or criminal citation to any individual who enters municipal property buffering a reservoir for the sole purpose of mowing grass, weeds, or other vegetation in an effort to beautify the municipal property that is contiguous to property owned by the individual.

Many cities, like the city of Columbus, for example, have established reservoir management plans or watershed management programs to reclaim city property and restore cleared areas back to their natural condition. The missions of these programs is to protect and maintain the quality of the drinking water supply. The Columbus program provides for land stewardship agreements that may allow specific and limited maintenance or planting privileges; the contractual right is a prerequisite to receiving a private dock, stake, or mooring permit.[228] A deep-rooted vegetative buffer is encouraged next to the reservoir's edge instead of the shallow root of turf grass in order to control the level of contaminants and soil particulates and to contain treatment costs and ultimately, the cost of water to customers.[229]

## County recorder funding for technology needs

(R.C. 305.23(C), 317.06(B), 317.32(A), and 317.321)

### 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

[228] A court may construe the bill's provisions as infringing on the municipal utility home rule authority under Article XVIII, section 4 and, to the extent it is made applicable to existing contracts, it may be viewed as an impairment of an existing contract, Article II, section 28.

[229] City of Columbus, Department of Public Utilities, "Frequently Asked Questions About Watershed Management."

exceed $7 of the following fees be placed in the county treasury in a special fund designated as "general fund moneys to supplement the equipment needs of the county recorder:" (1) the fees collected for filing or recording certain instruments, if the photocopy or any similar process is employed,[230] (2) the fee for filing a financing statement to perfect a security interest or an agricultural lien,[231] and (3) various fees for recording an assortment of instruments regarding registered land.[232] Current law requires that a $28 fee for recording and indexing the first two pages of a transfer, conveyance, or assignment of tangible or intangible personal property, or rights or interests therein, and an $8 fee for each subsequent page of that instrument if the photocopy or any similar process is employed, be deposited into the county treasury to the credit of the special fund designated as "general fund moneys to supplement the equipment needs of the county recorder."

A proposal 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 technology needs under the bill

The bill changes the name of the special fund designated as "general fund moneys to supplement the equipment needs of the county recorder," to the "county recorder's technology fund."

Under the bill, a county recorder may submit to the board of county commissioners a proposal for funding any of the following:

(1) The acquisition and maintenance of imaging and other technological equipment, and contract services therefore;

(2) To reserve funds for the office's future technology needs if the county recorder has no immediate plans for the acquisition of imaging and other technological equipment or contract services, or to use the county recorder's technology fund as a dedicated revenue source to repay debt to purchase any imaging and other

---

[230] 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.

[231] 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.

[232] The fees range from $5 to $30.

technological equipment before the accumulation of adequate resources to purchase the equipment with cash;

(3) For other expenses associated with the acquisition and maintenance of imaging and other technological equipment and contract services.

The bill limits the use of the technology fund for the purpose described in (3), above, when used for associated expenses for personnel by strictly confining the use of the fund to personnel directly related to imaging and other technological equipment. Any compensation increases for those personnel cannot exceed the average of the annual aggregate percentage increase or decrease in the compensation fixed by the board of county commissioners for their employees and the county's officers. Use of the fund for compensation bonuses, or for recognizing outstanding employee performance, is prohibited.

### Proposals for funding

The bill revises the information that must be in a funding proposal. A proposal for the purposes of (1), above, must include a description or summary of the imaging and other technological equipment that the county recorder proposes to acquire and maintain, and the nature of contract services that the county recorder proposes to use. A proposal for the purposes of (2), above, must explain the general future technology needs of the office for imaging and other technological equipment, or for revenue to repay debt. A proposal for the purposes of (3), above, must identify the other expenses associated with the acquisition and maintenance of imaging and other technological equipment and contract services that the recorder proposes to pay with moneys in the technology fund.

The bill changes from mandatory to permissive the board of county commissioners' authority to approve funding proposals for reserving funds for future imaging and technology needs. Under current law, the board must approve a proposal to reserve funds for the county recorder's future equipment needs.

### Amount of fees requested

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 be placed in the county treasury to the credit of the county recorder's technology fund. The bill decreases the amount of fees collected for recording and indexing the first two pages of an instrument that transfers, conveys, or assigns tangible or intangible personal property that is deposited in the technology fund. If the county recorder's technology fund has been established, of the $28 fee charged for recording and indexing the first two pages of the instrument, $14 must be deposited into the county treasury to the

credit of the technology fund and $14 must be deposited into the county general fund, instead of the entire $28 going into the fund for the county recorder's technology needs, as required by current law. If no technology fund has been established, the bill requires that the entire $28 fee be deposited into the county general fund.

### Operation of the proposals

The bill also revises how the funding proposals operate, as follows:

(1) A proposal that has been approved by the board of county commissioners before, and that is in effect on, the bill's effective date continues in effect until January 1, 2019, regardless of the number of years of funding specified in the approved proposal. (Currently, a proposal is valid for up to five years, as designated in the approved proposal.)

(2) A proposal submitted between October 1, 2013, and October 1, 2017, may request that an amount that does not exceed $3 be credited to the county recorder's technology fund, in addition to the amount approved by the board of county commissioners in a proposal approved before, and in effect on, the bill's effective date. If the total of the amount approved in the previous proposal and the amount approved in a proposal submitted during that four-year window does not exceed the $8 cap, the board must approve the proposal and notify the county recorder of its approval. A proposal may be submitted each year during that four-year window for funding in the following fiscal year.

(3) If the total amount of fees provided for in (1) above, (2) above, and in any proposal submitted after the bill's effective date, is less than $8, a proposal requesting additional fees may be submitted to the board of county commissioners under the regular proposal procedure whereby the board approves, rejects, or modifies the proposal for a number of years not to exceed five, as long as the total amount of the fees that are to be credited to the county recorder's technology fund under all active proposals does not exceed $8.

When the board of county commissioners approves a proposal, the county recorder's technology fund is established in the county treasury, and, beginning on the following first day of January, the fees approved must be deposited in that fund.

### Use of the fund for other purposes

If a county is under a fiscal caution, fiscal watch, or fiscal emergency declared by the Auditor of State, the board of county commissioners, notwithstanding tax levy laws that dictate how county funds are to be transferred, may transfer from the county recorder's technology fund any moneys the board deems necessary.

The bill also requires that if a county has established a county recorder's technology fund, the costs the county recorder must incur for training programs and continuing education must be paid from the technology fund, including registration fees, lodging and meal expenses, and travel expenses. Under current law, the board of county commissioners approves a reasonable amount requested by the county recorder for these costs, from money appropriated to the county recorder.

## Regional transit authority facilities

(R.C. 306.35)

The bill provides that a regional transit authority (RTA) cannot acquire, construct, improve, extend, repair, lease, operate, maintain, or manage transit facilities outside its territorial boundaries until:

(1) It has provided written notice of its proposed action to the legislative authority of any political subdivision in which the action of the RTA is proposed to take place; and

(2) It has received from each such affected political subdivision an agreement containing the terms and conditions for the RTA action.

Under current law an RTA generally may acquire, construct, improve, extend, repair, lease, operate, maintain, or manage transit facilities within or without its territorial boundaries as it considers necessary to accomplish the purposes of its organization and make charges for the use of transit facilities. However, an RTA cannot extend its service or facilities into a political subdivision outside its territorial boundaries without giving prior notice to the legislative authority of the political subdivision. The legislative authority has 30 days after receiving the notice to comment on the proposal.

## Recording registered land

(R.C. 5309.68 and 5309.86)

The bill allows county recorders who maintain registered land records by nonpaper means to reproduce, by electronic facsimile, the signature and seal of the county recorder or the recorder's authorized deputy or clerk on a certificate of title or on a duplicate of it. County recorders are allowed under existing law to maintain registered land records by use of photographic, magnetic, electronic, or certain other processes, means, or displays. The bill provides that any prior memorial, notation, or cancellation of the memorial or notation on a certificate of title or duplicate of it must

note only the name of the prior recorder and need not be signed by the county recorder or the recorder's authorized deputy or clerk.

Continuing law allows a person owning real estate, the title of which is registered, to request withdrawal of the real estate from registration by presenting to the county recorder an affidavit of intention to withdraw. The county recorder records the affidavit and, upon the order of the court, cancels the certificate of record. The bill requires a county recorder to record the court order in the recorder's unregistered land official records, rather than recording all previously filed deeds and mortgages that conveyed the registered land for which the registration certificate is being surrendered.

## County hospital trustees

(R.C. 339.02, 339.05, 339.06, and 339.07)

The 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.[233]

Within 60 days after the creation of an LFA, the county engineer of each county with territory in the impacted watershed is required to prepare a survey denoting the impacted watershed's boundaries in the county. (The territory of a watershed is determined by the U.S. Geological Survey.) The cost of the survey may be paid by the LFA if requested by all county engineers conducting the survey. Each participating county may advance funds to the LFA for that purpose.

Once an LFA is created, no special district with powers or duties similar to the LFA's may be created if the district would include territory in the "impacted lake district," which is defined to mean the territory of all townships and municipal corporations with any territory in the impacted watershed.

### Governance and regulation

(R.C. 353.04)

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

---

[233] 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.

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;
- Request that DNR, Department of Agriculture, or Ohio EPA adopt and enforce reasonable rules governing impacted watersheds;
- Employ managers, administrative officers, agents, engineers, architects, attorneys, contractors, sub-contractors, and employees, and require bonds to be given by any such persons and by officers of the authority for the faithful performance of their duties;
- Sue and be sued;
- Make and enter into contracts and agreements and execute instruments (see "**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 LFA is the beneficiary;
- 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;

- Adopt rules to carry out any of the above powers.

### Construction contracts; prevailing wage

(R.C. 353.03(F))

With respect to contracts for the construction of buildings, structures, or other improvements exceeding $25,000, the LFA is required to use a competitive bidding process and to select the lowest responsive and responsible bidder, who must be determined in accordance with a general law governing the factors to be applied in determining responsive and responsible bids (R.C. 9.312). In certain circumstances, the board may decline to use the competitive bidding process:

- There exists a real and present emergency that threatens damage to property or injury to persons of the LFA or other persons.

- A commonly recognized industry or other standard or specification does not exist and cannot objectively be articulated for the improvement.

- The contract is for any energy conservation measure.

- With respect to material to be incorporated into the improvement, only a single source or supplier exists.

- A single bid is received.

With respect to any construction contract, the LFA may choose to subject the project to prevailing wage requirements.

### LFA revenue sources

In addition to 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.

## 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.[234]

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

---

[234] See Section 3 of Am. Sub. S.B. 19 of the 120th General Assembly.

(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.

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 or county to decrease or increase the percentage of assessed value of grandfathered CRA property to be tax-exempt. Under continuing law, municipal corporations and counties were and are allowed to exempt only 100% of the increased assessed value of improved real property located in a grandfathered CRA.

## New community authorities

(R.C. 349.01 and 349.04)

Continuing law provides that new community districts may be established by developers by petition to an organizational board of commissioners. If the board approves the petition, a New Community Authority (NCA) is established to develop land in the district, provide services in the district, and to raise revenue by levying community "charges" in the district.

### Organizational board of commissioners and board of trustees

The bill provides that the organizational board of commissioners for a new community district that is located entirely within the boundaries of a municipal corporation is the legislative authority of that municipal corporation.

Continuing law provides that NCAs are governed by a board of trustees initially composed of a local government representative and citizen members (all appointed by the organizational board of commissioners) and representatives of the developer in a number equal to the citizen members. In general, the appointed citizen members, representatives of the developer, and representative of local government are replaced by elected citizen members in accordance with continuing statutory law. The bill expands the authorization, which current law limits to NCAs for which a petition is filed within 3 years after March 22, 2012, for the organizational board of commissioners, by resolution, to adopt an alternative method of selection or election of successor members of the board of trustees. The bill limits the authority of a board of trustees of an NCA to collect community development charges and issue bonds or notes to the amount permitted for a board of trustees whose members are not resident-elected if (1) the organizational board of commissioners adopted an alternative method of selecting or electing successor members of the board of trustees, and (2) the NCA was organized prior to March 2, 2012.

### Community development charge

The bill expands the factors upon which a community development charge (CDC) may be based for an NCA that is established within three years after March 22, 2012, to include all or part of the income of persons employed within the new community district. Continuing law allows the CDC of such an NCA to be based on all or part of the income of the residents of real property within the new community district if that property is devoted to residential uses and all or part of the profits, gross receipts, or other revenues of any business operating in the new community district, in addition to other factors.

## 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.

## Convention and visitors' bureau use of lodging tax revenue

(R.C. 5739.09(J) and (K))

The bill requires that lodging tax revenue distributed by a county to a convention and visitors' bureau in existence as of the effective date of the bill must be used solely for tourism sales, marketing and promotion, and their associated costs. Such expenses are defined to include operational and administrative costs of the bureau, sales and marketing, and maintenance of the physical bureau structure. Lodging tax revenue previously pledged to the payment of debt service charges on bonds, notes, securities, or lease agreements are exempted from this requirement.

The bill also limits the amount of county lodging tax revenues that a convention and visitors' bureau may retain for administrative purposes to 3% of the first $500,000 distributed to the convention and visitors' bureau and 1.5% of any amount above $500,000.

Under current law, lodging tax revenue distributed to a convention and visitors' bureau may be used for any purpose that promotes, advertises, and markets the region (including financing the construction and operation of a convention center). Current law does not explicitly permit, prohibit, or prescribe restrictions on the use of lodging tax revenue for administrative purposes.

## 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.

## Township use of motor fuel tax revenue

(R.C. 5735.27; Section 803.240)

Under continuing law, a portion of the revenue from the state motor fuel tax is distributed to townships to fund transportation-related projects. Townships may use this revenue to (1) plan, construct, and maintain public roads within the township, (2) pay debt service on obligations incurred through the State Infrastructure Bank, (3) install railroad crossing signals, (4) purchase road machinery and equipment, and (5) plan, construct, and maintain buildings that house road machinery and equipment.

The bill adds that a township may use motor fuel tax revenue to pay debt service on bonds issued to finance the purchase of road machinery and equipment, the planning, construction, and maintenance of buildings that house such machinery and equipment, and any highway improvement project for which the township is authorized to issue bonds. The bill specifies that this new authority may apply to bonds authorized or issued before the bill's effective date.

## Teleconference or video conference proceedings

(R.C. 6133.041)

The bill authorizes a joint board of county commissioners, when practicable, to conduct proceedings regarding *existing* joint county ditch improvements by video conference or, if video conference is not available, by teleconference. The joint board must make provisions for public attendance at any location involved in such a proceeding. The participation of any commissioner or board of county commissioners in a video conference or teleconference must occur at the location of the commissioner's main office or board room in an open public meeting.[235]

Before convening a meeting of a joint board of county commissioners by video conference or by teleconference, designated staff must send, by electronic mail, facsimile, or U.S. Postal Service, a copy of meeting-related documents to each member of the joint board.[236] The minutes of each joint county ditch meeting must specify who was attending by teleconference, who was attending by video conference, and who was physically present.[237]

The bill provides that nothing in the Open Meetings Act prohibits a joint board of county commissioners from conducting a proceeding about existing joint county ditch improvements by teleconference or video conference. The Open Meetings Act mandates that all meetings of a public body are public meetings open to the public at all times. The Act states that it is to be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings, unless the subject matter is specifically excepted by law. Under the Act, a member of a public body must "be present in person at a meeting open to the public to be considered present or to vote at the meeting and for purposes of determining whether a quorum is present at the meeting."[238]

The bill limits the proceedings of a joint board of county commissioners that may be conducted by teleconference or video conference to proceedings regarding *existing* improvements. Continuing law defines an "improvement" as including:

---

[235] R.C. 6133.041(A).

[236] R.C. 6133.041(B).

[237] R.C. 6133.041(C).

[238] R.C. 121.22.

(1) The location, construction, reconstruction, reconditioning, widening, deepening, straightening, altering, boxing, tiling, filling, walling, arching, or any change in the course, location, or terminus of any ditch, drain, watercourse, or floodway;

(2) The deepening, widening, or straightening or any other change in the course, location, or terminus of a river, creek, or run;

(3) A levee or any wall, embankment, jetty, dike, dam, sluice, revetment, reservoir, holding basin, control gate, breakwater, or other structure for the protection of lands from the overflow from any stream, lake, or pond, or for the protection of any outlet, or for the storage or control of water;

(4) The removal of obstructions such as silt bars, log jams, debris, and drift from any ditch, drain, watercourse, floodway, river, creek, or run; and

(5) The vacating of a ditch or drain.[239]

### Background: joint boards of county commissioners

Under continuing law, when a proposed improvement crosses county lines, the members of the boards of county commissioners of the affected counties in which land may be benefited or damaged by the proposed improvement must join to form a joint board of county commissioners. A petition for the improvement is filed with the clerk of the board of county commissioners of the county in which the majority of the proposed improvement is located. On a date fixed by that clerk, the board of county commissioners from each of the counties affected by the proposed joint county improvement must meet in the county in which the petition was filed and organize a joint board of county commissioners by electing one of their number president.

All decisions of the joint board are made by a majority vote of the county commissioners constituting the joint board. The Director of Natural Resources is a member ex officio of the joint board and may participate, either in person or through a designated representative, in deliberations and proceedings of the joint board, but the Director does not have a vote, except in case of a tie, in which case the proceedings are adjourned for 30 days, during which time the Director must review the proceedings and cast the deciding vote. After the joint board views the improvement, all hearings must be held in the county in which the petition was filed.

A joint board of county commissioners may do all of the things that a board of county commissioners may do relating to a single county improvement. The

---

[239] R.C. 6131.01, not in the bill.

proceedings for a joint county improvement must proceed before the joint board the same as if the joint board were a board of county commissioners representing a county that included all the territory of all the counties represented on the joint board.[240]

## 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

---

[240] R.C. 6133.02 to 6133.04, not in the bill.

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.[241] 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.[242]

## 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

[241] R.C. 135.143, not in the bill.

[242] See *Great Plains Exploration, LLC v. City of Willoughby*, 2006 Ohio 7009 (11th App. Dist. 2006).

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

### 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 study and assess the impact of the Affordable Care Act on the income of students attending colleges and universities in Ohio who are employed by institutions of higher education.

- 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.

### Bonds of statewide elected officials

- Modifies the bonding requirements that apply to the Attorney General, Secretary of State, Treasurer of State, and Auditor of State.

### Retention of investment interest

- Provides that the investment earnings on the cash balance of the following funds are to be credited to the respective fund: the Job Ready Site Development Bond Service Fund, the Mental Health Facilities Improvement Fund, the Parks and Recreation Improvement Fund, the Facilities Establishment Fund, and the Coal and Research Development Fund.

### Screening tool for high-risk youth

- Requires the Office of Health Transformation to convene a team comprised of various state departments to evaluate the feasibility of implementing a trauma screening tool for high-risk youth, and permits the Department of Youth Services to receive funds for piloting the recommended tool in detention centers.
- 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.

### Brain Injury Program

- Transfers the Brain Injury Program to The Ohio State University from the Rehabilitation Services Commission.

### Manufactured Homes Commission

- Expands the definition of "violation" for the purposes of Manufactured Homes Commission's investigations, hearings, and penalties to include violation of any rule adopted under the Manufactured Homes Commission Law.
- Allows the Commission to refuse to grant, suspend, or revoke a license for a person's failure to comply with the Manufactured Homes Commission Law or any rule adopted under the Law.
- Makes a corrective change to a cross reference in the Law.

### State Facility Utilization and Consolidation Task Force

- Creates the State Facility Utilization and Consolidation Task Force to create an inventory of state-owned real property and related assets, to evaluate whether the real property and assets are being put to productive use, and to make recommendations based on its evaluation.

### Ohio Council for Interstate Adult Offender Supervision

- Increases membership of the Ohio Council for Interstate Adult Offender Supervision from seven to 12 or more by giving the Chief Justice and Governor two additional appointments each, the Attorney General one appointment, and the Director of Rehabilitation and Correction additional appointments as necessary.

### Sale of state-owned employee housing sites

- Authorizes the sale, by bid, auction, real estate sale agreement, or through any other available legal means, specified surplus state-owned employee housing sites under the jurisdiction of the Department of Rehabilitation and Correction that the Department of Administrative Services and the Department of Rehabilitation and Correction determine should be sold.

### Authority to convey real estate

- Extends the authorization to convey certain real estate that is under the jurisdiction of the Department of Youth Services to September 29, 2013, or November 1, 2015, whichever is later.

### Public records correction

- Corrects a cross-reference in a law that requires governmental entities and nonprofit organizations to prepare complete financial records of moneys expended under

service contracts with other governmental units, because the records and contracts are public records; the law should refer to and exclude the financial records of a joint self-insurance pool administrator.

## 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 bill also requires the Committee to study and assess the impact of the Affordable Care Act on the income of students attending colleges and universities in Ohio who are employed by institutions of higher education.

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.

### Bonds of statewide elected officials

(R.C. 109.06, 111.02, 113.02, and 117.03)

The bill modifies the bonding requirements that apply to the Attorney General, Secretary of State, Treasurer of State, and Auditor of State to assure their faithful discharge of the duties of their respective offices.

In this regard, the bill removes the requirement that the Attorney General's and Secretary of State's bond have "two or more sureties," and the requirement that the Treasurer of State's bond have "sureties," thus requiring only one surety on each of these bonds. (The Auditor of State's bond requires only "a surety" under continuing law.) The bill specifies with regard to all the officers that the one surety must be authorized to do business in Ohio.

Finally, the bill removes the requirement that the Attorney General's, Treasurer of State's, and Auditor of State's bond be approved by the Governor. Similarly, the bill removes the requirement that the Secretary of State's bond be approved by the Governor, Auditor of State, and Attorney General.

## Retention of investment interest in funds

(R.C. 151.11, 154.20, 154.22, 166.03, and 1555.15)

The 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.

## 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 Heath 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.

## Brain Injury Program

(R.C. 3304.23 (3335.60) and 3304.231 (3335.61))

The bill transfers the Brain Injury Program and the Brain Injury Advisory Committee, which currently are part of the Rehabilitation Services Commission, to The Ohio State University. Current law provides that the Program is to consist of a program director and at least one support staff person. To the extent that funds are available, the Program may do a variety of things related to brain injury, including identifying existing services, promoting coordination of services, and promoting practices that will reduce the incidence of brain injury. Under the bill, the staff of the Program must complete a report on the incidence of brain injury in Ohio not later than two years after the bill's effective date and every two years thereafter.

Not fewer than 10 nor more than 12 of the members of the Advisory Committee are to be appointed. The bill requires that these appointments be made by the dean of the College of Medicine of The Ohio State University.

## Manufactured Homes Commission

(R.C. 4781.121, 4781.28, and 4781.29)

Under continuing law, the Manufactured Homes Commission is authorized to investigate any person who allegedly has committed a "violation," and where reasonable evidence exists, send a notice to that person and hold a hearing on the alleged violation. The bill expands the definition of "violation" for the purposes of Manufactured Homes Commission's investigations, hearings, and penalties to include a

violation of any rule adopted under the Manufactured Homes Commission Law. Existing law limited the violation to only certain rules of the Manufactured Homes Commission Law.

Additionally, the bill allows the Commission to refuse to grant, suspend, or revoke a license for a person's failure to comply with the Manufactured Homes Commission Law or any rule adopted under the Law. Under existing law, the Commission's authority to refuse to grant, suspend, or revoke a license was limited to failure to comply with only certain sections and rules under the Law.

Finally, the bill makes one corrective change to a cross reference in the Manufactured Homes Commission Law.

## State Facility Utilization and Consolidation Task Force

(Section 753.30)

The bill creates the State Facility Utilization and Consolidation Task Force and charges the Task Force with creating an inventory of state-owned real property and of assets related to the real property, studying the current utilization of the real property and related assets, determining which real properties and related assets are not being productively used, determining which real properties and related assets that are not being productively used could be productively used, and determining which real properties and related assets that are not being productively used could be productively used if consolidated.

The bill requires the Task Force, based on its study, to provide the Governor, the President of the Senate, and the Speaker of the House of Representatives, not later than one year after the effective date of the provision creating it, with a report expressing the Task Force's recommendations for the sale, productive use, or consolidation of state-owned real property and assets.

Upon completing delivery of its report, the Task Force ceases to exist.

The Task Force is to consist of the following members:

- Two members of the House of Representatives appointed by the Speaker of the House of Representatives;
- Two members of the Senate appointed by the President of the Senate;
- One individual appointed by the Governor;
- The Director of Administrative Services or the Director's designee; and

- The Director of Budget and Management or the Director's designee.

A vacancy on the Task Force is to be filled by the appointing authority.

The Task Force must select a chairperson and vice-chairperson from among its members.

The members of the Task Force are not entitled to compensation for serving on the Task Force. Members of the Task Force may continue to receive the compensation and benefits accruing from their regular offices or employments. A member of the Task Force is entitled to reimbursement of actual and necessary expenses incurred because of service on the Task Force.

The Task Force must first meet within one month after the effective date of the provision creating it, at the call of the Governor. Thereafter, the Task Force must meet at the call of its chairperson as necessary to carry out its duties.

The Director of Administrative Services must provide the Task Force with meeting space and with professional, technical, and clerical staff as is necessary for the Task Force successfully and efficiently to fulfill its duties.

## Ohio Council for Interstate Adult Offender Supervision

(R.C. 5149.22)

The bill increases the membership of the Ohio Council for Interstate Adult Offender Supervision from seven to 12 or more. The bill requires the Chief Justice to appoint three members instead of one and requires that two of the three be members of the judiciary. It increases the number of gubernatorial appointees from three to five and directs that the appointees include a prosecuting attorney, a member of the State Public Defender's Office and a chief probation officer. The bill requires the Attorney General to appoint one member, who must be from the Bureau of Criminal Identification and Investigation, and authorizes the Director of Rehabilitation and Correction to appoint as many additional members as the Director considers necessary to fulfill the mission of the Interstate Compact for Adult Offender Supervision.

## Sale of state-owned employee housing sites

(Section 753.20)

The bill authorizes the Director of Administrative Services (DAS), on behalf of the Department of Rehabilitation and Correction (DRC), to sell, by bid, auction, real estate sale agreement, or through any other available legal means, all of the state's right title, and interest any or all of in the state-owned employee housing sites, described

under "**Property list**" below, that the Director of DAS and the Director of DRC determine should be sold in the best interest of, and as surplus to, the needs of the state.

To this end, the bill authorizes the Governor to execute one or more deeds in the name of the state, conveying the real estate to one or more purchasers, their heirs and assigns or successors and assigns, all of the state's right, title, and interest in one or more of the real properties and the improvements thereon.

The Director of DAS must convey the real estate, its improvements and chattels, "as-is," in its present condition.

Consideration for conveyance of the real estate must be determined by bid, auction, or negotiated purchase agreement, at the discretion of the Director of DAS and the Director of DRC.

The real property must be conveyed subject to all easements, covenants, conditions, and restrictions of record; all legal highways; zoning, building, and other laws, ordinances, restrictions, and regulations; and real estate taxes and assessments not yet due and payable.

The deed or deeds to the real estate may contain any terms and conditions the Director of DAS and the Director of DRC determine to be in the best interest of the state. The deed or deeds may contain restrictions that the Directors determine are reasonably necessary to protect the interest of the state in neighboring state-owned land. The deed or deeds must contain restrictions prohibiting the purchaser from occupying, using, developing, or selling the real estate, such as will interfere with quiet enjoyment of the neighboring state-owned land.

The method of sale and disposition of the real estate must be determined by the Director of DAS and the Director of DRC.

The real estate may be sold as an entire tract, as multiple tracts, or in parcels.

The purchaser or purchasers must pay all costs associated with the purchase and conveyance of the real estate, including, but not limited to, title evidence, title insurance, transfer costs and fees, recording costs of the deed, taxes, and any other fees and costs that may be imposed. Surveys and legal descriptions as are required for the conveyance of the real estate must be prepared at the purchaser's expense.

The net proceeds of the sale of the real estate must be deposited into the state treasury to the credit of the Property Receipts Fund.

Upon payment of the purchase price for all or any of the real estate, the Auditor of State, with the assistance of the Attorney General, must prepare a deed or deeds for the real estate. A deed must state the consideration, and any terms or conditions and the restrictions. A deed must be executed by the Governor in the name of the state, countersigned by the Secretary of State, sealed with the Great Seal of the State, presented in the Office of the Auditor of State for recording, and delivered to the purchaser. The purchaser must present the deed for recording in the office of the appropriate County Recorder.

**Property list:**

- 101 Oval Drive, Lima 45801
- 102 Oval Drive, Lima 45801
- 1757 South Avon Belden Road, Grafton 44044
- 2069 South Avon Belden Road, Grafton 44044
- 900 East Capel Road, Grafton 44044
- 1088 North Main Street, Mansfield 44903
- 1659 Scioto Village Drive, Marion 43302
- 1674 Scioto Village Drive, Marion 43302
- 1686 Scioto Village Drive, Marion 43302
- 1693 Scioto Village Drive, Marion 43302
- 1705 Scioto Village Drive, Marion 43302
- 1710 Scioto Village Drive, Marion 43302
- 1717 Scioto Village Drive, Marion 43302
- 745 Likens Road, Marion 43302
- 813 Likens Road, Marion 43302
- PCI Unit 4 - 11781 State Route 762, Orient 43146
- 103 Reservation Circle, Chillicothe 45601
- 123 Reservation Circle, Chillicothe 45601

- 124 Reservation Circle, Chillicothe 45601
- 14166 Pleasant Valley Road, Chillicothe 45601
- 1187 Cook Road, Lucasville 45648

The authorization to sell the real estate expires two years after its effective date.

## Authority to convey Department of Youth Services real estate extended

(Sections 605.20 and 605.21)

The previous operating appropriations act, H.B. 153 of the 129th General Assembly, authorized the real estate of facilities under the management and control of the Department of Youth Services that were closed before January 1, 2012, to be conveyed not later than two years after its September 29, 2011, effective date. The bill specifies, instead, that the conveyance authority remains effective until September 29, 2013, or November 1, 2015, whichever is later.

## Public records cross-reference correction

(R.C. 149.431)

The bill corrects a cross-reference in R.C. 149.431, a law that requires governmental entities or agencies and nonprofit corporations or associations that enter into service contracts with other governmental units to prepare complete financial records of moneys expended under the contracts, because the records and contracts are public records. The law currently refers to R.C. 2744.08, which has no application to R.C. 149.431. The law is supposed to refer to R.C. 2744.081, which requires a joint self-insurance pool administrator to prepare a report of aggregate amounts reserved in, and aggregate disbursements made from, the pool, rather than preparing the financial records of moneys expended, and provides that the report is a public record, instead of the financial records.

## NOTE ON EFFECTIVE DATES

(Sections 812.10 to 812.40)

Article II, Section 1d of the Ohio Constitution states that "appropriations for the current expenses of the state government and state institutions" and "[l]aws providing for tax levies" go into immediate effect and are not subject to the referendum. The 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 |
| Reported, S. Finance | 06-05-13 |
| Passed Senate (23-10) | 06-06-13 |

h0059-ps-130.docx