Bill Analysis

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Am. Sub. H.B. 66*

126th General Assembly
(As Passed by the Senate)

Reps. Calvert, Flowers, Martin, McGregor, Peterson, Schlichter, Webster, Aslanides, Blasdel, Coley, Collier, Combs, DeWine, Dolan, C. Evans, D. Evans, Hagan, Kearns, Kilbane, Law, T. Patton, Seaver, Setzer, Wagoner, White, Widowfield, Husted

Sens. Amstutz, Goodman, Clancy, Carey, Jacobson, Harris

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

Within each category, a summary of the items appears first (in the form of dot points), followed by a discussion of their content and operation.

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* *This analysis does not address appropriations, fund transfers, and similar provisions. See the Legislative Service Commission's Budget in Detail spreadsheet and Comparison Document for H.B. 66 for an analysis of such provisions.*

ADJUTANT GENERAL

- Requires the Adjutant General to reimburse active duty members of the Ohio National Guard who choose to purchase life insurance under a specified federal program.

- Requires the Adjutant General to pay a $100,000 death benefit to a designated beneficiary or beneficiaries if an active duty member of the Ohio National Guard dies while performing active duty.

- Requires the Commander of the Ohio Military Reserve annually to report expenditures and the use of funds to the General Assembly.

- Creates the Ohio Military Reserve Homeland Security Study Commission to evaluate the Ohio Military Reserve.

Reimbursement of federal life insurance premiums for active duty members of the Ohio National Guard

(R.C. 5919.31)

The bill requires the Adjutant General to reimburse an active duty member of the Ohio National Guard in an amount equal to the monthly life insurance premium paid for each month or part of a month by the member while being an active duty member--if the member chooses to purchase life insurance from the federal Servicemembers' Group Life Insurance program. "Active duty member" is defined as a member of the Ohio National Guard on active duty pursuant to an executive order of the President of the United States, the federal Homeland Defense Activity Law, another act of the Congress of the United States, or a proclamation of the Governor.

If the Adjutant General does not have sufficient available unencumbered funds to so reimburse active duty Ohio National Guard members, the Adjutant General may request additional money from the Controlling Board. The bill also gives the Adjutant General power to prescribe and enforce regulations to implement these life insurance premium provisions, which regulations need not be adopted as rules in accordance with R.C. 111.15 of the Administrative Procedure Act.

Death benefit for active duty members of the Ohio National Guard

(R.C. 5919.33)

Under existing law, the Adjutant General must pay a $20,000 death benefit from appropriations *for operating expenses* to an Ohio National Guard member's designated beneficiary or beneficiaries if the member dies while performing *state active duty* under orders issued by the Adjutant General on behalf of the Governor. Under the bill, the Adjutant General instead must pay a $100,000 death benefit from the appropriations *made for this purpose* to the designated beneficiary or beneficiaries of any "active duty member" of the Ohio National Guard who dies while performing *active duty*. The bill defines "active duty member" in the same manner as described under the preceding topic.

The Ohio Military Reserve

(R.C. 5920.01; Section 560.03)

The Ohio Military Reserve (OHMR) is organized in Ohio as a reserve military force to defend the state when the Ohio National Guard is unable to do so. The Governor is Commander-in-Chief and is responsible for prescribing rules under which the OHMR operates. The OHMR cannot be called into the military

service of the United States. Enlistment in the OHMR does not exempt a person from military service under any law of the United States.

The bill requires the Commander of the Ohio Military Reserve annually, within three months of the end of the state fiscal year, to provide a written report of expenditures and the use of funds to the General Assembly.

The bill creates the Ohio Military Reserve Homeland Security Study Commission to evaluate the role and effectiveness of the Ohio Military Reserve. The Commission consists of seven members: the Chair of the House Commerce and Labor committee, who serves as chairperson, two members of the House of Representatives appointed by the Speaker of the House, two members of the Senate appointed by the President of the Senate, the Adjutant General or a representative the Adjutant General designates, and the Director of Public Safety or a representative the Director designates. The bill directs the Commission to report its findings to the General Assembly before January 1, 2006.

DEPARTMENT OF ADMINISTRATIVE SERVICES

- Allows the Department of Administrative Services to enter into an agreement with a municipal corporation or other political subdivision to furnish the Department's services and facilities in the administration of functions related to human resources.

- Requires such an agreement to provide for the Department of Administrative Services to be reimbursed for the services performed and facilities furnished.

- Requires a biennial report to the Governor, Senate President, and House Speaker regarding the components of the formula the Department of Administrative Services uses to charge state agencies for payroll services and the enforcement of merit standards.

- Directs the Department of Administrative Services to (1) decrease those charges to state agencies and state-supported colleges or universities as the percentage of their employees in the unclassified civil service increases and (2) negotiate the amount of those charges with state agencies in which all of the employees are in the unclassified civil service.

- Eliminates the duty of the Director of Administrative Services under the Civil Service Law to perform various functions with regard to officers and employees of counties and general health districts.

- Provides to counties and general health districts, with respect to their officers and employees, the same powers, duties, and functions as the Civil Service Law confers upon the Department of Administrative Services and its Director concerning officers and employees in the service of the state.

- Requires that certain county employees designated to be in positions in the unclassified civil service receive notice of their designation.

- Defines for appointing authorities when "reasons of economy" exist that may result in the abolishment of a position and the layoff of the employee holding the position.

- Redefines for appointing authorities the term "abolishment" as the deletion of a position from the organization or structure of an appointing authority.

- Permits an appointing authority to appeal a State Personnel Board of Review decision pertaining to a classified employee's layoff, to the appropriate court of common pleas under the Administrative Procedure Act.

- Modifies the state's "Buy Ohio" preference with regard to the purchase of furniture by state agencies.

- Allows state agencies to purchase furniture from bidders whose furniture is produced in a bordering state only if a purchase from a bidder whose furniture is produced in Ohio would result in an excessive price or acquiring disproportionately inferior furniture.

- Requires the Director of Administrative Services to establish guidelines rather than agency procurement goals for state universities and the Ohio School Facilities Commission for awarding contracts to EDGE business enterprises, thus allowing them to establish their own procurement goals.

- Allows the Director to use an equivalent code classification instead of standard industrial code when establishing procurement goals and to

establish a system comparable to a point system to evaluate bid proposals for EDGE business enterprises.

- Exempts EDGE applicants' financial information and trade secrets from the Public Records Law.

- Authorizes the Director of Administrative Services to debar vendors and contractors from consideration for contract awards based on separate, specified factors and establishes procedures governing the debarment, including notice and hearing requirements.

- Establishes the Office of Information Technology in the Department of Administrative Services to advise the Governor regarding the superintendence and implementation of statewide information technology policy and to lead, oversee, and direct activities regarding the development and use of information technology by specified state agencies.

- Changes the definitions of "state agency" and "law enforcement officer" as used in the Fleet Management Law to include or exclude various individuals or entities from those terms.

- Includes cargo vans within the types of motor vehicles subject to the Fleet Management Law.

- Generally requires state agencies subject to the Fleet Management Law to acquire motor vehicles through the master leasing program established by the Department of Administrative Services.

- Prohibits reimbursement to state employees who use their own personal vehicles for any mileage incurred above an amount the Department of Administrative Services determines annually unless the Department approves reimbursement for the excess mileage in accordance with specified standards.

- Requires a state institution of higher education to use the Department of Administrative Services' vehicle fleet management tracking system, fuel card program to pay for fuel and vehicle maintenance, and bulk fuel purchases contract to make bulk fuel purchases if the Ohio Board of Regents certifies pursuant to an annual specified reporting procedure that the institution will save funds by doing so.

- Authorizes proceeds from the disposition of motor vehicles under the Fleet Management Law to be deposited, in the discretion of the Director, to the credit of either the Fleet Management Fund or the Investment Recovery Fund, rather than just into the Fleet Management Fund.

- Requires state agencies to submit data and other information to the Department about motor vehicles that otherwise are not subject to the Fleet Management Law.

- Requires the Director of Administrative Services to contract with a third party to compile data concerning the most cost effective method for funding school districts' health benefits and creates the Health Care Task Force to make findings and recommendations concerning school employee health benefits using the information compiled by the third party.

- Requires the Department of Administrative Services to conduct a study to: (1) comprehensively analyze the technology needs of all governmental agencies that administer components of the Medicaid program and (2) determine how to ensure that the technology needs of those agencies can be integrated into a Medicaid information technology system.

- Requires the Department of Administrative Services to seek the most federal participation available for the conduct of the study and the Department of Job and Family Services to seek the most federal participation available for development and implementation of a technology system.

- Transfers, as of July 1, 2005, the State Committee for the Purchase of Products and Services Provided by Persons with Severe Disabilities (commonly known as the "State Use Committee"), currently housed in the Department of Mental Retardation and Developmental Disabilities, to the Department of Administrative Services (DAS).

- Requires DAS to replace, by July 1, 2007, the State Use Committee with a new Office of Procurement from Community Rehabilitation Programs (OPCRP).

- Requires OPCRP to establish a new program that generally requires state agencies and entities, as well as county, township, and village

governments to purchase supplies and services provided by persons with work-limiting disabilities from a procurement list established by the OPCRP.

- Generally requires the OPCRP to establish fair market prices for items on the procurement list, and provides that purchases from the list are not subject to any competitive selection process.

- Establishes a fee that must be paid to DAS by all agencies and entities making purchases under the OPCRP purchase program to cover DAS' costs in administering the program.

- Permits an appointing authority to assign duties of a higher classification to an exempt employee for not more than two years with that employee's consent.

- Permits, if necessary, employees exempt from the Collective Bargaining Law who maintain operations during the Ohio Administrative Knowledge System implementation to agree to a temporary assignment for more than two years.

Provision of "human resources function" administration services and facilities to political subdivisions

(R.C. 124.07)

Overview of current law

Under current law, the Director of Administrative Services may enter into an agreement with any municipal corporation or other political subdivision to furnish the Department of Administrative Services' (DAS) services and facilities in the administration of a merit program. The agreement must provide that DAS be reimbursed for the reasonable costs of those services and facilities as determined by the Director. The moneys received as reimbursement must be paid into the state treasury to the credit of the Human Resources Services Fund.

Changes made by the bill

The bill allows the Director to also enter into an agreement with a municipal corporation or other political subdivision to furnish DAS' services and

facilities in the administration of *other functions related to human resources*.[1] As with a merit program administration agreement under current law, the bill requires "other human resources function" administration agreements to provide that DAS be reimbursed for the reasonable costs of the furnished services and facilities as determined by the Director, which costs must be paid into the state treasury to the credit of the Human Resources Services Fund.

Department of Administrative Services' charges to state agencies for services performed

(R.C. 124.07(B))

Current law requires each state agency and each state-supported college or university to pay the cost of the services and facilities that the Department of Administrative Services (DAS) furnishes to it that are necessary to provide and maintain payroll services and state merit standards. These charges must be computed on a reasonable cost basis in accordance with procedures prescribed by the Director of Budget and Management. The bill affects the latter computation requirement as described below.

The bill requires DAS to biennially report to the Governor, House Speaker, and Senate President regarding the *components of the formula* that DAS uses to determine the amounts it so charges each state agency and each state-supported college or university. And, under the bill, that formula must require that the charges that an agency, college, or university must pay will *decrease* as the percentage of its employees who are in the *unclassified* civil service increases. Further, before calculating and assessing the amount of the charges that a *state agency* in which *all* of the employees are in the unclassified civil service must pay, DAS must negotiate the amount with that state agency.

[1] *Neither the bill nor current law defines those other "functions related to human resources" or otherwise indicates what the phrase includes.*

Administration of the Civil Service Law by the Director of Administrative Services

(R.C. 124.01, 124.02, 124.04(A) to (H) and (L), 124.07(A), 124.09, 124.11, 124.133, 124.14(A)(1) and (5), (F), (G), (H), (I), and (J), 124.15, 124.20, 124.23, 124.231, 124.241, 124.25, 124.26, 124.27, 124.29, 124.30, 124.31, 124.311, 124.32, 124.321, 124.322, 124.323, 124.324, 124.325, 124.33, and 124.34)

Overview

Among the various responsibilities of the Director of Administrative Services is the performance of certain duties under Chapter 124. of the Revised Code--the Civil Service Law. Specifically, the Law requires the Director to carry out a variety of civil service-related functions with regard to officers and employees of the state as well as the counties, certain state-supported colleges and universities, and general health districts. The bill, through the changes discussed below, *reduces* the Director's involvement in the administration of the Law with respect to the *counties* and *general health districts*.[2]

Limitation of the Director's duties

The bill amends several provisions of the Civil Service Law to specify that a variety of civil service-related functions that the Director currently must perform with regard to officers and employees generally need only be carried out in the future for officers and employees *with the government of the state*--i.e., generally eliminating the duty to perform these functions for officers and employees of the counties and general health districts. Relatedly, the bill eliminates the Director's responsibility or authority to perform certain civil service-related duties and functions *specifically* for counties and general health districts, and repeals (1) provisions under which the Department of Administrative Services' and the Director's powers, functions, or duties under the Civil Service Law *with respect to county officers or employees* could become vested in a county personnel department and (2) a provision under which the Director could delegate powers,

[2] *Continuing law confers the powers, duties, and functions of the Department of Administrative Services and the Director under the Civil Service Law on the boards of trustees of state-supported colleges and universities with respect to those institutions' officers and employees--subject to divestiture and reassumption by the Department and Director under specified circumstances. This law in R.C. 124.14(F) is not substantively changed by the bill. However, the bill may impact state-supported colleges and universities in certain respects due to its "definitional" and associated "limitation" of the Director's duties provisions.*

functions, or duties under the Law to "any political subdivision" with its legislative authority's concurrence.[3]

Corresponding to the bill's previously discussed provisions are its provisions that grant the counties and general health districts, with respect to their own officers and employees, the same powers, duties, and functions as the Civil Service Law confers upon the Department and the Director concerning officers and employees with the government of the state. *With respect to the counties*--that, under the bill, *must assume responsibility* for civil service matters involving their officers and employees--the latter powers, duties, and functions (1) are specifically stated to include, but not be limited to, the authority and responsibility for the classification of positions in the civil service of a county and the administration of examinations, resignations, appointments, promotions, removals, transfers, layoffs, suspensions, reductions, reinstatements, and other functions under the Civil Service Law related to the civil service of a county and (2) are vested in and assigned to *each* elected official, board, agency, or other *appointing authority* of the county.[4] But, a board of county commissioners may establish a *county personnel department* to exercise the powers, duties, and functions under the Civil Service Law and the County Compensation Law (R.C. Chapter 325.), and, if it does, any elected official, board, agency, or other appointing authority of the county may notify the county personnel department that the appointing authority has *elected* to use the department's services.[5] If such an election occurs, the county personnel department must exercise the powers, duties, and functions under the Civil Service Law and the County Compensation Law with respect to the classified employees of the appointing authority.[6] Finally, assuming a board of

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[3] *The bill does not affect the Director's ability to enter into agreements with state-supported colleges and universities for in-service training of personnel (R.C. 124.04(J)).*

[4] *A board of county commissioners is one example of an appointing authority.*

[5] *If a county personnel department is established, it may adopt rules, which must provide for public notice and comment, to implement the authority and responsibility for the classification of positions in the civil service of the county and the administration of other functions under the Civil Service Law related to the civil service of a county, and to carry out functions under the County Compensation Law.*

These county personnel department powers, duties, and functions do <u>not</u> include any powers, duties, or functions of the State Personnel Board of Review (SPBR). The SPBR's authority is not affected relative to any classified employee with respect to whom a board of county commissioners is an appointing authority or co-appointing authority.

[6] *An elected official, board, agency, or other appointing authority may cease to use the county personnel department's services at any time upon notification to the department.*

county commissioners does not create, or creates and subsequently disbands, a county personnel department, and assuming an elected official, board, agency, or other appointing authority does *not elect* to use the services of a county personnel department, the board of county commissioners and any such elected official, board, agency, or other appointing authority is authorized to adopt policies to implement the powers, duties, and functions that the bill confers upon them as appointing authorities. (See also the discussion in this analysis under "***Provision of "human resources function" administration services and facilities to political subdivisions***.")

Likewise, *with respect to general health districts*--that, under the bill, also must assume responsibility for the civil service matters involving their officers and employees--the bill provides that the same powers, duties, and functions as the Civil Service Law confers upon the Department and the Director concerning officers and employees with the government of the state are vested in and assigned to the board of health, which, in turn, can delegate the powers, duties, and functions to designated "officers."[7]

Definitions

To achieve the previously discussed changes in the Civil Service Law, the bill utilizes "service of the state" and "civil service of the state" as *interchangeable* terms throughout the Law. These terms are defined to include all offices and positions of trust or employment with the government of the state. They do not include offices and positions of trust or employment with the counties, state-supported colleges and universities, cities, city health districts, city school districts, general health districts, and civil service townships of the state.[8]

And, the board of county commissioners may disband the county personnel department at any time.

[7] Similar to the counties, general health districts are not conferred any of the powers and duties of the SPBR under the bill. And, the bill does not affect the right of any classified employee of a general health district to appeal to the SPBR.

[8] Continuing law grants municipal civil service commissions independent authority to enforce the Civil Service Law for cities, city health districts, and city school districts under a commission's jurisdiction (R.C. 124.40(A)--not in the bill). Likewise, continuing law grants a civil service township the same independent authority for the township (R.C. 124.40(B)--not in the bill). See the previous footnote relative to state-supported colleges and universities.

Notification of unclassified service designation

Under current law, county elective officers, and each of the principal appointive executive officers, boards, or commissions in a county that are authorized to appoint clerical and administrative support employees, may designate up to three clerical and administrative support employees for inclusion in the unclassified service. The bill requires (1) that county clerical or administrative support employees that are so included in the unclassified service receive notification of that designation in writing and (2) that a copy of that notification be kept in their personnel file.

Layoffs due to abolishment of a position by an appointing authority

(R.C. 124.321(D))

Overview of current law

Under the current Civil Service Law, one of the reasons for which an appointing authority may lay off an employee is as a result of the abolishment of the employee's position due to the lack of continued need for that position--the abolishment is a *permanent* deletion of the position from the appointing authority's organization or structure. The appointing authority must indicate in its determination to abolish the position this "lack of continued need" for it. An abolishment of a position and, therefore, a consequent lay off of the employee holding the position may be (1) as the result of a reorganization for the efficient operation of the appointing authority, (2) for reasons of economy, or (3) for lack of work.

Definition of and bases for abolishment

The bill redefines the term "abolishment" as the *deletion* of a position (as contrasted with current law's "permanent" deletion of a position) from the organization or structure of an appointing authority. The bill also removes from the definition the current condition that the abolishment "be due to the lack of continued need" for the position and repeals the current corresponding requirement that the appointing authority's determination to abolish the position indicate this lack of continued need. However, the bill still provides that an abolishment may be for anyone or any combination of the following: as the result of a reorganization for the efficient operation of the appointing authority, for reasons of economy, or for lack of work.

Layoff due to abolishment of a position for reasons of economy

The bill essentially defines for appointing authorities the second basis--"reasons of economy"--that may result in the abolishment of a position and the lay

off of the employee holding it. Specifically, the bill provides that "reasons of economy" must be determined at the time the appointing authority proposes to abolish the position. Additionally, "reasons of economy" generally must be based on the appointing authority's estimated amount of savings with respect to salary, benefits, and other matters associated with the abolishment of the position. However, the bill allows "reasons of economy" to be based on savings with respect to salary and benefits only if both of the following apply:

- Either the appointing authority's operating appropriation has been reduced by an executive or legislative action, or the appointing authority has a current or projected deficiency in funding to maintain current or projected levels of staffing and operations.

- In the case of an appointing authority that is abolishing a position in the service of the state, it files a notice of the position's abolishment with the Director of Administrative Services within one year of the appointing authority's operating appropriation being reduced by an executive or legislative action or the appointing authority having a current or projected deficiency in funding as described above.

If an appointing authority is authorized to abolish a position and lay off an employee based on the appointing authority's estimated amount of savings with respect to salary and benefits only, as outlined above, then each of the following applies:

- The position's abolishment must be done in good faith and not as a subterfuge for discipline.

- If a circumstance affects a specific program only, the appointing authority only may abolish a position within that program.

- If a circumstance does not affect a specific program only, the appointing authority may identify a position that it considers appropriate for abolishment based on the reasons of economy.

Appeals from a State Personnel Board of Review decision pertaining to a layoff

(R.C. 124.328)

Current law allows a classified employee to appeal the employee's layoff by an appointing authority to the State Personnel Board of Review (SPBR). And, under current law, only the employee may appeal the SPBR's decision to the appropriate court of common pleas under the Administrative Procedure Act. The bill also allows an appointing authority to so appeal a SPBR decision.

Purchase of furniture by state agencies

(R.C. 125.09(C))

Current law establishes the "Buy Ohio" preference that requires state agencies purchasing products to give preference to bidders whose products are produced or mined in this state. However, current law allows bidders located in bordering states, who might otherwise be excluded from being awarded a contract with a state agency due to the "Buy Ohio" preference, to be awarded a contract as long as the bordering state in which the non-Ohio business is located imposes no greater restrictions upon Ohio businesses selling products or services to its state agencies than Ohio does on non-Ohio businesses under its "Buy Ohio" requirements. But, a non-Ohio business cannot bid on a contract for state printing if it is located in a state that excludes Ohio businesses from bidding on state printing contracts in that state.

The bill amends these provisions of law by specifying that, in the case of a contract for the purchase of furniture by a state agency, preference generally *must* be given to bidders whose furniture is produced in Ohio. Bidders whose furniture is produced in bordering states may qualify for the award of a contract *only* if compliance with the proposed preference would result in the state agency paying an excessive price for the furniture or acquiring disproportionately inferior furniture.

Encouraging Diversity, Growth, and Equity (EDGE) Program

Procurement guidelines and goals for contracting with EDGE business enterprises

(R.C. 123.152)

Under current law, state agencies are encouraged to contract with "EDGE business enterprises," which are businesses certified by the Director of Administrative Services as participants in the Encouraging Diversity, Growth, and Equity Program. The Director must establish agency procurement goals for state agencies, including state universities[9] and the Ohio School Facilities Commission, to contract with EDGE business enterprises generally for services, goods, and

[9] *For purposes of this provision, "state university" is defined as a public institution of higher education that is a body politic and corporate and includes the University of Akron, Bowling Green State University, Central State University, the University of Cincinnati, Cleveland State University, Kent State University, Miami University, Ohio University, The Ohio State University, Shawnee State University, the University of Toledo, Wright State University, and Youngstown State University.*

public improvements. The bill requires the Director to establish guidelines only, rather than procurement goals, for state universities and the Ohio School Facilities Commission to allow the universities and Commission to establish their own agency procurement goals.

Standard industrial code

(R.C. 123.152(B))

Currently, the Director is required to establish agency procurement goals based on the availability of eligible program participants by region or geographic area and by standard industrial code. The bill allows the Director to use equivalent code classification as an alternative to using standard industrial code.

Point system to evaluate bid proposals for EDGE participants

(R.C. 123.152(B))

Under current law, the Director is required to establish a point system to evaluate bid proposals to encourage EDGE business enterprises to participate in the procurement of professional design and information technology services. The bill allows the Director to establish a comparable system as an alternative to a point system.

Exemption from Public Records Law for EDGE applicants

(R.C. 123.152(C))

The bill exempts from the Public Records Law business and personal financial information and trade secrets submitted by EDGE applicants to the Director unless the Director presents the financial information or trade secrets at a public hearing or public proceeding concerning the applicant's eligibility to participate in the EDGE program.

Director of Administrative Services debarment of vendors and contractors

(R.C. 125.25 and 153.02)

The bill authorizes the Director of Administrative Services to debar vendors and contractors from consideration for contract awards based on specified factors. It also establishes procedures governing the debarment, including notice and hearing requirements. As described below, the specified factors and procedures differ between the vendors and contractors.

Vendors

Under the bill, the director of Administrative Services may debar a vendor from consideration for contract awards upon a finding based upon a reasonable belief that the vendor has done any of the following:

(1) Abused the selection process by repeatedly withdrawing bids or proposals before purchase orders or contracts are issued or failing to accept orders based upon firm bids;

(2) Failed to substantially perform a contract within specified time limits;

(3) Failed to cooperate in monitoring contract performance by refusing to provide information or documents required in a contract, failed to respond to complaints to the vendor, or accumulated repeated justified complaints regarding performance of a contract;

(4) Attempted to influence a public employee to breach ethical conduct standards or to influence a contract award;

(5) Colluded to restrain competition by any means;

(6) Been convicted of a criminal offense related to the application for or performance of any public or private contract, including embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, and any other offense that directly reflects on the vendor's business integrity;

(7) Been convicted under state or federal antitrust laws;

(8) Deliberately or willfully submitted false or misleading information in connection with the application for or performance of a public contract;

(9) Violated any other responsible business practice or performed in an unsatisfactory manner as determined by the Director;

(10) Through the default of a contract or through other means had a determination of unresolved finding for recovery by the Auditor of State;

(11) Acted in such a manner as to be debarred from participating in a contract with any governmental agency.

When the Director reasonably believes that grounds for debarment exist, the Director must send the vendor a notice of proposed debarment indicating the grounds for the proposed debarment and the procedure for requesting a hearing on the proposed debarment. The hearing shall be conducted in accordance with the

Administrative Procedure Act. If the vendor does not request a hearing in the specified manner, the Director must issue the debarment decision without a hearing and must notify the vendor of the decision by certified mail, return receipt requested.

The Director determines the length of the debarment period and may rescind the debarment at any time upon notification to the vendor. During the period of debarment, the vendor is not eligible to participate in any state contract. After the debarment period expires, the vendor is eligible to be awarded such contracts.

Through the Office of Information Technology and the Office of Procurement Services, the Director is required to maintain a list of all vendors currently debarred from participating in state contracts.

Contractors

The Director of Administrative Services may debar a contractor from contract awards for certain public improvements upon proof that the contractor has done any of the following:

(1) Defaulted on a contract requiring the execution of a takeover agreement;

(2) Knowingly failed during the course of a contract to maintain the coverage required by the Bureau of Workers' Compensation;

(3) Knowingly failed during the course of a contract to maintain the contractor's drug-free workplace program as required by the contract;

(4) Knowingly failed during the course of a contract to maintain insurance required by the contract or otherwise by law, resulting in a substantial loss to the owner;

(5) Misrepresented the firm's qualifications in the selection process set forth in the Revised Code for the procurement of professional design services;

(6) Been convicted of a criminal offense related to the application for or performance of any public or private contract, including embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, and any other offense that directly reflects on the contractor's business integrity;

(7) Been convicted of a criminal offense under state or federal antitrust laws;

(8) Deliberately or willfully submitted false or misleading information in connection with the application for or performance of a public contract;

(9) Been debarred from bidding or participating in a contract with any state or federal agency.

When the Director reasonably believes that grounds for debarment exist, the Director must send the contractor a notice of proposed debarment indicating the grounds for the proposed debarment and the procedure for requesting a hearing on the proposed debarment. The hearing must be conducted in accordance with the Administrative Procedure Act. If the contractor does not request for a hearing in the specified manner, the Director must issue the debarment decision without a hearing and must notify the contractor of the decision by certified mail, return receipt requested.

The Director determines the length of the debarment period and may rescind the debarment at any time upon notification to the contractor. During the period of debarment, the contractor is not eligible to bid for or participate in any contract for a public improvement. After the debarment period expires, the contractor is eligible to bid for and participate in contracts for public improvements.

Through the Office of the State Architect, the Director is required to maintain a list of all contractors currently debarred under those provisions. Any governmental entity awarding a contract for construction of a public improvement may use a contractor's presence on the debarment list to determine whether a contractor is responsible or best as may be required in the award of a contract.

Office of Information Technology

(R.C. 125.041 and 125.18)

The bill establishes the Office of Information Technology in the Department of Administrative Services. The Office is to be under the supervision of a Chief Information Officer (CIO) who must serve as the director of the Office. The CIO must be appointed by the Governor and is subject to removal at the pleasure of the Governor.

The CIO is required to advise the Governor regarding the superintendence and implementation of statewide information technology policy. The CIO also must lead, oversee, and direct state agency activities related to information

technology development and use.[10] In that regard, the CIO must do all of the following:

- Coordinate and superintend statewide efforts to promote common use and development of technology by multiple state agencies. The Office relatedly must establish policies and standards that govern and direct state agency participation in statewide programs and initiatives.

- Establish policies and standards for the acquisition and use of information technology by state agencies, including, but not limited to, hardware, software, technology services, and security, with which state agencies must comply.

- Establish criteria and review processes to identify state agency information technology projects that require alignment or oversight. As appropriate, the Office must provide the Governor and the Director of Budget and Management with notice and advice regarding the appropriate allocation of resources for those projects. The CIO may require state agencies to provide, and may prescribe the form and manner by which they must provide, information to fulfill the CIO's alignment and oversight role.

The Office is permitted to make contracts for, operate, and superintend technology services for state agencies. It also may establish cooperative agreements with federal and local government agencies and state agencies that are not under the authority of the Governor for the provision of technology services and the development of technology projects.

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[10] *For the purpose of these provisions, "state agency" means every organized body, office, or agency established by the laws of the state for the exercise of any function of state government, other than any state-supported institution of higher education, the office of the Auditor of State, Treasurer of State, Secretary of State, or Attorney General, the Public Employees Retirement System, the Ohio Police and Fire Pension Fund, the State Teachers Retirement System, the School Employees Retirement System, the State Highway Patrol Retirement System, the General Assembly or any legislative agency, or the courts or any judicial agency (division (F)).*

Changes to the Fleet Management Law

(R.C. 125.831 and 125.832)

Overview of current law

Current law requires the Director of Administrative Services to establish and operate a fleet management program for purposes including, but not limited to, cost-effective acquisition, maintenance, management, analysis, and disposal of all motor vehicles owned or leased by the state. Current law also grants the Department of Administrative Services (DAS) exclusive authority over the acquisition and management of all motor vehicles used by state agencies. A "motor vehicle" for purposes of the Fleet Management Law generally is defined as any automobile, car minivan, passenger van, sport utility vehicle, or pickup truck with a gross vehicle weight under 12,000 pounds.

Changes in definitions

The bill continues to define a "motor vehicle" as described above, but also includes a cargo van within the definition, for purposes of the Fleet Management Law.

Current law excludes from that definition of "motor vehicle" any vehicle mentioned above that is used by a law enforcement officer and law enforcement agency, and relatedly defines "law enforcement officer" as an officer, agent, or employee of a state agency upon whom, by statute, a duty to conserve the peace or to enforce all or certain laws is imposed and the authority to arrest violators is conferred, within the limits of that statutory duty and authority. The bill modifies the definition of "law enforcement officer" by specifying that it *does not include* an officer, agent, or employee as described above if the officer's, agent's, or employee's duty and authority is *location specific*. Thus, a vehicle used by such an officer, agent, or employee is no longer excluded from the definition of a "motor vehicle" covered by the Fleet Management Law because it is not a vehicle used by a "law enforcement officer" and law enforcement agency.

The current Fleet Management Law defines "state agency" to mean every organized body, office, or agency established by the laws of Ohio for the exercise of any function of state government, other than (1) a state-supported institution of higher education, (2) the offices of the Governor, Lieutenant Governor, Auditor of State, Treasurer of State, Secretary of State, or Attorney General, (3) the General Assembly or any legislative agency, or (4) the courts or any judicial agency. The bill modifies this definition to mean every organized body, office, *board, authority, commission*, or agency established by the laws of Ohio for the exercise of any *governmental or quasi-governmental* function of state government

regardless of the funding source for that entity, other than current law's four categories of exempt entities and, as added by the bill, the State Highway Patrol and any state retirement system or retirement program established by or referenced in the Revised Code. Thus, this definitional change at the same time adds to, and removes from, the state agencies subject to the Fleet Management Law. The term "state-supported institution of higher education" also becomes "state institution of higher education" under the bill (see more detail below).

Acquisitions under DAS' master leasing program

DAS' exclusive authority over the acquisition and management of all motor vehicles used by state agencies includes approving the purchase or lease of each motor vehicle for use by a state agency and determining whether a motor vehicle will be leased or purchased for that use. The bill generally requires that, on and after July 1, 2005, each state agency acquire all *passenger motor vehicles* under DAS' master leasing program. If DAS determines, however, that acquisition under this program is not the most economical method and if DAS and the state agency can provide economic justification for doing so, DAS may approve the purchase, rather than the lease, of a passenger motor vehicle for the acquiring state agency.

Limit on reimbursement for state employees who use their personal vehicles

The bill requires the Director to adopt rules that prohibit the reimbursement of state employees who use their own motor vehicles for any mileage they incur above an amount that DAS must determine annually, unless reimbursement for the excess mileage is approved by DAS in accordance with standards for that approval the Director must establish in those rules.

Requirements for state institutions of higher education

Under the bill, not later than each September 15, each state institution of higher education must report to the Ohio Board of Regents on all of the following topics relating to motor vehicles that it acquires and manages: (1) the methods it uses to track the motor vehicles, (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. Assuming that it *does not use* the fleet management tracking, fuel card program, and bulk fuel purchases tools and services that DAS provides, the report also must include (a) an analysis of the amount the institution would save, if any, if it were to use the fleet management tracking, fuel card program, and bulk fuel purchases tools and services that DAS provides instead of the fleet management system the institution regularly uses and (b) a rationale for either continuing with the fleet management

system that the institution regularly uses or changing to the use of those tools and services that DAS provides.

The Ohio Board of Regents must certify to DAS within 90 days after receipt of all annual reports from state institutions of higher education a list of those institutions that the Board determines would save amounts if they were to use the fleet management tracking, fuel card program, and bulk fuel purchases fleet management tools and services that DAS provides. The institutions so certified then must use those fleet management tools and services until the Board next certifies state institutions of higher education as required by the bill.

The bill defines "state institution of higher education" for purposes of the Fleet Management Law to mean each of the four-year state universities, the Northeastern Ohio Universities College of Medicine, the Medical University of Ohio at Toledo, and each community college, state community college, university branch, or technical college.

Disposition of proceeds derived from sale of motor vehicles

Current law requires that the proceeds derived from the disposition of any motor vehicles under the Fleet Management Law be paid (1) to the fund that originally provided moneys for the purchase or lease of the motor vehicles or (2) if the motor vehicles were originally purchased with moneys derived from the General Revenue Fund (GRF), to the credit of the Fleet Management Fund created under current law. The bill instead requires that if the motor vehicles were originally purchased with money derived from the GRF, the proceeds be deposited, *in the discretion of the Director*, to the credit of *either* the Fleet Management Fund or the *Investment Recovery Fund* created by current law. The Investment Recovery Fund receives proceeds from the transfer, sale, or lease of excess and surplus supplies no longer needed by state agencies (R.C. 125.14(A)--not in the bill).

Additional motor vehicles included in the fleet reporting system

Current law requires the Director to establish and maintain a fleet reporting system and correspondingly to require state agencies (see definition above) to submit to DAS information relative to state motor vehicles, to be used in operating the fleet management program. The bill requires state agencies to submit information not only with respect to state "motor vehicles" covered by the Fleet Management Law (see definition above) but also relative to state motor vehicles *excluded from* the definition of those currently covered "motor vehicles," namely (1) motor vehicles used by law enforcement officers and law enforcement agencies and (2) motor vehicles that are equipped with specialized equipment that

is not normally found in a vehicle and that is used to carry out a state agency's specific and specialized duties and responsibilities.

Medicaid information technology system

The bill requires DAS to conduct a study to comprehensively analyze the technology needs of all government agencies that administer components of the Medicaid program. The study must also determine how to integrate those technology needs into a Medicaid information technology system. DAS is to seek the most federal financial assistance available for conducting the study. After DAS collects the information from the study, the Ohio Department of Job and Family Services is to develop and implement the system.

School employees health benefits study

(Section 206.10.07)

The bill requires that the Director of Administrative Services contract with a third party to investigate the most cost effective method for funding school districts' health benefits within 60 days after the bill's effective date. In the third party's investigation, the third party must consider (1) existing school benefit offerings, (2) employees' costs for benefits, (3) existing health care pools and consortiums, (4) potential benefits of state or regional regulated health care pools or consortiums that offer multiple health care plans and have different pools or consortiums for each region of the state, (5) existing strategies that positively manage health care costs, (6) other states' experience with statewide and regional health care pools or consortiums, and (7) alternatives to statewide or regional health care pools.

The bill also creates the Health Care Task Force for which the Director must appoint seventeen members within 90 days after the effective date of the bill. The Task Force must consist of all of the following: (1) one member from each of several education associations, the Ohio Association of Health Underwriters, the Department of Insurance, the Department of Administrative Services, and a school health care consortium, (2) one member from a licensed health insuring corporation (commonly known as a "HMO") recommended by the Ohio Association of Health Plans, (3) a person licensed under the Sickness and Accident Insurance Law recommended by the Ohio Association of Health Plans, (4) a licensed third party administrator, (5) three members of the Senate, and (6) three members of the House of Representatives.

Within 90 days from the time the Director contracts with the third party as described above, the third party must report initial data to the Task Force and within 90 days after that report, the third party must report final data to the Task

Force. Using the data obtained from the third party, the Task Force must make findings and recommendations that must include a determination of whether any changes to the existing school employee health benefit purchasing system would result in costs savings. The Task Force must make all of the following recommendations: (1) identification of necessary provisions needed to ensure long-term financial solvency and stability of a health care purchasing system, (2) potential impacts of any changes to the existing purchasing structure on private persons currently providing or producing health benefits, existing health care pooling and consortiums, individual school districts, and existing and future collective bargaining agreements, (3) identification of issues that could arise when school districts transition from the existing to the new purchasing structure, and (4) projected costs and savings to the state, school boards, and school employees if the existing structure is changed.

The Task Force must submit the above findings and recommendations, along with the final data obtained from the third party contracted to do the investigation described above, to the President of the Senate, Speaker of the House of Representatives, and Director of Budget and Management not later than 45 days after receiving the final data from the third party. The Director may extend the deadline with the consent of the President of the Senate and Speaker of the House of Representatives. After the Task Force submits its findings and recommendations, the Task Force ceases to exist. The Director must make copies of the findings and recommendations available to the public upon request.

Purchases of supplies and services by persons with disabilities

State Use Committee--background

Current law provides for the creation of a state committee for the purchase of products and services provided by persons with severe disabilities (also commonly referred to as the "State Use Committee"). The State Use Committee has the duty to adopt rules under the Ohio Administrative Procedure Act that require the committee to take various actions that have the goal of promoting the purchase of products and services of persons with severe disabilities.[11] Most important of those actions include determining products and services that are suitable for procurement, putting these products on a procurement list the committee must establish, maintain, and publish, and verifying the fair market price for the products and services. Current law generally requires any state

[11] *Under current law, a "person with a severe disability" means an individual or class of individuals with a physical disability, including visual impairment, or mental disability, according to criteria established by the State Use Committee. (R.C. 4115.31, not in the bill.)*

agency, political subdivision, or instrumentality of the state that intends to purchase any product or service to examine the procurement list and, if the product or service it intends to purchase is on the list and available to procure it from an agency for persons with severe disabilities. Purchases made in this manner are not subject to competitive bidding. Current law provides also that a subordinate named by the Director of Mental Retardation and Developmental Disabilities (MRDD) is the executive director of the committee and that the Director of MRDD must furnish other staff and clerical assistance, office space, and supplies required by the committee.

Transfer of State Use Committee to DAS control on July 1, 2005

(R.C. 4115.32 and Sections 203.12, 203.12.01, and 209.09.03)

The bill provides that, effective July 1, 2005, or the earliest date after that date permitted by law, the State Use Committee becomes part of the Department of Administrative Services (DAS).

Functions, assets, liabilities, and records. The committee's functions, assets, and liabilities, including its records, regardless of form or medium, are to be transferred to DAS. On July 1, 2005, DAS becomes the successor to, assumes the obligations of, and otherwise constitutes the continuation of the committee and the duties of the committee's executive director are transferred to DAS.

On-going business, rights, and rules. The bill provides that any business commenced but not completed by the committee on June 30, 2005, must be completed by DAS, in the same manner, and with the same effect, as if completed by the committee. No validation, cure, right, privilege, remedy, obligation, or liability is lost or impaired by reason of the transfer. All of the committee's rules, orders, and determinations will continue in effect as rules, orders, and determinations of DAS, until modified or rescinded by DAS. If necessary to ensure the integrity of the Ohio Administrative Code, the Director of the Legislative Service Commission must renumber the committee's rules to reflect the transfer.

Employees. MRDD employees designated as staff for the committee will be transferred to DAS. The transferred employees will retain their positions and all benefits, subject to law governing DAS lay-off provisions and provisions of union contracts between the state and all bargaining units affected.

Pending proceedings and actions. The transfer does not affect judicial or administrative actions or proceedings pending on July 1, 2005, in which the committee is a party. Such actions or proceedings must be prosecuted or defended in the DAS Director's name. On application to the court or other tribunal, the

Director of DAS must be substituted for the Director of MRDD as a party to such action or proceeding.

Appropriation changes. The bill directs the Director of Budget and Management to take actions with respect to budget changes made necessary by the transfer, including administrative reorganization, program transfers, the creation of new funds, and the consolidation of funds. The Director is permitted to cancel encumbrances and re-establish encumbrances or parts of encumbrances as needed in fiscal year 2006 in the appropriate fund and appropriation item for the same purpose and the same vendor. The Director, as determined necessary, may re-establish such encumbrances in fiscal year 2006 in a different fund or appropriation item within an agency or between agencies. If they are re-established, the bill appropriates them. The Director is then required to reduce each year's appropriation balances by the amount of the encumbrance canceled in their respective funds and appropriation item.

Not later than 60 days after the transfer, the Director of MRDD must certify to the Director of Budget and Management the amount of any unexpended balance of GRF appropriations made to the appropriation item for the State Use Committee. On receipt of the certification, the Director of Budget and Management must transfer the appropriations for the committee to DAS.

Creation of the Office of Procurement from Community Rehabilitation Programs to replace the State Use Committee by July 1, 2007

(R.C. 125.11, 125.60 to 125.6012, 127.16, 307.86, 731.14, 731.141, 4115.32, 4115.34, and 4115.36)

After the transfer from MRDD to DAS of the State Use Committee and its program of promoting and requiring the purchase of products and services provided by persons with severe disabilities, the bill provides for the termination of the committee and its program and replaces them with the Office of Procurement from Community Rehabilitation Programs and a program to promote and require similar purchases.

Creation of Office of Procurement from Community Rehabilitation Programs (OPCRP); termination of State Use Committee. The bill provides that, not later than July 1, 2007, the Director of DAS must establish the Office of Procurement from Community Rehabilitation Programs (OPCRP) within DAS. The Director must also designate a DAS employee as administrator of the OPCRP. The bill also provides that not later than July 1, 2007, the Director of DAS must abolish the State Use Committee and its program. In addition, abolition of the committee will make all the laws governing the committee no longer effective. (R.C. 125.601, 4115.32, 4115.34, and 4115.36.)

The OPCRP purchase program provides for the purchase by government ordering offices of supplies or services provided by persons with a work-limiting disability employed by community rehabilitation programs. The bill defines a "government ordering office" to mean any of the following: (1) any state agency, including the General Assembly, the Ohio Supreme Court, and the office of a state elected official, or any state authority, board, bureau, commission, institution, or instrumentality that is funded in total or in part by state money, or (2) a county, township, or village. "Person with a work-limiting disability" is defined by the bill as an individual who has a disability as described in the federal "Americans with Disabilities Act" and who: (1) because of that disability is substantially limited in the type or quantity of work the individual can perform or is prevented from working regularly, and (2) meets the criteria established by OPCRP.[12] Finally, the bill defines a "community rehabilitation program" to mean an agency that: (1) is organized under federal or Ohio law such that no part of its net income inures to the benefit of any shareholder or other individual, (2) is certified as a sheltered workshop, if applicable, by the Wage and Hour Division of the U.S. Department of Labor, (3) is registered and in good standing with the Ohio Secretary of State as a domestic nonprofit or not-for-profit corporation, (4) complies with applicable occupational health and safety standards required by federal or Ohio law, (5) operates in the interest of persons with work-limiting disabilities, provides vocational or other employment-related training to persons with work-limiting disabilities, and employs persons with work-limiting disabilities in the manufacture of products or the provision of services, and (6) is a nonprofit corporation for federal tax purposes. (R.C. 125.60 and 125.607.)

Purchases from the procurement list. The bill requires the OPCRP to establish, maintain, and periodically update a procurement list of approved supplies and services available from qualified nonprofit agencies or agents for such agencies. The bill then requires government ordering offices, before purchasing any supply or service, to determine whether the supply or service is on the procurement list. If the supply or service is on the list at a fair market price established by the OPCRP, the government ordering office must purchase it from the qualified nonprofit agency or an approved agent offering it for sale at that price. If the supply or service is on the procurement list, but a fair market price has not been established, the government ordering office must attempt to negotiate an agreement with one or more of the listed qualified nonprofit agencies or approved agents. (R.C. 125.603(A)(1) and 125.607(A) and (B).)

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[12] *The term "disability" under the Americans with Disabilities Act means, with respect to an individual--a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.*

Fair market price. The bill provides that, prior to purchases by government ordering offices, the OPCRP must attempt to establish for each item on the procurement list a fair market price that is representative of the range of prices that a government ordering office would expect to pay to purchase the item in the marketplace. When establishing a fair market price for an item, the OPCRP must consider the cost of doing business with respect to that item, including sales, marketing, and research and development costs and agent fees. If the OPCRP cannot establish a fair market price as described above, it must put the item on the list and let a government ordering office and qualified nonprofit agency negotiate the price. If the negotiations produce an agreement, the OPCRP may accept the agreed price as the fair market price. If an agreement is not successfully negotiated in such case, the office may establish a fair market price. (R.C. 125.606, 125.607(B), and 125.607(C).)

Qualified nonprofit agencies and approved agents. The bill permits a community rehabilitation program to apply to the OPCRP to be certified as qualified to provide its supplies and services for procurement by government ordering offices. The OPCRP must prescribe the form of the application and, if it is satisfied the program is qualified, it must certify the program as a qualified nonprofit agency for the purposes of the purchasing program outlined in the bill. The bill also gives DAS the authority to structure or regulate competition among qualified nonprofit agencies for the overall benefit of the OPCRP purchase program. (R.C. 125.604 and 125.607(E).)

The bill also provides that the OPCRP may certify any entity to serve as an approved agent of a qualified nonprofit agency for purposes of the OPCRP purchase program. The bill requires the OPCRP to prescribe procedures under which an entity can apply and be considered for certification. Under the bill, an approved agent can do any of the following: (1) contract with the OPCRP to provide centralized business facilitation or other assistance to qualified nonprofit agencies (however, the OPCRP must consult with qualified nonprofit agencies before agreeing to such a contract), (2) act as a distributor of supplies and services registered on the procurement list, and (3) provide marketing, administrative, and other services related to sales. (R.C. 125.605.)

DAS fee for purchases. The bill provides that all government ordering offices purchasing supplies and services from qualified nonprofit agencies or their approved agents must reimburse DAS a reasonable sum to cover its costs in administering the OPCRP purchase program. DAS is permitted to bill administrative costs to government ordering offices directly, or allow qualified nonprofit agencies or their approved agents to collect and remit the fees. Any fee collected and remitted by qualified nonprofit agencies or their approved agents will be considered allowable expenses in addition to the fair market price. The

money paid must be deposited in the state treasury to the credit of the DAS General Services Fund. (R.C. 125.608.)

Release from compliance with OPCRP purchase program. The bill provides that when a government ordering office and a qualified nonprofit agency or approved agent are negotiating a price and they cannot come to an agreement, instead of setting a fair market price, the OPCRP may release the government ordering office from compliance with the OPCRP purchase program. The bill also provides that the OPCRP, on its own or pursuant to a request from a government ordering office, may release a government ordering office from compliance with the OPCRP purchase program. If the OPCRP determines that compliance is not possible or not advantageous, or if conditions prescribed in rules adopted by the OPCRP for granting a release are met, it may grant such a release. A release must be written, specify the supplies or services to which it applies, state how long it will be effective, and state the reason for which it is granted. (R.C. 125.607(C) and 125.609.)

Applicability of OPCRP purchase program in special circumstances. The bill provides that the OPCRP purchase program does not apply to the purchase of a product or service available from a state agency, state instrumentality, or political subdivision under any law in effect on July 1, 2005. It also specifies that the program does not prohibit the purchase of a supply or service from a qualified nonprofit agency by a political subdivision that is not a government ordering office.

The bill makes clear that purchases under the OPCRP purchase program by a government ordering office are not subject to any competitive selection or bidding requirements. The bill also specifies that purchases made by one of the following political subdivisions from a qualified nonprofit agency are exempt from any competitive selection procedures otherwise required by law: counties, townships, municipal corporations, school districts, conservancy districts, township park districts, county-wide park districts, regional transit authorities, airport authorities, regional water and sewer districts, port authorities, and any other political subdivision approved by DAS to participate in DAS "pooled" supply, equipment, and purchase contracts. Finally, a political subdivision of the type listed in the previous sentence is prohibited from purchasing supplies and services from another party or political subdivision instead of through the OPCRP purchase program if the supply or service is on the procurement list, even if it can get the supplies or services at a lower price. (R.C. 125.607(D), 125.6010, and 125.6011.)

Other OPCRP duties and powers. The bill provides that the OPCRP must do the following (R.C. 125.603):

- Monitor the procurement practices of government ordering offices to ensure compliance with the OPCRP purchase program;

- Develop and recommend to the Director of DAS, in cooperation with qualified nonprofit agencies, government ordering offices, the Department of MRDD, the Department of Mental Health, the Department of Job and Family Services, and the Rehabilitation Services Commission, rules the Director must adopt in accordance with the Ohio Administrative Procedure Act for the effective and efficient administration of the OPCRP purchase program;

- Prepare a report of its activities by the last day of December of each year and post it on the OPCRP web site;

- Enter into contractual agreements and establish pilot programs to further the objectives of the OPCRP purchase program.

Provision of information to OPCRP. The bill requires a government ordering office and qualified nonprofit agency to provide the necessary information and documentation requested by the OPCRP to enable it to administer the purchase program (R.C. 125.6012).

Cooperation with other governmental agencies. The bill provides that the Department of MRDD, Department of Mental Health, Department of Job and Family Services, Rehabilitation Services Commission, and any other state or governmental agency or community rehabilitation program responsible for the provision of rehabilitation and vocational educational services to persons with work-limiting disabilities may cooperate, through written agreement, in providing resources to DAS for the operation of the OPCRP. The resources may include leadership and assistance in dealing with societal aspects of meeting the needs of persons with work-limiting disabilities. The bill also permits the OPCRP and all governmental entities that administer socioeconomic programs to enter into contractual agreements, cooperative working relationships, or other arrangements that are necessary for the effective coordination and realization of the objectives of these entities. (R.C. 126.602.)

Temporary work levels for exempt employees and personnel assignments for employees exempt from the Collective Bargaining Law

(R.C. 569.03)

Under existing 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 may be paid at a rate four and one-

half per cent higher than the employee's current base pay rate. The Director of Administrative Services must approve the temporary position change. (R.C. 124.181, not in the bill.)

Under the bill, notwithstanding existing law, in cases where a vacancy does not exist, an appointing authority, with the written consent of the employer, may assign duties of a higher classification for not more than two years to an exempt employee. The exempt employee must receive compensation commensurate with the higher classification. The bill utilizes existing law definitions of: (1) "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, and (2) "exempt employee" means a permanent full-time or permanent part-time employee paid directly by warrant of the Auditor of State whose position is included in the job classification plan but who is not considered a public employee for the purposes of the Collective Bargaining Law. (R.C. 124.01 and 125.152, not in the bill.)

The bill permits employees who are exempt from the Collective Bargaining Law and who are assigned to maintain operations during the Ohio Administrative Knowledge System implementation to agree to a temporary assignment for more than two years if necessary.

DEPARTMENT OF AGING

- Subject to certain exceptions, requires the Department of Aging to assess a penalty equal to a long-term care facility's total annual bed fee for failure to pay a bed fee on or before a deadline established by the Department in rules.

- Permits the Department to assess a penalty, not to exceed $500 for each violation, against a long-term care provider, other entity, or employee of a provider or entity that denies a representative of the state long-term care ombudsperson access to a long-term care facility or community-based long-term care site.

- Provides that a provider of community-based long-term care services under a program administered by the Department cannot receive payment unless the provider obtains certification from the Department.

- Requires the Department to develop a long-term care consultation program under which residents and potential residents of nursing facilities are provided with information about options available to meet

long-term care needs and about factors to consider in making long-term care decisions.

- Eliminates provisions authorizing the Department of Job and Family Services (ODJFS) to administer a similar program for potential residents of nursing facilities who are not Medicaid applicants or recipients.

- Modifies the procedures ODJFS must follow when conducting assessments of Medicaid applicants or recipients who apply for admission to or reside in a nursing facility to determine whether they need the level of care provided by a nursing facility.

- Permits ODJFS' level of care assessments to be performed concurrently with consultations performed under the long-term care consultation program to be developed by the Department of Aging.

- Authorizes the Department to conduct an annual survey of nursing homes and residential care facilities and establishes a fine for failure to complete the survey.

- Requires the Department to publish the Ohio Long-Term Care Consumer Guide, which may be developed as a continuation or modification of the guide currently published by the Department pursuant to its general rule-making authority.

- Requires the Guide to include information on both nursing homes and residential care facilities, including information obtained from customer satisfaction surveys conducted or provided for by the Department.

- Permits the Department to charge fees for the customer satisfaction surveys in an amount not exceeding $400 annually for nursing homes and $300 annually for residential care facilities.

- Requires the Department to carry out the day-to-day administration of the Medicaid program component known as the Program for All-Inclusive Care for the Elderly (PACE).

- Permits the Department of Aging to adopt rules for the PACE program if the rules: (1) are authorized by rules adopted by the Ohio Department of Job and Family Services (ODJFS) and (2) address only those issues that are not addressed in ODJFS' rules for the PACE program.

- Repeals the uncodified law under which the transfer of PACE administrative duties from ODJFS to the Department of Aging originally occurred.

- Provides for an individual admitted to a nursing facility while on a waiting list for the PASSPORT program to be placed in the PASSPORT program if it is determined that the PASSPORT program is appropriate for the individual and the individual would rather be placed in the PASSPORT program than continue to reside in a nursing facility.

- Creates the PASSPORT Evaluation Panel to select an independent contractor to conduct an evaluation of the PASSPORT Program.

- Requires the PASSPORT Evaluation Panel to approve a final report by not later than June 30, 2007.

- Permits the Department of Aging to apply for the 2005 Aging and Disability Resource Center Grant Initiative of the Administration on Aging and the Centers for Medicare and Medicaid and to create an Aging and Disability Resource Center if the application is accepted.

- Exempts from the Medical Transportation Law an ambulette service provider who operates under rules adopted by the Department of Aging during the period of time on any day that the provider is solely serving the Department or the Department's designee and creates new requirements for this type of provider.

Penalty for late payment of annual long-term care facility bed fee

(R.C. 173.026)

Under current law, a nursing home, residential care facility, adult care facility, adult foster home, or other specified long-term care facility must annually pay to the Department of Aging a fee of $6 for each bed the facility maintained for use by a resident during any part of the previous year. The funds are used to pay the costs of operating regional long-term care ombudsperson programs.

The bill requires the Department of Aging to assess a penalty on long-term care facilities that fail to pay the bed fee not later than 90 days after the deadline established by the Department in rules. The penalty is an amount equal to a facility's total annual bed fee.

Penalty for denial of ombudsperson access to long-term care facilities or community-based long-term care sites

(R.C. 173.99; R.C. 173.19 (not in the bill))

Under current law, the Office of the State Long-Term Care Ombudsperson Program, through the State Long-Term Care Ombudsperson and the Regional Long-Term Care Ombudsperson Programs, must receive, investigate, and attempt to resolve complaints made by long-term care facility residents, recipients, sponsors, providers of long-term care, or any person acting on behalf of a resident or recipient relating to health, safety, civil rights, or residents' rights issues. Each complaint is assigned to a representative of the Office who is responsible for investigating and working with the parties to resolve the complaint.

To carry out these responsibilities, a representative has the right to access long-term care facilities and community-based long-term care sites unescorted as reasonably necessary to investigate a complaint. The bill permits the Department of Aging to assess a penalty, not to exceed $500 for each violation, against a long-term care provider, other entity, or person employed by the provider or entity that denies a representative of the Program access to a long-term care facility or community-based long-term care site.

Certification for provision of community-based long-term care services

(R.C. 173.39 to 173.393)

The bill requires the Department of Aging to certify providers of community-based long-term care services[13] under programs the Department administers and, subject to certain exceptions, prohibits the Department from paying a person or government entity for providing community-based long-term care services under such a program unless the provider is certified to provide the services and provides the services. The Department may, however, pay a non-certified person or government entity for providing community-based long-term care services if the provider meets the terms of a contract that includes conditions of participation and service standards and the contract is not for Medicaid-funded

[13] *Current law defines "community-based long-term care services" as health and social services provided to individuals in their homes or communities that include case management, home health care, homemaker and chore services, respite care, adult day care, home-delivered meals, personal care, and physical, occupation, or speech therapy (R.C. 173.14, not in the bill).*

services, other than services provided under the Program of All-Inclusive Care for the Elderly (PACE).[14]

The Department is required to adopt rules in accordance with Ohio's Administrative Procedure Act (R.C. Chapter 119.) establishing certification requirements. The rules must establish procedures for ensuring that PASSPORT agencies comply with criminal background check requirements under the law governing the PASSPORT program and evaluating the services provided by persons and government entities seeking or holding a certificate to ensure they are provided in a quality manner advantageous to the individual receiving the services.

Evaluation considerations

The bill requires that the Department consider the following during the evaluation of a provider:

(1) Provider's experience and financial responsibility;

(2) Provider's ability to comply with standards of the community-based long-term care services program;

(3) Provider's ability to meet the needs of individuals served;

(4) Any other factor the Director considers relevant.

The bill provides that, in general, records of an evaluation are public records and must be made available on the request of any person. The bill, however, prohibits the release of a part of a record of an evaluation as a public record if the release of the part would violate federal or state law.

Disciplinary action and enforcement

Under the bill, the Department is authorized to take disciplinary action against a provider. The Department must adopt rules setting standards for determining which type of disciplinary action to take. The bill requires the rules to specify the reasons for taking disciplinary action, including disciplinary actions based on good cause, and for misfeasance, malfeasance, nonfeasance, confirmed abuse or neglect, financial irresponsibility, or other conduct of the provider the Director determines is injurious to the health or safety of individuals being served.

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[14] *The Program of All-Inclusive Care for the Elderly (PACE) is a Medicaid component based on a managed care model through which certain sites provide frail, older adults with all of their needed health care and ancillary services in acute, subacute, institutional, and community settings.*

The Department is authorized to take the following types of disciplinary actions:

(1) Issue a written warning;

(2) Require submission of a plan of correction;

(3) Suspend referrals;

(4) Remove clients;

(5) Impose a fiscal sanction, such as a civil monetary penalty or an order that unearned funds be repaid;

(6) Revoke the certificate;

(7) Impose another sanction.

The bill requires the Department to hold hearings when there is a dispute between the Department or its designee and a provider concerning actions the Department or its designee takes or does not take regarding certification or disciplinary proceedings.

Rules governing contracts and payments

The Department is required by the bill to adopt rules concerning contracts between the Department, or the Department's designee, and persons and government entities regarding community-based long-term care services provided under a program the Department administers. The Department must also adopt rules concerning the Department's payments for such services.

Long-term care consultation program

Background

Current law provides for several different types of assessments of persons applying or intending to apply for admission to a nursing facility.[15] The Department of Job and Family Services (ODJFS), or an agency designated by ODJFS, is authorized to assess any person who is not an applicant for or recipient of Medicaid who applies or intends to apply to a nursing facility to determine

[15] *"Nursing facility" means a facility, or a distinct part of a facility, that is certified under the Medicaid program as a nursing facility and is not an intermediate care facility for the mentally retarded (R.C. 173.42(A)(3) (renumbered from R.C. 5101.75(A)(3), by reference to R.C. 5111.20(M)).*

whether the person is in need of nursing facility services and whether an alternative source of long-term care is more appropriate for the person in meeting the person's physical, mental, and psychosocial needs than admission to the facility to which the person has applied (R.C. 5101.75 and 5101.751). In addition, ODJFS may require an applicant for or recipient of Medicaid who applies or intends to apply for admission to a nursing facility to undergo an assessment to determine whether the person needs the level of care provided by a nursing facility (R.C. 5101.754, 5111.204, and 5111.205).

Overview

In general, the bill transfers, from ODJFS to the Department of Aging, the authority to provide assessments of non-Medicaid recipients, modifies the nature of those assessments by including a "long-term care consultation,"[16] and expands the population that must be given the assessments (R.C. 173.42 and 173.43 and repeal of R.C. 5101.751 and 5101.753). It also revises the law governing assessments of Medicaid recipients by ODJFS (R.C. 5111.204 and repeal of R.C. 5101.754 and 5111.205).

Duty to perform assessments

(R.C. 173.42(B) and 5101.75(B))

Under existing law, ODJFS may assess a person applying or intending to apply for admission to a nursing facility who is not an applicant for or recipient of Medicaid to determine whether the person is in need of nursing facility services and whether an alternative source of long-term care is more appropriate for the person in meeting the person's physical, mental, and psychosocial needs than admission to the facility to which the person has applied. Each assessment must be performed by ODJFS or an agency designated by ODJFS.

Under the bill, the Department of Aging is required to develop a long-term care consultation program whereby individuals or their representatives are provided with information through professional consultations about options available to meet long-term care needs and about factors to consider in making long-term care decisions. The Department may enter into a contract with an area agency on aging or other entity under which the long-term care consultation program for a particular area is administered by the area agency on aging or other

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[16] *Under the bill, "long-term care consultation" means the process used to provide services such as the provision of information about long-term care options and costs, the assessment of an individual's functional capabilities, and the conduct of all or part of the reviews, assessments, and determinations required under Medicaid and nursing facility law.*

entity pursuant to the contract; otherwise, the program is to be administered by the Department.

Information to be provided; assessment of individual's functional capabilities

Existing law (R.C. 5101.75 (B), (F), and (G)). Under existing law, each assessment must be based on information provided by the person or the person's representative. It must consider the person's physical, mental, and psychosocial needs and the availability and effectiveness of informal support and care. ODJFS or the designated agency must determine these needs by using, to the maximum extent appropriate, information from a ODJFS created resident assessment instrument. ODJFS or the designated agency must use certain criteria and procedures established in ODJFS rules.

ODJFS or the designated agency must make a recommendation on the basis of the assessment. Not later than the time the assessment is required to be performed, ODJFS or the designated agency must give the person assessed, or the person's representative, written notice of the recommendation, which must explain the basis for the recommendation. If ODJFS or the designated agency determines pursuant to an assessment that an alternative source of long-term care is more appropriate for the person than admission to the facility to which the person has applied, it must include in the notice possible sources of financial assistance for the alternative source of long-term care. Under existing law, even though an alternative source of long-term care is available or the person is determined pursuant to an assessment not to need nursing facility services, a person is not required to seek an alternative source of long-term care and may be admitted to or continue to reside in a nursing facility. Existing law permits the person assessed or the person's representative to file a complaint with ODJFS about the assessment process.

The bill (R.C. 173.42(D), (E), and (I)). Under the bill, the information provided through a long-term care consultation must be appropriate to the individual's needs and situation. The information must address the following:

(1) The availability of any long-term care options open to the individual;

(2) Sources and methods of both public and private payment for long-term care services;

(3) Factors to consider when choosing among the available programs, services, and benefits;

(4) Opportunities and methods for maximizing independence and self-reliance, including support services provided by the individual's family, friends, and community.

An individual's long-term care consultation may include an assessment of the individual's functional capabilities. It also may incorporate portions of determinations required to be made by the Department of Mental Health or the Department of Mental Retardation and Developmental Disabilities[17] and may be provided concurrently with the assessment required to be made by ODJFS (see "***Level-of-care assessments to receive Medicaid nursing facility services***," below).

At the conclusion of a consultation, the Department of Aging or the program administrator under contract with the Department must provide the individual or the individual's representative with a written summary of options and resources available to meet the individual's needs. And, similar to existing law, even though the summary may specify that a source of long-term care other than care in a nursing facility is appropriate and available, the individual is not required to seek an alternative source and may be admitted to or continue to reside in a nursing facility.

Individuals to be provided consultations; exemptions

Existing law (R.C. 5101.75(B) and (C)). Existing law *permits* ODJFS to assess a person applying or intending to apply for admission to a nursing facility who is not an applicant for or recipient of Medicaid.

A person is not required to be assessed if any of the following apply:

(1) Circumstances specified by ODJFS rules exist.

(2) The person is to receive care in a nursing facility under a contract for continuing care.

[17] *The Department of Mental Health is required to determine--in accordance with federal law--whether a mentally ill individual seeking admission to a nursing facility requires the level of services provided by a nursing facility and, if the individual requires that level of services, whether the individual requires specialized services for mental illness (R.C. 5111.202 and 5119.061). The Department of Mental Retardation and Developmental Disabilities must make a similar determination with respect to a mentally retarded individual seeking admission to a nursing facility (R.C. 5123.021).*

(3) The person has a contractual right to admission to a nursing facility operated as part of a system of continuing care in conjunction with one or more facilities that provide a less intensive level of services.

(4) The person is to receive continual care in a tax-exempt home for the aged.

(5) The person is to receive care in the nursing facility for not more than 14 days in order to provide temporary relief to the person's primary caregiver and the nursing facility notifies ODJFS of the person's admittance not later than 24 hours after admitting the person.

(6) The person is to be transferred from another nursing facility, unless the nursing facility from which or to which the person is to be transferred determines that the person's medical condition has changed substantially since the person's admission to the nursing facility from which the person is to be transferred or a review is required by a third-party payment source.

(7) The person is to be readmitted to a nursing facility following a period of hospitalization, unless the hospital or nursing facility determines that the person's medical condition has changed substantially since the person's admission to the hospital, or a review is required by a third-party payment source.

(8) ODJFS or the designated agency fails to complete an assessment within the time required or determines after a partial assessment that the person should be exempt from the assessment.

The bill (R.C. 173.42(F) and (H)). Similar to existing law, under the bill a long-term care consultation *may* be provided for nursing facility residents who have not applied and have not indicated an intention to apply for Medicaid. The purpose of these consultations is to determine continued need for nursing facility services, to provide information on alternative services, and to make referrals to alternative services.

But, the bill *requires* long-term care consultations to be provided to the following:

(1) Individuals who apply or indicate an intention to apply for admission to a nursing facility, regardless of the source of payment to be used for such care;

(2) Residents of nursing facilities who apply or indicate an intention to apply for Medicaid;

(3) Residents who are likely to "spend down" their resources within six months after admission to a level that qualifies them financially for Medicaid;

(4) Any individual who requests a long-term care consultation.

The bill exempts certain individuals from the long-term care consultation requirement. The exemptions largely parallel the exemptions in existing law, but differ in the following ways:

(1) The bill additionally exempts an individual from the requirement if the individual or the individual's representative chooses to forego participation in the consultation pursuant to criteria specified in rules adopted under the bill.

(2) The bill eliminates the exemption regarding a person placed in the nursing facility in order to provide temporary relief to the person's primary caregiver.[18]

(3) The bill additionally exempts an individual who is seeking admission to a facility that is not a nursing facility with a provider agreement under the Medicaid Law.

(4) The bill removes the qualifiers from the exemption described in paragraph (6), above; thus the bill always exempts an individual who is to be transferred from another nursing facility.

(5) The bill removes the qualifiers from the exemption described in paragraph (7), above; thus the bill always exempts an individual who is to be readmitted to a nursing facility following a period of hospitalization.

(6) The bill eliminates the exemption based on the failure of a timely assessment.

Time frame for completion of consultations

Existing law (R.C. 5101.75(D) and (E)). Under existing law, ODJFS or the designated agency must perform a complete assessment, or, in certain circumstances, a partial assessment, as follows:

(1) In the case of a hospitalized person applying or intending to apply to a nursing facility, not later than two working days after the person or the person's representative is notified that a bed is available in a nursing facility;

[18] *In a conforming change, the bill eliminates the possible imposition of a fine for failing to notify ODJFS about the admission within the required time limits (R.C. 5101.75(J)(1), renumber R.C. 173.42(L)).*

(2) In the case of an emergency as determined in accordance with ODJFS rules, not later than one working day after the person or the person's representative is notified that a bed is available in a nursing facility;

(3) In all other cases, not later than five calendar days after the person or the person's representative who submits the application is notified that a bed is available in a nursing facility.

If ODJFS or the designated agency conducts a partial assessment, it generally must complete the rest of the assessment not later than 180 days after the date the person is admitted to the nursing facility.

The bill (R.C. 173.42(G)). Under the bill, when a long-term care consultation is required to be provided under the bill, it must be provided as follows:

(1) If the individual for whom the consultation is being provided has applied for Medicaid and the consultation is being provided concurrently with the assessment required to be made by ODJFS (see "***Level-of-care assessments to receive Medicaid nursing facility services***," below), the consultation must be completed in accordance with the applicable time frames specified in the Medicaid law for providing a level of care determination based on the assessment.

(2) In all other cases, the consultation must be provided not later than five calendar days after the Department of Aging, or the program administrator under contract with the Department, receives notice that (a) the individual has applied or has indicated an intention to apply for admission to a nursing facility or (b) if the individual is a resident of a nursing facility, the individual has applied or has indicated an intention to apply for Medicaid.

An individual or the individual's representative may request that a long-term care consultation be provided on a date that is later than that required under (1) or (2), above. Also, if a consultation cannot be completed within the required time frames, the Department or the program administrator may (a) exempt the individual from the consultation pursuant to rules adopted under the bill, (b) in the case of an applicant for admission to a nursing facility, provide the consultation after the individual is admitted to the facility, or (c) in the case of a resident of a nursing facility, provide the consultation as soon as practicable.

Who may perform assessments

(R.C. 173.42(C), 173.43, 5101.75(B), and 5101.752 and 5101.751 (repealed))

Existing law authorizes ODJFS to designate another agency to perform assessments. In addition, assessments may be performed only by persons certified by ODJFS; ODJFS is required to certify licensed registered nurses and licensed social workers and independent social workers who meet certification requirements established by ODJFS to perform assessments. And ODJFS is required to adopt rules governing the certification process and requirements that must specify the education, experience, or training in *geriatric* long-term care a person must have to qualify for certification.

Under the bill, the long-term care consultations are to be provided by individuals certified by the Department of Aging. The Director of Aging is required to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) governing the certification process and requirements. The rules must specify the education, experience, or training in long-term care a person is to have to qualify for certification. The bill repeals the authority of ODJFS to designate another agency to provide the assessments, and the Department of Aging is given no analogous designation authority.

Authority to fine nursing facilities

(R.C. 173.42(J) and (L) and 5111.62)

The bill, in a manner similar to existing law, prohibits any nursing facility for which an operator has a provider agreement under the Medicaid law from admitting or retaining any individual as a resident, unless the nursing facility has received evidence that a long-term care consultation has been completed for the individual or that the individual is exempt from the long-term care consultation requirement. The bill transfers from the Director of Job and Family Services to the Director of Aging the authority to fine a nursing facility an amount determined by rule if the facility violates this prohibition. All fines collected are to be deposited into the state treasury to the credit of the existing Residents Protection Fund.

Rulemaking

(R.C. 173.42(K))

Under existing law, the Director of Job and Family Services is required to adopt rules in accordance with the Administrative Procedure Act to implement and administer the assessment provisions.

The bill creates analogous authority for the Director of Aging. Under the bill, the Director is authorized to adopt any rules the Director considers necessary for the implementation and administration of the above provisions. The rules must be adopted in accordance with the Administrative Procedure Act and may specify all of the following:

(1) Procedures for performing long-term care consultations;

(2) Information to be provided through long-term care consultations regarding long-term care services that are available;

(3) Criteria for identifying nursing facility residents who would benefit from the provision of a long-term care consultation;

(4) Criteria under which an individual or the individual's representative may choose to forego participation in a long-term care consultation;

(5) Criteria for exempting individuals from the long-term care consultation requirement;

(6) Circumstances under which it may be appropriate to provide an individual's consultation after the individual's admission to a nursing facility.

Plan for providing home and community-based services

(R.C. 5101.573 (repealed))

The bill repeals a provision under which ODJFS or the designated agency may develop a plan for provision of home and community-based services to a person if the recommendation resulting from the assessment is that home and community-based services are appropriate for the person.

Level-of-care assessments to receive Medicaid nursing facility services

Individuals to be assessed

(R.C. 5111.204(B))

Existing law authorizes the Department of Job and Family Services (ODJFS) to require an applicant for or recipient of Medicaid who applies or intends to apply for admission to a nursing facility to undergo an assessment to determine whether the applicant or recipient needs the level of care provided by a nursing facility.

The bill expands this provision to also apply to an applicant for or recipient of Medicaid who resides in a nursing facility. In addition, the bill specifies that

the assessment may be performed concurrently with a long-term care consultation performed by the Department of Aging.

Who may perform assessments

(R.C. 5101.754 and 5111.204(B))

On receipt of the appropriate federal waiver or on determining that a federal waiver is not necessary, existing law permits ODJFS to designate another agency to conduct assessments. ODJFS rules govern how the assessments must be conducted and how the designated agency must report the assessments.

The bill instead permits ODJFS to enter into contracts in the form of interagency agreements with one or more other state agencies to perform the assessments. The interagency agreements must be in accordance with Medicaid law provisions governing interagency agreements to administer one or more components of the Medicaid program. The interagency agreements must specify the responsibilities of each agency in the performance of the assessments.

Partial assessments

The bill removes the authority of ODJFS or the designated agency to conduct a partial assessment of the person in certain circumstances (existing R.C. 5101.204(C), (D), (E), and (H)).

Time frame

(R.C. 5111.204 (C) and (D))

Existing law. Under existing law, ODJFS or the designated agency, whichever performs the assessment, must perform a complete assessment, or, if certain circumstances exist, a partial assessment, as follows:

(1) In the case of a person applying or intending to apply for admission to a nursing facility while hospitalized, not later than one of the following: (a) one working day after the person or the person's representative submits an application for admission to the nursing facility or notifies ODJFS of the person's intention to apply, or (b) a later date requested by the person or the person's representative.

(2) In the case of an emergency, not later than one calendar day after the person or the person's representative submits the application or notifies ODJFS of the person's intention to apply for admission.

(3) In all other cases, not later than one of the following: (a) five calendar days after the person or the person's representative submits the application or

notifies ODJFS of the person's intention to apply, or (b) a later date requested by the person or the person's representative.

If ODJFS or the designated agency conducts a partial assessment, it must complete the rest of the assessment not later than 180 days after the date the person is admitted to the nursing facility unless ODJFS or the designated agency determines the person should be exempt from the assessment.

The bill. The bill revises several timeframes and adds an additional category. Under the bill, ODJFS or the contracting agency must provide a level of care determination as follows:

(1) In the case of a person applying or intending to apply for admission to a nursing facility while hospitalized, not later than (a) one working day after the person or the person's representative submits the application or notifies ODJFS of the person's intention to apply and submits all information required for providing the level of care determination or (b) a later date requested by the person or the person's representative.

(2) In the case of a person applying or intending to apply for admission to a nursing facility who is not hospitalized, not later than (a) five calendar days after the person submits an application for Medicaid or notifies ODJFS of the person's intention to apply and submits all information required for providing the level of care determination or (b) a later date requested by the person or the person's representative (existing law).

(3) In the case of a person who resides in a nursing facility, not later than (a) five calendar days after the person or the person's representative submits an application for medical assistance and submits all information required for providing the level of care determination, or (b) a later date requested by the person or the person's representative (all added by the bill).

(4) In the case of an emergency, within the number of days specified by ODJFS rules (modified by the bill).

Appeals

(R.C. 5111.204(D))

The bill retains the current law provision that permits a person assessed or the person's representative to appeal the conclusions reached by ODJFS or the agency on the basis of the assessment, but rephrases the provision to refer to requesting "a state hearing to dispute the conclusions" rather than referring to an "appeal." But, the bill additionally requires that the state be represented in any

requested state hearing by ODJFS or the contracting agency, whichever performed the assessment.

Rulemaking

(R.C. 5111.204(F))

The bill makes the following revisions to the provision authorizing the Director of Job and Family Services to adopt rules to implement and administer the assessment provision:

(1) It eliminates the partial assessments.

(2) It requires that the rules set forth circumstances that constitute an "emergency" and the number of days within which a level of care determination must be provided in the case of an emergency.

(3) It eliminates specific criteria that must be included in rules establishing criteria and procedures to be used in determining whether admission to a nursing facility or continued stay in a nursing facility is appropriate for the person being assessed.

(4) It makes conforming changes to reflect the other changes in the bill.

Plan for providing home and community-based services

(R.C. 5111.205 (repealed))

The bill repeals a provision under which ODJFS or the designated agency, whichever performed the assessment, may develop a plan for provision of home and community-based services to that person if the recommendation resulting from the assessment is that home and community-based services are appropriate for the person assessed.

Nursing home and residential care facility survey

(R.C. 173.44 and 173.99)

The bill authorizes the Department of Aging to conduct an annual survey of nursing homes and residential care facilities.[19] The survey is to include questions

[19] *Nursing homes and residential care facilities are licensed by the Ohio Department of Health for persons who need residential care due to age or infirmity. The difference is the level of care provided, with nursing homes providing skilled nursing care on a regular basis.*

about capacity, occupancy, and private pay charges related to the facilities. Under the bill, the Department may work with an outside entity to conduct the survey and analyze the results. The results and analysis of the survey are to be made available to the General Assembly, other state agencies, nursing home and residential care facility providers, and the public.

A nursing home or residential care facility that recklessly fails to complete the survey is subject to a $100 fine.

Long-Term Care Consumer Guide

Background

(Former R.C. 173.45 to 173.59 and R.C. 173.02; O.A.C. Chapter 173-45)

Am. Sub. H.B. 95 of the 125th General Assembly, the biennial operating budget for fiscal years 2004 and 2005, repealed provisions that required the Department of Aging to publish the Ohio Long-Term Care Consumer Guide, a guide to Ohio nursing homes. Under prior law, the Guide was required to be available on the Internet and updated periodically. Every two years, the Department was required to publish an Executive Summary of the Guide, which had to be available in electronic and printed media. In addition, prior law specified that, to the extent possible, annual customer satisfaction surveys had to be conducted for use in the Guide. The Department was permitted to charge the nursing home a fee of up to $400 for each annual survey. The Guide has continued to be published pursuant to Department rules, but the statutory provisions were eliminated.

The bill

(R.C. 173.45 to 173.49)

The bill enacts new statutory provisions governing publication of an Ohio Long-Term Care Consumer Guide, conduct of customer satisfaction surveys, and the fee relating to the surveys.

Authorization to publish and content of Guide. The bill requires the Department of Aging to develop and publish a guide to long-term care facilities for use by individuals considering long-term care facility admission and their families, friends, and advisors.[20] This Ohio Long-Term Care Consumer Guide

[20] *"Long-term care facility" means a nursing home or a residential care facility.*

"Nursing home" means a home used for the reception and care of individuals who by reason of illness or physical or mental impairment require skilled nursing care and of

may be published in printed form or in electronic form for distribution over the Internet. The Guide may be developed as a continuation or modification of the rule-authorized Guide currently published by the Department.

The Guide must include information on each long-term care facility in Ohio. For each facility, the Guide must include the following information, as applicable to the facility:

(1) Information regarding the facility's compliance with Ohio statutes and rules and federal statutes and regulations;

(2) Information generated by the United States Department of Health and Human Services Centers for Medicare and Medicaid Services from the quality measures developed as part of its nursing home quality initiative;

(3) Results of customer satisfaction surveys;

(4) Any other information the Department specifies by rule.

Customer satisfaction surveys. For purposes of publishing the Guide, the Department must conduct or provide for the conduct of an annual customer satisfaction survey of each long-term care facility. The bill specifies that each long-term care facility must cooperate in the conduct of the survey (but does not specify a penalty for non-compliance). The results of the surveys may include information obtained from long-term care facility residents, their families, or both.

Fees and the Long-Term Care Consumer Guide Fund. The Department may charge fees for the conduct of annual customer satisfaction surveys. The Department may contract with any person or government entity to collect the fees on its behalf. The fees may not exceed the following amounts:

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individuals who require personal care services but not skilled nursing care. A nursing home is licensed to provide personal care services and skilled nursing care. (R.C. 173.45(B), by reference to R.C. 3721.01(A)(6).)

"Residential care facility" means a home that provides either of the following (R.C. 173.45(B), by reference to R.C. 3721.01(A)(7)): (1) accommodations for 17 or more unrelated individuals and supervision and personal care services for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, or (2) accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and, to at least one of those individuals, certain types of skilled nursing care.

(1) $400 for the customer satisfaction survey of a long-term care facility that is a nursing home or county home or district home operated in the same manner as a nursing home;

(2) $300 for the customer satisfaction survey pertaining to a long-term care facility that is a residential care facility.

Fees paid by a long-term care facility that is a "nursing facility" must be reimbursed through the Medicaid Program operated under R.C. Chapter 5111.[21]

The bill creates in the state treasury the Long-Term Care Consumer Guide Fund. Money collected from the fees charged for the conduct of customer satisfaction surveys must be deposited in the state treasury and credited to the Fund. The Department must use money in the Fund for costs associated with publishing the Guide, including, but not limited to, costs incurred in conducting or providing for the conduct of customer satisfaction surveys.

Rules. The bill authorizes the Department to adopt rules under the Administrative Procedure Act to implement and administer the preceding provisions relating to the annual surveys and the publication of the Long-Term Care Consumer Guide.

Transfer of PACE administrative duties

(R.C. 173.50; Section 490.03)

The Program of All-Inclusive Care for the Elderly (PACE) is a Medicaid component based on a managed care model through which certain sites provide frail, older adults with all of their needed health care and ancillary services in acute, subacute, institutional, and community settings. Enrollment is voluntary, and once enrolled, PACE becomes the sole source of all Medicare and Medicaid covered services and other items or medical, social, or rehabilitation services the PACE interdisciplinary team determines an enrollee needs. If a participant requires placement in a nursing home, PACE is responsible and accountable for the care and services provided and must regularly evaluate the participant's condition.[22]

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[21] *"Nursing facility" means a facility, or a distinct part of a facility, that is certified as a nursing facility under the Medicaid Program and is not an intermediate care facility for the mentally retarded. (R.C. 173.45(C), by reference to R.C. 5111.20(M).)*

[22] *Press Release from the Centers for Medicare and Medicaid Services, "CMS Approves Concordia Care in Cleveland Heights, Ohio for Health Care Program for Frail Elderly,"*

To be eligible for PACE, a person must:

- Live in the service area of a PACE site;
- Qualify for Medicaid coverage under the institutional financial eligibility standards;
- Need an intermediate or skilled level of care;
- Be age 55 or older;
- Be willing to receive all care from PACE providers;
- Be able to remain safely in a community setting at the time of initial enrollment.[23]

Currently, Ohio has two PACE sites: TriHealth SeniorLink located in Cincinnati and Concordia Care in Cleveland Heights.[24]

Am. Sub. H.B. 95 of the 125th General Assembly (Section 59.19) authorized the Director of JFS to submit an amendment to the state Medicaid Plan asking the United States Secretary of Health and Human Services for permission to transfer the day-to-day administration of PACE to the Department of Aging. This act also provided that if the Secretary approved the amendment, the Directors of JFS and the Department of Aging could enter into an interagency agreement to transfer responsibility and appropriation authority for administrative expenses for PACE.

As of February 15, 2005, the plan amendment was still under review by the Secretary. If the amendment is approved, an effective date of December 10, 2004, will apply.[25] In anticipation of approval, the bill requires the Department of Aging, pursuant to an interagency agreement, to carry out the day-to-day administration of PACE. The Department of Aging must carry out the administrative duties in accordance with the interagency agreement and all

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[23] *ODJFS, Office of Ohio Health Plans Medicaid Fact Sheet 1.5. "PACE," published Aug. 2003, available at <http://jfs.ohio.gov/ohp/bcps/factsheets/pace.pdf>.*

[24] *Id. TriHealth SeniorLink serves Hamilton County and parts of Warren, Butler, and Clermont counties. Concordia Care serves Cuyahoga County.*

[25] *Telephone interview with Matt Hobbs, Legislative Liaison, JFS (Feb. 15, 2005).*

applicable federal laws, including the Social Security Amendments of 1965.[26] The bill grants rulemaking authority to the Department of Aging as long as the rules: (1) are authorized by rules adopted by the Department of Job and Family Services (ODJFS) and (2) address only issues that are not addressed by ODJFS' rules for the PACE program. The bill repeals Section 59.19 of Am. Sub. H.B. 95 of the 125th General Assembly because the Director of JFS has submitted the amendment request to the Secretary and therefore, this provision is no longer needed.

Transferring individuals from nursing facilities to PASSPORT

(Section 206.66.64)

The bill provides that on a monthly basis, each Area Agency on Aging must determine whether individuals who reside in the area served by the Area Agency are on a waiting list for the PASSPORT program and were admitted to a nursing facility during the previous month. If the Area Agency determines that any individual meets those criteria, the Area Agency is required to contact the Long-Term Care Consultation Program administrator for that area.

Under the bill, the administrator is required to determine whether PASSPORT is appropriate for the individual and whether the individual would rather receive PASSPORT services than continue to reside in a nursing facility. If the administrator determines that the individual should receive PASSPORT services, the administrator is required to contact the Department of Aging. Upon receipt of the notice from the administrator, the Department is required to approve the enrollment of the individual in the PASSPORT program regardless of that individual's place on the PASSPORT waiting list.

The bill requires the Director of Job and Family Services to submit to the U.S. Secretary of Health and Human Services an amendment to the Medicaid waiver authorizing the PASSPORT program if necessary to implement this provision.

PASSPORT Evaluation Panel

(Section 203.21.06)

The bill creates the PASSPORT Evaluation Panel to oversee the performance of an evaluation of the PASSPORT Program conducted by an independent contractor. The Panel is composed of the following members:

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[26] *79 Stat. 286 (1965), 42 U.S.C. 1396u-4.*

(1) The Director of Aging or the Director's designee;

(2) The Director of Job and Family Services or the Director's designee;

(3) A representative of the Central Ohio Agency on Aging, appointed by the Agency;

(4) A representative of the Ohio Association of Area Agencies on Aging, appointed by the Agency;

(5) A representative of PASSPORT providers, appointed by the Director of Aging;

(6) A representative of the Ohio Academy of Nursing Homes, appointed by the Academy;

(7) A representative of the Ohio Health Care Association, appointed by the Association;

(8) A representative of the Association for Ohio Philanthropic Homes and Housing for the Aging, appointed by the Association;

(9) A representative of the Ohio Council for Home Care, appointed by the Council;

(10) A representative of the Ohio Association of Adult Day Services, appointed by the Association;

(11) The State Long-Term Care Ombudsperson or the Ombudsperson's designee;

(12) A representative of the Ohio Association of Regional Long-Term Care Ombudsman, appointed by the Association;

(13) A representative of the American Association of Retired Persons, appointed by the Association;

(14) The Chair of the Long-Term Care Committee of the Ohio Commission to Reform Medicaid;

(15) Three individuals to represent PASSPORT Program participants, appointed by the Director of Aging.

The Panel must convene by not later than 60 days after the bill's effective date. Panel members are not to be compensated for their service. The Department

of Aging must provide assistance to the Panel, including support services and meeting space.

The bill requires the Panel to establish criteria to be used in selecting an independent contractor to evaluate the PASSPORT Program. The criteria must specify that the independent contractor may not be affiliated with any state agency. The Panel must accept and evaluate bids from potential contractors in accordance with the request for proposals process administered by the Department of Administrative Services (DAS) and select a contractor that meets the criteria established by the Panel.

The independent contractor selected by the Panel must do all of the following in conducting the evaluation of the PASSPORT Program:

(1) Examine the implementation by the existing PASSPORT system of the long-term care recommendations of the Ohio Commission to Reform Medicaid and coordinate the work of the PASSPORT evaluation with the Medicaid Transition Council and the Medicaid Care Management Work Group;

(2) Evaluate the cost-effectiveness of services provided under the program;

(3) Evaluate the population served and the appropriateness of the program for that population;

(4) Evaluate program outcomes to determine the program's effectiveness in preventing nursing home administrations;

(5) Evaluate the effectiveness of area agencies on aging in efficiently linking older Ohioans to the appropriate level of assistance based on the screening and assessment activities of the PASSPORT system;

(6) Examine the cost-effectiveness of increasing the care management responsibilities of area agencies on aging to include the management of the Medicaid state plan services;

(7) Evaluate the effectiveness of client-to-case management ratios of area agencies on aging to assess whether clients receive quality outcomes in a cost-effective manner;

(8) Evaluate and assess the effectiveness of the PASSPORT Program's authority to provide interventions that increase enrollment and decrease disenrollment and increase flexibility to provide quality, timely service to clients with special service needs;

(9) Evaluate the PASSPORT Program's rate structure and contracting process to determine fair market rates and quality incentive indicators;

(10) Evaluate the effectiveness of the PASSPORT Program's current provider procurement process;

(11) Determine elements of the program that may be vulnerable to fraud;

(12) Any additional action requested by the PASSPORT Evaluation Panel.

The independent contractor must issue to the Panel quarterly reports and, by not later than May 15, 2007, a final report of its findings. By not later than June 30, 2007, the Panel must approve a final report.

Aging and disability resource centers

(Section 203.21.09)

The Aging and Disability Resource Center Grant Initiative is a program, jointly offered by the Administration of Aging (AoA) and the Centers for Medicare and Medicaid Services (CMS), that offers states the opportunity to establish Aging and Disability Resource Centers that provide public education, information, counseling, access to public programs and coordination with other programs, and assistance with prospective planning to help people plan ahead for long-term services and support. AoA and CMS offer each state up to $800,000 for a period of three years, to establish such centers and programs. To date, 24 states have received these grants.

The bill requires the Department of Aging to apply for the Aging and Disability Resource Center Grant Initiative and to create an Aging and Disability Resource Center beginning in fiscal year 2006 if the application is accepted.

Ambulette service providers solely serving the Department of Aging

(R.C. 4766.09, 4766.14, 4766.15, not in the bill; Section 612.12)

Under existing law, ambulette service providers are required to meet all of the requirements of the Medical Transportation Law. The bill exempts from the Medical Transportation Law an ambulette service provider who operates under rules adopted by the Department of Aging, but only during the period of time on any day the provider is solely serving the Department or the Department's designee. Under the bill, the Medical Transportation Law applies to an ambulette service provider at any time the ambulette service provider is not solely serving the Department or the Department's designee.

The bill creates new requirements for ambulette service providers who are exempted from the Medical Transportation Law under the bill. These ambulette service providers must do all of the following:

(1) Make available to all ambulette drivers while operating ambulette vehicles a means of two-way communication using either ambulette vehicle radios or cellular telephones;

(2) Equip every ambulette vehicle with one isolation and biohazard disposal kit that is permanently installed or secured in the vehicle's cabin;

(3) Before hiring an applicant, obtain all of the following:

(a) A signed statement from a licensed physician that the applicant does not have any impairment or medical condition that could interfere with safe driving, passenger assistance, and emergency treatment activity or could jeopardize the health and welfare of a client or the general public;

(b) The results of a chemical test for drug and alcohol abuse;

(c) Certificates of completion of CPR and first aid courses;

(d) The results of a criminal records check.

The bill prohibits an ambulette service provider from employing an applicant as an ambulette driver if the applicant has six or more points on the applicant's driving record.

The bill requires the Department of Aging to enforce the above provisions and specifies that these provisions go into immediate effect.

DEPARTMENT OF AGRICULTURE

- Extends the sunset of the Family Farm Loan Program from October 15, 2005, to October 15, 2007.

- Combines the Animal Industry Laboratory Fund with the Laboratory Services Fund, names the combined fund the Animal Health and Food Safety Fund, and retains existing fund provisions concerning sources and uses of money.

- Creates the Laboratory and Administrative Support Fund consisting of moneys received by the Department of Agriculture from auditorium

rentals and other miscellaneous sources, and authorizes the Department to use moneys in the Fund to pay costs associated with any of the Department's programs.

- Expands the scope of background information that must be submitted to the Director of Agriculture by certain applicants for a permit to install or permit to operate a concentrated animal feeding facility.

- Exempts from the background information requirements a permit application that involves a small or medium concentrated animal feeding operation that must obtain a permit to install or permit to operate due to known water pollution issues.

- Changes the annual schedule for fertilizer-related licensure and registration from July 1 of one year through June 30 of the subsequent year to December 1 of one year through November 30 of the subsequent year.

- Changes the fertilizer tonnage report from a semiannual report to an annual report, and requires it to be submitted by November 30 each year.

- Increases the fertilizer inspection fee from 12¢ per ton to 25¢ per ton and from 13¢ per metric ton to 28¢ per metric ton, as applicable.

- Makes discretionary rather than mandatory the distribution of annual statements of fertilizer sales and the publishing of an annual report of an analysis of fertilizers inspected by the Director of Agriculture.

- Merges the Commercial Feed, Fertilizer, and Lime Inspection and Laboratory Fund and the Seed Fund to create the Commercial Feed, Fertilizer, Seed, and Lime Inspection and Laboratory Fund.

- Prohibits political subdivisions from regulating or enacting legislation relating to (1) the registration, packaging, labeling, sale, storage, distribution, use, or application of fertilizer or (2) the registration, labeling, sale, storage, transportation, distribution, notification of use, use, or planting of seed.

- Beginning on January 1, 2007, establishes in statute a pesticide registration and inspection fee of $150 per product and a penalty fee of $75 for late registration or distribution of an unregistered pesticide rather

than allowing the Director to establish the amount of the fees by rule as in current law.

- Increases the semiannual commercial feed inspection fee from 10¢ per ton to 25¢ per ton, and increases the minimum payment from $10 to $25.

- Makes annual publishing of information concerning commercial feed by the Director discretionary rather than mandatory.

- Revises the definitions of "agricultural commodity handling" and "agricultural commodity handler" in the Agricultural Commodity Handlers Law.

- Changes the fee for the inspection of agricultural products and their conveyances under the Plant Pests Law from $65 to an amount equal to the hourly rate of pay in the highest step in the pay range, including fringe benefits, of a plant pest control specialist multiplied by the number of hours worked by such a specialist in conducting an inspection.

- Changes the name of the Scale Certification Fund to the Metrology and Scale Certification Fund.

- Increases the cannery license fee and license renewal fee from $100 to $200.

- Increases the soft drink manufacturing or bottling license fee from $100 to $200, increases the out-of-state soft drink manufacturing or bottling registration fee from $100 to $200, and increases the license fee from $50 to $100 for the sale, use, or possession with intent to sell of any soda water syrup or extract or soft drink syrup to be used in making, drawing, or dispensing soda water or other soft drinks.

- Increases the fee for an annual license to operate a cold-storage warehouse from $100 to $200.

- Increases the fee for an annual license to operate a frozen food manufacturing facility, slaughterhouse, locker room, locker, chill room, sharp freezing room and facilities, or sharp freezing cabinet from $25 to $50.

- Authorizes the Director to issue a certificate of health and freesale to a food processing establishment, manufacturer of over-the-counter drugs,

or manufacturer of cosmetics upon request for purposes of certifying that products have been produced and warehoused under sanitary conditions as determined through inspection, establishes a $20 fee for the issuance of such a certificate, and requires the Director to deposit any such fees that are collected to the credit of the existing Food Safety Fund.

- Extends through June 30, 2007, the extra 2¢ earmark of wine tax revenue credited to the Ohio Grape Industries Fund.

- Increases the annual amusement ride permit fee from $50 to $150.

- Requires the existing Advisory Council on Amusement Ride Safety to prepare and submit a report by December 31, 2006, to the Governor, Speaker of the House of Representatives, President of the Senate, and Director of Agriculture concerning the Council's recommendations for alternative funding sources for the Amusement Ride Safety Program.

- Requires amusement rides that are operated from an electric light company source to be operated only through a properly installed fusible switch, enclosed circuit breaker, or panelboard.

Family Farm Loan Program

(R.C. 122.011; Sections 403.11 and 403.12)

Under existing law, the Family Farm Loan Program is scheduled to expire on October 15, 2005. The bill extends the expiration date to October 15, 2007, and changes all statutory dates with regard to that Program accordingly.

Animal Health and Food Safety Fund

(R.C. 901.43)

Current law creates the Animal Industry Laboratory Fund in the state treasury and requires the deposit into the Fund of all moneys collected by the Director of Agriculture that are from fees generated by a laboratory service performed by the Department of Agriculture and related to the diseases of animals together with all moneys so collected that are from fees generated for the inspection and accreditation of laboratories and laboratory services related to the diseases of animals. The Director must use moneys in the Fund to pay the expenses necessary to operate the animal industry laboratory, including the purchase of supplies and equipment.

Current law also creates the Laboratory Services Fund in the state treasury and requires the deposit into the Fund of all moneys collected by the Director that are from fees generated by a laboratory service performed by the consumer analytical laboratory together with all moneys so collected that are from fees generated for the inspection and accreditation of laboratories and laboratory services not related to weights and measures or the diseases of animals. Moneys in the Fund may be used to pay the expenses necessary to operate the consumer analytical laboratory, including the purchase of supplies and equipment.

The bill combines the Animal Industry Laboratory Fund with the Laboratory Services Fund and names the combined fund the Animal Health and Food Safety Fund. Under the bill, moneys currently deposited into the two separate funds instead are required to be deposited into the combined fund. The Director may use moneys in the combined fund for the same purposes currently designated for moneys in the two separate funds.

Creation of Laboratory and Administrative Support Fund

(R.C. 901.44)

The bill creates the Laboratory and Administrative Support Fund in the state treasury. The Department of Agriculture must deposit the following moneys received by the Department to the credit of the Fund: payment for the rental of the Department's auditoriums by outside parties and reimbursement for related utility expenses, laboratory fees that are not designated for deposit into another fund, and other miscellaneous moneys that are not designated for deposit into another fund. The Department may use moneys in the Fund to pay costs associated with any program of the Department as the Director of Agriculture sees fit.

Permits for concentrated animal feeding facilities

(R.C. 903.05 (in the bill) and 903.01, 903.02, and 903.03 (not in the bill))

Introduction

Current law prohibits a person from modifying an existing or constructing a new concentrated animal feeding facility without first obtaining a permit to install from the Director of Agriculture. Likewise, current law prohibits a person from operating a concentrated animal feeding facility without a permit to operate issued by the Director. "Concentrated animal feeding facility" means an animal feeding facility with a total design capacity equal to or more than the specified number of animals in various categories. Those numbers range from 700 to 125,000 depending on the type of animals and, for certain types of animals, whether the facility uses a liquid manure handling system. "Animal feeding facility" generally

means a lot, building, or structure where both of the following conditions are met: (1) agricultural animals have been, are, or will be stabled or confined and fed or maintained there for a total of 45 days or more in any 12-month period, and (2) crops, vegetative forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot, building, or structure.

Background information requirements

Current law. Current law requires each application for a permit to install or permit to operate that is submitted by an applicant who has not operated a concentrated animal feeding facility in Ohio for at least two of the five years immediately preceding the submission of the application to be accompanied by information concerning other concentrated animal feeding facilities that the owner or operator of the proposed new or modified concentrated animal feeding facility has operated or is operating, including information concerning certain past liability and past violations involving those other facilities. The Director may deny the permit application if the background information reveals a history of substantial noncompliance with environmental laws.

The bill. The bill makes two changes to the background information requirements. First, it expands the scope of the background information that must be submitted to the Director by an applicant for a permit to install or permit to operate who has not operated a concentrated animal feeding facility in Ohio for at least two of the five years immediately preceding the submission of the application by requiring such an applicant to submit information concerning all animal feeding facilities of any size that the applicant has operated or is operating rather than information concerning only the concentrated animal feeding facilities that the applicant has operated or is operating as in current law.

Second, the bill creates an exemption from the background information requirements for certain permit applicants. Generally, a permit to install or permit to operate is not required under current law for an animal feeding facility that has a total design capacity that is less than the number of animals enumerated in the definition of "concentrated animal feeding facility." However, under certain circumstances generally involving pollution of the waters of the state, an animal feeding facility with a smaller total design capacity can be required to obtain a permit to install or permit to operate. The bill exempts from the background information requirements such smaller facilities by specifying that the requirements apply only to an application involving a concentrated animal feeding facility.

Fertilizer license, registration, and tonnage report schedule

(R.C. 905.32, 905.33, 905.331, and 905.36; Section 203.24.03)

Current law requires each person who manufactures or distributes any type of fertilizer in Ohio to obtain an annual fertilizer manufacturing or distribution license from the Department of Agriculture. Further, a person who engages in the businesses of blending custom mixed fertilizer for use on lawns, golf courses, recreation areas, or other real property that is not used for agricultural production must obtain a nonagricultural production custom mixed fertilizer blender license from the Director of Agriculture. The licenses are valid from July 1 of a given year through June 30 of the subsequent year. A renewal application for a license must be submitted no earlier than June 1 and no later than June 30 of each year. A person who submits a renewal application for a license after June 30 must include with the application a late filing fee of $10.

The bill amends the annual schedule for obtaining fertilizer manufacturing and distribution licenses and nonagricultural production custom mixed fertilizer blender licenses. Under the bill, all licenses are valid for one year beginning on December 1 of a calendar year through November 30 of the following calendar year. A renewal application must be submitted no later than November 30 each year. A person who submits a renewal application for a license after November 30 must include with the application a late filing fee of $10. With regard to licenses for which applications for the license period beginning July 1, 2005, have been submitted under current law, a license must be issued for a period beginning on July 1, 2005, and ending on November 30, 2005, and expires on November 30, 2005.

Current law also prohibits any person from distributing a specialty fertilizer in Ohio until it is registered by the manufacturer or distributor with the Department. All registrations expire on June 30 of each year. The bill instead provides that all registrations are valid for one year beginning on December 1 of a calendar year through November 30 of the following calendar year. With regard to registrations of a specialty fertilizer for which applications for the registration period beginning July 1, 2005, have been submitted under current law, a registration must be issued for the period beginning on July 1, 2005, and ending on November 30, 2005, and expires on November 30, 2005.

Current law requires every licensee or registrant to file a semiannual statement that includes the number of net tons or metric tons of fertilizer distributed to nonlicensees or nonregistrants in Ohio by grade, packaged, bulk, dry, or liquid. The statements are due within 30 days after June 30, and within 30 days after December 31 of each calendar year. The bill instead requires a tonnage report to be submitted to the Director annually instead of semiannually. Under the

bill, the tonnage report must be filed on or before November 30 of each calendar year and must include data from the period beginning on November 1 of the year preceding the year in which the report is due through October 31 of the year in which the report is due. A person who is required to submit a tonnage report within 30 days of June 30, 2005, under current law must submit the report by that date. However, the person also must submit a tonnage report by November 30, 2005 for the period beginning on July 1, 2005, and ending on October 31, 2005.

Fertilizer inspection fee

(R.C. 905.36)

Under current law, a licensee or registrant under the Fertilizer Law must pay to the Director for all fertilizers distributed in Ohio an inspection fee at the rate of 12¢ per ton or 13¢ per metric ton. The bill increases the fee to 25¢ per ton and 28¢ per metric ton. The fee must be paid at the time the annual tonnage report is submitted (see above). Currently, if a tonnage report is not filed or payment of inspection fees is not made within ten days after the due date, a penalty of $50 or 10% of the amount due, whichever is greater, must be assessed. Under the bill, the penalty must be assessed if the report is not filed or payment is not made on or before November 30 of the applicable calendar year.

Annual fertilizer sales statement

(R.C. 905.37)

Under current law, the Director of Agriculture must distribute annual statements of fertilizer sales by grades of materials and mixed fertilizer by counties in a manner prescribed by the Director. Further, the Director must publish at least annually a report of the analysis of fertilizers inspected. The bill makes the distribution of the annual statements and the publishing of the annual report discretionary rather than mandatory.

Merger of funds

(R.C. 905.38, 905.381, 905.50, 905.66, 907.16, and 923.46)

Current law creates the Commercial Feed, Fertilizer, and Lime Inspection and Laboratory Fund, which is used by the Director to administer and enforce the Fertilizer Law and the Livestock Feeds Law. Current law also creates the Seed Fund, which is used by the Director to administer and enforce the Agricultural Seed Law. The bill merges these funds to create the Commercial Feed, Fertilizer, Seed, and Lime Inspection and Laboratory Fund and requires it to be used to administer and enforce all of the above Laws.

Prohibition against regulation of fertilizer and seed by political subdivisions

(R.C. 905.501 and 907.111)

Current law prohibits a political subdivision from regulating the application of fertilizer, or requiring a person licensed or registered under the state statutes governing fertilizers to obtain a license or permit to operate in a manner described in those statutes or to satisfy any other condition except as provided by a statute or rule of this state or of the United States. "Political subdivision" means a county, township, or municipal corporation and any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state. The bill expands the activities that political subdivisions cannot regulate to include the registration, packaging, labeling, sale, storage, distribution, and use of fertilizers.

In addition, the bill prohibits a political subdivision from enacting, adopting, or continuing in effect local legislation relating to the registration, packaging, labeling, sale, storage, distribution, use, or application of fertilizers. "Local legislation" is defined to include, but be not limited to, an ordinance, resolution, regulation, rule, motion, or amendment that is enacted or adopted by a political subdivision.

Similar to the above prohibition against regulation of fertilizer by political subdivisions, the bill prohibits regulation of seed by political subdivisions. It specifies that the Department of Agriculture has sole and exclusive authority to regulate the registration, labeling, sale, storage, transportation, distribution, notification of use, use, and planting of seed within the state. It then states that the regulation of seed is a matter of general statewide interest that requires uniform statewide regulation and that the Agricultural Seed Law and rules adopted under it constitute a comprehensive plan with respect to all aspects of the regulation of seed within Ohio.

Under the bill, no political subdivision can do any of the following:

(1) Regulate the registration, labeling, sale, storage, transportation, distribution, notification of use, use, or planting of seed;

(2) Require a person who has been issued a permit or license under the Agricultural Seed Law to obtain a permit or license to operate in a manner described in that Law or to satisfy any other condition except as provided by a statute or rule of this state or of the United States; or

(3) Require a person who has registered a legume innoculant under the Agricultural Seed Law to register that innoculant in a manner described in that

Law or to satisfy any other condition except as provided by a statute or rule of this state or of the United States.

The bill also prohibits a political subdivision from enacting, adopting, or continuing in effect local legislation relating to the permitting or licensure of any person who is required to obtain a permit or license under the Agricultural Seed Law or to the registration, labeling, sale, storage, transportation, distribution, notification of use, use, or planting of seed.

Pesticide registration and inspection fee

(R.C. 921.02 and 921.16; Section 203.24.03)

Under current law, no person may distribute a pesticide within Ohio unless the pesticide is registered with the Director. Each applicant for a registration is required to pay a registration and inspection fee established by rule for each product name and brand registered for the company whose name appears on the label. If an applicant files a renewal of a registration after the deadline established by rule or if a person distributes an unregistered pesticide in Ohio, the applicant or person must pay a penalty fee established by rule for each product name and brand registered for the applicant. The aggregate amount of the fees initially established by rule must be designed to cover, but not exceed, the costs incurred by the Department of Agriculture in administering the Pesticides Law and cannot be increased without the approval of the General Assembly.

The bill replaces the registration and inspection fee established by rule with a statutory fee of $150 and changes the penalty for late registration or distribution of an unregistered pesticide from an amount established by rule to a statutory fee of $75. The changes are effective on January 1, 2007. Until that date, the fees established by rule remain in effect. The bill also eliminates the provisions that specify that the fees that are established by rule must be designed to cover, but not exceed, the costs incurred by the Department in administering the Pesticides Law and that the fees cannot be increased without the approval of the General Assembly.[27]

Commercial feed inspection fee

(R.C. 923.44)

Under current law, the first distributor of a commercial feed must pay the Director of Agriculture a semiannual inspection fee at the rate of 10¢ per ton, with

[27] *Because the fees are established in statute under the bill, any fee increase in the future would require a change in the law by the General Assembly.*

a minimum payment of $10, on all commercial feeds distributed by him in this state. The bill changes the fee to 25¢ per ton and establishes the minimum payment at $25.

Commercial feed report

(R.C. 923.45)

Under current law, the Director is required to publish at least annually information concerning the sale of commercial feed and a comparison of the analyses of official samples of commercial feeds distributed in Ohio with the guaranteed analyses on the label. The bill makes annual publishing of the information discretionary rather than mandatory.

Agricultural Commodity Handlers Law definitions

(R.C. 926.01)

Current law defines several terms for the purposes of the Agricultural Commodity Handlers Law. The bill revises the definitions for two of those terms. Under current law, the definition of "agricultural commodity handling" or "handling" includes in part the engaging in or participating in the business of purchasing an agricultural commodity for sale, resale, processing, or for any other use in the following volumes:

(1) In the case of purchases made from producers, more than 30,000 bushels annually;

(2) In the case of purchases made from agricultural commodity handlers, more than 100,000 bushels annually;

(3) In the case of total purchases made from producers combined with total purchases made from handlers, more than 100,000 bushels annually.

The bill modifies the definition by specifying instead that it includes in part engaging in or participating in the business of purchasing from producers agricultural commodities for any use in excess of 30,000 bushels annually rather than engaging in or participating in the business of purchasing an agricultural commodity for sale, resale, processing, or any other use in the volumes discussed above.

Under existing law, "agricultural commodity handler" or "handler" means any person who is engaged in the business of agricultural commodity handling. It does not include a person who does not handle agricultural commodities as a bailee and who purchases agricultural commodities in the following volumes:

(1) 30,000 or fewer bushels annually from producers;

(2) 100,000 or fewer bushels annually from agricultural commodity handlers.

A person who does not handle agricultural commodities as a bailee and who annually purchases 30,000 or fewer bushels of agricultural commodities from producers and 100,000 or fewer bushels of agricultural commodities from agricultural commodity handlers must be considered to be an agricultural commodity handler if the combined annual volume of purchases from the producers and the agricultural commodity handlers exceeds 100,000 bushels.

The bill removes from the definition the exclusion of a person who does not handle agricultural commodities as a bailee and who purchases agricultural commodities in volumes of 30,000 or fewer bushels annually from producers or 100,000 or fewer bushels annually from agricultural commodity handlers unless the combined annual volume of purchases from producers and handlers exceeds 100,000 bushels.

Plant pests program fee

(R.C. 927.69)

Current law establishes a fee of $65 for the inspection of agricultural products and their conveyances under the Plant Pests Law. The bill changes the fee to an amount equal to the hourly rate of pay in the highest step in the pay range, including fringe benefits, of a plant pest control specialist multiplied by the number of hours worked by such a specialist in conducting an inspection.

Metrology and Scale Certification Fund

(R.C. 1327.511)

The bill changes the name of the Scale Certification Fund to the Metrology and Scale Certification Fund.

Cannery license fee

(R.C. 913.02)

Current law prohibits a person, firm, or corporation from engaging in the business of operating a cannery without obtaining a license for the operation of each cannery from the Director of Agriculture. In order to obtain a license, an application must be made on a form prescribed by the Director and must be accompanied by a fee of $100. Similarly, the fee for an annual license renewal is

$100. The bill increases the cannery license fee and license renewal fee from $100 to $200.

Soft drink manufacturing or bottling and sale of syrup or extract fees

(R.C. 913.23)

Current law prohibits a person from manufacturing or bottling for sale within Ohio any soft drink in closed containers unless the person has a license issued by the Director of Agriculture. Upon receipt of an application for a license, the Director must examine the products and the place of manufacture where the business is to be conducted to determine whether the products and place comply with the statutes governing soft drink bottling. Upon finding there is compliance, and upon payment of a license fee of $100, the Director must issue a license authorizing the applicant to manufacture or bottle for sale such soft drinks. The bill increases the annual license fee from $100 to $200.

Similarly, existing law states that no soft drink that is manufactured or bottled out of the state can be sold or offered for sale within this state unless the soft drink and the plant in which the soft drink is bottled are found by the Director to comply with the statutes governing soft drink bottling and are registered by the Director. The bill also requires that the plant in which such a soft drink is manufactured comply with those statutes. Current law establishes an annual $100 registration fee for out-of-state soft drink manufacturers or bottlers. The bill increases the annual fee from $100 to $200.

However, current law provides that registration of out-of-state soft drink manufacturers or syrup and extract manufacturers is not required if a reciprocal agreement is in effect whereby a soft drink manufacturer or syrup and extract manufacturer located in this state is not subject to a license or registration fee by another state or a political subdivision of it. The bill retains the exemption and adds that the exemption also applies to out-of-state bottlers.

Existing law prohibits a person, other than a manufacturer holding a valid soft drink plant license, from selling, offering for sale, using, or possessing with the intent to sell any soda water syrup or extract or soft drink syrup, to be used in making, drawing, or dispensing soda water or other soft drinks, without registering annually with the Director of Agriculture and paying a license fee of $50. The bill increases the annual license fee from $50 to $100. In addition, the bill extends the exemption from registration and payment of the fee to a bottler holding a valid soft drink plant license.

Cold-storage warehouse operation license fee

(R.C. 915.02)

Existing law requires an applicant for an annual license to operate a cold-storage warehouse to pay a $100 fee to the Director of Agriculture before the Director issues the license.[28] The bill increases the fee to $200.

Food locker establishment operation license fee

(R.C. 915.16)

Current law requires an applicant who wishes to operate an establishment in Ohio to obtain an annual license from the Department of Agriculture and to pay a fee of $25 for the license.[29] The bill increases the fee to $50.

Certificates of health and freesale

(R.C. 915.24 and 3715.04)

The bill authorizes the Director of Agriculture, upon the request of a food processing establishment, manufacturer of over-the-counter drugs, or manufacturer of cosmetics, to issue a certificate of health and freesale after determining that conditions at the establishment or place of business of the manufacturer, as applicable, have been found to be sanitary through an inspection conducted pursuant to the Pure Food and Drug Law. For each certificate issued, the Director must charge the establishment or manufacturer a fee of $20. The bill requires the Director to deposit all such fees that are collected to the credit of the existing Food Safety Fund and adds the fees to the list of moneys that comprise that Fund.

The bill defines "certificate of health and freesale" as a document issued by the Director that certifies to states and countries receiving products that the products have been produced and warehoused in Ohio under sanitary conditions at a food processing establishment or at a place of business of a manufacturer of

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[28] Under law unchanged by the bill, "cold-storage warehouse" means a place artificially cooled by the employment of refrigerating machinery or ice or other means, in which articles of food are stored for 30 days or more at a temperature of 40º F, or lower (R.C. 915.01, not in the bill).

[29] Law unchanged by the bill defines "establishment" as any business location or building of which any of the following facilities or operations are a part: a frozen food manufacturing facility, slaughterhouse, locker room, locker, chill room, sharp freezing room and facilities, or sharp freezing cabinet (R.C. 915.14, not in the bill).

over-the-counter drugs or cosmetics, as applicable, that has been inspected by the Department of Agriculture. Other names of documents that are synonymous with "certificate of health and freesale" include, but are not limited to, "sanitary certificate of health and freesale," "certificate of origin," "certificate of freesale," "certificate of health and origin," "certificate of freesale, sanitary and purity," and "certificate of freesale, health and origin."

The bill defines "food processing establishment," by reference to existing law, as a premises or part of a premises where food is processed, packaged, manufactured, or otherwise held or handled for distribution to another location or for sale at wholesale. "Food processing establishment" includes the activities of a bakery, confectionery, cannery, bottler, warehouse, or distributor, and the activities of an entity that receives or salvages distressed food for sale or use as food. "Food processing establishment" does not include a cottage food production operation; a processor of maple syrup who boils sap when a minimum of 75% of the sap used to produce the syrup is collected directly from trees by that processor; a processor of sorghum who processes sorghum juice when a minimum of 75% of the sorghum juice used to produce the sorghum is extracted directly from sorghum plants by that processor; or a beekeeper who jars honey when a minimum of 75% of the honey is from that beekeeper's own hives.

Wine tax diversion to Ohio Grape Industries Fund

(R.C. 4301.43)

Current law imposes a tax on the distribution of wine, vermouth, and sparkling and carbonated wine and champagne at rates ranging from 30¢ per gallon to $1.48 per gallon. From the taxes paid, a portion is credited to the Ohio Grape Industries Fund for the encouragement of the state's grape industry, and the remainder is credited to the General Revenue Fund. The amount credited to the Ohio Grape Industries Fund is scheduled to decrease from 3¢ to 1¢ per gallon on July 1, 2005. The bill extends the extra 2¢ earmarking through June 30, 2007.

Amusement rides

Permit fee

(R.C. 1711.53)

Under current law, the Department of Agriculture charges a $50 fee for an annual amusement ride permit. The bill increases the permit fee to $150.

Funding report by Advisory Council on Amusement Ride Safety

(R.C. 1711.52)

Under existing law, the Advisory Council on Amusement Ride Safety must perform certain duties. The bill adds to these duties by requiring the Council to prepare and submit a report, not later than December 31, 2006, to the Governor, Speaker of the House of Representatives, President of the Senate, and Director of Agriculture concerning the Council's recommendations for alternative funding sources for the Amusement Ride Safety Program.

Requirements for electrical connections

(R.C. 1711.531)

The bill prohibits a person from operating an amusement ride powered from an electric light company source unless the amusement ride operates through a fusible switch, enclosed circuit breaker, or panelboard that has been:

(1) Rated by the Underwriters Laboratories for service entrance applications;

(2) Installed in compliance with the National Electrical Code;

(3) Metered through a meter installed by the electric light company. "Electric light company" has the same meaning as in public utility law.

Under the bill, an amusement ride owner cannot use an electric light company source as described above unless the owner has written certification that the fusible switch, enclosed circuit breaker, or panelboard satisfies the requirements established by the bill and that is issued by a person certified under the Electrical Safety Inspection Law or licensed under the Construction Industry Examining Board Law. The owner must make the certificate available to the Director of Agriculture upon request.

The bill specifies that the electrical requirements established under the bill do not apply to either of the following types of amusement rides:

(1) Rides that do not require electrical current; or

(2) Rides that the Director exempts in rules the Director adopts.

It further specifies that a person licensed under the Construction Industry Examining Board Law, when conducting an electrical connection inspection under the bill, is not violating the Electrical Safety Inspection Law.

STATE BOARD OF EXAMINERS OF ARCHITECTS

- Permits the State Board of Examiners of Architects to impose a fine against certificate holders in addition to other disciplinary actions the Board may take under current law.

Imposition of fines against certificate holders

(R.C. 4703.15)

Under current law, the State Board of Examiners of Architects may deny renewal of, revoke, or suspend any certificate of qualification to practice architecture or any certificate of authorization, if the certificate holder engages in specified practices or violates the Board's rules governing the standards of service, conduct, and practice of architects. The bill permits the Board, in addition to those disciplinary actions specified, to impose a fine against a certificate holder. The fine may be not more than $1,000 for each offense, but cannot exceed $5,000 regardless of the number of offenses the certificate holder has committed between the time the fine is imposed and the time any previous fine was imposed.

OHIO ATHLETIC COMMISSION

- Allows the Executive Director of the Ohio Athletic Commission (OAC), when authorized by the OAC, to issue, deny, suspend, or revoke permits to hold prize fights and public boxing or wrestling matches or exhibitions; to require a permit applicant to deposit a specified security before a public boxing match or exhibition; and to allow a permit holder to substitute contestants and hold a match or exhibition at an alternative site under specified conditions.

- Prohibits the OAC's Executive Director from issuing a permit or license to conduct a match or exhibition in a municipal corporation or township that prohibits such matches or exhibitions.

Authority to issue, deny, suspend, or revoke boxing or wrestling match or exhibition permits

(R.C. 3773.34, 3773.38, 3773.39, and 3773.57)

Under current law, the Ohio Athletic Commission may issue, deny, suspend, or revoke permits to hold prize fights and public boxing or wrestling matches or exhibitions. When the Commission receives a permit application, the Commission must determine if the applicant holds a valid promoter's license, if the contestants in the match or exhibition are evenly and fairly matched, and whether the applicant is financially responsible and able to pay the contestants. If the Commission determines the requirements are met, the Commission must issue a permit.

The Commission may require the applicant to deposit, before the match or exhibition, an amount estimated to be equal to the amount that the applicant will pay the contestants following the match or exhibition. If the applicant fails to make the deposit if it is required, the Commission may revoke the applicant's permit.

The bill allows the Commission's Executive Director to also perform all of the functions described above when authorized by the Commission to do so.

Currently, the Commission cannot issue a permit if the Commission determines that the municipal corporation or township where an applicant wants to hold a match or exhibition prohibits such matches or exhibitions. The bill applies this same prohibition to the Executive Director.

Alternative sites and substitute contestants for boxing or wrestling matches or exhibitions

(R.C. 3773.40)

Currently, the Commission may allow a permit holder to substitute contestants and to hold a match or exhibition for which a permit was already issued at an alternative site within the same municipal corporation or township under specified conditions. The bill allows the Commission's Executive Director, when authorized by the Commission, to also perform these functions.

ATTORNEY GENERAL

- Authorizes the Bureau of Criminal Identification and Investigation to investigate criminal activity in Ohio related to the conduct of elections when requested to do so by the Secretary of State.

- Removes the Chief Justice of the Supreme Court from the State Victims Assistance Advisory Committee.

- Specifies when various classes of debts fall due for the purpose of when they must be certified to the Attorney General for collection.

- Requires the Auditor of State to review state agencies' procedures for collecting debts owed to them.

- Allows fees for goods related to the Ohio Peace Officer Training Academy to be used for acquiring and equipping the Academy, in addition to General Assembly appropriations and gifts or grants as permitted under current law.

Investigation of election-related criminal activity by the Bureau of Criminal Identification and Investigation

(R.C. 109.54)

The bill authorizes the Bureau of Criminal Identification and Investigation to investigate criminal activity in Ohio related to the conduct of elections when requested to do so by the Secretary of State.

Removal of Chief Justice from the State Victims Assistance Advisory Committee

(R.C. 109.91)

The Crime Victims Assistance Advisory Committee (1) advises the Attorney General's Crime Victims Assistance Office in determining crime and delinquency victim service needs and policies and in improving and exercising leadership in the quality of crime and delinquency victim programs and (2) reviews and recommends to the Crime Victims Assistance Office the victim assistance programs that should be considered for the receipt of state financial assistance. Under current law, the committee consists of a chairperson appointed by the Attorney General, 15 members appointed by the Attorney General from

specified categories of persons, and four ex officio nonvoting members: the Chief Justice of the Supreme Court, the Attorney General, a member of the Senate designated by the President of the Senate, and a member of the House of Representatives designated by the Speaker of the House. The bill removes the Chief Justice from the committee.

Debts owed to the state

Time at which debts must be certified to the Attorney General for collection

(R.C. 131.02)

Under continuing law, whenever a debt owed to the state is not paid within 45 days after payment is due, the public official responsible for administering the law under which the debt arose must certify the debt to the Attorney General for collection. The bill specifies when various classes of debts fall due for the purpose of when they must be certified to the Attorney General.

Under the bill, a payment is due at whichever of the following times apply with respect to the debt:

(1) If a law of Ohio, including an administrative rule, prescribes the time a payment is required to be made or reported, when payment is required by that law to be paid or reported;

(2) If the payment is for services rendered, when the rendering of the service is completed;

(3) If the payment is reimbursement for a loss, when the loss is incurred;

(4) In the case of a fine or penalty for which a law or administrative rule does not prescribe a time for payment, when the fine or penalty is first assessed;

(5) If the payment arises from a legal finding, judgment, or court adjudication order, when the finding, judgment, or order is rendered or issued;

(6) If the payment arises from an overpayment of money by the state to another person, when the overpayment is discovered;

(7) The date on which the amount for which an employee of a corporation or business trust is personally liable under the motor fuel tax, sales tax, or personal income tax laws is determined;

(8) Upon proof of a claim being filed in a bankruptcy case; or

(9) Any other appropriate time determined by the officer, employee, or agent responsible for administering the law under which the debt arose on the basis of statutory requirements or the business processes of the agency to which the debt is owed.

If more than one of the times specified in (1) to (9) above applies with respect to a debt, the debt falls due for purposes of when it must be certified to the Attorney General for collection at the earliest of the applicable times.

The bill also specifies that an unpaid amount that a student owes to an institution of higher education shall be certified to the Attorney General for collection within ten days after the next academic session begins if that tenth day occurs after the usual 45-day period before a debt is certified for collection.

Review of state agencies' debt collection procedures

(Section 503.03)

The bill requires that, sometime during 2005, the Auditor of State examine the degree to which each state agency complies with the procedures set forth in continuing law with respect to collecting debts owed to them and certifying delinquent debts to the Attorney General for collection. Specifically, the Auditor is required to examine:

(1) The practices and procedures used by the agency to collect claims before the claims are certified to the Attorney General;

(2) The number of individuals employed by the agency or engaged under contract with the agency in 2003 and 2004 whose only, or primary, duty was to collect debts owed to the agency; and

(3) With respect to claims certified to the Attorney General in 2003 and 2004, the average number of days elapsing between the last day for timely payment of the claims and the day the agency certified the claim.

For purposes of completing the Auditor's examination, the Auditor may request a state agency to provide reports to the Auditor on the matters described above. The bill requires that state agencies provide the reports within 60 days after the request; however, the Auditor may extend the time for up to another 60 days for good cause.

On or before March 31, 2006, the Auditor is required to submit a written report on the Auditor's findings to the Governor, the Speaker of the House of Representatives, the President of the Senate, and the Legislative Service Commission.

Funding the Ohio Peace Officer Training Academy

(R.C. 109.79)

Under continuing law, unaffected by the bill, the Ohio Peace Officer Training Academy provides training for law enforcement officers of any political subdivision or the State Public Defender's office. To fund the Academy, the Ohio Peace Officer Training Commission is required to determine tuition costs that are sufficient in the aggregate to pay the costs of operating the Academy. The costs of acquiring and equipping the Academy are paid from designated General Assembly appropriations or from gifts or grants received for that purpose. The bill additionally allows fees for goods related to the Academy to be used for acquiring and equipping the Academy.

OHIO STATE BARBER BOARD

- Requires the Barber Board to review annually the rules the Board is required to adopt, compare those rules with the rules adopted by the State Board of Cosmetology, and adopt new rules similar to any cosmetology rules that the Barber Board determines would be beneficial to the barbering profession.

Annual review of Barber Board's rules

(R.C. 4709.05)

Under current law, the Barber Board is required to adopt rules concerning sanitary conditions of barber shops and schools, the contents of licensing examinations for barbers, continuing education requirements for barbers, licensing requirements for barber schools and teachers, requirements for barber students, and any other area the Barber Board determines appropriate. The bill requires the Barber Board to review these rules annually in order to compare them with the rules adopted by the State Board of Cosmetology. If the Barber Board determines that the cosmetology rules including, but not limited to, rules concerning using career technical schools, would be beneficial to the barbering profession, the bill requires the Barber Board to adopt rules for barbers similar to the cosmetology rules.

OFFICE OF BUDGET AND MANAGEMENT

- Requires that the budgeting services provided by the Director of Budget and Management be supported by user charges.
- Changes the name of the State Accounting Fund to the "Accounting and Budgeting Fund," and requires that all user charges collected for accounting and budgeting services be deposited into that fund.
- Permits the Director to transfer, until June 30, 2007, interest earned in any Central Accounting System fund to the GRF.

User charges for OBM budgeting services

(R.C. 126.25)

Current law requires that the accounting services provided by the Director of Budget and Management be supported by user charges. The Director determines a rate that is sufficient to defray the expense of those services and deposits all money collected from user charges in the state treasury to the credit of the State Accounting Fund.

Under the bill, the budgeting services provided by the Director are also to be supported by user charges. Likewise, the Director is to determine a rate that is sufficient to defray the expense of the services. The bill changes the name of the State Accounting Fund to the "Accounting and Budgeting Fund," and requires that all user charges collected for accounting and budgeting services be deposited into that fund.

Authority to transfer interest to GRF

(Section 312.06)

Under current law, many sections of the Revised Code specify that interest earnings of particular funds are to be credited to those funds. The bill provides that, in spite of any such law, the Director of Budget and Management, through June 30, 2007, may transfer interest earned by any fund in the Central Accounting System to the GRF. This authority, however, does not apply to funds whose source of revenue is restricted or protected by the Ohio Constitution, federal tax law, or the federal "Cash Management Improvement Act of 1990."

CAPITOL SQUARE REVIEW AND ADVISORY BOARD

- Adds to the membership of the Capitol Square Review and Advisory Board one nonvoting member who must be a member of the Capital Square Foundation appointed by the Foundation's board.

- Requires the Executive Director and the members of the Capitol Square Review and Advisory Board to file financial disclosure statements under the Ethics Law.

Additional nonvoting member

(R.C. 105.41)

Under current law, the Capitol Square Review and Advisory Board (CSRAB) consists of 13 members: two Senate members appointed by the President of the Senate; two House of Representatives members appointed by the Speaker of the House of Representatives; five members appointed by the Governor, with the advice and consent of the Senate, one each representing the Office of the State Architect and Engineer, the Ohio Arts Council, the Ohio Historical Society, the Ohio Building Authority, and the public at large; the clerks of the Senate and House of Representatives; and a former President of the Senate and a former Speaker of the House of Representatives, appointed respectively by the current holders of those offices.

The bill adds one *nonvoting* member to the CSRAB, who must be a member of the Capital Square Foundation appointed by the board of the Foundation.

Financial disclosure statement filings

(R.C. 102.02 and 105.41)

Under current law, the 13 CSRAB members mentioned above generally are appointed for terms of three years. Among its other powers and duties, the CSRAB must employ and fix the compensation of an *executive director* for the CSRAB and other employees its considers necessary for the performance of its powers and duties.

The bill includes among those persons currently required to file financial disclosure statements under the Ethics Law, the CSRAB's executive director and its members, which, as a result of the bill's "***Additional nonvoting member***"

provision discussed above, will include its 13 voting members and that nonvoting member.

DEPARTMENT OF COMMERCE

- Eliminates the ability of "interested parties" to file a complaint with the Director of Commerce and to bring an action in a court of common pleas to enforce the provisions of the Prevailing Wage Law.

- Requires the Superintendent of Industrial Compliance to adopt rules for certifying and recertifying, rather than approving, plumbing inspectors and for the continuing education of plumbing inspectors.

- Allows the Superintendent of Industrial Compliance to (1) contract with a third party to conduct certification examinations of plumbing inspectors, (2) deny, suspend, or revoke certifications for inspectors, (3) examine inspectors under oath and examine their records, (4) enter into reciprocal certification agreements with other states and other agencies of this state, and (5) establish fees for the certification, recertification, and continuing education of inspectors.

- Repeals the prohibition preventing inspectors employed by the Department of Commerce from engaging in the plumbing business.

- Eliminates the Fire Marshal's Fireworks Training and Education Fund and requires the State Fire Marshal to use the State Fire Marshal's Fund instead for fireworks training and education.

- Removes statutorily specified requirements for distances between buildings used for fireworks and other buildings and roadways and instead requires the State Fire Marshal to adopt rules establishing distance separation requirements.

- Allows a fireworks wholesaler or manufacturer to expand its licensed premises to include up to two storage locations that are located on premises that are noncontiguous to the licensed premises if the wholesaler or manufacturer meets specified requirements.

- Modifies the application and administration of the Ohio Residential Building Code.

- Reduces the minimum price discount for wholesale purchases of spirituous liquor from 12.5% to 6% of the retail selling price of that liquor.

- Authorizes a D-6 (Sunday liquor sales) permit to be issued to a D-5 liquor permit premises located at a ski area, whether or not such sales have been approved in a Sunday sales local option liquor election.

Eliminates an interested party's ability to enforce the provisions of the Prevailing Wage Law

(R.C. 4115.03, 4115.032, 4115.071)

The bill removes the provisions of existing law that permit an interested party to file a complaint with the Director of Commerce or a court of common pleas alleging a violation of the Prevailing Wage Law. Under existing law, the term "interested parties" means (1) any person who submits a bid for the purpose of securing the award of a construction contract for a public improvement, (2) any subcontractor of the above described person, (3) any labor organization, or (4) any association whose members are described in (1) and (2).

Under existing law, if an interested party files a complaint with the Director, upon receiving the complaint, the Director must investigate the claim. If the Director determines that no violation has occurred, the interested party may file an appeal with a court of common pleas. If the Director does not rule on the merits of the complaint within 60 days after the complaint is filed, the interested party may file a complaint in a court of common pleas. In either of the above situations, if the court finds that a violation has occurred, the court may order the Director to stop the violation, prevent further violations, and compensate aggrieved employees in a manner permitted for actions brought by the Director or an aggrieved employee.

Under existing law, a public authority's prevailing wage coordinator is required to make available for public inspection files of payroll reports and affidavits submitted by contractors and subcontractors. The ability to inspect the reports and affidavits is made specifically available to "interested parties or affected employees." The bill removes the term "interested parties" from this provision also; however, the prevailing wage coordinator must still make the reports and affidavits available for public inspection.

Plumbing inspectors

Certifying and recertifying

(R.C. 3703.01 and 3703.10)

Under current law, the Superintendent of Industrial Compliance in the Department of Commerce is required to adopt rules prescribing minimum qualifications that the Director of Commerce uses in approving plumbing inspectors to do plumbing inspections for health districts. Rather than *approving* inspectors the bill, instead, requires the Superintendent to prescribe these minimum qualifications that the Superintendent, not the Director, uses for *certifying* and *recertifying* plumbing inspectors.

The bill allows the Superintendent to contract with one or more persons to conduct certification examinations of plumbing inspectors. The persons contracted with must prepare, administer, score, and maintain the confidentiality of the examination; maintain responsibility for all the expenses of conducting the examination; charge each applicant a fee for the examination, in an amount the Superintendent authorizes; and design the examination.

Under the bill, the Superintendent may deny, suspend, or revoke the certification of any inspector and examine an inspector under oath. The Superintendent also may examine the books and records of the inspector if the Superintendent finds the books and records relevant to denying, suspending, or revoking a certification or examining an inspector under oath.

The bill permits the Superintendent to adopt rules for the continuing education of inspectors.

Reciprocal registration, licensure, or certification

(R.C. 3703.01)

The bill permits the Superintendent to enter into reciprocal registration, licensure, or certification agreements with other states or other agencies of this state relative to inspectors if two requirements are met. First, the registration, licensure, or certification requirements of the other state or other agency must be substantially equal to the requirements adopted by the Superintendent. Second, the other state or other agency must extend similar reciprocity to inspectors certified by the Superintendent.

Fees

(R.C. 3703.07)

The bill allows the Superintendent to establish fees to pay the costs of fulfilling the duties of the Division under the Plumbing Law (R.C. Chapter 3703.). These fees can include, but are not limited to, fees for administering a continuing education program for inspectors and for certifying and recertifying inspectors. The fees must bear some reasonable relationship to the costs of administering and enforcing the Plumbing Law.

Engaging in the plumbing business

(R.C. 3703.04)

Under current law, plumbing inspectors employed by the Department are prohibited from engaging in or having an interest in the plumbing business or the sale of any plumbing supplies. The bill eliminates this prohibition.

Technical changes in the Plumbing Law

(R.C. 3703.01, 3703.03, 3703.04, 3703.05, 3703.06, 3703.07, 3703.08, 3703.10, and 3703.99)

Under current law, the Director and the Department possess the authority to act under the Plumbing Law. The bill gives this authority specifically to the Superintendent of Industrial Compliance and the Division of Industrial Compliance.

Fire Marshal's Fireworks Training and Education Fund

(R.C. 3743.57)

Under current law, licensed fireworks manufacturers and wholesalers must pay assessments determined by the State Fire Marshal into the Fire Marshal's Fireworks Training and Education Fund (used to pay for fireworks training and education). The bill eliminates the assessments and the fund, and because of that, the bill requires the Fire Marshal, instead, to use the State Fire Marshal's Fund for fireworks training and education.

Fireworks Law

(R.C. 3743.01, 3743.02, 3743.04, 3743.05, 3743.06, 3743.15, 3743.17, 3743.18, 3743.19, 3743.59, and 3743.65)

Distance requirements between buildings used for fireworks and other buildings and roadways

Under existing law, no licensed manufacturer or wholesaler of fireworks may situate a building used in the manufacture, storage, or sale of fireworks closer than (1) 1,000 feet from any structure not located on the property of and does not belong to the licensed manufacturer or wholesaler, (2) 300 feet from any highway or railroad, (3) 100 feet from any building used for storing explosives or fireworks, or (4) 50 feet from any factory building.

The bill removes the distance requirements in existing law and requires the State Fire Marshal to adopt rules concerning the required distances between buildings and structures used in the manufacturing, storage, or sale of fireworks and occupied residential and nonresidential buildings or structures, railroads, highways, or any additional buildings.

Expansion or contraction of licensed premises

The bill requires the State Fire Marshal to adopt rules for the expansion or contraction of a licensed premises and for approval of such expansions or contractions. If the licensed premises consists of more than one parcel of real estate, the parcels must be contiguous unless the fireworks manufacturer or wholesaler meets certain requirements specified by the bill.

Under the bill, a licensed manufacturer or wholesaler may expand its licensed premises to include not more than two storage locations that are located upon one or more real estate parcels that are noncontiguous to the licensed premises if all of the following apply: (1) the licensee submits an application and $100 fee per storage location to the State Fire Marshal, (2) the identity of the license holder remains the same, (3) the storage location has received valid certificates of compliance for zoning and occupancy and those certificates permit the distribution and storage of fireworks, (4) every building or structure located upon the storage location is separated from occupied residential and nonresidential buildings or structures, railroads, highways, or other buildings on the licensed premises, (5) neither the licensee nor any person holding, owning, or controlling a 5% or greater interest in the licensee has been convicted of a felony, and (6) the State Fire Marshal approves the application for expansion.

Under the bill, the State Fire Marshal must approve an expansion application if the State Fire Marshal receives the application fee and proof that the manufacturer or wholesaler has met all of the requirements described above. The storage location must be considered part of the original licensed premises. If a licensee obtains approval for expansion, the storage location may be used only for the following purposes: (1) packaging, assembling, or storing fireworks, which must occur only in approved buildings, (2) distributing fireworks to other parcels of real estate located on the manufacturer's or wholesaler's premise or to licensed wholesalers or other licensed manufacturers in this state or other states or countries, and (3) distributing fireworks to a licensed exhibitor of fireworks. The State Fire Marshal is required to adopt rules to establish requirements for the operation of storage locations, including packaging, assembling, and storage of fireworks.

The bill prohibits the licensee who obtains approval for expansion from engaging in any sales activity at the storage location, including the retail sale of fireworks otherwise permitted under existing law. Existing law permits manufacturers and wholesalers to sell fireworks to licensed wholesalers and manufacturers, out-of-state residents who are transporting the fireworks from this state out of this state, Ohio residents if the fireworks are 1.4G fireworks, out-of-state residents if the manufacturer or wholesaler is shipping the fireworks out of this state to that person, or licensed exhibitors of fireworks.

Under the bill, a licensee who obtains approval for expansion must prohibit public access to all storage locations used by the licensee. The State Fire Marshal must adopt rules establishing acceptable measures a manufacturer or wholesaler must use to prohibit public access.

The bill defines "storage location" to mean a single parcel or contiguous parcels of real estate approved by the State Fire Marshal for expansion or contraction that are separate from a licensed premises containing a retail showroom, and which parcel or parcels a licensed manufacturer or wholesaler of fireworks may use only for distribution, possession, and storage of fireworks.

Variances to requirements of Fireworks Law and license moratorium

Under existing law, the State Fire Marshal, upon application by an affected party, may grant variances from any of the requirements of the Fireworks Law if the State Fire Marshal determines that the literal enforcement of the requirements will result in unnecessary hardship. The bill instead permits the State Fire Marshal to grant variances if enforcing the requirements of the Fireworks Law will result in "practical difficulty" in complying with the Fireworks Law or the rules adopted pursuant to the Fireworks Law.

Under existing law, the State Fire Marshal may not issue wholesaler or manufacturer licenses between June 29, 2001 and December 15, 2008 to a person for particular fireworks plant for a manufacturer's license or for a particular location for a wholesaler's license. The bill prohibits the State Fire Marshal, notwithstanding the authority granted to the Fire Marshal to grant variances as described above, from granting variances, waivers, or exclusions in order to allow the State Fire Marshal to grant (1) manufacturers or wholesalers licenses within the prohibited time frame, (2) approval for any expansion or contraction without meeting the necessary requirements, or (3) approval for storage locations on noncontiguous real estate without meeting the necessary requirements, all as described above.

The bill defines "person" to include any person or entity that acquires possession of a manufacturer's or wholesaler's license by transfer of possession of the license in any manner that is in accordance with the Fireworks Law. The bill defines "particular location" to include a licensed premises and any storage location.

Residential Building Code

(R.C. 307.37, 3781.07, 3781.10, 3781.102, 3781.191, and 4740.14)

The bill modifies the application and administration of the Ohio Residential Building Code, which was adopted in the 125th General Assembly. The bill clarifies that the *local residential building regulations* a board of county commissioners adopts under existing law may be enforced within the unincorporated area of the county or within districts the board establishes in any part of the unincorporated area. Under existing law, the board of county commissioners also may enforce an *existing structures code* pertaining to the repair and continued maintenance of residential structures within the unincorporated area of the county.

Under existing law, the Board of Building Standards is comprised of ten members and the Residential Construction Advisory Committee is comprised of eight members. The bill expands the membership of both the Board and the Committee by one member who is chosen from a list of three names the Ohio Municipal League submits to the Governor and is the mayor of a municipal corporation in which the residential and nonresidential building codes are enforced by a certified building department. Under the bill, the actual and necessary expenses of the members of the Residential Construction Advisory Committee, including a per diem for each day a member must attend an official meeting of the Committee, must be paid from the Industrial Compliance Operating Fund.

Under the bill, the Board of Building Standards may certify persons furnishing "other services," in addition to architectural or engineering services as under existing law, pursuant to a contract with a municipal corporation, township, county, or other political subdivision to exercise enforcement authority, to accept and approve plans and specifications, and make inspections.

The bill prohibits the Board of Building Appeals from hearing any case based on the Residential Building Code or to grant any variance to that Code.

Minimum price discount for spirituous liquor wholesale purchases

(R.C. 4301.10(B)(4))

Current law grants the Division of Liquor Control the authority to fix the wholesale and retail prices for the various classes, varieties, and brands of spirituous liquor sold by the Division. However, it requires the Division to fix wholesale prices at a discount, which must be not less than 12.5% of the retail selling prices. The bill reduces this minimum price discount to 6% of the retail selling prices.

Issuance of a Sunday sales liquor permit without local option election approval to D-5 liquor permit premises located at ski areas

(R.C. 4303.182)

Current law prohibits the sale of intoxicating liquor after 2:30 a.m. on Sunday unless the liquor is sold under the authority of a permit that authorizes Sunday sale (R.C. 4301.22(D)--not in the bill). The D-6 permit authorizes the Sunday sale of intoxicating liquor and *generally* is issued only to the holder of an existing liquor permit for sales at the permit holder's premises if Sunday liquor sales have been approved in a local option election on sales at that premises or in the area where the premises is located (R.C. 4303.182(A)).

Current law, however, does authorize the issuance of a D-6 permit under certain conditions to an existing permit holder for the permit holder's premises even though Sunday liquor sales have *not* been approved in a local option election on sales at that premises or in the area where the premises is located (R.C. 4303.182(B) to (H)).[30] The bill additionally requires a D-6 permit to be issued to

[30] *Liquor permit premises located at certain publicly owned airports, certain hotels and motels, certain sports facilities, the Ohio Historical Society area, the State Fairgrounds, certain outdoor performing arts centers, certain publicly owned golf courses, and national professional sports museums may be issued a D-6 permit without approval in a Sunday sales local option election.*

the holder of a D-5 permit for a premises that is licensed as a retail food service operation operating as a restaurant and that is located at a ski area, to allow sales under the D-6 permit between the hours of 10 a.m. and midnight on Sunday, whether or not those sales have been approved in a local option election on sales at that premises or in the area where the premises is located (R.C. 4303.182(I)).[31]

OFFICE OF CONSUMERS' COUNSEL

- Limits the Consumers' Counsel and the Public Utilities Commission to the joint operation of a single, statewide, toll-free, utility consumer call service that is automated to route residential electric, natural gas, telephone, and water public utility calls to the Consumers' Counsel and all other calls to the Commission and is to be funded equally through appropriations to the two agencies.

- Changes the minimum annual assessment against a public utility for maintaining the Office of the Consumers' Counsel from $50 to $100.

- Beginning in 2006, revises the schedule by which the Consumers' Counsel collects the assessments from utilities.

- Eliminates the need to transfer funds from the GRF to the Consumers' Counsel Operating Fund so the Consumers' Counsel can operate during the beginning of each fiscal year.

Joint operation of utility consumer call service

(R.C. 4912.01)

Both the Public Utilities Commission (PUCO) and the Consumers' Counsel receive and respond to telephoned utility complaints from consumers. The bill requires the Consumers' Counsel and the PUCO to operate jointly a single, efficient, statewide, toll-free call service for the general public seeking information

[31] *The D-5 permit authorizes sales of beer and intoxicating liquor at a retail food establishment or food service operation operating as a restaurant or night club (R.C. 4303.18--not in the bill). The Skiing Safety Law currently defines a "ski area" as all the ski slopes, ski trails, and passenger tramways that are administered or operated as a single enterprise within Ohio (R.C. 4169.01(D)--not in the bill).*

and assistance regarding utility services. The service must be automated to provide the routing of all residential electric, natural gas, telephone, or water public utility calls to the Office of the Consumers' Counsel and the routing of all other calls to the PUCO. The agencies will fund the costs of the service equally, from appropriations to the continuing Public Utilities Fund and the Consumers' Counsel Operating Fund. Each agency is prohibited from operating or causing the operation of any other utility consumer call center, any costs of which are payable from revenue available to the agency.

Changes to assessments collected from public utilities for maintaining the Consumers' Counsel

(R.C. 4911.18)

For the purpose of maintaining the Office of the Consumers' Counsel, each public utility pays a yearly assessment. The amount is calculated by first computing an assessment in proportion to the intrastate gross earning or receipts of the utility for the preceding calendar year. The Consumers' Counsel may include in the initial computation, any amount underreported by a utility from a prior year. Excluded from the computation are earnings or receipts from sales to other public utilities. Under the bill, the Consumers' Counsel may also exclude from the computation any overreported amount from a prior year.

Under current law, a final computation of the assessment imposes a $50 assessment on each utility whose assessment under the initial computation equaled $50 or less. The bill changes the minimum yearly assessment against each utility from $50 to $100. The utility payments are deposited in the state treasury to the credit of the Consumers' Counsel Operating Fund.

Currently, the Consumers' Counsel must notify each utility of the sum assessed against it by October 1 of each year, after which payment is to be made to the Consumers' Counsel. The bill changes this schedule, to require that by May 15 of each year beginning in the 2006 calendar year, the Consumers' Counsel must notify each utility that had an assessment against it for the current fiscal year of more than $1,000, that the utility must pay 50% of that amount to the Consumers' Counsel by June 20. This payment is an initial payment for the next fiscal year. The bill requires the Consumers' Counsel to make a final determination of the assessment against each utility by October 1 of each year, deducting any initial payment received, and to notify the utility of that amount. Each utility must pay the Consumers' Counsel the remaining assessment amount by November 1 of that year.

Under current law, at the beginning of each fiscal year, the Director of Budget and Management transfers an amount from the General Revenue Fund (GRF) to the

Consumers' Counsel Operating Fund so the Consumers' Counsel can maintain operations during the first four months of the fiscal year. The amount transferred by the Director must be transferred back into the GRF from the Consumers' Counsel Operating Fund by December 31. Under the bill, beginning in calendar year 2006, these obligations no longer apply because under the bill's new assessment schedule the Consumers' Counsel Operating Fund will receive sufficient revenue from the initial assessment payment to operate at the beginning of each fiscal year.

CONTROLLING BOARD

- Makes the Controlling Board, instead of the General Assembly the "legislative body" that must accept or reject a state collective bargaining agreement and provide the funds necessary to implement the agreement.

Approval of state collective bargaining agreements and funds necessary to implement agreement

(R.C. 4117.10)

Under the Public Employee Collective Bargaining Law (Chapter 4117.) any collective bargaining agreement concluded between a public employer and an employee organization must be submitted to the "legislative body" of the public employer for ratification. In the case of the state, the legislative body is the General Assembly. The bill replaces the General Assembly with the Controlling Board as the entity responsible to accept or reject both of the following: (1) a collective bargaining agreement between a state public employer and an exclusive representative and (2) a request for the funds necessary to implement the agreement. As under existing law, a collective bargaining agreement and a request for funds must be accepted or rejected as a whole.

OHIO STATE BOARD OF COSMETOLOGY

- Requires the State Board of Cosmetology to establish an office in Franklin County, Ohio, instead of only Columbus, Ohio.

- Generally prohibits school districts from offering postsecondary courses regulated by the State Board of Cosmetology, other than continuing education courses, unless there is no proprietary cosmetology school in

the same or adjacent county or unless the district has entered into a written agreement with a proprietary school to offer the course.

State Board of Cosmetology office location

(R.C. 4713.02)

The bill requires the State Board of Cosmetology to establish an office in Franklin County, Ohio, instead of in Columbus, Ohio, as under existing law.

School district post-secondary cosmetology programs

(R.C. 4713.441)

Under current law, professional licensing boards and commissions are prohibited from "restricting entry into any occupation, profession, or trade" by denying certification or accreditation to any school that has certification by the Ohio Board of Regents or the State Board of Education (R.C. 4743.03, not in the bill). The bill creates an exception to this provision by generally prohibiting a city, local, exempted village, or joint vocational school district from offering any postsecondary course regulated by the State Board of Cosmetology if a licensed proprietary school of cosmetology is located in the same county as the school district, or in an adjacent county. A school district may offer such a course only if it is a "continuing education" course (presumably available only to persons already licensed as cosmetologists) or if the district enters into a written agreement with "each proprietary school" located in the same or adjacent county permitting the district to offer a specific postsecondary education course. If there is no licensed proprietary school within the same or an adjacent county, the school district must obtain approval from both the State Board of Cosmetology and the Department of Education prior to enrolling any postsecondary student in a district cosmetology course.

The bill states that this provision is "necessary in order to protect the public health, safety, and welfare."

OFFICE OF CRIMINAL JUSTICE SERVICES

- Abolishes the Office of Criminal Justice Services and generally transfers its personnel and functions to, and creates, the Division of Criminal Justice Services in the Department of Public Safety.

- Creates the Federal Justice Programs Fund in the state treasury for the deposit of all money from certain federal grants that fund local criminal justice programs.

Abolition of the Office of Criminal Justice Services and creation of the Division of Criminal Justice Services in the Department of Public Safety

(R.C. 108.05, 109.91, 141.011, 181.251 (5502.63), 181.51 (5502.61), 181.52 (5502.62), 181.54 (5502.64), 181.55 (5502.65), 181.56 (5502.66), 2152.74, 2901.07, 2923.25, 3793.09, 4112.12, 5120.09, 5120.51, 5139.01, and 5502.01; Section 209.51)

Existing law creates the Office of Criminal Justice Services with a director appointed by the Governor and employees appointed by the director. The Office serves as the state criminal justice services agency and performs criminal justice system planning in Ohio; collects, analyzes, and correlates information and data concerning the criminal justice system in Ohio, assists state and local governmental agencies and entities in dealing with criminal justice services planning and problems, administers federal and state programs and funds related to criminal justice, reports to the General Assembly, Attorney General, and Governor on ways to improve the criminal and juvenile justice systems, and performs other tasks related to criminal justice services. (R.C. 181.52.)

The bill abolishes the Office of Criminal Justice Services and creates a Division of Criminal Justice Services in the Department of Public Safety. Under the bill, the Director of Public Safety, with the concurrence of the Governor, appoints an executive director of the Division to serve at the pleasure of the Director. The executive director, subject to the control of the Director of Public Safety, appoints the Division's staff and enters into any agreements necessary to perform the Division's functions. The bill requires the Division to perform the same functions as the Office of Criminal Justice Services. (R.C. 5502.62.)

The bill makes appropriate changes in the Revised Code to reflect the abolition of the Office and creation of the Division, including the renumbering of sections. The bill provides for the transfer to the Division of: (1) the employees of the Office, subject to the layoff provisions of R.C. 124.321 to 124.328, and (2) the assets, rules, business, and determinations of the Office. The bill repeals the authority of the Governor to appoint advisory committees to assist the Office of Criminal Justice Services. (Repeal of R.C. 181.53.)

Creation of Federal Justice Programs Fund

(R.C. 181.52 renumbered R.C. 5502.62)

The bill creates the Federal Justice Programs Fund in the state treasury for the deposit of all money from federal grants that require that the money be deposited into an interest-bearing fund, that are intended to provide funding to local criminal justice programs, and that require that investment earnings be distributed for program purposes. The bill requires that all investment earnings of the Fund be credited to the Fund and distributed in accordance with the terms of the grant under which the money is received.

OHIO CULTURAL FACILITIES COMMISSION

- Increases to 12 the total membership of, to nine the voting membership of, and to five voting members the quorum requirement for action by, the Ohio Cultural Facilities Commission.

- Provides that the Director of Budget and Management, when requested by the Ohio Cultural Facilities Commission, can transfer to the Commission's administration fund, the premium paid on any bonds issued on behalf of the Commission and credited to the Cultural and Sports Facilities Building Fund that exceed federal arbitrage rebate requirements.

Composition

(R.C. 3383.02)

The Ohio Cultural Facilities Commission engages in and provides for the development, performance, and presentation or making available of culture and professional sports and athletics to the public in Ohio, and the provision of training or education in culture. Under current law, the Commission consists of ten members, seven of whom are voting members and three of whom are nonvoting members. The voting members are appointed by the Governor, with the Senate's advice and consent, from different geographical regions of the state. Not more than four of the voting members can be affiliated with the same political party. The nonvoting members are the Ohio Arts Council's staff director, a Senate member appointed by the President of the Senate, and a House member appointed by the Speaker of the House of Representatives. Current law specifies that four

voting members constitute a quorum for the conduct of Commission business and that the affirmative vote of four voting members is necessary for approval of any action taken by the Commission.

The bill increases the Commission's membership to 12 members, by adding two voting members to be appointed by the Governor with the Senate's advice and consent. No more than five of the nine voting members appointed by the Governor to the Commission can be affiliated with the same political party.

The two additional voting members must be appointed within 60 days after the bill's effective date, one for a term ending December 31, 2007, and the other for a term ending December 31, 2008. Their successors will serve three-year terms, the same as the Commission's other voting members, commencing on January 1 and ending on December 31 in the appropriate years.

The bill also specifies that five voting members of the Commission constitute a quorum for the conduct of Commission business, and the affirmative vote of five voting members is necessary for approval of any action taken by the Commission.

Cultural Facilities Commission bond premium

(R.C. 3383.09)

The Ohio Cultural Facilities Commission is a state agency that focuses on the construction, renovation, and use of cultural and sports facilities. The General Assembly makes appropriations to the Cultural and Sports Facilities Building Fund that consist of proceeds of obligations authorized to pay costs of the cultural and sports facilities.

Currently, the Commission's Chairperson or Executive Director can request the Director of Budget and Management to transfer to the Ohio Cultural Facilities Commission Administration Fund, investment earnings credited to the Cultural and Sports Facilities Building Fund that exceed the amount required to meet estimated federal arbitrage rebate requirements.[32] The bill adds that the Commission's Chairperson or Executive Director can also request the Director of Budget and Management to transfer to the Commission's administration fund, the premium paid on any bonds issued on behalf of the Commission and credited to the Cultural and Sports Facilities Building Fund that exceed the federal arbitrage rebate requirements.

[32] *Generally, the Internal Revenue Code requires a state to pay the federal government the earnings it receives from investing proceeds of tax-exempt bonds in higher-yielding taxable securities.*

DEPARTMENT OF DEVELOPMENT

- Requires the Director of Development to establish the Alternative Fuel Transportation Grant Program.

- Makes permanent the Shovel Ready Sites Program in the Department of Development, currently established as a pilot program in uncodified law, to provide grants for projects to port authorities and development entities approved by the Director of Development, specifies the purposes for which the grants may be used, and requires the Director to adopt rules establishing procedures and requirements necessary for the administration of the Program.

- Modifies the law authorizing agreements that provide for payments to municipal corporations and counties to attract federal jobs by authorizing municipal corporations to enter into similar agreements for the purpose of retaining jobs at existing facilities recommended for closure to the Base Realignment and Closure Commission in the United States Department of Defense.

- Creates a grant program administered by the Director for the purpose of providing financial assistance to certain types of amateur or professional sporting events, and establishes requirements and procedures governing the awarding of the grants.

- Specifies that six members, rather than four as in current law, of the total membership of ten constitutes a quorum of the Development Financing Advisory Council and that an affirmative vote of six members is necessary for any action taken by the Council.

- Increases the state's contribution to loan guarantee reserve pools under the Capital Access Loan Program.

- Modifies eligibility for, the permissible purposes of, and the approval process for loans made under the Minority Business Development Loan Program, including the existing Bond Guarantee Program; increases the size of the Minority Development Financing Advisory Board from nine to ten members; and modifies the Board's procedural requirements.

- Increases from 50% to 80% the amount of a loan that the Director of Development may guarantee in connection with the loan guarantees for

the general Small Businesses Program and expands the purposes for which these loan guarantees may be made.

- Revises the provisions in current law governing the awarding of grants by the Director of Development from the Industrial Site Improvement Fund, and revises the definitions of "eligible county" and "commercial or industrial areas" for purposes of awarding grants from the Fund.

- Prohibits the Third Frontier Commission from making any grants or loans for any activities involving stem cell research with embryonic tissue unless it involves embryonic stem cells listed on the federal Human Embryonic Stem Cell Registry.

Alternative Fuel Transportation Grant Program of the Director of Development

(R.C. 122.075)

The bill provides that for the purpose of improving the air quality in this state, the Director of Development must establish the Alternative Fuel Transportation Grant Program. As used in the bill, "alternative fuel" means biodiesel or blended gasoline. Under the program, the Director may make grants to businesses, nonprofit organizations, public school systems, or local governments for the purchase and installation of alternative fuel refueling facilities and for the purchase and use of alternative fuel.

In accordance with the Administrative Procedure Act, the Director must adopt any rules that are necessary for the administration of the grant program. The rules must establish at least all of the following:

(1) An application form and procedures governing the grant application process;

(2) A procedure for prioritizing the award of grants under the program;

(3) A requirement that the maximum grant for the purchase and installation of an alternative fuel refueling facility be no more than 50% of the facility cost;

(4) A requirement that the maximum grant for the purchase of alternative fuel be no more than 50% of the incremental cost of the fuel;

(5) Any other criteria, procedures, or guidelines that the Director determines are necessary to administer the program.

The bill creates the Alternative Fuel Transportation Grant Fund in the state treasury to make grants under the grant program and to pay the program's administrative costs. The fund consists of money as may be specified by the General Assembly from the existing Energy Efficiency Revolving Loan Fund.

Shovel Ready Sites Program

(R.C. 122.083)

Current uncodified law establishes the Shovel Ready Sites Pilot Program in the Department of Development to provide grants for projects to port authorities and development entities approved by the Director of Development. The bill makes the program permanent by placing it in codified law and specifies that grants may be used to pay the costs of any or all of the following: (1) acquisition of property, including options, (2) preparation of sites, including brownfield clean-up activities, (3) construction of road, water, telecommunication, and utility infrastructure, and (4) payment of professional fees the amount of which cannot exceed 20% of the grant amount for a project. In addition, the bill requires the Director to adopt rules in accordance with the Administrative Procedure Act that establish procedures and requirements necessary for the administration of the program, including a requirement that a recipient of a grant enter into an agreement with the Director governing the use of the grant. Finally, the bill creates in the state treasury the Shovel Ready Sites Fund consisting of money appropriated to it. The Fund must be used solely for the purposes of the Shovel Ready Sites Program.

Grant program for certain sporting events

(R.C. 122.12 and 122.121)

The bill requires the Director of Development to approve grants in accordance with the bill for the purpose of providing financial assistance to eligible events from money appropriated for that purpose. "Eligible event" is defined as an event that meets all of the following criteria: (1) it is held for a period not to exceed seven consecutive days, (2) it is either an amateur sporting event not regularly held in Ohio or a professional sporting event not affiliated exclusively with a franchise of the National Football League, Major League Baseball, the National Basketball Association, the National Hockey League, or Major League Soccer, and (3) it is administered or managed by a sports commission or convention and visitors bureau domiciled in Ohio. "Sports commission" means a nonprofit corporation organized under the laws of this state that is entitled to tax exempt status under federal law and whose function is to attract, promote, or sponsor sports and athletic events within a municipal corporation, township, or county.

An applicant for a grant must submit an application to the Director on a form and in a manner prescribed by the Director. An application must include estimates of total administrative operations spending and the total number of persons from outside Ohio that are expected to attend the eligible event. "Total administrative operations spending" means the total amount of administrative costs related to conducting an eligible event by a sports commission or convention and visitors bureau as estimated in a grant application.

Not later than 30 days after receipt of an application, the Director must approve or disapprove the application in accordance with procedures that he establishes. The Director cannot approve an application until the applicant has submitted a formal letter of commitment from the organizer of the eligible event for which the application was submitted. If a grant application is approved, the grant money must be paid directly to the sports commission or convention and visitors bureau that applied for the grant.

Grants approved by the Director must comply with all of the following requirements: (1) no one sports commission or convention and visitors bureau can receive more than 40% of the total money awarded in grants in any given calendar year, (2) no one eligible event can receive more than 30% of the total money awarded in grants in any given calendar year, (3) money from a grant cannot be spent on costs other than costs associated with marketing, eligible event operations, facility costs, and any bid fee or financial guarantee that is required to secure the eligible event, and (4) a grant for an eligible event must comprise not more than 2% of the direct costs associated with conducting the eligible event or, if the eligible event is or is scheduled to be televised nationally, not more than 2.5% of the direct costs associated with conducting the eligible event. "Direct costs" is defined as total administrative operations spending plus total visitor spending. "Total visitor spending" means the number of attendees of an eligible event from outside Ohio as estimated in a grant application multiplied by the number of days the eligible event is to take place and then multiplied by $150.

The Director may request a sports commission or convention and visitors bureau to submit the results of the most recent audit of the sports commission or bureau, if available. Not later than 90 days after an eligible event for which a grant has been issued has been conducted, the sports commission or convention and visitors bureau that received the grant must submit a report to the Director in a form and manner that he prescribes detailing attendance statistics, spending receipts, and any other information that he determines is necessary.

Agreements to assist municipal corporations in retaining jobs at military facilities scheduled to close

(R.C. 122.18)

Current law allows the tax credit authority to enter into an agreement with a landlord under which an annual payment equal to the new income tax revenue or the amount called for under the agreement must be made to the landlord from moneys of this state that were not raised by taxation and must be credited by the landlord to the rental owing from the tenant to the landlord for a facility. Current law defines "landlord" as a county or municipal corporation or a corporate entity that is an instrumentality of a county or municipal corporation and that is not subject to the corporate franchise tax or the income tax. In addition, "tenant" means the United States, any department, agency, or instrumentality of the United States, or any person under contract with the United States or any department, agency, or instrumentality of the United States. "New income tax revenue" means the total amount withheld under the Income Tax Law by the tenant or tenants at a facility during a year from the compensation of new employees for the tax levied under that Law. Finally, current law defines "new employee" to mean a full-time employee first employed by, or under or pursuant to a contract with, the tenant in the project that is the subject of the agreement after a landlord enters into an agreement with the tax credit authority under these provisions.

The bill also allows the tax credit authority to enter into such an agreement under which an annual payment equal to retained income tax revenue must be made to the landlord. The bill defines "retained income tax revenue" to mean the total amount withheld under the Income Tax Law from employees retained at an existing facility recommended for closure to the Base Realignment and Closure Commission in the United States Department of Defense.

Current law states that a landlord that proposes to create new jobs in Ohio may apply to the tax credit authority to enter into such an agreement for annual payments. The bill adds that a landlord also may apply to the tax credit authority to enter into such an agreement when the landlord proposes a project to retain jobs in Ohio within a municipal corporation at an existing facility recommended for closure to the Base Realignment and Closure Commission. The bill retains a requirement that the Director of Development prescribe the form of the application.

Current law authorizes the tax credit authority, after receipt of an application, to enter into an agreement with the landlord for annual payments if it determines all of the following:

(1) The project will create new jobs in this state;

(2) The project is economically sound and will benefit the people of this state by increasing opportunities for employment and strengthening the economy of this state; and

(3) Receiving the annual payments will be a major factor in the decision of the landlord and tenant to go forward with the project.

The bill adds in item (1) that the project will retain jobs within a municipal corporation at a facility recommended for closure to the Base Realignment and Closure Commission.

Current law requires that an agreement with a landlord for annual payments include all of the following:

(1) A description of the project that is the subject of the agreement;

(2) The term of the agreement, which cannot exceed 20 years;

(3) Based on the estimated new income tax revenue to be derived from the facility at the time the agreement is entered into, provision for a guaranteed payment to the landlord commencing with the issuance by the landlord of any bonds or other forms of financing for the construction of the facility and continuing for the term approved by the authority;

(4) Provision for offsets to this state of the annual payment in years in which the annual payment is greater than the guaranteed payment of amounts previously paid by the state to the landlord in excess of the new income tax revenue by reason of the guaranteed payment;

(5) A specific method for determining how many new employees are employed during a year;

(6) A requirement that the landlord annually must obtain from the tenant and report to the Director the number of new employees, the new income tax revenue withheld in connection with the new employees, and any other information the Director needs to perform the Director's duties; and

(7) A requirement that the Director annually verify the amounts reported by the landlord and, after doing so, issue a certificate to the landlord stating that the amounts have been verified.

The bill applies these requirements to agreements that it authorizes for projects that will retain jobs at facilities that are recommended for closure as discussed above. For that purpose, it adds references to retained income tax revenue to items (3) and (4) above and, in item (6), adds that the landlord's report

must include the number of retained employees and the retained income tax revenue withheld in connection with the retained employees if applicable.

Development Financing Advisory Council

(R.C. 122.40)

Current law establishes the Development Financing Advisory Council to assist the Director of Development in carrying out various assistance programs authorized by the statute. The Council consists of ten members--seven members appointed by the Governor who are selected for their knowledge of and experience in economic development financing, one member of the Senate appointed by the President of the Senate, one member of the House of Representatives appointed by the Speaker of the House of Representatives, and the Director or his designee. Current law establishes requirements governing the operation of the Council. One of those requirements specifies that four members of the Council constitute a quorum. The bill instead specifies that six members of the Council constitute a quorum and that the affirmative vote of six members is necessary for any action taken by the Council.

Increased state contributions under the Capital Access Loan Program

(R.C. 122.603)

The existing Capital Access Loan Program seeks to increase the amount of capital available to certain for-profit businesses located in Ohio by securing loans made from financial institutions to the businesses. Under the program, the state, a financial institution, and a business each make a contribution to a loan guarantee reserve pool at the financial institution. If a business defaults on a loan, the financial institution that made the loan can recover the delinquent loan amount from its reserve pool.

Under existing law, upon receiving a certification from a financial institution that it has made a loan under the program in a specified amount, the Director of Development disburses to the financial institution an amount equal to 10% of the principal amount of the loan for deposit into the financial institution's reserve pool. The bill increases the amount of the state's contribution with respect to the first three loans made by a participating financial institution. Under the bill, with respect to the first three loans made by a financial institution, the state contributes 50%, as opposed to 10%, of the principal amount of each loan.

Minority business development loan and bond guarantee programs

(R.C. 122.71, 122.72, 122.73, 122.74, 122.75, 122.751, 122.76, 122.78, 122.79, 122.82, and 122.83)

Generally, the existing Minority Business Development Loan Program involves the Minority Development Financing Advisory Board advising the Director of Development in determining assistance to minority businesses, including approval of loan applications. This law includes specifications about the composition of the Board and its duties; duties of the Director; and eligibility for, purposes of, and the approval process for loans made under the Program. Pursuant to recent authority, the Director also may guarantee bonds executed by sureties for minority businesses and certain enterprises (R.C. 122.90, not in bill).

The bill adds references to this Bond Guarantee Program as being part of the Minority Business Development Loan Program, including for purposes of administration by the Director. This also authorizes the Minority Development Financing Advisory Board to advise and make recommendations to the Director as to applications for assistance under the Bond Guarantee Program.

The bill modifies eligibility for, and expands the permissible purposes of, loans made under the Minority Business Development Loan Program by expressly adding African Americans and Latinos and replacing "Orientals" with Asians, and by removing a prohibition for loans used to procure or improve power driven vehicles, office equipment, raw materials, small tools, supplies, or inventories. In addition to other specifications for considering an application for a loan, the bill adds that an application will be considered if there is certification by the Minority Business Supplier Development Council that the applicant is a minority business.

The bill modifies the approval process for these loans to empower "regional economic development entities," rather than the Minority Development Financing Advisory Board, to submit recommendations and determinations to the Director. Specifically, if these entities submit a recommendation or determination to the Director, the Director is not required (as in existing law) to submit information to or to solicit recommendations from the Board. Regional economic development entities are defined in the bill to be entities having a contract with the Director to administer a loan under the Minority Business Development Loan Program in a particular area of Ohio.

The bill also increases the size of the Minority Development Financing Advisory Board from nine to ten members, with the Director or the Director's designee being added as a voting member of the Board. The bill increases from five to six the number of Board members necessary to constitute a quorum and

from five to six the number of affirmative votes necessary for any action to be taken by the Board.

Loan Guarantees for Small Businesses Program

(R.C. 122.77)

For purposes of the loan guarantees for the general Small Businesses Loan Program, the bill increases from 50% to 80% the amount of the loan that the Director of Development may guarantee. The bill also expands the purposes for which a loan guarantee may be made by eliminating a prohibition for guaranteeing loans used to procure or improve power driven vehicles, office equipment, raw materials, small tools, supplies, or inventories.

Industrial Site Improvement Fund

(R.C. 122.95 and 122.951)

Current law provides that if the Director of Development determines that a grant from the Industrial Site Improvement Fund will create new jobs or preserve existing jobs and employment opportunities in an eligible county, the Director may grant up to $1 million from the Fund to the eligible county for the purpose of making improvements to commercial or industrial areas within the eligible county. The bill instead provides that if the Director determines that a grant from the Fund may create new jobs or preserve existing jobs and employment opportunities in an eligible county, the Director may grant up to $500,000 from the Fund to the eligible county for the purpose of acquiring commercial or industrial land or buildings and making improvements to commercial or industrial areas within the eligible county.

Current law defines "eligible county" to mean any of the following:

(1) A county designated as being in the "Appalachian region" under the Appalachian Regional Development Act of 1965;

(2) A county that is a "distressed area" as defined in the Department of Development Law;

(3) A county that has a population of less than 100,000 according to the most recent federal decennial census and in which 350 or more residents of the county were, during the most recently completed calendar year, permanently or temporarily terminated from a private sector employment position for any reason not reflecting discredit on the employee; or

(4) A county that has a population of 100,000 or more according to the most recent federal decennial census and in which 1,000 or more residents of the county were, during the most recently completed calendar year, permanently or temporarily terminated from a private sector employment position for any reason not reflecting discredit on the employee.

The bill eliminates category (3), above, from the definition and instead includes a county that within the previous calendar year has had a job loss numbering 200 or more of which 100 or more are manufacturing-related as reported in the notices prepared by the Department of Job and Family Services pursuant to the Worker Adjustment and Retraining Notification Act. It also eliminates category (4), above.

In addition, existing law defines "commercial or industrial area" to mean areas established by a state, county, municipal, or other local zoning authority as being most appropriate for business, commerce, industry, or trade or an area not zoned by state or local law, regulation, or ordinance, but in which there is located one or more commercial or industrial activities. The bill instead defines "commercial or industrial area" to mean areas zoned either commercial or industrial by the local zoning authority or an area not zoned, but in which there is located one or more commercial or industrial activities.

Currently, an eligible county that receives a grant from the Industrial Site Improvement Fund is not eligible for any additional grants from the Fund. The bill instead specifies that an eligible county that receives a grant from the Fund is not eligible for any additional grants from the Fund in the fiscal year in which the grant is received and in the subsequent fiscal year.

The bill adds that a grant from the Fund cannot provide more than 75% of the estimated total cost of the project for which an application is submitted. In addition, the bill states that not more than 10% of the amount of the grant can be used to pay the costs of professional services related to the project.

Finally, the bill allows an eligible county to designate a port authority, community improvement corporation as defined in the Department of Development Law, or other economic development entity that is located in the county to apply for a grant from the Industrial Site Improvement Fund. If a port authority, community improvement corporation, or other economic development entity is so designated, references to an eligible county in the statute governing the Fund include references to the authority, corporation, or other entity.

Restrictions on Third Frontier Commission funding embryonic stem cell research

(R.C. 184.02)

Current law creates the Third Frontier Commission for the purpose of supporting high technology research and development capabilities in Ohio, primarily through the issuance of grants and loans. The bill prohibits the Commission from making any grants or loans to individuals, public agencies, private companies or organizations, or joint ventures for any activities involving stem cell research with embryonic tissue, unless it involves embryonic stem cells listed on the "Human Embryonic Stem Cell Registry" created by the National Institutes of Health in the United States Department of Health and Human Services' in accordance with August 9, 2001 Presidential criteria.

DEPARTMENT OF EDUCATION

Base-cost funding

- Establishes a "building blocks" methodology reflecting determinations that the base cost of providing an adequate education comprises the costs of base classroom teachers, other personnel support, and nonpersonnel support.

- Prescribes that the base-cost formula amount is $5,283 for fiscal year 2006 and $5,403 for fiscal year 2007.

- Requires the payment of additional base funding supplements to school districts (not joint vocational school districts) for large-group academic intervention services, professional development, and data-based decision making.

- Phases out the "cost-of-doing-business factor" in calculating base-cost funding for school districts, community schools, and county MR/DD boards.

- Guarantees that each district's state base-cost payment will be no lower than its FY 2005 state aggregate or per pupil base cost payment, whichever is less.

- Requires the Department of Education to publish on its web site a spreadsheet for each school district that indicates the components of the district's "building blocks" funds.

- Requires the Superintendent of Public Instruction to adopt a rule authorizing the Superintendent to issue orders to school districts under academic watch or in a state of academic emergency that could require the districts to periodically report on their spending of state building blocks funds, require the districts to establish separate accounts for each of their state building block payments, or have the state Superintendent direct the spending of the districts' state building block funds.

- Applies the bill's funding formula changes to county MR/DD boards, community schools, open enrollment, and the Post-Secondary Enrollment Options Program.

Guarantee/transitional aid

- Eliminates the current state basic aid guarantee for city, exempted village, and local school districts and a similar guarantee currently provided for joint vocational school districts.

- Provides additional state transitional aid in fiscal years 2006 and 2007 to prevent any city, exempted village, or local school district's state "SF-3 funding plus charge-off supplement" for the current fiscal year from being less than it was in the previous fiscal year.

- Provides additional state transitional aid to prevent any joint vocational school district's funding from decreasing by more than 2% from the previous fiscal year.

Parity aid

- Revises the formula for calculating state parity aid by basing the calculation on 7.5 mills, rather than 9.5 mills, to account for the phase-out of the cost-of-doing-business factor.

Poverty-based assistance

- Renames the Disadvantaged Pupil Impact Aid subsidy as "Poverty-Based Assistance" and expands the subsidy to include additional payments for (1) services to limited-English proficient students, (2) teacher

professional development, (3) dropout prevention in the Big-Eight districts, and (4) community outreach programs in the Urban-21 districts.

Transportation funding

- Specifies that, instead of using the established transportation formula, each school district's payment for regular student transportation in fiscal years 2006 and 2007 increase 2% from the previous fiscal year.

- For fiscal years 2006 and 2007, specifies that the local share of the calculated amount for transportation is 2% greater than in the previous year (instead of as prescribed under the transportation subsidy formula) for purposes of computing a district's charge-off supplement and excess cost supplement.

- Requires the Department of Education to recommend a new student transportation payment formula by July 1, 2006.

Special education funding

- Specifies that the weights for special education funding continue to be paid at 90% in fiscal years 2006 and 2007.

- Increases the catastrophic threshold amount for special education and related services to $26,500 for categories one through five (from $25,700 as under current law) and to $31,800 for category six (from $30,800 as under current law).

- Maintains for fiscal years 2006 and 2007 the $30,000 personnel allowance for calculating the subsidy for speech-language pathology services.

- Specifies that the existing authorization for an additional subsidy for transporting disabled students refers to all students with disabilities (instead of only "developmentally handicapped" students as under current law).

- Requires the Department of Education, by May 30, 2006 and 2007, to report to the Office of Budget and Management the amount of state and local shares of special education and related services weighted funding calculated for each school district and the amount of federal special education funds passed through to each district.

- Permits a joint vocational school district to decline having the Department of Education transfer payments to it from the state accounts of city, exempted village, and local school districts or community schools for the excess cost of providing special education and related services.

- Requires the payment of weighted special education funding to state institutions for services to school-age children (instead of unit funding as under current law).

- Authorizes a school district, in the case of a disabled child placed in a residential "home" by court order, to charge the child's district of residence for the excess cost of providing special education and related services for that child.

- Authorizes the Department of Education to deduct and credit the excess cost calculated for any child receiving services from a school district other than the child's district of residence.

- Changes the date for determining the eligibility of children for handicapped preschool units based on their age from December 1 to the date on which the children must have attained the minimum age to start school in their school districts (August 1 or September 30).

- Clarifies that related services units for handicapped preschool children be approved for any statutorily-defined "related services."

- Requires the Department of Education by January 1 of each year to report to the General Assembly the number of handicapped preschool children receiving services, as reported to the U.S. Department of Education the previous December.

Other school funding provisions

- Specifies that the personnel allowance for the GRADS subsidy, for programs for pregnant and parenting students, remains at $47,555 in fiscal years 2006 and 2007 (same as provided for fiscal years 2004 and 2005 under current law).

- Specifies that a recalculation of a school district's taxable valuation (due to refunded taxes or other changes in real property, public utility property, or tangible personal property valuation) affecting the district's amount of state aid apply to the district's "SF-3 payment."

- Requires that adjustments to a district's state aid relative to changes in its taxable value be paid on or before July 31 of the following fiscal year (instead of June 30 of the year in which the adjustment is made as under current law).

- Repeals the statute authorizing Equity Aid.

- Requires the Superintendent of Public Instruction to recommend a plan to the General Assembly whereby a second formula ADM count may be used to guarantee a minimum level of state funding in the next fiscal year.

- Adds, to the revenue considered to be received by a school district for purposes of calculating "gap aid," revenues a school district receives from the Tangible Personal Property Tax Replacement Fund or the General Revenue Fund for current expense taxes lost due to the bill's proposed phase out of the tangible personal property tax.

- Establishes a new, three-year payment to phase out (rather than immediately terminate) "gap aid" subsidies to school districts that pass property tax or income tax levies in tax year 2005 or thereafter.

- Specifies that the subsidy for bus purchases to school districts for transporting special education and nonpublic students, and to county MR/DD boards for transporting special education students, be based on a per pupil allocation (instead of 100% of the net cost of acquiring buses as under current law).

- Eliminates "units" for funding of state institutions operating vocational education programs and instead authorizes the Department of Education to award grants to those institutions for those programs.

- Increases from $250 to $275, the per pupil cap on reimbursement payments to chartered nonpublic schools for mandated administrative expenses.

Scholarship programs

- Establishes the Educational Choice Scholarship Pilot Program, beginning in the 2006-2007 school year, to provide scholarships for students assigned to school buildings that have been in academic emergency for three consecutive years to attend chartered nonpublic schools.

- Directs the Department of Education to award not more than 10,000 scholarships in fiscal year 2007 under the Educational Choice Scholarship Pilot Program.

- Excludes students who are eligible to participate in the Pilot Project Scholarship Program (the Cleveland voucher program) from participation in the Educational Choice Scholarship Pilot Program.

- Expands eligibility for scholarships under the (Cleveland) Pilot Project Scholarship Program to eleventh and twelfth graders.

- Codifies a long-standing practice to allow new students to enter the (Cleveland) Pilot Project Scholarship Program in any of grades K to 8.

- Beginning in fiscal year 2007, increases the base scholarship amount under the Cleveland Pilot Project Scholarship Program to $3,450 for grades K through 12 (from $3,000 for grades K through 8 and $2,700 for grades 9 through 12 as under current law).

- Beginning in fiscal year 2007, sets at $400 the maximum tutorial assistance grant amount under the Cleveland Pilot Project Scholarship Program (instead of 20% of the average basic scholarship amount as under current law).

- Reauthorizes the Pilot Project Special Education Scholarship Program for fiscal years 2006 and 2007, under which the parent of an identified autistic child may receive an annual scholarship of up to $20,000 (which is deducted from the account of the child's resident school district) to pay for the child's IEP services at a private or another public provider.

Community schools

- Establishes a statewide cap until July 1, 2007, on the number of community schools sponsored by the school districts in which they are located of 25 more than the number of such schools on the bill's effective date that were in operation as of May 1, 2005.

- Extends the current statewide cap on the number of community schools sponsored by other entities for two years to July 1, 2007, and increases the cap for that period (from the current 225) to 25 more than the number of such schools on the bill's effective date that were in operation as of May 1, 2005.

- Exempts up to five community schools with education programs that serve students at risk of dropping out of school from counting toward each cap.

- Creates a moratorium on the establishment of new Internet- or computer-based community schools ("e-schools") between May 1, 2005, and one year after the bill's effective date.

- Requires community school sponsors approved on or after the bill's effective date to have a record of financial responsibility and successful implementation of educational programs.

- Specifies that if an entity that sponsors or operates out-of-state schools seeks approval to sponsor community schools in Ohio, at least one of those out-of-state schools must perform better than or comparably to Ohio schools in academic watch.

- Limits entities approved for sponsorship on or after July 1, 2005, to 15 community schools, but permits the Department of Education to increase that limit up to 50 schools if an entity's schools perform satisfactorily.

- Limits existing sponsors generally (1) to 35 schools if the number of the sponsor's schools open as of May 1, 2005, was 35 or fewer and (2) to the number of the sponsor's schools open as of May 1, 2005, if that number was more than 35.

- Permits the Department of Education on a case-by-case basis to increase the limit on an existing sponsor up to 50 schools if the sponsor had 50 or fewer schools open as of May 1, 2005.

- Reduces a sponsor's limit by one whenever one of its schools permanently closes for specified academic problems, except that the limit of a sponsor with over 50 schools open as of May 1, 2005, is reduced by one whenever one of the sponsor's schools closes for any reason.

- Prohibits a sponsor from charging fees to a community school for services provided by the sponsor, other than oversight and monitoring services, beginning July 1, 2006.

- Requires the contract between the sponsor and governing authority of a new community school to be adopted by March 15 prior to the school year in which the school will open.

- Specifies that a community school's contract with its sponsor is void if the school (1) fails to open within one year after the contract is adopted or (2) permanently closes prior to the contract's expiration.

- Specifies that a student is considered enrolled in a community school for state funding purposes beginning on the later of (1) the date on which the student actually enrolls in the school or (2) 30 days prior to the date on which the student is entered into the Education Management Information System (EMIS).

- Eliminates the 30-day period currently granted to community schools to withdraw a student who has missed 105 consecutive hours of the school's learning opportunities without excuse.

- Increases the minimum number of students a community school must enroll from 25 to 100 for schools established on or after the bill's effective date, but maintains the 25-student minimum enrollment for schools established prior to that date.

- Permits a community school's sponsor to waive the 100-student enrollment requirement with Department of Education approval.

- Requires community schools, other than those schools solely serving dropouts, to open by September 30 each year beginning in the 2006-2007 school year.

- Prohibits a residential facility that receives and cares for children from being an e-school.

- Requires the State Board of Education, by June 30, 2006, to adopt rules establishing standards for e-schools and other electronic courses.

- Requires the Department of Education to select up to two entities approved to sponsor community schools to have sole authority to sponsor new e-schools established after July 1, 2006.

- Specifies that the Department will have sole authority to sponsor new e-schools if it does not select other sponsors by July 1, 2006.

- Requires each e-school to retain an affiliation with at least one full-time teacher licensed by the State Board of Education.

- Specifies that any time an e-school student spends participating in learning opportunities over ten hours within a 24-hour period does not count toward the minimum number of hours of learning opportunities the school must provide to the student.

- Requires that each student enrolled in an e-school be assigned to at least one teacher of record (who is an Ohio-licensed teacher responsible for the overall academic development and achievement of a student).

- Specifies that no teacher of record employed by an e-school may be primarily responsible for the academic development and achievement of more than 125 students.

- Requires an e-school to provide each student enrolled in the school with an in-person visit by a State Board-licensed teacher for least one hour after every 230 hours of learning opportunities provided to the student.

- Requires e-schools to provide a location within 50 miles of a student's residence at which the student can take the achievement tests and diagnostic assessments.

- Requires an e-school, or a school district-operated school that primarily uses a computer-based instructional method, to withdraw a student who fails to participate in the spring administration of a grade-level achievement test for two consecutive school years.

- Prohibits an e-school or a district-operated school that primarily uses a computer-based instructional method from enrolling any student who has been withdrawn from such a school for failure to take achievement tests.

- Requires each e-school to submit to its sponsor an annual plan for the provision of special education and related services to disabled students enrolled in the school.

- Requires any community school that is not an e-school but provides nonclassroom-based learning opportunities via an Internet- or computer-based instructional method to supply a computer to each student who must participate in those learning opportunities from home if (1) those

learning opportunities constitute a "significant" portion of the total learning opportunities provided to the student by the school or are not supplemental or remedial in nature and (2) the student does not have a computer to use at home.

- Requires, beginning in the 2006-2007 school year, fall and spring administrations of reading and math assessments approved by the Department of Education to students in grades 1 to 12 who are enrolled in a community school that (1) is in continuous improvement, academic watch, or academic emergency, (2) has not been open for at least two school years, or (3) does not have a performance rating based on achievement test data.

- Imposes sanctions on academic watch and academic emergency community schools and community schools whose performance rating is not based on achievement test data, and their sponsors, if the schools do not make expected gains in student achievement established by the State Board of Education.

- Directs the Department of Education to adopt procedures for closing a community school.

- Requires community schools to participate in Battelle for Kids' Project SOAR.

- Excludes student performance data from a conversion community school that primarily enrolls students at risk of dropping out of high school in calculating the sponsoring school district's academic performance for the district report card.

- Requires a community school sponsor to submit an annual report to the Department of Education describing the special education and related services provided to the school's students during the previous fiscal year and the school's expenditures for those services.

- Permits the establishment of a community school to simultaneously serve autistic students and non-disabled students.

- Prohibits e-schools from receiving vocational education weighted funding, parity aid, or poverty-based assistance, including funding for all-day kindergarten.

- Establishes a three-year pilot program, to operate in fiscal years 2007 through 2009, for making state base-cost payments to e-schools at a rate of 80% of the base-cost amount each year plus the remaining 20% in the school's first two years of operation for start-up costs and up to the remaining 20% thereafter in the form of a grant if certain conditions are satisfied.

- Directs the Department of Education to make recommendations to the General Assembly by December 31, 2005, regarding payment of parity aid to community schools in FY 2007.

- Clarifies the procedure for paying state funds to a community school for an enrolled student who lives in a residential facility.

- Makes other changes to the community school law.

Statewide testing

- Beginning in the 2006-2007 school year, requires the spring administration of elementary-level achievement tests generally to be no earlier than Monday of the week of May 1, instead of in mid-March as under current law.

- Authorizes the State Board of Education to designate a testing period one week earlier than the general testing period for administration of achievement tests to limited English proficient students.

- Requires alternate assessments for special education students to be completed and submitted to the test scoring company by April 1 of the school year in which the assessment is given.

- Beginning in the 2006-2007 school year, requires student scores on the spring achievement tests to be returned to school districts by June 15.

- Requires a student's data verification code to be included on each achievement test administered to the student.

- Permits companies hired to score the achievement tests to have access to personally identifiable student information.

- Requires the Department of Education and contracting entities to use the data verification codes to protect student privacy when conducting studies and research projects.

- Specifies that the initial administration of each elementary-level achievement test is a public record and that at least 40% of the questions used to compute student scores on subsequent administrations of those tests are public records.

- Specifies that only the spring administration of the Ohio Graduation Test (OGT) is a public record.

- Eliminates the requirement for the State Board of Education to adopt diagnostic assessments for grades 3 through 8, except for third grade writing.

Early childhood education programs

- Eliminates the Title IV-A Head Start and Head Start Plus programs.

- Establishes the Early Learning Initiative, paid for with TANF funds and jointly administered by the Department of Education and the Department of Job and Family Services, to provide early learning programs and child care to TANF-eligible children.

- Establishes a GRF-funded program to support comprehensive early childhood education (preschool) programs offered by school districts and educational service centers to serve preschool children whose families earn up to 200% of the federal poverty guidelines.

- Prohibits specified early childhood education programs from receiving state funds in fiscal years 2006 and 2007 unless at least 50% of the program's teachers are working toward an associate degree and, beginning in fiscal year 2008, prohibits any such program from receiving state funds unless all of the program's teachers have an associate degree.

- Permits an accredited Montessori program that is licensed as a preschool program to combine three- to five-year-old preschool children with kindergarteners.

Reading grants

- Repeals authorization for the OhioReads community reading grants program.

- Eliminates the OhioReads Office within the Department of Education.

- Requires the Department of Education to award reading intervention grants to public schools to engage volunteers to work with struggling students, to improve reading outcomes in low-performing schools, and to close the achievement gap.

Post-Secondary Enrollment Options Program

- Restricts participation in the Post-Secondary Enrollment Options Program after July 1, 2005, to Ohio residents.

School district RIF authority

- Allows boards of education and governing boards of educational service centers to reduce the number of teachers for financial reasons.

- Expands the reasons for which these boards may reduce the number of nonteaching employees to include the same reasons the board would reduce the number of teaching employees.

- Specifies that the changes for school districts' and educational service centers' authority to make reductions in force prevail over conflicting provisions of future collective bargaining agreements.

- Permits the board of education of a local or exempted village school district (non-civil-service school districts) to terminate the positions of transportation employees for reasons of economy and efficiency and to contract with an independent agent to provide student transportation services as long as specified conditions are satisfied.

Other education provisions

- After July 1, 2007, requires the Superintendent of Public Instruction to establish an academic distress commission for each academic emergency school district that has failed to make adequate yearly progress for four or more consecutive years; and grants the commission authority over

specified personnel, management, and budgetary decisions, which authority may not be negated by collective bargaining.

- Restores to the board of a school district for which an academic distress commission has been established any management rights and responsibilities specified in the Collective Bargaining Law that the district board relinquished in a collective bargaining agreement entered into after the bill's effective date.

- Prohibits the creation of a new city or local school district proposed by the State Board of Education without the approval of the General Assembly.

- Eliminates the requirement that the State Board of Education approve a local school district's resolution effecting the severance of the local district from its current educational service center (ESC) and its annexation to another ESC before the annexation can occur.

- Authorizes school districts to contract with an employee who would be called an "internal auditor," and requires that anyone employed specifically as an "internal auditor" hold a valid permit to practice as a certified public accountant or public accountant.

- Codifies and makes permanent an existing provision of uncodified law that generally requires a disabled student to undergo, at private expense, a comprehensive eye examination by a licensed optometrist or physician within three months after beginning special education services.

- Prohibits future collective bargaining agreements from barring school district use of volunteers when they assist with functions not required to be performed by a licensed, permitted, or certificated employee.

- Until December 31, 2005, permits a school district to dispose of real property by private sale in support of economic development when certain conditions are satisfied. The private sale would be in lieu of offering the property at public auction, or to a community school, or to another government entity, as otherwise required under current law.

- Directs the Department of Education, when issuing school district performance ratings in 2005 and 2006, not to reduce a district's rating

from the prior year solely because one student subgroup did not meet adequate yearly progress.

- Creates the Ohio Center for Autism and Low Incidence (OCALI) within the Department of Education to administer programs and coordinate services for infants, preschool and school-age children, and adults with autism and other disabilities.

- Limits eligibility for the annual stipend paid to teachers certified by the National Board for Professional Teaching Standards to the ten-year period of the teacher's initial certification.

- Requires the State Board of Education to adopt a model student acceleration policy.

- Specifically authorizes joint vocational school districts and educational service centers (in addition to city, local, and exempted village school districts under current law) to provide latchkey programs.

- Authorizes school districts and educational service centers to expend money from their general funds for latchkey programs.

- Eliminates the requirement that school districts produce annual "spending plans" (detailing all revenues available for appropriation and expected expenditures, including outstanding debts) to be filed with the Department of Education.

- Eliminates the requirement that school districts file their amended certificates of estimated resources with the Department of Education.

- Eliminates requirements that the Department of Education file monthly and annual statistical reports with the Governor, the Senate, the House of Representatives, the Auditor of State, and the Legislative Service Commission.

- Requires city, local, and exempted village school districts to transport their high school pupils who attend career-technical classes at another district, including a joint vocational school district, from the student's high school to the career-technical program.

- Requires a school district that is in fiscal watch or fiscal emergency status to update its five-year projection of revenues and expenditures once the

Superintendent of Public Instruction approves the district's financial plan or financial recovery plan.

- Exempts a school district from making otherwise required deposits into certain "set-aside" funds while in a fiscal emergency period and excuses it from eliminating deficits in those funds that accrued in prior years.

- Prohibits a school district, or individual school operated by a district, from operating without a charter issued by the State Board of Education.

- Requires the State Board of Education, upon considering the charter of a new school district, to require the party proposing the new district to submit a map, certified by the county auditor, showing the boundaries of the new district.

- Establishes the School Physical Fitness and Wellness Advisory Council to develop, by December 31, 2005, best practices guidelines and evaluation strategies for school districts regarding nutrition education, physical activity for students, and student wellness.

Background to school funding formula changes

Base-cost and categorical funding

State operating funding for school districts is divided primarily into two types: base-cost funding and categorical funding. Base-cost funding is the prescribed minimum amount of money needed per pupil to pay the expenses that all school districts experience on a somewhat even basis. These expenses include compensation for teachers of curriculum courses, textbooks, janitorial and clerical services, administrative functions, and support services such as libraries and guidance counseling.

Categorical funding, on the other hand, is calculated for expenses that vary from district to district due to special circumstances, such as the demographics of the student population or the geography of the district. Some categorical funding, namely the current cost-of-doing-business factor and some adjustments to property value, is actually built into the base-cost formula. But most categorical funding is paid separately from the base cost including: additional weighted funding for special education and vocational education services, gifted education funding, disadvantaged pupil impact aid or "DPIA" (for districts with a significant proportion of low-income students), and transportation funding. The bill renames

disadvantaged pupil impact aid "poverty-based assistance" and expands its provisions.

Equalization

State funds are used in the school funding formula to "equalize" school district revenues. Equalization means using state money to ensure that all districts, regardless of property wealth, have an equal amount of combined state and local revenues to spend for necessary services. In an equalized system, poor districts receive more state money than wealthy districts in order to guarantee the established minimum amount for all districts.

The school funding system essentially equalizes 23 mills of property tax for base-cost funding. It does this by providing sufficient state money to each school district to ensure that, if all districts in the state levied exactly 23 effective mills, they all would have the same per pupil amount of base-cost money to spend (currently adjusted in part to reflect the cost of doing business in the district's county).[33]

Base-cost formula

To determine a district's funding for base-cost expenses, current law prescribes the following formula:

(Base-cost "formula amount" x cost-of-doing-business factor x the "formula ADM") minus (0.023 times "recognized valuation")

Where:

(a) The "**formula amount**" is the statutorily prescribed minimum amount for each student. The formula amount for fiscal year 2005 is $5,169. Current law does not prescribe a formula amount for any year beyond fiscal year 2005.

(b) The **cost-of-doing-business factor** varies by county from 1.0000 (for the lowest-cost county) to 1.0750 (for the highest-cost county) as prescribed by statute based on a comparison of labor costs for each county. Currently, Gallia County is the lowest-cost county, and Hamilton County is the highest-cost county. The bill phases out the cost-of-doing-business factor.

(c) "**Formula ADM**" is the number of full-time-equivalent students reported as attending school in the district during the first full week of October.

[33] *One mill produces $1 of tax revenue for every $1,000 of taxable property valuation.*

(d) The district's "**recognized valuation**" is the value of taxable property in the district, adjusted to diminish the sudden effect of increases due to triennial appraisal updates.

(e) "**0.023**" represents **23 mills** of property taxation, which is the "charge off" presumed to be the district's contribution of the total base cost. In other words, an amount equal to 23 mills worth of the district's adjusted taxable value will be subtracted from the total amount of base cost calculated for the district.

State share percentage

As a result of the base-cost formula, a "state share percentage" can be computed. It is the percentage of the total base-cost amount supplied by the state after the charge-off is deducted. That state share percentage is subtracted from many, but not all, of the separately calculated categorical funding amounts to determine how much of those amounts is presumed to be the responsibility of the district. Current law, not changed by the bill, limits a district's share of the aggregate of its calculated special education, vocational education, and transportation funding to 3.3 mills beyond the 23-mill charge off. The state, then, pays the remainder of the district's calculated aggregate amount of funding for those three categories with a subsidy known as the "excess cost supplement."

How the base-cost "formula amount" was established

Since 1998, the General Assembly has utilized explicit methodologies for determining the base cost of an adequate education, from which is derived the formula amount. The current methodology relies on the premise that, all other things being equal, most school districts should be able to achieve satisfactory performance if they have available to them the average amount of funds spent by those districts that have met the standard for satisfactory performance.[34] The standard for that performance adopted by the General Assembly in 2001 was meeting in fiscal year 1999 at least 20 of the 27 state academic performance standards. In essence, the General Assembly developed an "expenditure model" by examining the average per pupil expenditures of school districts deemed to be performing satisfactorily. From the initial group of these districts, it eliminated "outriders" (the top and bottom 5% in property wealth and personal income) and arrived at 127 districts to include in the model. The base cost derived from analyzing that group's fiscal year 1999 expenditures was $4,814 per pupil for

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[34] *The fact that "all other things are not equal" is the rationale behind the "categorical" funding provided for school districts with greater needs for transportation funding, DPIA, special education services, and similar requirements that vary from district to district.*

fiscal year 2002. That amount was increased by an inflation factor of 2.8% for fiscal year 2003 and, subsequently, 2.2% for fiscal years 2004 and 2005.

New "building blocks" methodology

(R.C. 3317.012(A) and (B))

The bill prescribes a new method for determining the base cost of an adequate education relying on "building blocks," which the bill describes as the following:

(1) Base classroom teachers;

(2) Other personnel support, including "additional teachers, such as music, arts, and physical education teachers funded by state, local, or federal funds or other funds that are above the base-cost funding level," and other school personnel including administrators; and

(3) Nonpersonnel support.

The bill further states that this model reflects the General Assembly's "policy decisions" that the cost of base classroom teachers rests on two "policy variables." Those variables are (1) the number of students per base classroom teacher necessary for an adequate education and (2) the average compensation for a base classroom teacher necessary for an adequate education. In addition, under the model the General Assembly then decides the amount of other personnel support necessary for an adequate education, which is to increase from year to year by the same percentage as the General Assembly increases the average compensation for base classroom teachers. Finally, the General Assembly decides the nonpersonnel costs necessary for an adequate education, which are inflated from year to year using the projected inflationary measure for the Gross Domestic Product Deflator (all items) prepared by the U.S. Bureau of Labor Statistics.

Using this new model, the bill specifies that, for fiscal years 2006 and 2007, the General Assembly has resolved that a ratio of one base classroom teacher for every 20 students is necessary for an adequate education. It then prescribes that the average compensation for base classroom teachers in fiscal year 2006 is $53,680, and in fiscal year 2007 is $54,941. Both of these amounts include an amount for the value of fringe benefits. Based on a ratio of 20 students per base classroom teacher, these average compensation amounts equal $2,684 per pupil in fiscal year 2006 and $2,747 per pupil in fiscal year 2007.

The bill then specifies that the General Assembly has made a policy decision that the per pupil cost of salary and benefits of other personnel support is $1,807 in fiscal year 2006. Based on the percentage increase for the average

compensation of base classroom teachers from fiscal year 2006 to fiscal year 2007, the per pupil cost of other personnel support is $1,850 in fiscal year 2007.

Finally, the bill specifies that the General Assembly has made a policy decision that the per pupil cost of nonpersonnel support is $792 in fiscal year 2006 and $806 in fiscal year 2007, the latter amount reflecting the inflationary measure for the Gross Domestic Product Deflator (all items) projected for those years of 1.80%.

FY 2006 and FY 2007 base-cost formula amount

(R.C. 3317.012(B)(4))

Based on the determinations described under the "building blocks" methodology statement, the bill prescribes that the per pupil base cost amount is $5,283 in fiscal year 2006 and $5,403 in fiscal year 2007.

Base funding supplements

(R.C. 3317.012(C))

In addition to the base-cost amount, the bill prescribes four new "base funding supplements," which are to be calculated for each school district, except joint vocational school districts. Some of these supplements are paid on a phased-in basis, as described below. The supplements are as follows:

(1) A base funding supplement for "large-group academic intervention" for all students calculated as follows:

"Large-group intervention units" x 25 hours x hourly rate

Where:

(a) "Large-group intervention units" equals the district's formula ADM divided by 20; and

(b) "Hourly rate" equals $20.00 in fiscal year 2006 and $20.40 in fiscal year 2007.

In other words, the supplement provides funding for 25 hours of intervention for every student at a 20:1 student-to-teacher ratio and an hourly rate of $20 in the first year of the biennium and $20.40 in the second year.

(2) A base funding supplement for professional development, phased in as follows:

District's teacher factor x 4.5% x formula amount x phase-in percentage

Where:

(a) For each school district, the district's "teacher factor" is the district's formula ADM divided by 17; and

(b) "Phase-in percentage" equals 25% in fiscal year 2006 and 50% in fiscal year 2007.

In fiscal year 2006, this subsidy will result in an additional $3.50 per student for teacher professional development and, in fiscal year 2007, an additional $7.15 per student for that purpose.

(3) A base funding supplement for "data-based decision making" calculated according to the following formula:

0.1% x formula amount x formula ADM

In fiscal year 2006, this subsidy will result in an additional $5.28 per student and, in fiscal year 2007, an additional $5.40 per student. It presumably is to help defray a district's cost in examining student performance data to determine the appropriate courses of action for students.[35]

(4) Finally, a base funding supplement for "professional development regarding data-based decision making" is calculated as follows:

(20% of the district's "teacher factor" x 8% of the formula amount)
+ (the district's "principal factor" x 8% of the formula amount)

A district's "teacher factor" is its formula ADM divided by 17. A district's "principal factor" is its formula ADM divided by 340.

Presumably, this supplement is to help districts defray the cost related to professional development for just its data-based decision-making activities.

[35] *R.C. 3302.021 currently requires the Department of Education to develop and implement a "value added progress dimension" to measure individual student performance over the entire course of a student's primary and secondary education. It is to be based on a model developed by a non-profit organization led by the Ohio business community. The Ohio Business Roundtable's "Battelle For Kids" has developed such a model program. Presumably, a district could use some or all of its supplement to pay for services from that or similar programs.*

Phase-out of cost-of-doing-business factor

(R.C. 3317.02(N))

As noted above, the current cost-of-doing-business factor applies a multiple of between 1.000 to 1.075 (7.5% extra maximum for the highest cost county) to the formula amount to account for the labor costs of the county in which the district is located. The bill phases out the current cost-of-doing-business factor by applying further multipliers to the cost-of-doing-business factor so that the range for fiscal year 2006 is between 1.000 and 1.050 (5% extra maximum) and between 1.000 and 1.025 (2.5% maximum) in fiscal year 2007. The bill zeros out the cost-of-doing-business factor for fiscal year 2008 and thereafter.

Revised base-cost formula

(R.C. 3317.022)

The bill uses the new base funding supplements and the phased-out cost-of-doing-business factor in setting forth the following revised formula for calculating a district's total base cost funding:

[(Cost-of-doing-business factor x formula amount x formula ADM) + the sum of all four of the base funding supplements] – (0.023 x recognized valuation)

Revised base-cost formula for joint vocational school districts

(R.C. 3317.16)

Joint vocational school districts (JVSDs) are special taxing districts that provide career-technical instruction to high school students. They are formed by agreements among two or more school districts. The member districts send their students who wish to enroll in career-technical programs to the JVSD for those services. In addition, JVSDs may enter into contracts with nonmember districts and schools to provide services specified in the contracts.

Under current law, a JVSD's base-cost funding and some of its categorical funding are calculated in the same manner as other school districts, except that its "charge off" is only ½ mill (or 0.0005) times its recognized valuation. The bill prescribes a revised formula for JVSDs that is similar (but not identical) to the one the bill prescribes for city, exempted village, and local districts. Under the bill, the revised base-cost formula for JVSDs is:

(Cost-of-doing-business factor x formula amount x formula ADM) – (0.0005 x recognized valuation)

The bill does not provide for the payment of base funding supplements to JVSDs.

Base cost funding guarantee

(R.C. 3317.022(A) and 3317.16(B))

The bill guarantees that each city, exempted village, local, or joint vocational school district's state payment for base cost funding will be no lower than its fiscal year 2005 state aggregate or per pupil base cost payment, whichever is less.

To do so, the bill provides that the Department of Education calculate both of the following for each district:

(1) The difference between the district's fiscal year 2005 base cost payment and the base cost amount computed for the district for the current fiscal year;

(2) [(fiscal year 2005 base cost payment divided by fiscal year 2005 formula ADM) times current year formula ADM] minus the base cost amount computed for the district under current law. This formula results in a per pupil fiscal year 2005 state base cost amount multiplied by the district's *current* formula ADM.

If one of the amounts computed under (1) and (2) above is a positive amount, the Department must pay the district that amount in addition to the base cost amount calculated for the district. If both amounts are positive amounts, the Department must pay the district the lesser of the two amounts in addition to the base cost amount calculated for the district.

Building blocks spreadsheet

(R.C. 3317.016)

In addition to the funding information for each district that the Department currently has on its web site (that is the district's form SF-3 and other forms that show how a district's funding is calculated), the bill requires the Department to publish on its web site a spreadsheet for each district that indicates the "constituent components of the district's "building blocks" funds." Specifically, the bill requires that the following information be included in each district's spreadsheet:

(1) Aggregate and per pupil amounts of state funds and of combined state and local funds for compensation of base classroom teachers;

(2) The average compensation decided by the General Assembly for base classroom teachers and the number of base classroom teachers attributable to the district based on the student-teacher ratio decided by the General Assembly;

(3) Aggregate and per pupil amounts of state funds and of combined state and local funds for each of the following:

(a) Other personnel support;

(b) Nonpersonnel support;

(c) Academic intervention services;

(d) Professional development;

(e) Data-based decision making;

(f) Professional development for data-based decision making; and

(g) Separate specifications for each of the eight components of the poverty-based assistance subsidy (see "***Poverty-based assistance payments***" below).

Spending requirements associated with the building blocks model

(R.C. 3317.012(D) and 3317.017)

The bill states that the General Assembly intends that school districts spend the state funds calculated and paid for each component of the building blocks methodology (that is, the amount determined for base classroom teachers, other personnel support, and nonpersonnel support and the amount of base funding supplements paid to a district) for those specific purposes.[36]

Academic watch and academic emergency districts

In addition, the bill requires the Superintendent of Public Instruction, not later than July 1, 2006, to adopt a rule under which the Superintendent may issue an order with respect to the spending by a school district declared to be under an academic watch or in a state of academic emergency of the following state building block funds intended to pay instructional-related costs (including in many cases amounts received from the poverty-based assistance subsidy):

(1) Compensation of base classroom teachers;

[36] *R.C. 3317.012(D).*

(2) Academic intervention services;

(3) Professional development;

(4) Data based decision making;

(5) Poverty-based assistance guarantee payment;

(6) All-day kindergarten payments;

(7) Class-size reduction;

(8) Services to limited English proficient students;

(9) Dropout prevention; and

(10) Community outreach.

The rule must authorize the Superintendent of Public Instruction to issue an order that does one or a combination of the following:

(1) Require the school district to periodically report to the Superintendent on its spending of the state funds paid for each building blocks component;

(2) Require the district to establish a separate account for each of the building blocks components; or

(3) Direct the district's spending of any or all of the state funds paid for the components.

The bill also directs each school district board of education to comply with an order issued by the Superintendent.[37]

Transitional aid

(Sections 206.09.39 and 206.09.42)

To protect districts from losses in state funding due to the bill's funding formula changes, the bill specifies that in both fiscal years 2006 and 2007, no school district's "SF-3 funding plus charge-off supplement" be less than it was for the prior fiscal year. Accordingly, the Department of Education must pay a district additional state funds, as necessary, to eliminate any decrease in either fiscal year.

[37] *R.C. 3317.017.*

A district's "SF-3 funding plus charge-off supplement" comprises most of the state subsidies paid to school districts, including base-cost, special education, vocational education, transportation, DPIA (or poverty-based assistance under the bill's new provisions), gifted education units, GRADS subsidy for programs for parenting and pregnant students, adjustments for classroom teachers and educational service personnel, parity aid, state aid guarantee, reappraisal guarantee, and the charge-off supplement.

The bill also requires the Department when calculating the reappraisal guarantee for a district in fiscal years 2006, 2007, or 2008 to include any payments it made to the district under the temporary transitional aid subsidy in the previous fiscal year.[38]

In addition, the bill guarantees that no JVSD in either fiscal year will receive a decrease from the previous fiscal year in its "joint vocational funding" in excess of 2%. The bill defines "joint vocational funding" as the district's aggregate state funding for base-cost funding, special education, vocational education, GRADS, and the JVSD state aid guarantee.

State aid guarantee eliminated

(repealed R.C. 3317.0212 and R.C. 3317.16(H); conforming changes in R.C. 3314.08(A)(10), 3317.031, 3317.081, and 3317.09)

Current law guarantees that every school district with a formula ADM over 150 will receive a minimum amount of total state aid (base cost and categorical funding) based on its state funds for fiscal year 1998. The state funds guaranteed include the sum of base-cost funding, special education funding, vocational education funding, gifted education funding, DPIA funds, equity aid, state subsidies for teachers with high training and experience, and state "extended service" subsidies for teachers working in summer school. The Department of Education is required to pay a district the difference between the amount calculated under the current formulas and the amount the district received in fiscal year 1998. A similar guarantee applies to JVSDs.

The bill eliminates both guarantees.

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[38] *The reappraisal guarantee prevents a school district from losing any state funds in the first fiscal year after the county auditor has reappraised or updated the valuation of taxable property. (County auditors formally reappraise property value every six years and, in the third year of the six-year period, perform a statistical update of the valuations.) The effect is to exempt districts for one year against any reduction in state funding that might be triggered by the increase in the valuation of taxable property. (R.C. 3317.04, not in the bill.)*

Application of funding formula changes to county MR/DD boards, community schools, open enrollment, and Post-Secondary Enrollment Options Program

(R.C. 3313.98, 3314.08, 3317.20, and 3365.01)

The bill applies its new base-cost formula to funding for county MR/DD boards, community schools (charter schools), interdistrict open enrollment, and the Post-Secondary Enrollment Options Program. In doing so, it provides that per pupil payments for participants under those provisions will be determined based on the formula amount plus times the phased-out cost-of-doing-business factor a per pupil amount of the four new base funding supplements.

Parity aid

(R.C. 3317.0217)

Background

In 2001, the General Assembly began phasing in a new subsidy known as "parity aid," to replace equity aid (and another, former subsidy known as "power equalization"). The subsidy pays additional state funds to school districts based on combined income and property wealth. For most eligible school districts, parity aid essentially pays state funds to make up the difference between what 9.5 mills would raise against the district's income-adjusted property wealth versus what 9.5 mills would raise in the district where the income-adjusted property wealth ranks as the 123rd highest (the 80th percentile).

The 9.5-mills represent the General Assembly's determination of the average number of "effective operating mills" (including school district income tax equivalent mills) that school districts in the 70th to 90th percentiles of property valuations levied in fiscal year 2001 *beyond* the millage needed to finance their calculated local shares of base-cost, special education, vocational education, and transportation funding. The amount of parity aid, therefore, varies based on how far below the 123rd district a district's income-adjusted valuation falls. The 123 districts having the highest income-adjusted valuations are not eligible for parity aid. Districts need not actually levy any of the 9.5 mills to receive a state parity aid payment.

Changes in the calculation of parity aid

The bill revises the formula for calculating parity aid by basing it on what 7.5 mills would raise in the 123rd highest ranked district, instead of 9.5 mills as under current law. The bill states that this change is to account for the General Assembly's policy decision to phase-out use of the cost-of-doing-business factor in the base cost formula.

Full funding of parity aid

Current law provides that state parity aid payments for fiscal year 2005 be 76% of the amount calculated, and for fiscal years thereafter be 100% of the amount calculated. The bill retains the full-funding provision of current law for the revised formula.

Poverty-based assistance--background

Under current codified law, an additional, nonequalized state subsidy is paid to school districts with threshold percentages of resident children from families receiving public assistance. Known as "disadvantaged pupil impact aid" or "DPIA," the amount of the subsidy depends largely on the district's "DPIA index," which is its percentage of children receiving public assistance compared to the statewide percentage of such children. Three separate calculations determine the total amount of a district's DPIA funds:

(1) Any district with a DPIA index greater than or equal to 0.35 (meaning its proportion of children receiving public assistance is at least 35% of the statewide proportion) receives money for safety and remediation. Districts with DPIA indices between 0.35 and 1.00 receive $230 per pupil in a public assistance family. The per pupil amount increases proportionately for districts whose indices are greater than 1.00 as the DPIA index increases.

(2) Districts with a DPIA index greater than 0.60 receive an additional payment for increasing the amount of instructional attention per pupil in grades K to 3. The amount of the payment increases with the DPIA index. This payment is called the "third grade guarantee," but is also known as the "class-size reduction" payment.

(3) Districts that have either a DPIA index equal to or greater than 1.00 (having at least the statewide average percentage of public assistance children) or a three-year average formula ADM exceeding 17,500, and that offer all-day kindergarten receive state funding for the additional half day.

However, all districts (regardless of their DPIA indices) are eligible for at least the amount of DPIA funding they received during FY 1998.

Poverty-based assistance payments

(R.C. 3317.029 and Section 612.18; conforming changes in R.C. 3314.03, 3314.08, 3314.13, 3317.0212, and 3317.0217)

The bill revises the Disadvantaged Pupil Impact Aid (DPIA) subsidy, and renames the subsidy as "poverty-based assistance." The revisions consist of

changes to the current components of the subsidy, plus a phase-in of four new components.

Poverty index

(R.C. 3317.029(A))

As with the DPIA subsidy, the amount of poverty-based assistance paid to a school district will depend on its percentage of children receiving public assistance, compared to the statewide percentage--a relative measure called the "poverty index" (formerly, the "DPIA index"). For example, a school district with a poverty index of 1.0 has the same proportion of children living in families receiving "family assistance" as the state as a whole. A district with a poverty index of 0.25 has a proportion of children receiving family assistance that is 25% of the statewide proportion. A district with a poverty index of 1.25 has a proportion of children receiving family assistance that is 125% of the statewide proportion.

Under current law, the index accounts for each district's five-year average proportion of children ages 5 to 17 whose families (1) have incomes not exceeding the federal poverty guidelines[39] and (2) participate in one of the following programs:

(a) Ohio Works First;

(b) Food Stamps;

(c) Medicaid;

(d) The Children's Health Insurance Program ("CHIP"); or

(e) The state Disability Assistance program, which program is eliminated by the bill.

Although the use of multiple indicators for calculating the index was enacted in 2001, they have never been used due to overriding temporary provisions that have delayed their use. The bill permanently precludes the use of these multiple indicators (including the requirement to include families with incomes that do not exceed federal poverty guidelines). Instead, a district's index under the bill (as under current temporary law) is to be based only on the proportion of its students living in families receiving assistance under Ohio Works First.

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[39] *The 2005 federal poverty guideline for a family of three is $16,090.*

Guaranteed minimum payment

(R.C. 3317.029(B))

The bill guarantees that each school district annually will receive poverty-based assistance that is at least equal to its fiscal year *2005* (instead of 1998) DPIA payment. If the sum of the various components of the new subsidy does not equal the district's fiscal year 2005 DPIA payment, the district receives the amount of its fiscal year 2005 payment.[40]

All-day kindergarten payment

(R.C. 3317.029(D))

The bill does not substantially revise the payment for all-day kindergarten. Therefore, districts with a poverty index greater than or equal to 1.0, or a three-year average formula ADM exceeding 17,500 students, that offer all-day kindergarten continue to receive state funding for the additional half-day for their kindergarten students. However, the bill does codify a customary temporary provision that permits districts that have received an all-day kindergarten payment in the previous year to continue to receive that payment even if its index falls below 1.0.

Academic intervention payment

(R.C. 3317.029(C) and (M)(2))

The bill replaces the former "safety, security, or remediation" payment with a new, phased-in, three-tier payment designated for "academic intervention" paid to districts with a poverty index greater than or equal to 0.25. The bill refers to the respective tiers as "level one," "level two," and "level three," each with its own formula for calculating payments to eligible districts. All three payments are phased in at 60% of the calculated amounts in fiscal year 2006 and 85% of the calculated amounts in fiscal year 2007.

Level One. Level One is designated for "large-group academic intervention for all students" for districts with poverty indexes of 0.25 and higher. Districts with poverty indexes of 0.75 and above receive the maximum calculation, whereas districts with indexes between 0.25 and 0.75 are paid on a sliding scale. The payment is based on $20 per hour for 25 hours in fiscal year 2006, and $20.40 per

[40] *The bill does deduct from the fiscal year 2005 guarantee any amount paid that year for a district's students who were attending Internet- or computer-based community schools, which schools the bill specifies are not eligible for poverty-based assistance.*

hour for 30 hours in fiscal year 2007, for every 20 students in a district's formula ADM.

Level Two. Level Two is designated for "medium-group academic intervention for impoverished students" for districts with poverty indexes of 0.75 and higher. Districts with poverty indexes of 1.50 and above receive the maximum calculation, whereas districts with indexes between 0.75 and 1.50 are paid on a sliding scale. The payment is based on $20 per hour for 100 hours in fiscal year 2006, and $20.40 per hour for 105 hours in fiscal year 2007, for every 10 students in a district's poverty student count.

Level Three. Level Three is designated for "small-group academic intervention for impoverished students" for districts with poverty indexes of 1.50 and higher. Districts with poverty indexes of 2.50 and above receive the maximum calculation, whereas districts with indexes between 1.50 and 2.50 are paid on a sliding scale. The payment is based on $20 per hour for 375 hours in fiscal year 2006, and $20.40 per hour for 415 hours in fiscal year 2007, for every five students in a district's poverty student count.

Poverty-Based Assistance Academic Intervention

	Level One		Level Two		Level Three	
	FY 2006	FY 2007	FY 2006	FY 2007	FY 2006	FY 2007
Hourly Rate	$20.00	$20.40	$20.00	$20.40	$20.00	$20.40
Hours	25	30	100	105	375	415
Unit size	Formula ADM divided by 20		Poverty student count divided by 10		Poverty student count divided by 5	
Sliding scale	School districts with poverty indexes between 0.25 and 0.75		School districts with poverty indexes between 0.75 and 1.50		School districts with poverty indexes between 1.50 and 2.50	
Max. Payment	School districts with poverty indexes of 0.75 or higher		School districts with poverty indexes of 1.50 or higher		School districts with poverty indexes of 2.50 or higher	

Use of the payment. Current law applies certain spending restrictions to the current "safety, security, and remediation" payment for any school district with a poverty index higher than 1.0. The bill provides that all school districts, regardless of index, that receive the new "academic intervention" payment must use it for that purpose (see also "***Spending prescriptions***" below).

Deployment plan. The bill also requires any district that receives a level two or level three payment to submit to the Department of Education an annual plan describing how the district will deploy those funds. It also specifies that this deployment must conform to the spending prescriptions described above and with any order issued by the Superintendent of Public Instruction (see "***Spending requirements associated with the building blocks model***" above).

K to 3 class-size reduction payment

(R.C. 3317.029(E))

The third component of DPIA, the so-called "class-size reduction" payment, is intended to assist districts to increase the amount of instructional attention for students in grades K to 3. It is paid on a sliding scale, and is based on the amount of money it would take to hire additional teachers to reduce class sizes in those grades, although districts' strategies to increase instructional attention need not include hiring more teachers.

The bill raises the eligibility threshold for this component from a DPIA index of 0.60 to a poverty index of 1.0. It also revises the payment formula by (1) reducing the imputed teacher-pupil ratio from 23:1 to 20:1 for districts at the bottom of the sliding scale and (2) reducing the threshold index at the top of the scale from a DPIA index of 2.5 to a poverty index of 1.5.

Average teacher salary. One of the variables of the class-size reduction payment formula is the statutorily designated statewide average teacher salary. This amount was last set at $43,650 for fiscal year 2003. The bill sets it at $53,680 for fiscal year 2006 and $54,941 for fiscal year 2007, which also are the base classroom teacher compensation amounts prescribed under the bill (see "***New "building blocks" methodology***" above).

Payment for services to limited-English proficient students

(R.C. 3317.029(F) and (J)(2))

The bill phases in a new poverty-based component to assist with services to students who are limited-English proficient. To qualify for this payment, both of the following must apply:

(1) The district's poverty index must be 1.0 or higher; and

(2) The proportion of the district's students who were limited-English proficient in the 2002-2003 school year must have been at least 2%, as reported by the Department of Education on the district's state report card.

The payment formula is a sliding scale that ranges from 12.5% of the base-cost formula amount ($660 in fiscal year 2006) per limited-English proficient student for a district with a poverty index equal to 1.0, to 25% ($1,321 in fiscal year 2006) of the base-cost formula amount per limited-English proficient student for districts with a poverty index of 1.75 or higher. This subsidy is phased-in, with districts eligible for 40% of the formula calculation in fiscal year 2006 and 70% in fiscal year 2007.

Counting limited-English proficient students after fiscal year 2007. In fiscal years 2006 and 2007, the per student amount calculated by the formula is to be multiplied by the number of the district's limited-English proficient students in the 2002-2003 school year, as determined by the Department when it calculated the district's limited-English proficient percentage on the state report cards. The bill requires the Department, by December 31, 2006, to recommend to the General Assembly and the Director of Budget and Management a new method of identifying the number of limited-English proficient students for purposes of calculating payments after fiscal year 2007.

Use of the payment. Each school district must use its payment for services to limited-English proficient students, in one or more of the following ways:

(1) To hire teachers for limited-English proficient students or other personnel to provide intervention services for those students;

(2) To contract for intervention services for those students; or

(3) To provide other services to assist those students in passing the third grade reading achievement test, and to provide the statutorily mandated intervention services to those students who have not passed that test.

Professional development payment

(R.C. 3317.029(G) and (J)(3))

A second new component for poverty-based assistance that the bill phases in is a payment for professional development of teachers, payable to districts with poverty indexes greater than 1.0. The payment is a percentage of the base-cost formula amount, multiplied by a calculated number of teachers. For this purpose, the bill calculates each eligible district's number of teachers by dividing its formula ADM by 17. The per teacher amount is set on a sliding scale for districts with poverty indexes greater than 1.0 but less than 1.75. For districts with poverty indexes of 1.75 or higher, the per teacher payment is 4.5% of the base-cost formula amount ($238 in fiscal year 2006) per teacher. The bill phases in this

component by directing that districts be paid for 40% of the formula calculation in fiscal year 2006 and 70% in fiscal year 2007.

Use of the payment. A district must use its professional development payment for professional development of teachers or other licensed personnel providing educational services to students as follows:

(1) The professional development must be in one or more of the following areas: (a) data-based decision making, (b) standards-based curriculum models, or (c) job-embedded professional development activities that are research-based, as defined in federal law; and

(2) The professional development program must be on the Department of Education's list of eligible programs, unless the Department grants the district a waiver to implement an alternative program.

Dropout prevention payment

(R.C. 3317.029(H) and (J)(4))

The bill phases in a poverty-based component for dropout prevention programs. Only the "Big-Eight" school districts (Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown) are eligible. This component pays an amount for each student in the district's formula ADM. That amount is 0.5% of the base-cost formula amount ($26 in fiscal year 2006), multiplied by the district's poverty index. Therefore, the higher a district's poverty index, the higher its per pupil payment. For example, if a district's poverty index is 1.5, the per pupil payment would be (0.5% x formula amount x 1.5), which equals 0.75% of the formula amount ($40 in fiscal year 2006). If the district's poverty index is 2.5, the per pupil payment would be (0.5% x formula amount x 2.5), which equals 1.25% of the formula amount ($66 in fiscal year 2006).

However, all calculated amounts are phased in at 40% for fiscal year 2006 and 70% for fiscal year 2007.

Use of the payment. The Big-Eight districts must use their dropout prevention payment for one or a combination of the following purposes:

(1) Preventing at-risk students from dropping out of school;

(2) Implementing any of the specified safety and security activities; or

(3) Academic intervention services.

If the district elects to use all or part of the payment for dropout prevention, it must implement a program on a list provided by the Department of Education, unless the Department grants the district a waiver to implement an alternative program.

Community outreach payment

(R.C. 3317.029(I), (J)(5), and (M)(2))

The last new component of poverty-based assistance that the bill phases in is a payment for community outreach services. Only the state's 21 urban districts are eligible for this payment. The payment is calculated as 0.005 (one-half of one per cent) times the formula amount times the district's poverty index times the district's formula ADM times a phase-in percentage of 0.40 in fiscal year 2006 and 0.70 in fiscal year 2007.

Use of the subsidy. Districts that receive a community outreach payment must use it for one or a combination of the following purposes:

(1) To hire or contract for community liaison officers, attendance or truant officers, or safety and security personnel;

(2) To implement programs designed to ensure that schools are free of drugs and violence and have a disciplined environment conducive to learning; or

(3) To implement academic intervention services.

Spending prescriptions

(R.C. 3317.029(J) and (M))

As with the DPIA program, the bill establishes guidelines for spending poverty-based assistance, with the strictest guidelines applying to districts with poverty indexes of 1.0 or higher (the districts that receive most of the subsidy).

Poverty indexes of 1.0 or higher. Districts with poverty indexes of 1.0 or higher must spend their poverty-based assistance first to provide all-day kindergarten to all of the kindergartners they certified when they requested an all-day kindergarten payment. They then must follow the spending guidelines established for the payments for services to limited-English proficient students, professional development, dropout prevention, and community outreach, described above.

Current law provides that districts must use the safety, security, and remediation payment (redesignated just "safety and security" under the bill) for (1)

programs designed to ensure that schools are free of drugs and violence and have a disciplined environment conducive to learning or (2) remediation for students who have failed or are in danger of failing any of the state's achievement tests.

The bill specifies instead that the new "academic intervention" payment that replaces it for all school districts, regardless of index, *must* be used for academic intervention services for students who have failed or are in danger of failing any of the state achievement tests, including intervention services required under the third-grade reading guarantee.[41] The bill also prohibits any collective bargaining agreement entered into after the effective date of the bill from requiring use of the district's academic intervention payment for any other purpose.

Finally, the bill maintains the current law requiring these districts to use whatever remains of their poverty-based assistance payment (mostly the class-size reduction payment) for increasing the amount of instructional attention to students in grades K to 3, either by reducing the ratio of students to instructional personnel (teachers, aides, or paraprofessionals) or by undertaking other initiatives that have the effect of increasing the length of the school day or school year.

Poverty indexes below 1.0. Most districts with poverty indexes below 1.0 are eligible only for the safety, security, and remediation payment. Current law itemizes a number of services and mandates that these districts spend at least 70% of their DPIA payments to provide one or more of them. The bill eliminates the 70% prescription, thereby requiring these districts to spend all of their poverty-based assistance payment on one or more of the itemized services.

A district with a poverty index below 1.0 qualifies for an all-day kindergarten payment if its formula ADM exceeds 17,500 students. For such a district, the bill maintains the current law requiring that the district first spend what is necessary to provide all-day kindergarten, and then spend all (instead of 70%) of the remainder on one or more of the itemized services. Likewise, an Urban 21 district that has a poverty index below 1.0 must first use its community outreach payment as prescribed by the bill, and then must spend the remainder of its payment for the itemized services.

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[41] *The third-grade reading guarantee (codified in R.C. 3313.608, not in the bill) aims to ensure that students are reading at grade level by the end of third grade. To that end, the provision requires that districts and community schools offer intense summer remediation for students who do not attain proficient scores on the third grade achievement test. That test is administered three times to third graders. The payments for dropout prevention and community outreach also may be used for intervention services for those students who have failed or are at risk of failing state achievement tests.*

The bill also expands the purposes for which these excess funds may be expended. Under existing law, these funds may be expended for Head Start and preschool programs; the bill additionally permits these funds to be spent on early childhood education and early learning programs.

Report on spending prescriptions

(Section 206.09.37)

The bill requires the Department of Education to review the spending requirements for poverty-based assistance and submit a report recommending modifications, by July 1, 2006, to the Director of Budget and Management, the Speaker of the House, and the President of the Senate. The recommendations must include "decreasing degrees of flexibility of spending for districts not meeting adequate progress standards as defined by the Department." The Department must specifically review the requirements for increasing instructional attention to children in grades K to 3 with the class-size reduction payment. The Department must use reports submitted by school districts concerning intervention funding to inform its recommendations.[42]

Transportation subsidy

(Section 206.09.21)

Background

Each school district is eligible for a subsidy for transporting students to and from school.[43] Like base cost, the amount calculated is shared between the district and the state. The amount of additional state funding paid for transportation is the *greater* of 60% or the district's state share percentage of the amount calculated by the formula.

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[42] *Section 206.09.90 of the bill summarizes the state funding appropriated for student intervention services and requires each school district to report to the Department concerning its spending for intervention services. Each district's report is due by December 31, 2006, which is six months after the deadline for the Department's recommendations on poverty-based assistance spending.*

[43] *A city, exempted village, and local school district is required to provide transportation to and from school for each student in grades K through 8 who resides in the district and lives more than two miles from the school the student attends. The requirement applies also to community school and nonpublic school students unless the direct travel time measured by school bus is more that 30 minutes. District also may provide transportation to resident students in grades 9 through 12. (R.C. 3327.01.)*

The formula itself is based on the statistical method of multivariate regression analysis.[44] Under this formula, each district's payment for transportation of students on school buses is based on (1) the number of daily bus miles traveled per day per student in the previous fiscal year and (2) the percentage of its student body that it transported on school buses in the previous fiscal year (whether the buses were owned by the district board or a contractor).[45] The Department of Education updates the values for the formula and calculates the payments each year based on analysis of transportation data from the previous fiscal year. Current law requires the Department to apply a 2.8% inflation factor to the previous year's cost data. There is a separate "rough road subsidy" targeted at relatively sparsely populated districts where there are relatively high proportions of rough road surfaces.

Payments for fiscal years 2006 and 2007

Instead of calculating the transportation subsidy as otherwise required under current law, the bill specifies that each district's transportation subsidy in each of fiscal year 2006 and 2007 be 2% greater than it was in the previous fiscal year. Districts that did not receive a state subsidy for transportation in fiscal year 2005 are not eligible for transportation funding in either fiscal year 2006 or 2007.

Recommendations for formula changes

The bill requires the Department of Education, by July 1, 2006, to submit to the Director of Budget and Management, President of the Senate, and Speaker of the House recommendations for a new transportation funding formula.

District share of pupil transportation for other funding calculations

For fiscal years 2006 and 2007, the bill specifies that, for purposes of computing a school district's charge-off supplement and excess cost supplement, the local share of the calculated amount for transportation is 2% greater than in the previous year (instead of the greater of the district's state share percentage or 60%, as prescribed under the transportation subsidy formula).

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[44] Regression analysis is a statistical tool that can explain how much of the variance in one variable (in this case, transportation costs from district to district) can be explained by variance in other variables (here, number of bus miles per student per day and the percentage of students transported on buses).

[45] The statute presents the following model of the formula based on an analysis of FY 1998 transportation data: 51.79027 + (139.62626 x daily bus miles per student) + (116.25573 x transported student percentage). The law directs that the formula be updated each year to reflect new data. (R.C. 3317.022(D)(2).)

Special education weighted funding

(R.C. 3317.013)

Background

School districts are eligible to receive an additional amount per pupil for providing special education and related services to each student who is identified as a disabled student.[46] The amount of additional funding is calculated as a weight (or multiple) applied to the base-cost formula amount that represents an expression of additional costs attributable to the special circumstances of the students in each class. For example, a weight of 0.25 would indicate that an additional 25% of the formula amount is presumed necessary to provide additional services to a student in that category. Each school district is paid its "state share percentage" of the additional weighted amount calculated for special education and vocational education.

The following weights are prescribed by current law for special education and related services.[47]

Disabilities	Weight
Speech and language only	0.2892
Specific learning disabled Developmentally handicapped Other health handicapped-minor	0.3691
Severe behavior handicapped Hearing handicapped Vision Impaired	1.7695
Orthopedically handicapped Other health handicapped-major	2.3646

[46] *School districts and community schools (charter schools) are required under state and federal law to identify each disabled student enrolled in school and provide appropriate services for that student. Services must be provided in accordance with the student's "individualized education program" or "IEP." (R.C. Chapter 3323. and 20 U.S.C. 1400 et seq.)*

[47] *Two categories of multiples also are prescribed for the provision of vocational education and associated services (see R.C. 3317.014, not in the bill).*

Disabilities	Weight
Multihandicapped	3.1129
Both visually and hearing disabled Autism Traumatic brain injury	4.7342

Continued phase-in of special education weights

Current law provides that the special education weights are to be paid at 88% in fiscal year 2004 and 90% in fiscal year 2005. It is does not provide any phase-in percentages for subsequent fiscal years. The bill, on the other hand, specifies that the special education weights continue to be paid at 90% in both fiscal years 2006 and 2007.

Threshold catastrophic amount

(R.C. 3317.022(C)(3))

In addition to the prescribed weighted amount, school districts and community schools (charter schools) may receive a "catastrophic cost" subsidy for some special education students if the costs to serve the students exceed the prescribed "threshold catastrophic amount." A school district may receive the sum of (1) one-half of the district's costs in excess of the threshold amount and (2) one-half of those costs times the district's state share percentage. A community school may receive 100% of the amount of its costs in excess of the threshold amount.[48]

The bill increases the catastrophic threshold amount to $26,500 for categories one through five (from $25,700 as under current law) and to $31,800 for category six (from $30,800 as under current law).

Speech-language services subsidy

(R.C. 3317.022(C)(4) and 3317.16(D)(2))

A separate subsidy for speech-language pathology services pays school districts their state share percentage of one "personnel allowance" for every 2,000 students in their formula ADMs. The bill maintains the personnel allowance at $30,000, which has been the amount of the allowance since fiscal year 2002.

[48] *R.C. 3314.08(E), 3317.022(C)(3), and 3317.16(E).*

Special education transportation subsidy

(R.C. 3317.024(J))

School districts and educational service centers are eligible for an additional subsidy for transporting disabled students who cannot be transported by a regular school bus. Current law refers only to "developmentally handicapped" students in authorizing this additional payment. The bill provides instead that it applies to all disabled students.

Special education funding report

(R.C. 3317.013)

The bill requires the Department to submit a report to Office of Budget and Management by May 30, 2006 and 2007 that specifies for each school district the amount of local, state, and federal pass-through funds allocated for special education and related services. The Department is currently required to submit such a report on May 30, 2004 and 2005.

Payment of special education excess costs to JVSDs

(R.C. 3317.16(G))

In addition to weighted vocational education amounts, each joint vocational school district (JVSD) receives the calculated base-cost and weighted special education amounts attributed to the students enrolled in the JVSD. These amounts, calculated on a full-time-equivalency basis, are the amounts that otherwise would be paid to a student's resident district (the regular school district in which the student is entitled to attend school) or to a community school, if the student is enrolled in such a school. However, a JVSD is not the school responsible for developing a disabled student's individualized education program and for guaranteeing that the student receives the required services. Instead, the student's resident school district or community school is legally responsible for the student's services.

In some cases, the sum of money a JVSD receives from the calculated state and local shares may not cover the actual cost of providing special education and related services to the disabled students enrolled in the JVSD. Current law, not changed by the bill, specifies that the portion of the cost of providing those services by a JVSD that exceeds the sum of the calculated state and local shares of base-cost and special education funding be paid by the student's resident district or, if the student is also enrolled in a community school, by that school. Current law also *requires* the Department of Education to deduct the amount of these excess costs from the account of the applicable resident district or community

school and to pay that amount to the JVSD. The bill permits a JVSD to decline having the Department transfer payments for excess costs and, presumably, to rely instead on a direct payment from the district or community school.

Payment of excess costs for children in residential "homes"

(R.C. 3323.14; conforming changes in R.C. 3314.08(A)(10), 3317.023(N), and 3317.0212)

The bill authorizes a school district that is providing special education and related services to a child who has been placed by court order in a residential "home" (that is a home, institution, foster home, group home, or other residential facility that receives or cares for children) to charge excess costs to the child's district of residence (generally, where the child's parent resides).

It also authorizes the Department of Education to credit to a district the amount of excess costs calculated for providing special education and related services to a child who is a resident of another district and to deduct that amount from the child's district of residence.

Switch from unit funding to weighted special education funding for state institutions

(R.C. 3317.03(G)(1), 3317.05, 3317.052, 3317.053, 3317.201, 3323.091, and 3323.16)

The Department of Mental Health, Department of Mental Retardation and Developmental Disabilities, Department of Rehabilitation and Correction, and Department of Youth Services are all required under current law, not changed by the bill, to provide special education programs for the disabled children in their custody. Each operates its own schools at the institutions under its control.

Currently, the institutions may apply for state unit funding to defray the cost of special education services. A "unit" is a group of students receiving the same education program. The Department approves the number of units statewide based on the amount of appropriations available. The value of a unit is generally the sum of the annual salary of the unit's classroom teacher based on the state's former minimum teacher salary schedule (the version in effect prior to 2001), an amount for fringe benefits equal to 15% of the salary allowance; a basic unit allowance, and a supplemental unit allowance.[49]

[49] *Under current law, not changed by the bill, unit funding is also used in making state payments to school districts, educational service centers, and county MR/DD boards for*

The bill requires, instead, the payment of per pupil weighted funding to these institutions for school-age special education students in their custody. Each institution is to receive for each identified pupil an amount equal to the base-cost formula amount times the multiple assigned to the category of that pupil's disability (including the phase-in percentage). However, the bill also specifies that an institution must receive in aggregate for all its non-preschool disabled children as much state funding as it did in fiscal year 2005 under unit funding.

The bill leaves unchanged provisions for unit funding for preschool children receiving special education services from institutions, except for a change in the date for counting students in applicable units (see below).

Date for counting of students in handicapped preschool units

(R.C. 3317.05)

State and federal law both mandate a free, appropriate public education for preschool children who are identified as disabled, whom state law refers to as "handicapped preschool children."[50] School districts, educational service centers, state institutions, community schools, and county MR/DD boards all may receive unit funding (as described above) for services for handicapped preschool children. To be counted in a handicapped preschool unit, currently a child must be less than six years old (that is, not of "compulsory school age") as of December 1. The bill provides instead that a child must be at least three but less than six years old as of either *September 30*, or *August 1* if the child's school district has adopted a resolution prescribing August 1 as the date by which children must be five or six years old, respectively, to be enrolled in kindergarten or first grade.[51]

Unit funding for preschool special education related services

(R.C. 3317.05)

As noted above, school districts, state institutions, community schools, and county MR/DD boards are required to provide special education and related

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services for handicapped preschool children and to school districts and educational service centers for gifted education classes.

[50] *R.C. 3323.01, not in the bill.*

[51] *Current law, not changed by the bill, authorizes a district board of education to adopt August 1, instead of September 30, as the date by which a child must be either five or six years old, respectively, for admission to kindergarten or first grade. (R.C. 3321.01, not in the bill.)*

services for identified handicapped preschool children enrolled in their schools and may receive state unit funding for those services. However, the law authorizing the Department of Education to grant units for preschool related services mentions only "child study, occupational, physical, or speech hearing therapy, supervisors, and special education coordinators" as services for which related services units may be granted. The bill clarifies that units may be granted for any of the related services defined in state law regarding services to handicapped children. That law defines related services as including transportation, developmental, corrective, and other supportive services as may be required to assist a handicapped child to benefit from special education (including the early identification and assessment of disabilities in children, speech pathology and audiology, psychological services, occupational and physical therapy, physical education, recreation, counseling services, and medical services).[52]

Report on the number of handicapped preschool children served

(R.C. 3323.20)

The bill requires the Department of Education by January 1 of each year to report to the General Assembly the number of handicapped preschool children served as reported to the U.S. Department of Education the previous December.

GRADS personnel allowance

(R.C. 3317.024(R))

School districts may receive an extra subsidy for operation of a "graduation, reality, and dual-role skill" (GRADS) program for pregnant and parenting students. The amount of the payments is the district's state share percentage times the "personnel allowance" times the full-time-equivalent number of teachers approved for the district by the Department of Education. The bill specifies that the GRADS personnel allowance for fiscal years 2006 and 2007 is $47,555 (which is the same amount current law specifies for fiscal years 2004 and 2005).

Repeal of equity aid statute

(Repealed R.C. 3317.0213; conforming changes in R.C. 3314.08, 3317.0212, and 3317.081)

The bill repeals outright the Revised Code provision specifying the payment of equity aid.

[52] R.C. 3323.01, not in the bill.

Since fiscal year 1993, an "equity aid" subsidy has been paid to certain school districts with relatively low property wealth. Since fiscal year 1998, the state has been phasing out equity aid by reducing the number of districts receiving the subsidy and decreasing the number of extra mills equalized under it for each fiscal year. Currently, no more equity aid payments are authorized to be paid after fiscal year 2005.

Recalculating school district valuations

(R.C. 3317.026, 3317.027, and 3317.028)

A school district's tax valuation may be recalculated after its state funding for a fiscal year has been calculated and even paid. The recalculations might be triggered by refunds paid to certain taxpayers, adjustments made due to valuation or assessment complaints filed by taxpayers, or creation of new tax exemptions. Each may reduce the actual revenue received by a district without a corresponding reduction in the value of the tax duplicate. There also may be fluctuations in tangible personal property valuation during a fiscal year that affect a district's revenue. In all these cases, current law provides for a recalculation of a district's state aid to account for reduced property valuation.

These adjustments currently must be paid on or before June 30 of the year the adjustments are made. But the bill provides, instead, that they be paid on or before July 31 of the following fiscal year (thereby pushing the payment into the next fiscal year). The bill also specifies that the recalculation of state aid for a district applies to the district's entire "SF-3 payment," which the bill defines as comprising the aggregate of most state subsidies, less mandated adjustments and transfers.

One change that can prompt the recalculation of a district's state aid is an increase or decrease of 5% or more in the value of tangible personal property. The bill provides that, beginning in fiscal year 2007, only such changes in *public utility* tangible personal property can prompt a recalculation.

Recommended plan for second annual ADM certification

(Section 206.10.24)

The bill requires the Superintendent of Public Instruction, not later than July 1, 2006, to recommend to the General Assembly a plan whereby:

(1) School districts make a second annual certification of formula ADM in the second half of each fiscal year, prior to the first day of April; and

(2) This second annual certification of formula ADM may be used to guarantee a minimum level of state funding to each school district for the next fiscal year, with sufficient notice so that the districts may prepare in advance of each school year.

The recommended plan must include methods to accommodate enrollment growth trends in fast-growing districts.

Changes in charge-off supplement gap aid

(R.C. 3317.0216)

Background

Certain school districts are not able to achieve 23 effective mills to cover their assumed local share of the base cost. In other cases, districts' effective tax rates will not cover their assumed local shares of special education, vocational education, and transportation funding. In such cases, the state provides a subsidy to make up the gap between the districts' effective tax rates and their assumed local shares for base-cost, special education, vocational education, and transportation.

Revenue considerations

For purposes of the supplement, the Department of Education is required to compare a district's charge-off amount (that is the amount presumed to be raised by 23 mills times its recognized valuation) and its local share of combined special education, vocational education, and transportation funding with the actual amount of taxes charged and payable for the district. If the tax revenue is not greater than either of the two presumed local shares, the Department must pay the district the difference.

The bill adds to the revenue considered to be received by a school district, for purposes of calculating the supplement, the payments a school district receives from the Tangible Personal Property Tax Replacement Fund or the General Revenue Fund for current expense taxes lost due to the bill's proposed phase-out of the tangible personal property tax (see "***Phase-out of tax on business personal property***" below). It does not take into account any funds received for purposes other than current expenses.

Any district that receives payments for loss of tangible personal property tax for current expenses likely would receive less funding under the charge-off supplement than it would otherwise receive under the supplement.

Phase-down of supplement for districts passing taxes

Districts that receive this "gap aid" potentially face losing it if their voters approve new property or income taxes. New taxes can disqualify a district for gap aid in the first fiscal year that the taxes are counted in the funding formulas (for example, tax year 2005 taxes are used in fiscal year 2007 state funding calculations). The bill prescribes a method to phase-down the payment over three years, rather than end it immediately.

Specifically, the Department of Education must make the payments to a district that previously received gap aid but becomes ineligible if (1) the ineligibility is the result of a property tax or income tax levy approved for tax year 2005 or later and (2) the Department determines that the levy exceeded, by at least one mill, the millage-equivalent amount of its previous gap aid payment. For the next three years, rather than losing its entire gap aid subsidy, the district would receive 75%, 50%, and 25%, respectively, of its last full gap aid payment.

A district may receive the phase-out payments only once. Therefore, if the district were again to qualify for gap aid, it could not also again receive the phase-out payments should a subsequent levy render it ineligible.

Bus purchase subsidies

(R.C. 3317.07)

School districts and county MR/DD boards currently are eligible to receive additional state subsidies to purchase buses to transport certain students who live more than one mile from school. Currently, a school district may receive 100% of the net cost of acquiring buses for the transportation of special education students and students attending nonpublic schools.[53] County MR/DD boards also may receive 100% of the net cost of acquiring buses for special education students. In both cases, the bill prescribes that the subsidy be limited to a "per pupil allocation." Presumably, under the bill, the subsidy would be based on an allocation of the total amount appropriated for the subsidy on a per pupil basis among all district and county MR/DD boards that apply for the subsidy.

[53] *School districts must provide transportation for some of their resident students attending nonpublic schools. For a description of this responsibility, see "**Transportation of scholarship students**" below and the accompanying footnote.*

Switch from unit funding to grants for state institutions operating vocational education programs

(R.C. 3317.03(G), 3317.05, and 3317.052; Section 206.09.33)

As in the case of special education funding, the Department of Mental Health, Department of Mental Retardation and Developmental Disabilities, Department of Rehabilitation and Correction, and Department of Youth Services currently receive funding for vocational educational services, if they provide those services, on a "unit" basis (see "***Switch from unit funding to weighted special education funding for state institutions***" above). The bill eliminates unit funding for vocational education programs offered by these institutions and instead authorizes the Department of Education to award grants to those institutions for those programs. Under the bill, the Department of Education may award a grant amount to an institution based on the institution's submission of a comprehensive plan for a program to provide vocational education services. In addition, each institution that receives a grant annually must report to the Department of Education on the delivery of services and the performance of students and any other information required by the Department to evaluate the institution's vocational education program.

Cap on reimbursement of nonpublic school administrative expenses

(R.C. 3317.063)

Current law requires the Superintendent of Public Instruction to annually reimburse each chartered nonpublic school for the "actual mandated service administrative and clerical costs" of the school. Payment may be made only upon the school's submission of an application containing evidence of the costs. Reimbursement payments are limited by a statutory cap of $250 per pupil for each school year. The bill increases this cap to $275 per pupil.

Educational Choice Scholarship Pilot Program

(R.C. 3310.01 to 3310.17, and 3317.03; Section 206.10.03)

The bill establishes the Educational Choice Scholarship Pilot Program to provide scholarships for primary and secondary students attending school in or assigned to "academic emergency" buildings to use for the sole purpose of paying tuition at chartered nonpublic schools.[54] This program does not apply to any

[54] *The Ohio Department of Education (ODE) is required under continuing law to rate each school district's and school building's academic performance based on standards adopted by the State Board of Education and the federal No Child Left Behind Act of 2001 (R.C. 3302.03, not in the bill).*

student residing in a school district included in the Pilot Project Scholarship Program, which currently operates only in the Cleveland Municipal School District. The first scholarships under the Pilot Program would be awarded by the Department of Education to students for use in the 2006-2007 school year. In awarding scholarships, the Department first must award scholarships to eligible students who received them in the previous school year, then to students whose family incomes are at or below 200% of the federal poverty guidelines, and then on the basis of a lottery.[55]

Eligible students

(R.C. 3310.01(A), 3310.03, and 3310.05)

To be eligible under the Educational Choice Scholarship Pilot Program, a student must meet one of the following conditions:

(1) The student is enrolled in a school building operated by the student's resident district (other than Cleveland) that the Department of Education declared, in the most recent rating of school buildings published prior to the first day of July of the school year for which a scholarship is sought and in the two preceding school years, to be in a state of academic emergency;[56]

(2) The student is eligible to enroll in kindergarten in the school year for which a scholarship is sought and would be assigned to an academic emergency school building described in (1) above; or

(3) The student is enrolled in a community school (public charter school) but otherwise would be assigned to an academic emergency school building described in (1) above.

The bill specifies that a student who receives a scholarship under the Educational Choice Scholarship Pilot Program remains eligible and may continue to receive scholarships in subsequent school years until the student completes grade 12, so long as the student takes each state achievement or proficiency test prescribed for the student's grade level while enrolled in a chartered nonpublic school and is not absent from that school for more than 20 days (not including

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[55] *The 2005 federal poverty guideline for a family of three is $16,090. 200% of that amount is $32,180.*

[56] *The Department of Education rates school districts and buildings in August of each year, so, for example, the third of the three consecutive performance ratings applying to scholarships for the 2006-2007 school year (which begins July 1, 2006) is the one that will be published in August 2005.*

absences due to illness or injury confirmed in writing by a physician).[57] On the other hand, the Department must cease awarding *first-time* scholarships with respect to a school building that ceases to be in a state of academic emergency.

Scholarship amount

(R.C. 3310.08 and 3310.09)

The amount of each annual Educational 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 that is specified in the bill. That maximum amount in fiscal year 2007 is:

(a) $4,250 for grades K through 8; and

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

In future fiscal years, the maximum amount is to be inflated by the rate of increase in the base-cost amount from the previous fiscal year.

Financing of scholarships

(R.C. 3310.08 and 3317.03)

The bill requires the resident school district of each student awarded an Educational Choice scholarship to report the number of its resident students who have received a scholarship. That number will be added to the district's base-cost calculation. This will credit the district with state base-cost funding. The bill, then, requires the Department of Education to deduct $5,200 for each of the school district's students awarded a scholarship from the district's state funding account. The bill states that this deduction funds scholarships under both the Educational Choice and the Cleveland pilot programs.

The Department of Education must disclose on the SF-3 form of a school district from which a deduction is made for Educational Choice scholarships both the aggregate and per pupil differences between (1) the district's state base-cost

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[57] *The bill, therefore, requires each chartered nonpublic school that enrolls scholarship students to administer the state achievement and proficiency tests to those students and to report the results from those tests to the Department of Education (R.C. 3310.14). However, a school is not required to administer the tests to nonscholarship students, except for the 10th grade Ohio Graduation Tests, which already are required for graduation from chartered nonpublic high schools under continuing law (see R.C. 3313.612, not in the bill).*

funding and (2) what its state base-cost funding would have been if the scholarship students had not been included in the district's formula ADM.

Number of scholarships

(R.C. 3310.17; Section 206.10.03)

Under the bill, the General Assembly is to prescribe the maximum number of scholarships that may be awarded under the program in each year. The bill specifies that, in fiscal year 2007, the maximum number of scholarships under the program is 10,000.

Scholarship payments

(R.C. 3310.08)

The bill requires the Department of Education to pay to the parent of each eligible student awarded a scholarship or to the student, if at least 18 years old, periodic partial payments of the scholarship. The Department also must proportionately reduce or terminate the payments for any student who withdraws from school prior to the end of the school year.

Excess tuition charges

(R.C. 3310.13)

The bill prohibits a registered private school from charging any Educational Choice scholarship student whose family income is less than 200% of the federal poverty guidelines a tuition fee that is greater than the scholarship amount paid for that student.

On the other hand, the bill explicitly permits a registered private school to charge any other student the difference between the amount of the scholarship and the school's regular tuition. Each school must permit a scholarship student's family, at the family's option, to provide volunteer services in lieu of cash to pay all or part of the amount of the school's tuition not paid for by the scholarship.

Transportation of scholarship students

(R.C. 3310.04)

The bill specifies that Educational Choice scholarship students are entitled to transportation to and from the chartered nonpublic schools they attend in the manner prescribed under continuing law. That law requires school districts to provide transportation to nonpublic school students in grades K to 8 who reside in

the district and who live more than two miles from the school they attend. Districts may also transport high school students to and from their nonpublic schools. A district, however, is not required to transport students of any age to and from a nonpublic school if the direct travel time by school bus, from the district school the student would otherwise attend to the nonpublic school, is more than 30 minutes. Districts are eligible for state subsidies for transporting nonpublic school students.[58]

Start-up; State Board of Education rulemaking authority

(R.C. 3310.16; Section 206.10.03)

The bill requires the State Board to adopt rules that prescribe procedures for the administration of the Educational Choice Scholarship Pilot Program. The bill also states that the State Board or the Department of Education may not require schools to comply with any education laws or rules or other requirements that are not specified under the program's provisions if they otherwise would not apply to nonpublic schools.[59]

The State Board must adopt its rules so that they are in effect and the program is operational for the 2006-2007 school year. In the meantime, the Superintendent of Public Instruction, by September 1, 2005, must begin preparations to implement the program. The Superintendent must ensure that school districts, nonpublic schools, students, and parents are notified of the program and how it may affect them. This information must be supplied in sufficient time for affected parties to meet deadlines imposed by the Superintendent.

Purpose statement

(R.C. 3310.06)

The bill states that it is the policy adopted by the General Assembly that the Educational Choice Scholarship Pilot Program is one of several options available for students enrolled in academic emergency school buildings. It further states

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[58] *R.C. 3317.022 and 3327.01.*

[59] *Some requirements in continuing law already apply to nonpublic schools. For example, a chartered nonpublic school must comply with many but not all of the provisions that apply to school districts, such as high school curriculum and diploma requirements and immunization record requirements. In addition, all schools, regardless of whether they are public or private or are chartered or nonchartered, must comply with state and local health and safety regulations.*

that those students may choose to enroll in the schools of the student's resident district, in community schools, in the schools of another school district pursuant to an open enrollment policy, in chartered nonpublic schools with or without an Educational Choice scholarship, or in other schools as the law may provide. Those other choices might include, for example, enrolling in another school district or in some other type of private school and paying tuition to that district or private school.

Comparison with the Cleveland program

(R.C. 3310.05)

As noted above, a scholarship under the Educational Choice Scholarship Pilot Program is not available for any student whose resident district is a school district in which the existing Pilot Project Scholarship Program (Cleveland voucher program) is operating. The bill states that the two pilot programs are separate and distinct, each with its own prescribed scholarship amount in recognition of its unique eligibility criteria. The bill also states that the Cleveland program is a district-wide program that may award scholarships to students who do not attend district schools that face academic challenges, whereas the proposed Educational Choice Scholarship Pilot Program is limited to students of individual district school buildings that do face academic challenges.

Changes to the Pilot Project Scholarship Program

Eligibility for scholarships

(R.C. 3313.975, 3313.976, 3313.977, and 3313.978)

The Pilot Project Scholarship Program (the Cleveland voucher program) provides scholarships to attend alternative schools, including private schools, and tutorial assistance grants to certain students who reside in any school district that is or has been under a federal court order requiring supervision and operational management of the district by the Superintendent of Public Instruction.

Current law limits eligibility for participation in the scholarship program to students in kindergarten through tenth grade. After tenth grade, students must either return to the public school to which they are assigned by the district superintendent, enroll in a community school, or pay full tuition at a private school.

The bill expands eligibility for scholarships to eleventh graders beginning in the 2005-2006 school year and to twelfth graders in the 2006-2007 school year. Students must have been awarded a scholarship previously to receive one in the

eleventh or twelfth grade.[60] The bill also codifies a long-standing practice to allow new students to enter the scholarship program in any of grades K to 8.[61]

Scholarship amount

(R.C. 3313.978(C)(1))

Currently, under the Cleveland program, the amount of the scholarship is the lesser of the tuition charged by the student's alternative school or an amount set by the Superintendent of Public Instruction not to exceed $3,000 for grades K through 8 and $2,700 for grades 9 through 12. The bill increases the maximum amount of a scholarship under that program, beginning in fiscal year 2007, to $3,450 for all grades K through 12.

Tutorial assistance grant amount

(R.C. 3313.978(C)(3))

Current law specifies that the maximum amount of a tutorial assistance grant is 20% of the average basic scholarship amount under the program. The bill provides instead that, beginning in fiscal year 2007, the maximum amount of a tutorial assistance grant is $400.

Pilot Project Special Education Scholarship Program

(Section 206.09.84)

The budget act for the 2003-2005 biennium established a temporary pilot program to pay scholarships to the parents of certain autistic children to be used for services at public or nonpublic special education programs that are not operated by or for the child's resident school district.[62] The bill reauthorizes that

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[60] *R.C. 3313.975(C)(1). Continuing law specifies that, in the event the scholarship program is terminated, students attending alternative schools are entitled to attend those schools through the highest grade served in the same manner as under the program, except that a parent can be charged tuition if no funds are appropriated for scholarships. While this entitlement exists only up to the tenth grade under current law, the bill extends it to the twelfth grade to correspond with the availability of the additional high school scholarships. (R.C. 3313.975(C)(2).) Also, under the bill, eleventh and twelfth grade students who were enrolled in a private school in the previous year must be given priority for admittance to the school in the following year (R.C. 3313.977(A)(2)).*

[61] *R.C. 3313.975(C)(1).*

[62] *Section 41.33 of Am. Sub. H.B. 95 of the 125th General Assembly, as subsequently amended.*

program and increases the maximum amount of the scholarship to $20,000 (from 15,000 under current law).

Under the program, as reauthorized in the bill, in fiscal years 2006 and 2007, the Department of Education is required to pay upon application a scholarship to the parent of a child identified as autistic who is entitled to receive special education and related services at the child's resident school district in any grade from preschool to 12th grade. The scholarship is to be used solely to pay part or all of the cost of sending the child to a public or nonpublic special education program instead of the one provided by the child's resident school district. The amount of the scholarship is the lesser of the amount charged by the special education program or $20,000. The law further prescribes that the scholarship is to be used to pay for only those services specified in the child's "individualized education program."

The amount of the scholarship is to be deducted from the state aid account of the child's resident school district. The district, therefore, is authorized to count the child in the district's formula ADM and category six formula ADM. The district, then, retains the balance of any amount of state funding credited to the district after the scholarship amount is deducted.

Changes to community school law

Background

Community schools (often called "charter schools") are public schools that operate independently from any school district under a contract with a sponsoring entity. Community schools often serve a particular educational purpose or a limited number of grades. Community schools are funded with state funds that are deducted from the state aid accounts of the school districts in which the enrolled students are entitled to attend school. Community schools may not charge tuition.

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 "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 school district in academic watch or academic emergency, or (3) a school district in the original community school pilot project area (Lucas County).[63]

[63] *R.C. 3314.02(A)(3). The "Big-Eight" districts are Akron, Canton, Cincinnati, Cleveland, Columbus, Dayton, Toledo, and Youngstown.*

The sponsor of a start-up community school, which must be approved by the Department of Education, may be any of the following:

(1) The school district in which the school is located;

(2) A school district located in the same county as the district in which the school is located has a major portion of its territory;

(3) A joint vocational school district serving the same county as the district in which the school is located has a major portion of its territory;

(4) An educational service center;

(5) The board of trustees of a state university (or the board's designee) under certain specified conditions; or

(6) A federally tax-exempt entity under certain specified conditions.[64]

Until the enactment of Sub. H.B. 364 of the 124th General Assembly, effective April 8, 2003, the State Board of Education was authorized to sponsor start-up community schools. That act eliminated the State Board's authority to sponsor schools, except that it permits the State Board to continue its existing sponsorship of schools for up to two school years while the schools secure new sponsors. After that, the State Board may sponsor community schools only in specified exigent circumstances.

Cap on community schools

(R.C. 3314.013(A)(4), (5), and (8))

There is currently a statewide limit of 225 start-up community schools sponsored by entities other than the school districts in which they are located. That cap is set to expire July 1, 2005.

The bill extends the cap for two years to July 1, 2007, and increases it for that period to 25 more than the number of such schools in existence on the bill's effective date that were in operation as of May 1, 2005. As under current law, the cap does not apply to community schools sponsored by the school districts in which they are located. However, the bill establishes a separate statewide cap on the number of district-sponsored schools until July 1, 2007. That cap is equal to 25 more than the number of such schools in existence on the bill's effective date that were in operation as of May 1, 2005. Up to five community schools with

[64] *R.C. 3314.015(B)(1) and 3314.02(C)(1)(a) through (f).*

education programs that serve students at risk of dropping out of school are exempt from counting toward each cap. The bill specifies that the existence of a cap or moratorium (see below) on community schools does not prohibit an existing school from offering additional grades.

Moratorium on new e-schools

(R.C. 3314.013(A)(6) and (7))

The bill prohibits any entity from sponsoring a new Internet- or computer-based community school (e-school) between May 1, 2005, and one year after the bill's effective date. Presumably, then, if a sponsor entered into a contract with an e-school after May 1, 2005, that contract is void and the school may not open until the moratorium is over.

However, all qualified sponsors may renew any contracts with existing e-schools when those contracts are eligible for renewal. In addition, during the moratorium period, all qualified sponsors, except a tax-exempt entity, may assume the sponsorship of existing e-schools formerly sponsored by other entities. The bill retains a provision of current law that prohibits a tax-exempt entity from sponsoring any schools other than existing schools formerly sponsored by the State Board of Education until July 1, 2005. After that date, the bill allows a tax-exempt entity to sponsor an existing or new community school as under current law, but prohibits the entity from sponsoring a new e-school for the balance of the moratorium period.

Criteria for approval of sponsors

(R.C. 3314.015(B)(1))

Continuing law requires the Department of Education to adopt rules containing criteria for the approval of community school sponsors.[65] These rules must require an entity seeking approval for sponsorship to provide evidence of its ability and willingness to provide proper oversight. The bill adds two new requirements for sponsors approved on or after the bill's effective date. First, entities seeking approval for sponsorship must have a record of financial responsibility and successful implementation of educational programs. Second, if the entity sponsors or operates schools in another state, at least one of those

[65] *See Ohio Administrative Code 3301-102-03.*

schools must be performing as well as or better than Ohio schools in academic watch, as determined by the Department.[66]

Limit on number of schools an entity may sponsor

(R.C. 3314.015(B)(1); Section 206.10.09)

While current law allows an entity to sponsor any number of community schools, the bill establishes limits on sponsorship. Entities approved for sponsorship on or after July 1, 2005, are generally limited to 15 schools, but the Department of Education may increase an entity's limit up to 50 schools if the Department determines that the schools sponsored by the entity have demonstrated satisfactory financial, administrative, and academic performance. The limits on entities currently sponsoring community schools are based on the number of schools the entity sponsored that were open for operation as of May 1, 2005. Those limits affect both entities approved for sponsorship prior to July 1, 2005, and entities that were never required to be approved for sponsorship by the Department.[67] The bill's limits on existing sponsors are shown in the table below.[68]

[66] *A school in academic watch does not meet the federal standard of adequate yearly progress and either meets 31%-49% of the performance indicators established by the State Board of Education or attains a performance index score set by the Department (R.C. 3302.03(B)).*

[67] *Entities that had entered into contracts to sponsor community schools prior to April 8, 2003, are exempt from the requirement to be approved for sponsorship by the Department, as is a tax-exempt entity that succeeds the University of Toledo Board of Trustees or its designee as the sponsor of a community school (R.C. 3314.021 and Section 6 of Sub. H.B. 364 of the 124th General Assembly).*

[68] *When an entity is approved to sponsor community schools, the Department of Education must notify the entity of how many schools it may sponsor. Existing sponsors must be notified of their respective limits within 30 days after the bill's effective date.*

Limits on Number of Schools for Existing Sponsors		
Schools sponsored by entity open as of May 1, 2005	**Limit**	**Other Conditions**
35 or less	35	(1) Department of Education may increase limit up to 50 on case-by-case basis (2) Limit decreases by one for each school sponsored by entity that is forced to close for specified academic reasons
36-50	Equal to the number of schools sponsored by entity open as of May 1, 2005	(1) Department of Education may increase limit up to 50 on case-by-case basis (2) Limit decreases by one for each school sponsored by entity that is forced to close for specified academic reasons
More than 50	Equal to the number of schools sponsored by entity open as of May 1, 2005	(1) Limit decreases by one for each school sponsored by entity that permanently closes for any reason

The limits for both new and existing sponsors must be reduced in certain circumstances. For new sponsors approved on or after July 1, 2005, and for existing sponsors that sponsored 50 or fewer schools that were open as of May 1, 2005, the sponsor's limit is decreased by one for each of its schools that permanently closes due to three consecutive school years of poor academic performance under the new sanctions imposed by the bill (see "***Sanctions for poorly performing community schools***," below). The limit on a sponsor that sponsored more than 50 schools that were open as of May 1, 2005, is decreased by one whenever one of its schools permanently closes for any reason, including financial problems, health or safety issues, or contract termination by the sponsor.

Sponsor fees for services

(R.C. 3314.03(C))

Continuing law authorizes the sponsor of a community school to receive payments from the school's governing authority for oversight and monitoring of the school. These payments must be specified in the school's contract and may not exceed 3% of the total amount of the school's state funding for operating expenses. Beginning July 1, 2006, the bill prohibits a sponsor from charging fees to a community school for other services besides oversight and monitoring that the sponsor provides to the school.

Deadline for adoption of contract

(R.C. 3314.02(D))

The bill requires the contract between the sponsor and governing authority of a new community school to be adopted by March 15 prior to the school year in which the school will open.[69] This deadline only affects contracts adopted on or after the provision's effective date. Therefore, a school whose contract is adopted after March 15, 2005, but before the provision's effective date still would be able to open in the 2005-2006 school year.

Nullification of contract

(R.C. 3314.03(F))

Under the bill, the contract between a community school and its sponsor becomes void if the school (1) fails to open for operation within one year after adoption of the contract or (2) permanently closes prior to the contract's expiration.[70] Furthermore, the school may not enter into a contract with another sponsor. A school whose contract is nullified for one of these reasons does not count toward the statewide cap on community schools.

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[69] *A majority vote of both the sponsor's governing board and the school's governing authority is necessary to adopt the contract.*

[70] *Under continuing law, a school's sponsor must suspend the school's operations for a violation of health and safety standards and may suspend them for (1) failure to meet student performance requirements, (2) fiscal mismanagement, (3) a violation of the contract or law, or (4) other good cause (R.C. 3314.072). The bill specifies that a school is not considered permanently closed because its operations have been temporarily suspended for one of these reasons.*

Enrollment of community school students

(R.C. 3314.03(A)(6)(b) and (11)(a) and 3314.08(L))

Under current law, a student is considered enrolled in a community school for state funding purposes on the date the student commences participation in the school's learning opportunities following receipt of the appropriate documentation by the student's parent. The bill specifies instead that a student is considered enrolled beginning on the *later* of that date or 30 days prior to the date on which the school enters the student into the Education Management Information System (EMIS).[71] For example, if a student enrolls in a community school on October 15 but is not entered into EMIS until December 1, the school could not receive state funding for that student for the period of enrollment between October 15 and November 1.

The bill retains current law requiring a community school to automatically withdraw a student who misses 105 consecutive hours of learning opportunities without a legitimate excuse. However, it eliminates the 30-day period currently granted to the school for making the withdrawal. Therefore, under the bill, a student must be withdrawn immediately after accruing the requisite number of missed hours.

Finally, current law requires each community school to enroll at least 25 students. The bill preserves this minimum enrollment for schools established prior to the bill's effective date. New schools established on or after that date, however, must enroll at least 100 students. The sponsor of a new school may waive the 100-student requirement with the approval of the Department of Education.

Opening date for schools

(R.C. 3314.03(A)(25))

Under current law, a community school may open at any time during the school year. Beginning in the 2006-2007 school year, the bill generally requires community schools to open for instruction by September 30 each year. This restriction does not apply to schools whose mission is solely to serve dropouts, which may open at any time during the school year as under current law. If a school fails to open by September 30 in its initial year of operation, the school's

[71] *EMIS is a statewide electronic database of student, building, personnel, and fiscal data about school districts and community schools maintained by the Department of Education (see R.C. 3301.0714).*

contract with its sponsor is void.[72] A school serving dropouts must open for its first year of operation within one year after the adoption of the contract to avoid nullifying the contract.

Changes regarding e-schools

Definition (R.C. 3314.01 and 3314.02(A)(7)). Current law defines an Internet- or computer-based community school ("e-school") as one in which students "work primarily from their residences on assignments in nonclassroom-based learning opportunities provided via an Internet- or other computer-based instructional method that does not rely on regular classroom instruction or via comprehensive instructional methods that include Internet-based, other computer-based, and noncomputer-based learning opportunities." The bill eliminates the language specifying that an e-school may provide instruction via comprehensive methods that include both computer-based and noncomputer-based learning opportunities. It also eliminates the language stating that an e-school's instructional method does not rely on regular classroom instruction.

In addition, the bill prohibits an e-school from being a residential "home" or a public benefit corporation affiliated with such a home. For this purpose, "home" includes a home, institution, foster home, group home, or other residential facility that is maintained by the Department of Youth Services or is licensed or otherwise authorized by the state to receive and care for children.

Standards for e-schools (R.C. 3314.23). Current law required the State Board of Education, by September 30, 2003, to recommend to the General Assembly standards governing the operation of e-schools and other educational courses delivered primarily by electronic media. The State Board adopted recommendations on September 9, 2003, but the General Assembly has not taken action on the recommendations.

Under the bill, by June 30, 2006, the State Board must adopt rules under the Administrative Procedure Act establishing standards for e-schools and electronic courses. These standards may be the same standards that were previously recommended to the General Assembly. All e-schools must comply with the

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*[72] This provision of the bill appears to conflict with the provision described above (see "**Nullification of contract**"), which gives a school one full year after adoption of the contract to open for operations without voiding the contract. Since the bill's deadline for adoption of the contract is March 15 prior to the school year the school will open (see "**Deadline for adoption of contract**" above), nullifying a contract for failure to open by September 30 would give some schools less than one year to open, even if they adopt their contracts well before the March 15 deadline.*

rules, regardless of whether the contracts with their sponsors explicitly require such compliance.

Limitation on sponsors (R.C. 3314.016). After July 1, 2006, the bill limits the number of entities that may sponsor *new* e-schools. Specifically, the Department of Education must select up to two entities that will have sole authority to sponsor new e-schools established after that date. Both entities must have been approved by the Department for sponsorship prior to their selection and at least one of them must be the sponsor of an existing e-school. Other sponsors of existing e-schools not chosen by the Department are not required to relinquish sponsorship of those schools, but they may not sponsor new e-schools after July 1, 2006.

If the Department does not make any selections by July 1, 2006, the Department itself would be the only entity that could sponsor new e-schools after that date. In that case, the length of the initial contract between the Department and a new e-school's governing authority could be up to five years and renewals of that contract may be for any length of time determined by the Department, which are the same terms applicable to other community school sponsors. As under current law, the Department's authority to sponsor community schools in all other cases would be limited to two years.

Limit on daily hours logged by e-school students (R.C. 3314.08(L)(3) and 3314.27). Continuing law requires each community school to provide a minimum of 920 hours of learning opportunities to students per school year.[73] The bill specifies that, in the case of students enrolled in an e-school, a student's time spent participating in learning opportunities over 10 hours within a 24-hour period does not count toward the 920 instructional hours due to that student. In other words, an e-school student who spends 12 hours a day engaged in the school's learning opportunities would only be credited with 10 hours of participation. If an e-school requires its students to participate in learning opportunities on the basis of days rather than hours, a minimum of five hours of student participation constitutes the equivalent of one day under the bill.

E-school teachers (R.C. 3314.21). The bill establishes several new requirements regarding the employment of teachers by e-schools. First, the bill prohibits an e-school from relying exclusively on teachers employed by a person or company from which the e-school purchased its curriculum. Each e-school must retain an "affiliation" with at least one full-time "teacher of record" licensed by the State Board of Education. The bill defines "teacher of record" as a teacher who is responsible for the overall academic development and achievement of a

[73] *R.C. 3314.03(A)(11)(a).*

student and not merely the student's instruction in a single subject. Second, each e-school student must be assigned to at least one teacher of record but no teacher of record may be primarily responsible for more than 125 students.

Finally, e-schools must grant each of their students a face-to-face visit with a State Board-licensed teacher, though not necessarily the student's teacher of record, after every 230 hours of learning opportunities provided to the student. Since community schools must offer a minimum of 920 hours of learning opportunities, the bill would require at least four visits per school year. Each visit must be at least an hour in length. While current law does not explicitly mandate face-to-face visits, it expresses the General Assembly's intent that teachers employed by e-schools should conduct such visits periodically throughout the school year. As under current law, the bill requires an e-school's contract with its sponsor to specify a plan for the visits, including the number of visits and the manner in which they will be conducted.

Administration of state assessments to e-school students (R.C. 3313.6410, 3314.25, and 3314.26). As public schools, all community schools must administer the state-developed achievement tests and diagnostic assessments in the same manner as school districts. The bill requires Internet- or computer-based community schools to provide each of their students a location within 50 miles of the student's residence at which to take the achievement tests and diagnostic assessments.

Whenever an e-school student fails to participate in the spring administration of a grade-level achievement test (or any of the applicable proficiency tests, which were given for the last time in the 2004-2005 school year) for two consecutive school years, the bill requires the school to withdraw that student from enrollment.[74] Upon withdrawal, the school must report the student's name to the Department of Education. School district-operated schools in which students work primarily on assignments in a nonclassroom-based setting using an Internet- or other computer-based instructional method are also subject to this requirement under the bill.

The Department must maintain a list of all students who have been withdrawn from an e-school, or from a district-operated school that uses a computer-based instructional method, for failure to take achievement tests.

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[74] *A school is not required to withdraw a student who was excused from taking the test because (1) the student took an alternate assessment designed for special education students or (2) the student is limited English proficient and was exempt from the test until the student had been enrolled in a U.S. school for one year (R.C. 3314.26(A); see also R.C. 3301.0711(C)(1) and (3)).*

Neither an e-school nor a district-operated school that primarily uses a computer-based instructional method may enroll any student whose name appears on the list. This prohibition has the effect of requiring those students to enroll in a traditional school that relies on classroom-based instruction until they complete high school.

Plan for special education services (R.C. 3314.28). Under the bill, each e-school must submit to its sponsor a plan for providing special education and related services to disabled students enrolled in the school. Schools established after the bill's effective date must submit the plan prior to the school's receipt of its first payment of state funds and annually thereafter by September 1. Existing schools must submit their first report by September 1, 2005, and by that date each subsequent year.

Within 30 days after submission of the plan, the school's sponsor must certify to the Department of Education whether the plan is satisfactory and, if not, that the sponsor will promptly assist the school in developing an acceptable plan. The sponsor also must provide assurance to the Department that it will monitor implementation of the plan and take corrective action if necessary. The Department must develop guidelines for the content and format of the plans.

Provision of computers to certain community school students

(R.C. 3314.08(N) and 3314.22)

Current law entitles each student enrolled in an e-school to a computer supplied by the school. If more than one child living in a household is enrolled in the school, however, the parent of those children may request less than one computer per child, as long as at least one computer is supplied to the household. The parent may amend this decision at any time during the school year. In that case, the school must provide any additional computers requested by the parent, up to one computer per child enrolled in the school, within 30 days. Each computer supplied by the school must be equipped with a filtering device that blocks Internet access to materials that are obscene or harmful to juveniles.[75] An e-school student is not considered enrolled for purposes of state funding until these requirements have been met.

The bill extends this entitlement to certain students enrolled in community schools that are not e-schools. Under the bill, if a traditional ("brick and mortar") community school provides its students with nonclassroom-based learning opportunities using an Internet- or other computer-based instructional method and requires those students to access the learning opportunities from their homes, the

[75] *R.C. 3314.21(C)(1).*

school must supply each participating student with a computer on the same terms applicable to e-schools. This requirement is waived if (1) the nonclassroom-based learning opportunities that a student must participate in from home are supplemental or remedial in nature or do not constitute a "significant" portion of the total learning opportunities provided to the student by the school and (2) the student already has a computer to use at home. As with an e-school, a traditional community school student who is eligible for a computer is not considered enrolled until the computer has been supplied and is fully operational.

The bill also prohibits a community school from providing a stipend or other substitute in lieu of supplying an actual computer to a student.[76] This prohibition applies to both e-schools and other community schools that must provide a student with a computer under the bill's extension of the entitlement.[77]

Sanctions for poorly performing community schools

(R.C. 3314.03(A)(4), 3314.35, and 3314.36)

The bill requires additional assessments of students enrolled in certain community schools to measure their academic progress during the school year and establishes sanctions in some cases for schools in which student progress is not sufficient. The required assessments are in addition to the state achievement tests and diagnostic assessments, which community schools must administer under continuing law. Similarly, the sanctions created by the bill must be imposed along with other sanctions prescribed by the federal No Child Left Behind Act of 2001 or accountability provisions of state law.[78]

Additional reading and math assessments (R.C. 3314.35(A), (B), (C), and (D)). Under the bill, beginning in the 2006-2007 school year, a community school

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[76] *The bill states that enactment of this prohibition is meant solely to clarify the existing entitlement provision and not to change the meaning of that provision (R.C. 3314.22(A)(1)).*

[77] *As under current law, the bill authorizes the provision of less than one computer per child at the parent's request in cases where a school enrolls children who live together. The bill specifies that the children must be living in the same "residence," rather than the same "household" as under current law, to trigger the authorization. This change in terminology does not appear to be substantive.*

[78] *Such sanctions may include, among others, (1) instituting a new curriculum, (2) decreasing a school's authority to manage its operations, (3) extending the school day or year, (4) replacing staff, (5) contracting with an outside organization to run the school, or (6) closing the school (see R.C. 3302.04(E)).*

must administer reading and math assessments to students in grades 1 to 12 if the school (1) has a performance rating of continuous improvement, academic watch, or academic emergency, (2) has not been in operation for at least two full school years, or (3) does not have a performance rating based on achievement test data because it does not offer a grade level in which an achievement test is given or the Department of Education has determined that the number of students enrolled in grades that take an achievement test is too small to yield statistically reliable data about those students' test performance. A school must give the same assessment in both the fall and spring of the school year to measure student academic growth over that period.

Each school must select the reading and math assessments it gives from a list of nationally normed assessments approved by the Department.[79] The costs of administering and scoring the assessments are the school's responsibility. Student scores must be reported to the Department.

Sanctions for insufficient student progress (R.C. 3314.36(A), (B), (C), and (E)). To determine which community schools face sanctions, the State Board of Education, by July 1, 2006, must adopt rules establishing "reasonable" standards for expected gains in student achievement from the fall to spring assessment periods and for expected gains in the graduation rate. The bill grants the State Board flexibility to establish different levels of expected gains for different groups of students to account for differences in their baseline achievement levels.

Community schools that have been open at least two school years and are in academic watch or academic emergency or do not have a performance rating based on achievement test data face sanctions if (1) the school offers a high school diploma but is not showing the expected gains in its graduation rate established by the State Board or (2) the percentage of the school's population showing the State Board's expected gains in student achievement on the reading and math assessments is less than 55% for a school open for two years, 60% for a school open for three years, or 65% for a school open for four or more years. The bill's sanctions are shown in the table.

[79] *The Department may include assessments in subject areas other than reading and math on the list for optional use by community schools.*

	Consecutive years of failure to make expected gains in student achievement		
	1	**2**	**3**
Sanctions for community schools	(1) School must develop and implement an improvement plan with the assistance of the sponsor. The plan must be approved by the sponsor and filed with the Department of Education (ODE).	(1) School's sponsor must pay to ODE the greater of $5,000 or one-half of the annual fees it receives from the school for oversight and monitoring.[80]	(1) School must permanently close at end of school year. (2) School's sponsor must pay to ODE the total annual fees it receives from the school for oversight and monitoring. (3) Sponsor's limit on number of schools it may sponsor must be reduced by one (see "***Limit on number of schools an entity may sponsor***," above).

In calculating whether a school makes the expected gains, the Department of Education must include the scores of all students who participated in both the fall and spring assessments. If a school's participation rate for any grade level is less than 95%, the Department must assume a score of zero for each student that must be added to the participation rate to bring that rate up to 95%. Therefore, schools are more likely to fail to make the expected gains, and be subject to sanctions, if they do not ensure that their students take the assessments.

Optional use of progress measure by other community schools (R.C. 3314.03(A)(4), 3314.35(E), and 3314.36(D)). If a community school has a performance rating of continuous improvement or higher based on achievement test data, the school is not subject to the bill's sanctions. Nevertheless, the school's sponsor may choose to have the school administer the additional reading and math assessments and evaluate the school's performance using the goals for student achievement described above. The length of time the school will be evaluated in

[80] *The oversight and monitoring fees a sponsor receives under continuing law cannot exceed 3% of the total amount of the school's state funding for operating expenses (R.C. 3314.03(C)).*

this manner must be specified in the school's contract with the sponsor, but it must be a minimum of three years. Unless the contract specifies otherwise, a sponsor need not impose any of the bill's sanctions on a school for failure to meet the goals. Presumably, though, the sponsor may consider the school's performance when deciding whether other actions, such as suspension of the school's operations or contract termination, are warranted.

Procedures for closing a school

(R.C. 3314.015(E))

The bill requires the Department of Education to adopt procedures for permanently closing a community school. These procedures must cover the reporting of data to the Department, handling of student records, distribution of assets in the manner prescribed by law, and other pertinent matters.[81]

Community school reporting of EMIS data

(R.C. 3314.17)

Current law. Under continuing law, every community school is required to participate in the Education Management Information System (EMIS). EMIS is an electronic database for fiscal, employee, building, and student data maintained by the Department of Education. Each community school is required to participate in EMIS as if it were a school district, except as modified by rules of the State Board of Education. Those rules may distinguish methods and timelines for community schools to annually report data that differ from those prescribed for school districts. The rules, however, may not modify the actual data required to be reported by statute.

Each community school must designate a fiscal officer who is currently responsible for reporting the school's data to EMIS.[82] If the Superintendent of Public Instruction determines that a community school fiscal officer has (1) willfully failed to report data, (2) willfully reported erroneous, inaccurate, or incomplete data in any year, or (3) negligently reported erroneous, inaccurate, or

[81] *Continuing law specifies that the assets of a closed community school must be distributed in the following order: (1) to employees' retirement funds, (2) to employees, (3) to private creditors who are owed compensation, and (4) to the General Revenue Fund (R.C. 3314.074).*

[82] *See R.C. 3314.011, not in the bill.*

incomplete data in the current and any previous year, the Superintendent may impose a civil penalty of $100 on the fiscal officer.[83]

The bill. The bill eliminates the requirement that the fiscal officer is responsible for reporting all of a community school's EMIS data. It also removes the civil penalty for a fiscal officer's failure to report EMIS data properly. The bill does not designate another employee to be responsible for EMIS reporting. Presumably, then, each community school may appoint one or more employees of its choice to do the reporting.

In place of the civil penalty authorized by current law, the bill specifies a process whereby the Department of Education must withhold a portion of a community school's state funding for noncompliance with the EMIS reporting requirements. This process is the same one that applies to school districts under continuing law.[84] Under that process, the Department must make a report of any of the following actions:

(1) A community school fails to meet any deadline for reporting data to EMIS;

(2) A community school fails to meet any deadline established by the State Board for the correction of data reported to EMIS;

(3) A community school reports data to EMIS in a condition, as determined by the Department, that indicates that the school did not make a good faith effort in reporting the data.

The report produced by the Department must include recommendations for corrective action by the school. A copy of the report must be sent to the sponsor of the school as well as maintained in the Department's files.

Upon making a report for the first time in a fiscal year, the Department must withhold 10% of the total amount of the school's state funding due for that year. Upon making a second report within the same fiscal year, the Department must withhold an *additional* 20% of the school's state funds. The Department cannot release these withheld funds unless it determines that the school has taken corrective action. However, if the school fails to take corrective action within 45 days of the Department's report, no withheld funds may be released. As under current law, these penalties are in addition to any action the State Board may take

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[83] *The Superintendent of Public Instruction may impose the civil fine only after an adjudicatory hearing under the Administrative Procedure Act.*

[84] *See R.C. 3301.0714(L), not in the bill.*

to suspend or revoke the license of a community school employee who violates the EMIS requirements.

Department examination of student test data

(R.C. 3314.119)

The bill requires the Department of Education annually to examine the EMIS data reported by each community school about scores attained on the state proficiency and achievement tests by each student enrolled in the school at the end of the school year. If the Department determines that the data is incomplete or inaccurate, the Department must notify the school and provide technical assistance to the school so that it may revise its reports. The assistance must be in sufficient time for the revised data to be included in the Department's report card for the school.[85]

Participation in Project SOAR

(R.C. 3314.18)

The bill requires all community schools to participate in Battelle for Kids' Project SOAR. Project SOAR provides participating school districts with "value-added" analyses, which enable the districts to track the academic growth of students and determine the amount of growth attributable to the instruction provided by a student's school. In participating in the program, community schools must comply with all program requirements, including test administration and submission of student performance data. The Department of Education must negotiate the cost of community school participation in Project SOAR with Battelle for Kids and pay that cost entirely from its own funds beginning in FY 2007. Each community school must pay its own participation costs in FY 2006.

District report card data for conversion schools serving at-risk students

(R.C. 3302.03(C)(6))

Under current law, the academic performance data of students enrolled in a conversion community school is combined with the data for students enrolled in the sponsoring school district in determining the district's report card rating. The bill creates an exception to this requirement. Under the bill, the data for a conversion school is not combined with the sponsoring district's data if the school

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[85] *The Department must issue an annual report card for each community school that has been open for instruction for two full school years. The report card covers the academic and financial performance of the school. (R.C. 3314.012, not in the bill.)*

primarily enrolls students aged 16 to 22 who are high school dropouts or are at risk of dropping out due to poor attendance, disciplinary problems, or suspensions. However, as in current law, the performance data of students in such a conversion school must be included on the sponsoring district's report card, even though that data would not affect the district's performance rating.

Annual report of expenditures for special education services

(R.C. 3314.12)

The bill requires the sponsor of a community school to submit an annual report to the Department of Education describing the special education and related services provided by the school to its students during the previous fiscal year and the school's expenditures for those services. The report is due by November 1 and must be submitted in accordance with guidelines adopted by the Department.

Community school to serve autistic students and non-disabled students

(R.C. 3314.03(A)(5) and (19), 3314.06, and 3314.061)

The bill permits the establishment of a community school to simultaneously provide (1) special education and related services to autistic students and (2) regular educational programs for non-disabled students. The contract between the sponsor and governing authority of such a school must specify the school's admission standards, including the target ratio of autistic students to non-disabled students and the total number of each type of student the school may enroll. Despite these targets, the school may not deny admission to a disabled student on the basis of the student's disability, even if the disability is not autism, unless the school is fully enrolled. As required by current law for all community schools, if the applicants for enrollment exceed the school's capacity limits, the school must admit students by lottery after giving preference to students enrolled the previous year and students residing in the school district where the school is located. However, since the school sets different capacity limits for autistic and non-disabled students, it must hold separate lotteries for each group.

State payments to community schools

(R.C. 3314.08(C) and (D), 3314.084, and 3314.13)

Under current law, community schools receive various state payments, including base-cost funding, special education and vocational education weights, handicapped preschool and gifted units, parity aid, and Disadvantaged Pupil Impact Aid (DPIA), which the bill renames "poverty-based assistance." In most cases, these payments are deducted from the state aid accounts of the school

districts in which the community school's students are entitled to attend school and paid to the community school by the Department of Education.

Traditional ("brick and mortar") community schools remain eligible for these payments under the bill. However, the bill prohibits Internet- or computer-based community schools ("e-schools") from receiving (1) vocational education weighted funding, (2) parity aid, and (3) poverty-based assistance, including funding for all-day kindergarten. E-schools retain eligibility under the bill for state base-cost and special education payments; however, beginning with fiscal year 2007, the bill limits for three fiscal years the per pupil base-cost payment to an e-school to 80% of the calculated per pupil base-cost amount unless certain conditions are satisfied.

E-school base-cost payments (R.C. 3314.085). The bill specifies that the General Assembly has determined that the base cost of operating an e-school, after incurring start-up costs, is less than the base cost of other public schools. Therefore, the bill establishes a three-year pilot program for the separate payment of base cost to e-schools in fiscal years 2007, 2008, and 2009. First, the bill specifies that in those three years, the Department of Education must pay each e-school 80% of the calculated base-cost amount. Then, if the school is in its first or second fiscal year of operation, regardless of whether the school is open for an entire school year during either fiscal year, the bill requires the Department to pay the school the remaining 20% of the calculated base-cost amount to pay the school's start-up costs. In each fiscal year after the second fiscal year that the school is open for business providing learning opportunities, the school may apply to the Department for a grant of up to the remaining 20% of the calculated base-cost amount. Under the bill, that grant is to provide services that are in addition to or an enhancement to those required by law to be provided by e-schools and are intended to substantially enhance student learning. In the first fiscal year that a school applies for a grant, the Department must award grants based on a school's proposal for services stated in its application. Each grant awarded must contain an agreement between the school and the Department that specifies the goal to be achieved, the actions to be taken, the methodology to measure the achievement of the goal, and the target to be met according to that methodology. A grant may not be renewed for a subsequent year unless the school meets the target specified in the grant agreement.

The bill also requires the Superintendent of Public Instruction to adopt rules to operate the grant component of the pilot program. Those rules must specify types of services for which grants may be awarded and may include any other requirements the Superintendent determines necessary to operate the grant component. The bill requires each e-school that applies for or receives a grant to comply with the rules.

Finally, the bill requires the Superintendent of Public Instruction, not later than December 1, 2008, to report to the General Assembly the Department's findings and conclusions concerning the pilot program and recommendations for a permanent method of calculating and paying state base-cost payments to e-schools after fiscal year 2009.

Payments for a child enrolled in a community school but also living in a residential facility (R.C. 3314.084). Additionally, the bill establishes procedures for paying state funds to a community school for a student enrolled in the school and living in a residential "home."[86] Those procedures specify that the student's district of residence, which is generally the district where the student's parent resides, must count the student in its average daily membership (ADM) rather than the district where the student is living in the residential home. Therefore, the Department must deduct the amount of state funds owed to the community school for that student from the state aid account of the student's district of residence.

Parity aid recommendations

(Section 206.10.05)

The bill directs the Department of Education to make recommendations to the General Assembly by December 31, 2005, regarding the payment of parity aid to community schools in FY 2007.

Later administration of spring achievement tests

(R.C. 3301.0710(C) and (H); Section 612.09)

All achievement tests must be administered in the spring, currently during the second or third week of March. These weeks have been designated for testing by rule of the State Board of Education, and are the earliest weeks permitted by the Revised Code.[87] In addition, the third grade reading achievement test is also administered in October and in June or July, giving each student up to three opportunities to take it. And the Ohio Graduation Test (OGT) is administered in

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[86] *A "home" is considered to be a home, institution, foster home, group home, or other residential facility that is maintained by the Department of Youth Services or is licensed or otherwise authorized by the state to receive and care for children (R.C. 3313.64).*

[87] *The State Board's rule prescribing the current testing schedule is Ohio Administrative Code § 3301-13-02. Current statute requires the State Board to schedule the tests so that all tests but the Ohio Graduation Test (OGT) is administered no earlier than the second week of March, and the OGT is administered to tenth graders no earlier than the third week in March (R.C. 3301.0710(C)).*

October as well as in March for eleventh and twelfth graders who have not yet passed each part.

Beginning in the 2006-2007 school year, the bill requires the spring administration of the *elementary*-level achievement tests generally to begin no earlier than Monday of the week of May 1. The bill further requires the State Board to designate consecutive days for the administration of those tests within each grade. The bill does not change the spring administration dates for the OGT.

However, the bill creates exceptions to the general testing periods for special education students and limited English proficient students. These exceptions apply to all achievement tests, including the OGT, starting in the 2006-2007 school year. For special education students who take an alternate assessment, instead of the regular achievement test, those assessments must be completed and school districts must submit them to the test scoring company hired by the Department of Education by April 1.[88] Limited English proficient students may be tested one week earlier than the general testing period at the State Board's discretion.

Deadlines for submission of tests and return of scores to districts

(R.C. 3301.0711(G); Section 612.09)

Current law grants the Department of Education a maximum of 60 days after the administration of an achievement test to score that test and inform school districts of students' scores. The bill maintains this 60-day deadline for the fall and summer administrations of the third grade reading achievement test and for administrations of the OGT. For all other achievement tests, however, the bill shortens the deadline for returning test scores beginning in the 2006-2007 school year. Starting that year, students' scores from the spring administrations of the tests must be returned to districts by June 15. Due to the earliest possible administration date of April 26 for most students, this deadline would allow a maximum of 50 days to score the elementary-level tests and report the results to school districts. The bill also specifies that the test results may be reported to districts by either the Department or the test scoring company with which it contracts.

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[88] *Under continuing law, a special education student may be excused from taking an achievement test if no "reasonable accommodation" can be made to enable the student to take the test and the student's individualized education program (IEP) specifies an alternate assessment approved by the Department. An alternate assessment must produce measurable results comparable to those produced by the achievement tests. (R.C. 3301.0711(C)(1).)*

To meet the shortened deadline for returning student scores after the spring administrations of the elementary-level tests, the bill requires districts to submit those tests to the test scoring company under contract with the Department no later than the Friday after the tests are given. Tests given during the make-up period, which is the nine days following the scheduled test date, must be submitted by the Friday after the students take the make-up test.

Use of student data verification codes

(R.C. 3301.0711(A)(1) and (I), 3301.0714(D), and 3301.12; Section 612.09)

Under continuing law, each school district or community school is required to assign a unique data verification code to every student for purposes of reporting student-level data to the Education Management Information System (EMIS). Except as necessary to assign the data verification code, personally identifiable student information may not be reported to any person who is not employed by a school district or data acquisition site and authorized to have access to that information.[89]

The bill makes several changes regarding the use of data verification codes. First, it requires each achievement test to include the data verification code of the student to whom it is administered. Second, it allows employees of companies hired by the Department of Education to grade the achievement tests to have access to students' personal information. This access presumably would enable a test scoring company to match a test booklet or answers with a particular student by using the data verification code. Third, the bill prohibits test scoring companies from releasing students' test results except for the purpose of reporting the scores to districts. The State Board of Education may require use of the data verification codes to protect the confidentiality of student test scores. All of these changes take effect with the 2006-2007 school year.

Finally, the bill permits studies and research projects conducted by the Department or a contracting entity to include analysis of EMIS data. The studies or projects, however, must maintain the confidentiality of student data by using the students' data verification codes. The bill explicitly prohibits the Superintendent of Public Instruction, the Department, the State Board, or an entity conducting a study or project on their behalf from having access to a student's name, address, or social security number while analyzing student data. As noted above, this prohibition does not apply to a test scoring company.

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[89] *Data acquisition sites provide administrative computer services, including EMIS data reporting, to school districts and other education entities.*

Public release of achievement tests

(R.C. 3301.0711(N))

Under current law, all achievement tests become public records on July 1 (or July 16 for the third grade reading test) following their administration. Test questions that are not used to compute a student's score are not public records and must be redacted from the tests prior to their release.[90]

The bill places additional restrictions on the public release of achievement tests. As the elementary-level tests are phased in through 2007, only the initial administration of each test is subject to public release in its entirety (except for questions that do not count toward a student's score). On subsequent administrations of those tests, a minimum of 40% of the questions used for scoring the test must become a public record. Questions that the Department of Education determines will be needed for reuse on future tests are not public records and must be redacted. The spring administration of the Ohio Graduation Test (OGT) is a public record, but the fall and summer administrations of the OGT are not available to the public under the bill.

Elimination of certain diagnostic assessments

(R.C. 3301.079(D) and 3301.0715)

The bill eliminates the requirement for the State Board to adopt diagnostic assessments for grades 3 through 8, except in third grade writing. According to the Department of Education, the third grade writing assessment and the K through 2 assessments have been developed and provided to districts and community schools. The remaining diagnostic assessments, which are eliminated by the bill, have yet to be developed. The bill's changes do not affect which students must take the assessments or the requirement to provide intervention services to struggling students.

Background

Current law requires the State Board of Education, by July 1, 2008, to adopt diagnostic assessments for grades K through 2 in reading, writing, and math, and

[90] *Test questions not included in a student's score are field test questions, which are used to determine the validity of proposed questions, and anchor questions, which are included on various versions of the same test to ensure they are of comparable difficulty (R.C. 3301.0711(N)(2) and (3)).*

for grades 3 through 8 in those subjects and science and social studies.[91] The diagnostic assessments must be aligned with the statewide academic standards and be designed to measure student mastery of those standards. School districts and community schools must administer the appropriate diagnostic assessments to (1) students in grades K through 2, (2) students enrolled in schools that have not made adequate yearly progress for two or more consecutive school years, and (3) certain transfer students.[92] Students whose diagnostic assessments show that they are not performing at grade level must receive intervention services.

Early childhood education programs

Elimination of Title IV-A Head Start and Head Start Plus programs

(repealed R.C. 3301.31, 3301.33, 3301.34, 3301.35, 3301.36, 3301.37, and 3301.38; R.C. 121.37, 3301.311, 3301.32, 4511.75, 5104.01, 5104.02, and 5104.32)

Head Start programs provide instruction and health and social services to preschool children from low-income families. Local agencies, including school districts, may receive direct grants from the federal government to operate Head Start programs. In addition, the state Department of Education operates two Head Start programs, known as "Title IV-A Head Start" and "Title IV-A Head Start Plus," in accordance with an interagency agreement with the Department of Job and Family Services. These two programs are currently funded with federal TANF moneys allocated by the state.[93] Title IV-A Head Start provides traditional Head Start services during the school year. Title IV-A Head Start Plus offers year-round Head Start services along with child care.

The bill eliminates the requirement that the Department of Education administer Title IV-A Head Start and Title IV-A Head Start Plus programs. The

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[91] *The State Board, however, is prohibited from adopting a diagnostic assessment for any subject area and grade level in which an achievement test is given (R.C. 3301.079(D)(3)).*

[92] *Adequate yearly progress, or AYP, is a measure required by the federal No Child Left Behind Act of 2001. It is a combination of student performance on state assessments and at least one other academic indicator. Districts that made AYP in the previous school year may administer diagnostic assessments other than the state-developed ones in grades 1 through 8 (R.C. 3301.0715(E)).*

[93] *TANF is a block grant program authorized by Title IV-A of the Social Security Act, 42 U.S.C. 601, that provides "temporary assistance for needy families." The program provides federal funds to states to serve low-income families with children.*

elimination of the state-funded Head Start programs generally does not affect traditional Head Start programs funded by direct federal aid. But, the bill requires each agency operating a federally-funded Head Start program to meet the criteria for, and be licensed as, a child day-care center.

Qualifications of staff for head start, preschool, school child (latchkey), and early learning programs

(R.C. 3301.311)

Under existing law[94] no head start program may receive any state funds unless half of the staff members employed by that program as teachers are working toward an associate degree of a type approved by the Department of Education, and beginning in Fiscal Year 2008, no head start program may receive any state funds unless every staff member employed by that program as a teacher has attained such a degree.

Under the bill, head start programs no longer are required to meet these requirements, but preschool programs, school child (latchkey) programs, and early learning programs are. Under the bill, after July 1, 2005, no preschool program, school child program, or early learning program may receive any state funds unless half of the staff members employed by that program as teachers are working toward an associate degree of a type approved by the Department of Education. Beginning in Fiscal Year 2008, no such program may receive any state funds unless every staff member employed by that program as a teacher has attained such a degree. In addition, after July 1, 2010, no such program may receive any state funds unless half of the staff members employed by the program as teachers have attained a bachelor's degree of a type approved by the Department.

TANF-funded Early Learning Initiative

(Sections 206.09.54 and 206.67.12)

The bill establishes the Early Learning Initiative, paid for with federal TANF funds, to provide early learning programs and child care to certain TANF-eligible children.[95] The bill specifies that early learning programs may provide

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[94] *This requirement took effect June 30, 2001.*

[95] *As used in the bill, a TANF-eligible child is a child who is at least three years of age but not of compulsory school age or enrolled in kindergarten, is eligible for services under Title IV-A of the Social Security Act, and whose family income does not exceed 185% of the federal poverty line* at application. *If the family income of a child receiving*

early learning services on a full-day basis, a part-day basis, or both a full-day and part-day basis. As defined by the bill, early learning programs provide early learning services that are allowable under Title IV-A of the Social Security Act but are not considered "assistance" under federal regulations.[96] The Initiative is administered by the Department of Education and the Department of Job and Family Services in accordance with an interagency agreement and rules adopted by the Department of Job and Family Services in consultation with the Department of Education.[97] The joint rules for the Early Learning Initiative must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

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early learning services under the early learning initiative subsequently exceeds 195% of the federal poverty line, the child ceases to be eligible for an early learning program.

[96] Title IV-A services cannot include "cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses)." Title IV-A services, however, may include:

(1) "Nonrecurrent, short-term benefits . . . designed to deal with a specific crisis situation or episode of need [that are] not intended to meet recurrent or ongoing needs, and [that will] not extend beyond four months;

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project . . . to an individual who is not otherwise receiving assistance." (45 C.F.R. 260.31(a) and (b).)

[97] The Department of Job and Family Services is the single state agency to administer Title IV-A programs in Ohio. Other state agencies, however, may administer Title IV-A programs if they enter into an interagency agreement with the Department of Job and Family Services to administer the program under the Department's supervision. Each agency administering a Title IV-A program under the Department's supervision must comply with federal and state requirements regarding program eligibility, use of funds,

Department of Education duties. The bill directs the Department of Education to define the early learning services that will be provided to TANF-eligible children through the Early Learning Initiative. In addition, the Department of Education must establish early learning program guidelines for school readiness to evaluate early learning programs.

When the Department of Education approves an early learning agency, the Department must determine the number of TANF-eligible children the agency will serve and report that number to the Office of Budget and Management and the Department of Job and Family Services.

Department of Job and Family Services duties. The Department of Job and Family Services is responsible for reimbursing early learning agencies for costs associated with their early learning programs. In reimbursing early learning agencies, the Department must ensure that all funds paid to an agency are solely for Title IV-A services provided to TANF-eligible children. In calculating reimbursements, the Department must reimburse an early learning agency for up to 25 days per year in which an eligible child is absent from the early learning program on a day the child is scheduled to attend the program.

The bill directs the Department of Job and Family Services, in consultation with the Department of Education, to do all of the following:

(1) Adopt rules[98] regarding the establishment of co-payments for families of eligible children whose family income is more than 165% of the federal poverty line but equal to or less than 195% of the federal poverty line;[99]

(2) Adopt rules providing an exemption from co-payment requirements for families whose family income is equal to or less than 165% of the federal poverty line;

(3) Adopt rules establishing the following reimbursement rates for early learning agencies based on the attendance of eligible children: (a) if an eligible child attends 25 or more hours in a given week, the weekly reimbursement must be not less than $200.73, (b) if an eligible child attends 15 or more hours but less

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allowable benefits and services, limitations on administrative costs, and audits. (R.C. 5101.80 and 5101.801.)

[98] *All of the rules the Department adopts must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.) .*

[99] *The county department of job and family services must establish co-payment requirements in accordance with these rules.*

than 25 hours in a given week, the weekly reimbursement rate must not be less than $160.58, and (c) if an eligible child attends less than 15 hours in a given week, the hourly reimbursement rate must not be less than $8.03;

(4) Adopt rules defining "weekly attendance rate" for the purpose of reimbursing early learning agencies;

(5) Establish a caretaker employment eligibility requirement for participation in the Early Learning Initiative that specifies the minimum number of hours that the caretaker of the eligible child must be employed, specifies the time period over which the minimum number of hours is to be measured; and permits a limited number of "gap days";[100]

(6) Establish a deadline for the submission of applications to be an early learning agency that occurs after the effective date of those provisions if, on the effective date of the ELI provisions, no early learning agencies have been approved for a given county.

Finally, the Department of Job and Family Services must provide up to 10,000 slots of services for eligible children in fiscal year 2006 and up to 12,000 slots of services for eligible children in fiscal year 2007 through the Early Learning Initiative. In each fiscal year, the Department must allocate at least 17 slots of services to each Ohio county.

Joint duties. Finally, in consultation with each other, the Department of Job and Family Services and the Department of Education must develop an application form and criteria for the selection of early learning agencies to provide early learning programs. Early learning agencies must be approved by the Department of Education to receive funding through the Initiative. Each early learning agency, or each provider with which the agency subcontracts for the operation of an early learning program, must be licensed by the Department of Education as a preschool or by the Department of Job and Family Services as a child day-care center.

Early learning program duties. The bill requires each early learning program to do all of the following:

(1) Meet certain teacher qualification requirements;

(2) Align curriculum to the Department of Education's early learning guidelines for school readiness;

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[100] *The Department of Job and Family Services must periodically review this "gap day" requirement to ensure that it complies with federal law and regulations.*

(3) Meet any diagnostic assessment requirements that apply to the program;

(4) Require teachers, except teachers enrolled and working to obtain a degree, to attend a minimum of 20 hours per year of professional development as prescribed by the Department of Education regarding the implementation of content standards and assessments;

(5) Document and report child progress in meeting the early learning program guidelines for school readiness;

(6) Meet and report compliance with the early learning program guidelines for school success.

Contract, corrective action. Prior to providing an early learning program, each early learning agency must enter into a contract with the Department of Education and the Department of Job and Family Services outlining the terms and conditions applicable to the provision of Title IV-A services.[101] This contract also must include:

(1) The respective duties of the early learning agency, the Department of Education, and the Department of Job and Family Services;

(2) Requirements regarding the use of and accountability for TANF funds;

(3) A requirement that the early learning agency's costs for developing and administering an early learning program cannot exceed 15% of the total approved program costs;

(4) Reporting requirements, including a requirement that the early learning provider inform the Department of Education when the provider learns that a kindergarten eligible child will not be enrolled in kindergarten;

(5) The method of reimbursing the early learning agency for program costs which must be consistent with the Department of Job and Family Services reimbursement rules;

(6) Audit requirements;

(7) Provisions for suspending, modifying, or terminating the contract;

[101] *These contracts are not subject to competitive bidding.*

(8) A requirement that a child enrolled in a Head Start Plus program during fiscal year 2005 be given higher priority if the child enrolls in an early learning program and is TANF-eligible.

If an early learning agency, or a provider with which the agency subcontracts, substantially fails to meet the Department of Education's early learning program guidelines for school readiness or otherwise exhibits below average performance, the early learning agency must implement a corrective action plan approved by the Department. If the agency does not implement a corrective action plan, the Department of Education may direct the Department of Job and Family Services to withhold funding from the agency or either department may suspend or terminate the agency's contract.

Early Learning Initiative and publicly funded child care. The bill specifies that the provision of early learning services in a part-time early learning program does not prohibit or otherwise prevent an individual from obtaining certificates for payment that the individual may use to purchase services from any provider qualified to provide publicly funded child care for periods during which the child is not in an early learning program. If the individual must meet employment and training requirements for a certificate for payment, the individual may, but is not required to, meet these requirements concurrently with the time the child is participating in an early learning program or receiving child care as a result of the certificate.

If on or after December 31 of each fiscal year, the Director of Budget and Management, in consultation with the Director of Job and Family Services and the Superintendent of Public Instruction, determines that there is a balance of funds in the Early Learning Initiative in either fiscal year 2006 or fiscal year 2007, the Director of Budget and Management may approve the use of the funds by the Department of Job and Family Services to provide publicly funded child care.

State-funded early childhood education programs

(Section 206.09.06)

The bill establishes a GRF-funded program administered by the Department of Education to support comprehensive early childhood education programs serving preschool-age children from families earning up to 200% of the federal poverty guidelines.[102] Program providers may include school districts and educational service centers (ESCs). Families who earn more than the federal

[102] *A preschool-age child is one who is at least three years old but not yet eligible to start kindergarten.*

poverty guidelines must be charged for the programs their children attend in accordance with a sliding fee scale developed by the program provider.

To receive state funding, an early childhood education program must:

(1) Meet teacher qualification requirements applicable to early childhood education programs (see "***Teacher qualifications for early childhood education programs***" below);

(2) Align its curriculum to early learning program guidelines for school readiness developed by the Department of Education;

(3) Administer any diagnostic assessments adopted by the State Board of Education that are applicable to the program;[103]

(4) Require all teachers annually to attend at least 20 hours of professional development regarding the implementation of content standards and assessments; and

(5) Document and report child progress in meeting the Department's early learning program guidelines for school readiness.

In distributing funds to providers of early childhood education programs, the Department of Education must give priority in each fiscal year to previous recipients of state funds for such programs. Funding must be distributed on a per-pupil basis, which the Department may adjust as necessary so that the per-pupil amount, when multiplied by the number of eligible children receiving services on December 1 (or the first business day after that date), equals the total amount appropriated for early childhood education programs.[104] The Department may use up to 2% of the total appropriation for its administrative expenses.

The Department may examine a program provider's records to ensure accountability for fiscal and academic performance. If the Department finds that

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[103] *The State Board must adopt diagnostic assessments for certain grades, including kindergarten (R.C. 3301.079). Continuing law permits school districts to administer the kindergarten diagnostic assessment, known as the kindergarten readiness assessment, to a child prior to the child's enrollment in kindergarten on the condition that the results not be used to prohibit the child from starting school (R.C. 3301.0715(A)(3)). It is possible, therefore, that a city, exempted village, or local school district may administer the kindergarten readiness assessment to a preschool-age child. However, it does not appear that the requirements regarding diagnostic assessments would ever apply to an early childhood education program provided by a joint vocational school district or ESC.*

[104] *The per-pupil amount also may be adjusted for inflation.*

(1) the program's financial practices are not in accordance with standard accounting principles, (2) the provider's administrative costs exceed 15% of the total approved program costs, or (3) the program substantially fails to meet the early learning program guidelines for school readiness or exhibits below-average performance compared to the guidelines, the provider must implement a corrective action plan approved by the Department. This plan must be signed by the chief executive officer and the executive of the governing body of the provider. The plan must include a schedule for monitoring by the Department. Monitoring may involve monthly reports, inspections, a timeline for correction of deficiencies, or technical assistance provided by the Department or another source. If an early childhood education program does not improve, the Department may withdraw all or part of the funding for the program. The Department may select a new program provider through a competitive bidding process established by the Department.

If a program provider has its funding withdrawn or it voluntarily waives its right to funding, the provider must transfer property, equipment, and supplies obtained with state funds to other early childhood education program providers designated by the Department. It also must return any unused funds to the Department along with any reports requested by the Department. State funds made available when a program provider is no longer funded may be used by the Department to fund new early childhood education program providers or to award expansion grants to existing providers. In each case, interested providers must apply to the Department in accordance with the Department's competitive bidding process. Unspent funds may be allocated to program providers for program expansion or improvement or for special projects to promote quality and innovation.

The bill requires the Department of Education to compile an annual report regarding GRF-funded early childhood education programs and the Department's early learning program guidelines for school readiness. Copies of the report must be given to the Governor, the Speaker of the House, and the President of the Senate. The report also must be posted on the Department's website.

Teacher qualifications for early childhood education programs

(R.C. 3301.311)

Currently, all teachers employed by Title IV-A Head Start and Head Start Plus programs must be working toward an associate degree approved by the Department of Education in order to receive funding. This requirement is removed by the bill to coincide with its elimination of Title IV-A Head Start programs. However, the bill creates similar teacher qualifications for other early childhood education programs.

Under the bill, after July 1, 2005, a preschool program, school child program, or early learning program is prohibited from receiving any state funds unless at least 50% of the program's teachers are working toward an associate degree approved by the Department of Education. Beginning July 1, 2007, no such program may receive state funds unless all of its teachers have attained an approved associate degree.

A "preschool program" is either (1) a child day-care program for preschool children that is operated by a school district or a chartered nonpublic school or (2) a child day-care program for preschool children age three or older that is operated by a county board of mental retardation and developmental disabilities (MR/DD board). A "school child program" is a child day-care program for school children that is operated by a school district, chartered nonpublic school, or county MR/DD board. (R.C. 3301.52, not in the bill.) The Department of Education must define the "early learning programs" that are subject to the teacher qualifications outlined in the bill.

Montessori programs

(R.C. 3301.56)

Under current law, every preschool program is subject to an established maximum number of children per preschool staff member and a maximum group size by age category. When age groups are combined, the maximum number of children per preschool staff member is determined by the age of the youngest child in the group. Preschool children may not be combined with kindergarten students.

The bill permits any accredited, licensed preschool program that uses the Montessori method endorsed by the American Montessori Society or the Association Montessori Internationale as its primary method of instruction to combine preschool children of ages 3 to 5 years old with children enrolled in kindergarten. When such age groups are combined, the maximum number of children per preschool staff member is 12 and the maximum group size is 24 children.

Reading improvement grants

Background

Sub. H.B. 1 of the 123rd General Assembly established the OhioReads initiative to provide classroom and community reading grants to improve students' reading skills. These grants were awarded by the OhioReads Council. An OhioReads Office within the Department of Education was created to be the fiscal agent for the grant program.

The enacting legislation also included a sunset provision abolishing the OhioReads Council effective July 1, 2004. By January 1, 2004, the Director of Budget and Management was required to recommend a governmental entity to assume the functions of the Council if the General Assembly did not continue the Council's existence. The General Assembly allowed the Council to expire on July 1, 2004. However, it did not designate a successor.

Elimination of OhioReads Office and community grant program

(repealed R.C. 3301.85 and 3301.87; R.C. 109.57, 3301.86, and 3301.88)

The bill repeals the statute authorizing the OhioReads community reading grants program. This change acknowledges that the OhioReads Council ceased to exist on July 1, 2004, and grants are no longer being awarded under the program. Similarly, the bill eliminates the OhioReads Office within the Department of Education because its fiscal responsibilities are obsolete.

Reading improvement grants

(R.C. 109.57, 3301.86, and 3301.88)

The bill changes the name of the "OhioReads Classroom Reading Grants Program" to the "Classroom Reading Improvement Grants Program" and requires the Department of Education to administer the renamed program. Under the program, the Department must award reading intervention grants to public schools and classrooms operated by school districts, community schools, and educational service centers (ESCs). Grants must be used (1) to engage volunteers to assist students struggling with reading, (2) to improve reading outcomes in low-performing schools, and (3) to close the achievement gap between students of different subgroups such as race and socioeconomic status.

As under current law, grant recipients may request a criminal records check from the Bureau of Criminal Identification and Investigation (BCII) for any person, presumably a volunteer, who applies to provide directly to children any service funded by a grant.[105] (Employees of a school district, community school, or ESC who provide services directly to children under a grant would have been required to undergo a criminal records check prior to employment.[106]) Volunteers

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[105] *The request must be accompanied by the standard BCII form and the person's fingerprints or the person's name, social security number, and date of birth. Grant recipients are not permitted to request a criminal records check of any person who furnishes the recipient with a certified copy of a records check completed by BCII within the past year. (R.C. 3301.88(A) and (B).)*

[106] *See R.C. 3319.39, not in the bill.*

who have pled guilty to or been convicted of a felony, an offense of violence, a theft or drug abuse offense, or certain other specified offenses cannot provide services directly to children under a grant, unless they meet rehabilitation standards established by the State Board of Education.[107]

Grant recipients that request criminal records checks of volunteers may apply to the Department of Education for reimbursement of the costs of those checks. Reimbursements paid by the Department are not deducted from the grant amounts. The bill requires the State Board to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) prescribing procedures for grant recipients to use in applying for reimbursements (R.C. 3301.88(G)(1)).

Post-Secondary Enrollment Options Program

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 and community schools) and nonpublic high schools (chartered and nonchartered) are eligible to participate in the program.

PSEO consists of two "options," which the student elects at the time of enrolling in the course. Under Option A, the student receives only college credit and is responsible for payment of all tuition and other costs charged by the college. Under Option B, the student receives both college credit and high school credit for successfully completing the course, and the state makes a payment to the institution of higher education on the student's behalf. State payments to institutions of higher education for students enrolled in public high schools are deducted from the state aid accounts of the students' school districts or community schools. State payments for students enrolled in nonpublic high schools are paid out of a separate state set-aside, since those schools do not receive operations funding from the state.

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[107] *The other specified offenses include failing to provide for a functionally impaired person, patient abuse or neglect, child enticement, unlawful sexual conduct with a minor, sexual imposition, importuning, voyeurism, public indecency, procuring, prostitution, disseminating matter harmful to juveniles, unlawful abortion, child endangerment, contributing to the delinquency of a minor, illegal manufacture of drugs, placing harmful objects in food, and child stealing (R.C. 3301.88(C)). A grant recipient may conditionally allow a volunteer to provide services directly to children pending the results of a criminal records check (R.C. 3301.88(D)).*

Ohio residency

(R.C. 3365.02; Section 206.09.99(B))

The bill specifies that a student must be a resident of Ohio to participate in PSEO. Most students participating in the program would be Ohio residents if they are entitled to attend school in an Ohio school district. Nevertheless, it is possible that a student enrolled in a *nonpublic* school in the state may not be a resident but under current law might still be eligible to participate in PSEO. The bill would eliminate this possibility beginning July 1, 2005.

Reduction of the number of school district employees for financial reasons

Application to future collective bargaining agreements

(R.C. 3319.17(D) and 3319.172; Section 563.03)

The bill revises and expands the statutory authority of school districts to make reductions in force among their teachers and nonteaching employees. However, the bill also expressly states that the changes made by the bill do not affect existing collective bargaining agreements. Nevertheless, the bill also specifies that its provisions prevail over conflicting stipulations in agreements entered into after the provisions' effective date (91st day after the bill becomes law).

Teachers

(R.C. 3319.17)

Current law allows a board of education or educational service center (ESC) governing board to make a reasonable reduction in teaching employees when, for any of certain statutorily specified reasons, the board decides that it will be necessary to reduce the number of teachers it employs. Among the reasons for which a board may reduce the number of teaching employees, in the case of any district or service center, are: (1) return to duty of regular teachers after leaves of absence, (2) suspension of schools, and (3) territorial changes affecting the district or center. The bill adds that the board also may make a reasonable reduction of teaching employees for financial reasons. The bill does not define "financial reasons."

Suspension of teachers' contracts

(R.C. 3319.17(C))

In making any reduction for any of the authorized reasons, current law requires a school district board or an ESC governing board to proceed to suspend contracts in accordance with the recommendation of the superintendent of schools who must, within each teaching field or service area affected, give preference to teachers on continuing contracts (i.e., tenure) and to teachers who have greater seniority. The bill requires that preference be given first to teachers on continuing contracts and then to teachers who have greater seniority. Also, the bill allows a board, on a case-by-case basis, instead of suspending a contract in whole, to suspend a contract in part, so that an individual is required to work a percentage of the time the employee otherwise is required to work under the contract and receives a commensurate percentage of the full compensation the employee otherwise would receive.

Restoration of teachers

(R.C. 3319.17(C))

Under current law, teachers whose continuing contracts are suspended by any board pursuant to the reduction process have the right of restoration to continuing service status by that board in the order of seniority of service in the district or service center, if and when teaching positions become vacant or are created for which any of such teachers are or become qualified. The bill adds that no teacher whose continuing contract has been suspended can lose that right of restoration to continuing service status by reason of having declined recall to a position that is less than full-time or, if the teacher was not employed full-time just prior to suspension of the teacher's continuing contract, to a position requiring a lesser percentage of full-time employment than the position the teacher last held while employed in the district or service center.

Reduction of the number of nonteaching employees

(R.C. 3319.081 and 3319.172)

Current law establishes an employment contract system that controls nonteaching employees who are employed in school districts wherein the Ohio Civil Service Law does not apply (local and exempted village districts and ESCs and whose contracts of employment are not otherwise provided by law.[108] Under

[108] *Nonteaching employees of city school districts are generally subject to the Civil Service Law, unless the district opts out through collective bargaining or if a home rule*

continuing law, contracts provided through this system may be terminated by a majority vote of the board of education. Except as provided below, continuing law specifies that these contracts may be terminated only for violation of written rules and regulations as set forth by the board of education or incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, or any other acts of misfeasance, malfeasance, or nonfeasance. Continuing law also specifies that sexual battery against a student is grounds for termination.

The bill adds a method by which, and expands the reasons for which, these contracts may be terminated. It specifies that the board of education of each school district wherein the provisions of the Civil Service Law do not apply, and each ESC governing board, may adopt a resolution ordering reasonable reductions in the number of nonteaching employees for any of the reasons described above for making reductions in teaching employees. Therefore, in addition to the reasons for reduction discussed under "***Teachers***," above, a board may make a reduction for any of the following reasons:

(1) In the case of any city, exempted village, local, or joint vocational school district, decreased enrollment of pupils in the district;

(2) In the case of any governing board of an ESC providing any particular service directly to pupils pursuant to one or more interdistrict contracts, reduction in the total number of pupils the governing board is required to provide with the service under all interdistrict contracts as a result of the termination or nonrenewal of one or more of these interdistrict contracts;

(3) In the case of any ESC governing board providing any particular service that it does not provide directly to pupils pursuant to one or more interdistrict contracts, reduction in the total level of the service the governing board is required to provide under all interdistrict contracts as a result of the termination or nonrenewal of one or more of these interdistrict contracts.

Suspension of contracts for nonteaching employees

(R.C. 3319.172)

In making any reduction in nonteaching employees by adopting a resolution, the district board or ESC governing board must proceed to suspend contracts in accordance with the recommendation of the superintendent of the district or ESC who must, within each pay classification affected, give preference

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municipality excludes school district employees from the Civil Service Law (see Ohio Assoc. of Public School Employees v. City of Twinsburg (1988), 36 Ohio St.3d 180).

first to employees under continuing contracts and then to employees on the basis of seniority. On a case-by-case basis, in lieu of suspending a contract in whole, a board may suspend a contract in part, so that an individual is required to work a percentage of the time the employee otherwise is required to work under the contract and receives a commensurate percentage of the full compensation the employee otherwise would receive under the contract.

Restoration of nonteaching employees

(R.C. 3319.172)

The bill specifies that similar to teachers, any nonteaching employee whose continuing contract is suspended under this section has the right of restoration to continuing service status by the district or ESC board that suspended that contract in order of seniority of service in the district or service center, if and when a nonteaching position for which the employee is qualified becomes vacant or is created. The bill specifies that no nonteaching employee whose continuing contract has been suspended under this provision can lose that right of restoration to continuing service status by reason of having declined recall to a position requiring fewer regularly scheduled hours of work than required by the position the employee last held while employed in the district or ESC.

Termination of school district transportation staff

Background

Continuing law provides that employment of nonteaching personnel in "city" school districts is controlled by the state Civil Service Law, codified in R.C. Chapter 124. Employment of such personnel in "exempted village" and "local" school districts is instead controlled by separate specific statutes.[109] In either case, however, unless otherwise specified, the provisions of any effective collective bargaining agreement prevail over conflicting statutes in matters that are subjects of collective bargaining.

Under the Civil Service Law, a city school district board may abolish any of its nonteaching staff positions "as a result of a reorganization for the efficient operation of the [district], for reasons of economy, or for lack of work."[110] If a city school district board does abolish positions, it must do so in compliance with statutorily prescribed procedures, which include an order for layoffs based on seniority of employment, a right to displace less-senior personnel, a right to fill

[109] *R.C. 3319.081, 3319.082 (not in the bill), and 3319.083 (not in the bill).*

[110] *R.C. 124.321(D), not in the bill.*

other vacancies, reinstatement rights, and an appeal procedure.[111] On the other hand, nonteaching employees in exempted village and local districts (non-Civil Service districts) may be "terminated *only* for violation of [the district board's] written rules and regulations . . . or for incompetency, inefficiency, dishonesty, drunkenness, immoral conduct, insubordination, discourteous treatment of the public, neglect of duty, or any other acts of misfeasance, malfeasance, or nonfeasance."[112] In interpreting this provision, the Supreme Court of Ohio has held that absent any provision of a collective bargaining agreement to the contrary, the board of a non-Civil Service school district has *no* authority to lay off its nonteaching employees for economic reasons. The Court has further interpreted this provision as giving "statutory job security" to nonteaching employees.[113] Thus, under current law, an exempted village or local school district board may not terminate nonteaching staff positions (such as those of bus drivers) and replace them with labor supplied by independent contractors.

Termination of transportation staff positions and replacement with services provided by an independent agent

(R.C. 3319.081(C) and 3319.0810(A))

The bill authorizes the termination of transportation staff positions for "reasons of economy and efficiency" by the boards of non-Civil Service school districts. In that case, rather than employ its own staff to transport students the board must contract with an independent agent to provide transportation services. This provision of the bill does not appear to permit the lay off of any board-employed transportation personnel for economic reasons unless the district intends to contract for at least some nonpublic personnel. However, another provision

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[111] *Employment of teachers in both Civil Service and non-Civil Service school districts is controlled by other specific statutes that provide (among other things) procedures for termination of positions when it is necessary to reduce the number of teachers for certain specified reasons (R.C. 3319.17, not in the bill).*

[112] *R.C. 3319.081(C), emphasis added. The statute also specifically provides that sexual battery against a student at the school (R.C. 2907.03(A)(7)) is grounds for termination.*

[113] *State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn. (1998), 82 Ohio St.3d 222, 226. In a subsequent action in the same case, the Court clarified that certain bus drivers illegally laid off by the local school district board were entitled to reinstatement to their positions as school district-employed bus drivers with back pay and benefits. The Court also held that the board was not authorized to lay off those employees by abolishing their positions while in effect retaining those positions to be filled by contract nonpublic employees. See State ex rel. Boggs v. Springfield Local School Dist. Bd. of Edn. (2001), 93 Ohio St.3d 558, 561-562.*

permits reductions in force among teachers and nonteaching employees for "financial reasons" (see "***Reduction of the number of nonteaching employees***," above).

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

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

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

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

Fifth, the contract entered into by the board and an independent agent for the provision of transportation services must contain a stipulation requiring the agent to consider hiring the terminated district employees for similar positions within the agent's organization.

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

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

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

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

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

Recourse if school district board does not comply with conditions

(R.C. 3319.0810(B))

If the school district board fails to comply with any of the prescribed lay-off conditions, including enforcement of the required contractual obligations, the bill provides that the terminations of transportation staff positions are void. In such instances, the board is required to reinstate the positions and fill them with the employees who filled those positions just prior to the terminations. The employees must be compensated at a rate equal to their rate of compensation in those positions just prior to the terminations plus any increases paid to other nonteaching employees since the terminations. In addition, the employees must receive back pay for the period from the date of the terminations to the date of reinstatement minus any pay the employees received while the board was in compliance with the bill's provisions. The bill grants any employee aggrieved by the board's failure to comply with any of the bill's provisions the specific right to sue the board for reinstatement of the employee's former position or for damages in lieu of reinstatement.[114]

Academic distress commissions

(R.C. 3302.10)

Current law provides for the Department of Education annually to assign one of five ratings to each school district (and schools within each district).[115] The

[114] *Under the bill, suit may be brought in the court of common pleas for the county in which the school district is located or, if the school district is located in more than one county, in the court of common pleas for the county in which the majority of the territory of the school district is located.*

[115] *The ratings are excellent, effective, needs continuous improvement, academic watch, or academic emergency.*

rating is based on the number of performance indicators achieved by the district, whether the district has a certain performance index score established by the Department, and whether the district has made adequate yearly progress (AYP) toward meeting certain performance goals in reading and mathematics. A school district is declared to be in a state of academic emergency if it does not make AYP, does not meet at least 31% of the state performance indicators, and has a performance index score established by the Department that signifies a state of academic emergency.

Under the bill, beginning July 1, 2007, the Superintendent of Public Instruction must establish an academic distress commission for each school district that is in a state of academic emergency and that has failed to make AYP for four or more consecutive years. The commission remains in existence until the district's performance rating is upgraded to "continuous improvement" for two out of three school years, unless the Superintendent sooner determines that the district can perform adequately without the commission.

Each commission must consist of three voting members appointed by the Superintendent and two voting members appointed by the president of the district board of education. The commission would have the following powers to assist with and oversee the academic performance of the district:

(1) appoint, reassign, and terminate the contracts of district administrative personnel;[116]

(2) contract with a private entity to perform school or district management functions; and

(3) establish a budget for the district and approve school district expenditures, unless a financial planning and supervision commission has been established under the school district fiscal emergency law.

Academic distress commissions and collective bargaining

(R.C. 3302.10(D))

Generally, state public employee collective bargaining law (and collective bargaining agreements negotiated under that law) prevail over most other state laws. Specifically, a public employer under a collective bargaining agreement must bargain with respect to the wages, hours, and terms and conditions of

[116] *The bill specifically exempts contract terminations from the teacher contract law specifying limited acceptable reasons for terminating contracts and requirements for notice, hearing, and appeal of contract terminations.*

employment of its employees. Exceptions to this general provision (that is, matters which an employer is not required, and in some cases not permitted, to bargain) are listed in the collective bargaining statutes (R.C. 4117.08 and 4117.10, not in the bill). The bill creates an additional exception by providing that, if a district board of education is renewing a collective bargaining agreement while it has an academic distress commission in place, it may not enter into any collective bargaining agreement that would render any decision of the academic distress commission unenforceable.

The bill also provides that if the board of a school district for which an academic distress commission has been established has bargained away some of its management rights and responsibilities (which it was not required but was permitted to bargain), those rights and responsibilities are restored to the board until both the commission is dissolved and the board agrees in a new collective bargaining agreement to relinquish them. This applies to any collective bargaining agreement entered into after the bill's effective date regardless of whether a commission was established for the district at the time the board entered into that agreement. The management rights and responsibilities to which this provision applies are:

(1) Determine matters of inherent managerial policy, which include, but are not limited to, areas of discretion or policy such as the functions and programs of the district, standards of services, its overall budget, utilization of technology, and organizational structure;

(2) Direct, supervise, evaluate, or hire employees;

(3) Maintain and improve the efficiency and effectiveness of district operations;

(4) Determine the overall methods, process, means, or personnel by which district operations are to be conducted;

(5) Suspend, discipline, demote, or discharge for just cause, or lay off, transfer, assign, schedule, promote, or retain employees;

(6) Determine the adequacy of the work force;

(7) Determine the overall mission of the employer as a unit of government;

(8) Effectively manage the work force;

(9) Take actions to carry out the mission of the district as a governmental unit.[117]

Legislative approval of new school districts

(R.C. 3311.11)

Under current law (R.C. 3311.26, not in the bill), the State Board of Education may propose the creation of a new local school district from all or parts of other local school districts. The establishment of the district is subject to a referendum vote of the electors within the proposed territory of the new district if a petition signed by at least 35% of those electors is filed with the State Superintendent of Public Instruction.

The State Board may also propose the creation of a new local or city school district from territory of all or part of the territory of contiguous local, exempted village, or city school districts (R.C. 3311.37, not in the bill). In this case, the State Board has 30 days to submit the proposal to the electors of the proposed new district, but the current law does not appear to necessarily *require* the State Board to submit such a referendum vote to those electors.

The bill provides that if the State Board of Education adopts a resolution proposing a new city or local school district to begin operations after the 2004-2005 school year, a school district may not be created unless both houses of the General Assembly approve its creation by concurrent resolution.

It is unclear whether, if the State Board submitted the referendum for a proposed district under R.C. 3311.37 within the required 30 days, the election would have to be held whether or not the General Assembly had approved the new district.

Transfer of a local school district from one educational service center to another

(R.C. 3311.059)

Current law provides that a board of education of a local school district may adopt a resolution effecting the annexation of the district from one educational service center (ESC) to an adjacent ESC. The resolution must be approved by the majority of the members of the local board and must also be approved by the State Board of Education before it can take effect. The State Board may only approve the resolution after it considers the impact of the annexation on both the school district and the ESC to which the district will be

[117] *R.C. 4117.08(C), not in the bill.*

annexed, including the ability of that ESC "to deliver services in a cost effective and efficient manner."

The bill removes the requirement for the State Board to approve an annexation resolution, but retains the current law right of the voters within the local school district to file a petition for a referendum vote on the annexation.

School district internal auditors

(R.C. 3319.06)

The bill authorizes, but does not require, any city, exempted village, or local school district board of education to create a position called "internal auditor,"[118] which is directly responsible to the district board (and, presumably, not to the district superintendent). If a school district does create a position specifically called "internal auditor," the position must be staffed by a certified public accountant or registered public accountant[119] who signs a contract with the board specifying the following:

(1) The duties of the internal auditor;

(2) The salary and other compensation to be paid, which may be increased, but may not be reduced during the term of the contract unless the district imposes an across-the-board reduction for district employees;

(3) The number of days to be worked and any holidays or paid leave; and

(4) The term of the contract.

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[118] *The bill does not define this term and states only that the duties of an "internal auditor" include anything specified in the contract between the district and the employed individual. Presumably, school districts may already be employing persons who would do the same duties that they might specify in a contract for an "internal auditor." If this is the case, it would apparently be up to the district whether or not to officially create an "internal auditor" position or whether to continue to have the same people perform these duties, whether or not they have contracts, are evaluated, or have permits to practice as CPAs or public accountants.*

[119] *Ohio accountancy law provides for issuing a "permit" to practice "public accounting" to persons who hold either a "certificate of public accounting" or are registered as "public accountants." According to a spokesperson for the Accountancy Board, the primary difference is that CPAs must pass an examination in order to be certified. Currently no additional individuals are permitted to become registered public accountants, but, generally, individuals who were already registered may continue to practice public accounting.*

The initial contract with an internal auditor may not exceed three years and any renewals must be for between two and five years. In determining whether a contract will be renewed, the board must "consider" the results of an evaluation, which must be conducted in accordance with procedures specified by the board.

If the district board does not intend to renew a contract, it must provide written notice to the internal auditor not later than March 31 of the year of the contract's expiration. If the board fails to give this notice, the internal auditor is "deemed reemployed" for one year at the same salary plus any increments authorized by the board. A contract may be terminated only for "gross inefficiency or immorality; for willful and persistent violations of reasonable regulations of the board of education; or for other good and just cause." Any contract termination must be done in accordance with the notice and hearing requirements of teacher contract law.

Eye exams for disabled students

(R.C. 3323.19)

The bill codifies and makes permanent an uncodified provision of current law that requires students receiving special education services from a school district to undergo, at private expense, an eye examination. This provision was enacted in Am. Sub. H.B. 95 of the 125th General Assembly, the 2003-2005 state operating budget act, to apply in the 2004-2005 and 2005-2006 school years.

Under this provision, school districts must require each student who is identified for the first time as having a disability to undergo a comprehensive eye exam within three months after beginning any special education services under the individualized education program (IEP) prepared for the student. This requirement does not apply to students who began receiving special education services before July 1, 2004. Moreover, newly identified special education students who underwent a comprehensive eye exam in the nine months prior to identification need not have another exam. All eye exams must be performed by a licensed optometrist or by a licensed physician who is "comprehensively trained and educated in the treatment of the human eye, eye disease, or comprehensive vision services" (presumably, an ophthalmologist).

The law, unchanged by the bill, specifies that neither the state nor the school district is responsible for covering the cost of an eye exam, unless a student is entitled to an exam as part of the identification process or provision of subsequent services. Presumably, a student's parent must pay for the exam or otherwise arrange for it if the student is not so entitled. School district superintendents, in determining whether a student has met the eye exam requirement, may take into account any special circumstances of the student or the

student's family that could prevent the student from having the exam before starting special education services. Districts, however, cannot withhold special education services from a student who does not undergo an eye exam as required.

Collective bargaining agreements and use of school volunteers

(R.C. 4117.103)

Current collective bargaining law generally states that "all matters pertaining to wages, hours, or terms and conditions of employment" are subject to collective bargaining. It further specifies that public employers generally retain the right to make decisions regarding, among other things, "inherent managerial policy," direction, supervision, or hiring of employees, determination of the "adequacy of the work force," and maintaining and improving the "efficiency and effectiveness of governmental operations." However, these functions *may* be limited by a collective bargaining agreement entered into by the employer. Collective bargaining law (and agreements concerning wages, hours, and terms and conditions of public employment) specifically take precedent over all other provisions of law, other than the exceptions specifically listed in the collective bargaining statutes *or specified by the General Assembly*. (R.C. 4117.08 and 4117.10, not in the bill.)

The bill states that no collective bargaining agreements entered into after the provision's effective date may prohibit a school district from "utilizing volunteers" to assist the district and its schools in performing school functions, except in the cases where the function must be performed by an employee who holds a license, permit, or certificate issued by the State Board of Education or, in the case of bus drivers, a certificate issued by the school district, an educational service center, a nonpublic school, or contractor.

School district sale of real property

(Section 206.10.21)

Under current law, school districts may only dispose of real property exceeding $10,000 in value by first offering it at public auction. If the property is not sold after being offered, the property may be sold by private sale. However, the statute provides for several other alternatives. The district may sell the property directly to one of a number of government entities, may trade it for an item of personal property, or may trade for a different parcel of real property "needed for school purposes." An exception to the general law on disposal of school property requires school districts, before exercising any of the above options, to first offer any property "suitable for classroom space" to community

schools located in the district. The property must be offered at its appraised fair market value (R.C. 3313.41, not in the bill).

The bill provides another exception to the statute governing sale of school district property. Until December 31, 2005, a school district may "support economic development within its territory" by using direct sale to dispose of *certain* property, in lieu of any of the existing alternatives, including the requirement to offer property to community schools. The property exempted from current law by the bill's provision must meet all of the following conditions:

(1) The property must be encumbered by easements, liens, or other restrictions that benefit the purchaser;

(2) The property must be adjacent to real property previously disposed of by the district; and

(3) The property will be used for commercial development.

Two-year moratorium on lowered school district performance ratings

(Section 206.10.27)

Under current law, the Department of Education annually must publish how a district or building performed on the three components included in determining the academic performance rating assigned to the district or building. The Department must indicate the extent to which a district or building meets each of the performance indicators and the number of applicable performance indicators that have been achieved. Also, the Department must include the performance index score of the district or building and whether it made its required average yearly progress (AYP). In calculating achievement on each of these components, the Department must include only those students who are counted in the district's ADM in October and are continuously enrolled in the district or building through the time of the March administration of the proficiency or achievement tests. Currently, the Department publishes school district and building ratings in August in time to meet the requirements of the federal No Child Left Behind Act of 2001.

The following table shows how the performance ratings are determined.

Rating	Percentage of performance indicators met		Performance index score		Makes AYP
Excellent	94%-100%	*or*	*	*and*	Yes
	94%-100%	*or*	*	*and*	No
Effective	75%-93%	*or*	*	*and*	Yes
	75%-100%	*or*	*	*and*	No
Continuous improvement	0%-74%	*and*	*	*and*	Yes
	50%-74%	*or*	*	*and*	No
Academic watch	31%-49%	*or*	*	*and*	No
Academic emergency	0%-30%	*and*	*	*and*	No

* The Department is required to set the values for the performance index on a graduated scale.

The bill specifies that when designating performance ratings for school districts (but not buildings) in 2005, based on the 2004-2005 school year, and in 2006, based on the 2005-2006 school year, the Department must not assign a school district a lower designation from its previous year's designation based solely on one student subgroup's not meeting adequate yearly progress.

Ohio Center for Autism and Low Incidence

(R.C. 3323.30, 3323.31, 3323.32, and 3323.33)

The bill formally establishes the Ohio Center for Autism and Low Incidence (OCALI) to administer programs and coordinate services for infants, preschool and school-age children, and adults with autism and other low incidence disabilities involving hearing, vision, orthopedics, traumatic brain injuries, and general health. (OCALI is currently operating within the Department of Education as an information clearinghouse under a federally funded initiative of the Department of Education.) The bill places OCALI within the Department's Office for Exceptional Children. The bill requires the Superintendent of Public Instruction, in consultation with an advisory board, to appoint the OCALI executive director.

The Superintendent must establish and organize an advisory board to assist and advise the Department in the operation of OCALI. As determined by the Superintendent, the advisory board consists of individuals who are stakeholders in the service to persons with autism and low incidence disabilities, including the following:

(1) Persons with autism and low incidence disabilities;

(2) Parents and family members;

(3) Educators and other professionals;

(4) Higher education instructors; and

(5) Representatives of state agencies.

In its administration and coordination of programs, OCALI is charged with the following goals:

(1) Collaborate and consult with state agencies that serve persons with autism and low incidence disabilities;

(2) Collaborate and consult with institutions of higher education in development and implementation of courses for educators and other professionals serving persons with autism and low incidence disabilities;

(3) Collaborate with parent and professional organizations;

(4) Create and implement programs for professional development, technical assistance, intervention services, and research in the treatment of persons with autism and low incidence disabilities;

(5) Create a regional network for communication and dissemination of information among educators and professionals serving persons with autism and low incidence disabilities; and

(6) Develop a statewide clearinghouse for information about autism spectrum disorders and low incidence disabilities.

In developing the statewide clearinghouse, OCALI must also (a) maintain a collection of resources for public distribution, (b) monitor information on resources, trends, policies, services, and current educational interventions, and (c) respond to requests for information from parents and educators of children with autism and low incidence disabilities.

Stipend for National Board certified teachers

(R.C. 3319.55)

Under continuing law, public and chartered nonpublic school teachers who hold valid teaching certificates issued by the National Board for Professional Teaching Standards are eligible for annual state-funded stipends. The National

Board is an independent organization that awards certificates to teachers whose instructional practices, as demonstrated by evaluations of content knowledge and classroom performance, meet rigorous standards of teaching quality. The certificates are valid for ten years, but can be renewed for an additional ten-year period.

The bill limits a teacher's eligibility for an annual state stipend to the ten-year period of the initial certification. That is teachers who renew their National Board certification for another ten-year period are not eligible for the state stipends.

Model student acceleration policy

(Section 206.09.28)

The bill requires the State Board of Education to adopt a model student acceleration policy considering at least the options of whole grade acceleration, subject area acceleration, and early high school graduation. The policy must be adopted by June 30, 2006, and must address any recommendations made in a 2005 study conducted under the Gifted Research and Demonstration Grant Program.

School district latchkey programs

(R.C. 3313.207, 3313.208, and 3313.209)

Current law

Currently, a board of education of a city, local, or exempted village school district is permitted to operate a latchkey program after assessing the need for such a program and determining the best and most efficient manner of providing the program to children in its district. The board is prohibited from expending money from the general fund of the district to provide the program, however, unless the money is from an appropriation of the General Assembly that specifically permits the expenditure.

Current law also allows a board of education that does not operate a latchkey program (1) to provide ancillary services and to make payments to any provider that operates a latchkey program that enrolls one or more children who are residents of the school district, or (2) to furnish ancillary services or employees solely for use in conjunction with the program's operation to any person or entity that operates a latchkey program. Ancillary services include (a) space in a school district building that is used for other school district purposes in addition to latchkey programs, (b) utilities furnished in conjunction with the space, or (c) transportation to a latchkey program on a regular school bus. The board is again,

though, expressly prohibited from using money from the general fund of the district to pay for these services, except under certain circumstances.

The bill

The bill extends the ability to provide latchkey programs to joint vocational school districts and educational service center and removes the restriction against using money from the general fund to provide for the program. The bill also removes the restriction against expending money from the general fund for ancillary services.

Elimination of school districts' annual spending plan and submission of certificate of estimated resources

(R.C. 3313.489 and 5705.391; Repealed R.C. 3311.40)

Under current law, each board of education must adopt, as part of its annual appropriation measure, a spending plan setting forth a schedule of expenses and expenditures of all appropriated funds as well as all revenues available for appropriation by the school district for the fiscal year. A copy of the appropriation measure and spending plan must be submitted to the Superintendent of Public Instruction, who is required to use it to determine whether the district will incur any expenses during that year that will impair its financial ability to operate its schools with the revenues available to it.

The bill eliminates the mandate for the annual spending plan and requires the Superintendent to make the determination based upon the districts' five-year projections of revenues and expenditures already required by law. It also eliminates the requirement that school districts file their amended certificates of estimated resources, produced by the county budget commission and filed with the school district pursuant to R.C. 5705.35, and their annual appropriations measure with the Department of Education.

Elimination of requirement to file statistical reports

(R.C. 3317.09)

The bill eliminates (1) the requirement that the Department of Education must file a monthly report, regarding distribution of money to a school district by the state, with the Senate, the House of Representatives, the Legislative Service Commission, and the Governor, and (2) the requirement that the Department must file its annual statistical report, detailing receipts of revenues and expenditures for all school districts, with those officials as well as with the Auditor of State.

Transportation of pupils attending vocational education programs

(R.C. 3327.01)

The bill codifies a provision requiring the boards of education of all city, local, and exempted village school districts that transport pupils according to a career-technical plan approved by the State Board of Education. Specifically, it requires them to transport high school pupils 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.

Updated five-year projections for fiscal watch and fiscal emergency school districts

(R.C. 3316.043)

The bill requires that upon the approval by the Superintendent of Public Instruction of a financial plan (required for fiscal watch districts) or a financial recovery plan (required for fiscal emergency districts), the board of education of a school district that is in fiscal watch status, or the financial planning and supervision commission for a district in fiscal emergency status, must revise the district's five-year projection of revenues and expenditures so that the projection is consistent with the financial plan or financial recovery plan.

Suspension of set-asides for school districts in fiscal emergency

(R.C. 3315.17, 3315.18, 3316.06, and 3316.16)

Current law requires the board of education of each city, exempted village, local, and joint vocational school district to establish a "Textbook and Instructional Materials Fund" and a "Capital and Maintenance Fund" and deposit into each of those funds an amount equal to 3% (or another percentage if established by the Auditor of State) of the base-cost formula amount for the preceding fiscal year, multiplied by the district's student population for the preceding fiscal year. Money in the Textbook and Instructional Materials Fund must be used solely for textbooks, instructional software, and instructional materials, supplies, and equipment, while money in the Capital and Maintenance Fund must be used solely for acquisition, replacement, enhancement, maintenance, or repair of permanent improvements. Any money not used in either fund in any fiscal year carries over to the next fiscal year.

The bill exempts a school district from making otherwise required deposits into the funds while the district is in a fiscal emergency period and excuses the district from eliminating any deficits in the funds that accrued in prior years.

Before the district's financial planning and supervision commission is terminated, however, the district's five-year financial forecast must project that the district will comply with the requirement to make those deposits the year after the commission is proposed to be terminated.

Prohibition against school district operation without a charter

(R.C. 3301.16)

Under current law, the State Board of Education has the power to classify and charter school districts and individual schools within each district. The Board also has the power to revoke the charter of any school district or school that fails to meet the Board's standards for elementary and high schools. The bill explicitly prohibits any school district or individual school operated by a school district from operating without a charter issued by the Board.

Map required in chartering new school districts

(R.C. 3301.16)

The bill requires the State Board of Education to require any party proposing the creation of a new school district to submit to the Board a map, certified by the county auditor of the county in which the proposed new district is located, that shows the boundaries of the proposed new district. If the new district is located in more than one county, the map must be certified by the county auditor of each county.

School Physical Fitness and Wellness Advisory Council

(Section 206.10.12)

The bill establishes the School Physical Fitness and Wellness Advisory Council to develop best practices regarding nutrition education, physical activity for students, and school-based activities and school-business partnerships that promote student wellness. The Council must provide information no later than December 31, 2005, to school districts participating in the federal school lunch program to facilitate adoption of local wellness policies, and must develop strategies for evaluating the implementation of the policies.

The 12 members of the School Physical Fitness and Wellness Advisory Council include one representative of each of the following:

(1) Ohio Association for Health, Physical Education, Recreation and Dance;

(2) Ohio School Food Service Association;

(3) Ohio School Boards Association;

(4) Ohio Dietetic Association;

(5) Ohio State Medical Association;

(6) The food industry, appointed by the Ohio Chamber of Commerce;

(7) Ohio Parent Teacher Association;

(8) Ohio Soft Drink Association;

(9) Department of Education, appointed by the Superintendent of Public Instruction;

(10) Ohio Parks and Recreation Association;

(11) Ohio Children's Hunger Alliance; and

(12) The Director of Health.

The representative of the Department of Education serves as chairperson.

BOARD OF EMBALMERS AND FUNERAL DIRECTORS

- Requires a person who desires to be licensed as a funeral director to "satisfactorily complete" instead of "serve," as under existing law, the type of apprenticeship applicable to that applicant.

Funeral director apprenticeships

(R.C. 4717.05)

Under existing law, any person who desires to be licensed as a funeral director must apply to the Board of Embalmers and Funeral Directors and meet several requirements. One requirement is that the applicant serve a one-year apprenticeship under a licensed funeral director and assist the funeral director in directing at least 25 funerals. The bill requires that the applicant "satisfactorily complete" the above apprenticeship instead of "serve" it, as under existing law.

Existing law also requires the applicant to satisfactorily complete at least 12 months of mortuary science college training; however, the applicant may substitute a two-year apprenticeship under a licensed funeral director assisting the funeral director in at least 50 funerals. The bill requires that the applicant "satisfactorily complete" the above two-year apprenticeship if the applicant chooses to substitute it for mortuary science college training.

STATE EMPLOYMENT RELATIONS BOARD

- Allows the State Employment Relations Board (SERB) to seek, solicit, apply for, and accept grants, gifts, and contributions for specified uses.
- Renames the Training and Publications Fund used by SERB the "Training, Publications, *and Grants* Fund."
- Expands the funding sources for the Training, Publications, and Grants Fund and specifies additional uses for money held in the Fund.

SERB Training, Publications, and Grants Fund

(R.C. 4117.24)

Current law requires the State Employment Relations Board (SERB) to deposit into the Training and Publications Fund all payments received by SERB for copies of documents, rulebooks, and other publications; fees received from seminar participants; and receipts from the sale of clearinghouse data. Current law also specifies the purposes for which these funds may be used.

The bill renames the Fund the Training, Publications, *and Grants* Fund. It also allows SERB to seek, solicit, apply for, accept, receive and enter into contracts concerning grants, gifts, and contributions. The bill requires that all of the money received through these sources be deposited into the Fund. Under the bill, these funds must be held for, used for, and applied to only the purposes for which those grants are made and for which those contracts are entered.

In addition to the moneys received from the sources listed in current law and the moneys received from grants, gifts, and contributions as described in the paragraph above, SERB also must deposit into the Fund moneys received from donations, awards, bequests, reimbursement for professional services and expenses related to those services, and from funds to support the development of

labor relations services and programs. In addition to the purposes specified in current law, the bill requires the Fund to be used to defray the costs associated with grant projects, innovative labor-management cooperation programs, related research projects, the advancement in professionalism of public sector relations, and for the professional development of board employees.

ENVIRONMENTAL PROTECTION AGENCY

- Requires the Director of Environmental Protection to continue to implement an enhanced motor vehicle inspection and maintenance program (referred to as E-Check) in counties in which an enhanced motor vehicle inspection and maintenance program is federally mandated, prohibits its implementation in any other county, requires the program to expire on December 31, 2007, prohibits the continuation of the program beyond that date unless otherwise federally mandated, and requires the Director to adopt rules necessary to implement the program in the counties in which it is federally mandated.

- Establishes a new, additional fee on the disposal of solid wastes of $1.50 per ton, the proceeds of which must be credited to the Environmental Protection Fund created by the bill, and specifies that money in the Fund must be used by the Environmental Protection Agency (EPA) to administer and enforce most of the programs under the Agency's jurisdiction and to fund other duties that state law requires the Agency to perform.

- Extends through June 30, 2008, the existing fee on the disposal of solid wastes that is used to fund the solid and infectious waste and construction and demolition debris management programs, and expands the allowable uses of the proceeds of the fee by authorizing the Agency to use the proceeds to provide compliance assistance to small businesses.

- Exempts from the disposal fee levied under the Construction and Demolition Debris Law source separated materials exclusively composed of reinforced or nonreinforced concrete, asphalt, clay tile, building or paving brick, or building or paving stone when the materials are used as a fire prevention measure at a construction and demolition debris facility in accordance with the bill or as fill material for construction at such a facility or to bring the facility up to grade in accordance with the bill.

- Specifies that state solid waste disposal fees are to be collected at transfer facilities as well as at disposal facilities as in existing law, excludes from the fees materials that are separated or removed for recycling, and amends the procedures for collecting and remitting the fees.

- Excludes certain shale and clay products and certain spent petroleum refinery catalysts from the definition of "solid wastes."

- Specifies that the fee levied on the disposal of construction and demolition debris at a solid waste facility under the Construction and Demolition Debris Law does not apply if there is no licensed construction and demolition debris facility within 35 miles of the solid waste facility as determined by a facility's property boundaries rather than within 40 miles as in current law.

- Establishes a new 25¢ per ton or 12.5¢ per cubic yard fee on the disposal of construction and demolition debris, and requires the proceeds of the fee to be credited to the Soil and Water Conservation District Assistance Fund created by the bill to provide matching funding for soil and water conservation district projects.

- Establishes a second new fee on the disposal of construction and demolition debris of 75¢ per ton or 37.5¢ per cubic yard, requires the proceeds to be credited to the Recycling and Litter Prevention Fund administered by the Division of Recycling and Litter Prevention in the Department of Natural Resources, and eliminates the crediting of receipts from the corporate franchise tax on litter stream products to the Fund.

- Specifies that the two new construction and demolition debris disposal fees levied by the bill do not apply to the disposal of construction and demolition debris at a licensed solid waste facility if the owner or operator of the facility chooses to collect fees on the disposal of the construction and demolition debris that are identical to the fees that are collected on the disposal of solid wastes at the facility.

- Authorizes money in the existing Environmental Protection Remediation Fund to be used for certain environmental clean-up activities involving hazardous waste.

- Makes it optional, rather than required as in current law, that hazardous waste clean-up agreements with landowners contain provisions for the

reimbursement of the state for the costs of a cleanup and that unreimbursed portions of the cost of the cleanup be recorded at the office of the applicable county recorder.

- Clarifies that existing contractual bidding requirements apply to hazardous waste clean-up activities conducted by EPA regardless of whether property has been acquired by EPA.

- Allows the Director to enter into contracts independent of the Department of Administrative Services for certain clean-up activities if there is a threat to public health or safety or the environment.

- Exempts from solid waste disposal and generation fees solid wastes generated as a result of certain clean-up activities involving public funds and conducted under contracts entered into by the United States Environmental Protection Agency, the Ohio Environmental Protection Agency, or the Department of Administrative Services on behalf of the Ohio EPA.

- Specifies that money used by EPA from the Hazardous Waste Clean-up Fund to pay the costs of clean-up activities and subsequently recovered in a civil action must be repaid to the Hazardous Waste Clean-up Fund instead of paid into the Immediate Removal Fund as in current law.

- Extends the sunset of the fee on the sale of tires that is used to fund the Scrap Tire Management Program from June 30, 2006, to June 30, 2011.

- Reduces the amount of money that the Department of Taxation receives to pay the Department's costs in administering the fee on tires that is used to fund the Scrap Tire Management Program from 4% to 2% of the money collected from that fee.

- Alters the cost recovery procedure for removal actions taken by the Director under the Scrap Tire Management Program by requiring the Director to record the costs and establish a lien on the property that was the subject of a removal action after completing the removal action rather than after a civil action has been adjudicated as in current law.

- Revises the industrial classifications in the fee schedule based on process weight rates for permits to install under the Air Pollution Control Law.

- Extends all of the following for two years:

  --The sunset of the annual emissions fees for synthetic minor facilities;

  --The levying of higher fees, and the decrease of those fees at the end of the two years, for applications for plan approvals for wastewater treatment works under the Water Pollution Control Law;

  --The sunset of the annual discharge fees for holders of NPDES permits issued under the Water Pollution Control Law;

  --The sunset of license fees for public water system licenses issued under the Safe Drinking Water Law;

  --The establishment of a higher cap on the total fee due for plan approval for a public water supply system under the Safe Drinking Water Law and the decrease of that cap at the end of the two years;

  --The levying of higher fees, and the decrease of those fees at the end of the two years, for state certification of laboratories and laboratory personnel for purposes of the Safe Drinking Water Law;

  --The levying of higher fees, and the decrease of those fees at the end of the two years, for applications and examinations for certification as operators of water supply systems or wastewater systems under the Safe Drinking Water Law or the Water Pollution Control Law, as applicable, and eliminates a fee schedule for those purposes that has expired; 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.

- Establishes requirements and procedures governing the distribution of federal moneys that are disbursed for purposes of compensating EPA and the Department of Agriculture for administering the NPDES program.

- Establishes requirements specifying what must be submitted with a section 401 water quality certification application and procedures and

time frames for issuance or denial of a section 401 water quality certification.

- Generally subjects standards and procedures that are used to evaluate mitigation proposals to review under the Administrative Procedure Act in order to have the force of law.

- Establishes certain mitigation requirements for impacts to wetlands and streams.

- Establishes an application fee of $200 for a section 401 water quality certification, and requires the payment of review fees of $500 per each acre of wetland to be impacted; $3 per linear foot of each ephemeral stream to be impacted, $6 per linear foot of each intermittent stream to be impacted, and $10 per linear foot of each perennial stream to be impacted, or $200, whichever is greater; and $3 per cubic yard of dredged or fill material to be moved with respect to a lake.

- Caps the total fees for a section 401 water quality certification at $5,000 for counties, townships, and municipal corporations and $25,000 for all other applicants, requires proceeds from the fees to be credited to the existing Surface Water Protection Fund, and exempts state agencies and projects authorized by general or nationwide permits issued by the U.S. Army Corps of Engineers from the fees.

- Requires the issuance, denial, renewal, suspension, and revocation of certifications of certified professionals under the Voluntary Action Program Law to be published on the Agency's web site and in the Agency's weekly review rather than in newspapers of general circulation as in current law.

- Allows the Director to suspend or revoke the certification of certified professionals for specified violations in accordance with rules adopted under the Voluntary Action Program Law rather than in accordance with the Environmental Protection Agency Law.

- Creates the Clean Diesel School Bus Fund consisting of money from gifts, grants, and contributions for the purpose of adding pollution control equipment to diesel-powered school buses, requires the Director to use money in the Fund to make grants to Ohio school districts for the purpose of adding pollution control equipment to diesel-powered buses and to pay

EPA's related administrative costs, requires the Director to give priority to school districts designated as nonattainment for the fine particulate national ambient air quality standard, and allows the Director to make grants to school districts to maintain pollution control equipment on school buses and to offset the additional costs of using ultra-low sulfur diesel fuel.

Motor vehicle inspection and maintenance program

(R.C. 3704.035, 3704.14, 3704.142 (repealed), 3704.143, 3704.17 (repealed), 3704.99, 4503.103, and 5552.01)

Under current law, the Ohio Environmental Protection Agency (OEPA) oversees the implementation of an enhanced motor vehicle inspection and maintenance program in 14 counties in the state in the Cleveland-Akron, Cincinnati, and Dayton metropolitan areas. The program operates under the name E-Check and is designed to comply with the federal Clean Air Act Amendments. Motor vehicle inspections are conducted under the program by a contractor selected pursuant to requirements established in current law. There is a separate contract governing each metropolitan area in which the program is operating. Current law establishes numerous specific requirements that govern the program.

The current contracts for the program expire on December 31, 2005. Under existing law, the Director of Environmental Protection cannot renew the contracts or enter into new contracts. In addition, upon the expiration or termination of the contracts, the Director must terminate the program and cannot implement a new program unless the program is authorized by the General Assembly. The bill revises those prohibitions and requirements in order to provide for the continuation of the program in a portion of the state as discussed below.

In providing for the continuation of the program, the bill eliminates many of the existing specific requirements related to it, replacing those requirements with more general authority granted to OEPA. Under that authority, the Director must continue to implement an enhanced motor vehicle inspection and maintenance program in counties in which an enhanced program is federally mandated. The program must operate for a period of two years beginning on January 1, 2006, and ending on December 31, 2007, and is required to be substantially similar to the enhanced program implemented in those counties under the contract that is scheduled to expire on December 31, 2005. The bill prohibits the Director from implementing a motor vehicle inspection and maintenance program in any county other than a county in which the program is federally

mandated. Further, the bill specifically states that the enhanced program established under the bill expires on December 31, 2007, and cannot be continued beyond that date unless otherwise federally mandated.

Under the bill, the enhanced program, at a minimum, must do all of the following:

(1) Comply with the federal Clean Air Act;

(2) Provide for the extension of a contract for a period of two years beginning on January 1, 2006, and ending on December 31, 2007, with the contractor who conducted the enhanced motor vehicle inspection and maintenance program in those federally mandated counties pursuant to a contract that is scheduled to expire on December 31, 2005;

(3) Provide for the issuance of inspection certificates; and

(4) Provide for a new car exemption for motor vehicles four years old or newer and provide that a new motor vehicle is exempt for four years regardless of whether legal title to the motor vehicle is transferred during that period.

Under existing law, if the General Assembly authorizes a new program, that program must include a new car exemption for motor vehicles five years old or newer. As indicated above, the bill instead requires the program to include a new car exemption for motor vehicles four years old or newer.

The bill requires the Director to adopt rules in accordance with the Administrative Procedure Act that the Director determines are necessary to implement the enhanced program. The Director may continue to implement and enforce rules pertaining to the enhanced motor vehicle inspection and maintenance program previously implemented, provided that the rules do not conflict with the requirements established in the bill.

The bill creates the Motor Vehicle Inspection and Maintenance Fund, consisting of money received by the Director from any fees for inspections that are established in rules adopted under the bill. The Fund is a continuation of the Fund of the same name that exists in current law. The Director must use money in the Fund solely for the implementation, supervision, administration, operation, and enforcement of the enhanced motor vehicle inspection and maintenance program.

Finally, the bill makes several technical changes necessitated by the repeal of the statutes governing the current program.

Solid waste disposal fees

Introduction

Currently, there are two state fees levied on the disposal of solid wastes. The first is a $1 per-ton fee, of which one-half of the proceeds must be deposited in the state treasury to the credit of the Hazardous Waste Facility Management Fund and one-half of the proceeds must be deposited in the state treasury to the credit of the Hazardous Waste Clean-up Fund. Both funds are administered by the Environmental Protection Agency (EPA). The second fee is another $1 per-ton fee that is used to fund the EPA's solid and infectious waste and construction and demolition debris management programs. Solid waste disposal fees are collected by the owners and operators of solid waste disposal facilities as trustees for the state.

New solid waste disposal fee

(R.C. 3734.57 and 3745.015)

The bill establishes a new solid waste disposal fee of $1.50 per ton. Money from this new fee is required to be deposited in the state treasury to the credit of the Environmental Protection Fund, which is created by the bill. Money in the Fund is to be used by the EPA to pay its costs associated with administering and enforcing, or otherwise conducting activities under, the Environmental Protection Agency Law, the Air Pollution Control Law, the Solid, Hazardous, and Infectious Waste Law, the Voluntary Action Program Law, the Low-Level Radioactive Waste Law, the Radiation Control Program Law, the Emergency Response and Planning Law, the Hazardous Substances Law, the Cessation of Regulated Operations Law, the Risk Management Program Law, the Water Pollution Control Law, the Safe Drinking Water Law, the Conservancy Districts Law, the County Water Supply Systems Law, the Watershed Districts Law, the Private Sewer Systems Law, the Ohio River Sanitation Compact Law, the Sanitary Districts Law, the Sewer Districts and County Sewers Law, the Regional Water and Sewer Districts Law, the Real Property Tax Law, and the Water Resources Council Law. Collection of the fee is to begin on July 1, 2005.

Continuation of existing solid waste disposal fee and expansion of use

(R.C. 3734.57)

As discussed above, current law levies a $1 per-ton fee on the disposal of solid wastes to fund the EPA's solid and infectious waste and construction and demolition debris management programs. The fee is scheduled to sunset on June 30, 2006. The bill continues the fee through June 30, 2008. Further, the bill

expands the purposes for which money generated from the fee may be used by allowing the money to be used to provide compliance assistance to small businesses.

Procedures for collecting and remitting state solid waste disposal fees

(R.C. 3734.57)

Current law requires the owner or operator of a solid waste disposal facility to collect state solid waste disposal fees as a trustee for the state and to prepare and file with the Director of Environmental Protection monthly returns indicating the total tonnage of solid wastes received for disposal at the gate of the facility and the total amount of fees collected. Not later than 30 days after the last day of the month to which such a return applies, the owner or operator must mail to the Director the return for that month together with the fees collected during that month as indicated on the return.

The bill requires the disposal fees to be collected by either a solid waste transfer facility or a solid waste disposal facility, whichever facility first receives the solid wastes. The fees are required to be collected by a transfer facility if the solid wastes are taken to the transfer facility prior to being transported to a solid waste disposal facility for disposal. The fees must be collected by a solid waste disposal facility if the solid wastes are not taken to a solid waste transfer facility prior to being transported to the disposal facility. The fees must be collected by the owner or operator of the solid waste transfer or disposal facility as a trustee for the state. However, the bill specifies that the fees do not apply to materials separated from a mixed waste stream for recycling by a generator or materials removed from the solid waste stream through recycling, as "recycling" is defined in rules adopted by the Director.

The bill applies the requirement that owners and operators of solid waste facilities submit a return to the owners and operators of both transfer and disposal facilities and retains the time frame within which the return must be submitted, but it specifies that the return must be filed each month and that the return must indicate the total tonnage of solid wastes received at the facility during that month and the total amount of fees required to be collected during that month. In addition, the bill specifies that the amount of fees required to be collected is equal to the total tonnage of solid wastes received at a facility multiplied by the fees levied. It requires the monthly returns to be filed on a form prescribed by the Director.

The bill also establishes a discount for the timely submission of a return and fees. Specifically, the bill provides that if the return is filed and the amount of fees due is paid in a timely manner as discussed above, the owner or operator may

retain a discount of ¾ of 1% of the total amount of the fees that are required to be paid as indicated on the return.

Current law authorizes the owner or operator of a solid waste facility to request an extension of not more than 30 days for filing the return and remitting the fees. If the fees are not remitted within 30 days after the last day of the month during which they were collected or are not remitted by the last day of an extension approved by the Director, the owner or operator must pay an additional 50% of the amount of the fees for each month that they are late. The bill clarifies that fees must be remitted within 30 days after the last day of the month to which the return applies, or by the last day of an extension, and provides that late submission of the return and the fees results in a loss of the ¾ of 1% timely payment discount (see above) and a charge of 10%, rather than 50%, of the amount of the fees for each month the fees are late. For purposes of calculating the late fee, the first month in which fees are late begins on the first day after the deadline has passed for timely submitting the return and fees, and one additional month is counted every 30 days thereafter.

Technical changes

(R.C. 3734.57)

The bill makes technical changes to the law related to state solid waste disposal fees and solid waste disposal fees levied by solid waste management districts. In particular, it consolidates repetitive language and eliminates provisions that are no longer applicable.

Definition of "solid wastes"

(R.C. 3734.01)

The bill excludes from the definition of "solid wastes" in the Solid, Infectious, and Hazardous Waste Law nontoxic, nonhazardous, unwanted fired and unfired, glazed and unglazed, structural shale and clay products. In addition, the bill excludes spent petroleum refinery hydrotreating, hydrorefining, and hydrocracking catalysts that are used to produce ferrovandium, iron nickel molybdenum, and calcium aluminate alloys for the steel, iron, and nickel industries unless the catalysts are disposed of at a licensed solid waste facility or are accumulated speculatively. The bill defines "accumulated speculatively" to have the same meaning as in rules adopted by the Director of Environmental Protection under the Solid, Infectious, and Hazardous Waste Law.

Exclusion from construction and demolition debris disposal fee

(R.C. 3714.07)

Current law establishes a 30¢ per cubic yard or 60¢ per ton fee, as applicable, on the disposal of construction and demolition debris at a construction and demolition debris facility or at a solid waste facility. However, the requirement that the fee be levied on the disposal of construction and demolition debris at a solid waste facility does not apply if there is no licensed construction and demolition debris facility within 40 miles of the solid waste facility as determined by a facility's property boundaries. The bill revises this exclusion by reducing the distance between facilities to within 35 miles rather than within 40 miles as in current law.

In addition, the bill exempts from the fee the disposal at a licensed construction and demolition debris facility of source separated materials that are exclusively composed of reinforced or nonreinforced concrete, asphalt, clay tile, building or paving brick, or building or paving stone when either of the following applies:

(1) The materials are placed within the limits of construction and demolition debris placement at the facility as specified in the facility's license, are not placed within the unloading zone of the facility, and are used as a fire prevention measure in accordance with rules adopted by the Director under the Construction and Demolition Debris Law; or

(2) The materials are not placed within the unloading zone of the facility or within the limits of construction and demolition debris placement at the facility as specified in the facility's license, but are used as fill material, either alone or in conjunction with clean soil, sand, gravel, or other clean aggregates, in legitimate fill operations for construction purposes at the facility or to bring the facility up to a consistent grade.

New construction and demolition debris disposal fees to fund projects of soil and water conservation districts and recycling and litter prevention program

(R.C. 1502.02, 1515.14, 3714.073, and 5733.122 (repealed))

Current law establishes construction and demolition debris disposal fees of 60¢ per ton or 30¢ per cubic yard, the proceeds of which must be used by the Environmental Protection Agency or a local board of health, as applicable, to administer the Construction and Demolition Debris Law and rules adopted under it. In addition, current law authorizes the Director of Environmental Protection to

adopt a fee of 10¢ per ton or 5¢ per cubic yard for certain ground water monitoring purposes related to construction and demolition debris facilities.

The bill establishes an additional 25¢ per ton or 12.5¢ per cubic yard fee on the disposal of construction and demolition debris and requires the proceeds of the new fee to be credited to the Soil and Water Conservation District Assistance Fund, which is created by the bill. The Fund must be used to provide funding to soil and water conservation districts as matching money for local contributions to the districts.

Further, the bill establishes a second additional fee of 75¢ per ton or 37.5¢ per cubic yard on the disposal of construction and demolition debris and requires the proceeds to be credited to the existing Recycling and Litter Prevention Fund, which is administered by the Division of Recycling and Litter Prevention in the Department of Natural Resources. The Division uses money in the Fund to operate its recycling and litter prevention program, which includes the awarding of grants.

Under current law, funding for the Recycling and Litter Prevention Fund comes from a corporate franchise tax on litter stream products. The bill retains that tax, but eliminates the crediting of receipts from the tax to the Fund.

The bill specifies that the two new construction and demolition debris disposal fees do not apply to the disposal of construction and demolition debris at a licensed solid waste facility if the owner or operator of the solid waste facility chooses to collect fees on the disposal of the construction and demolition debris that are identical to the fees that are collected under the Solid Waste Management Districts Law and the Solid, Infectious, and Hazardous Waste Law on the disposal of solid wastes at that facility.

Hazardous waste cleanups

Use of Environmental Protection Remediation Fund for cleanups

(R.C. 3734.20, 3734.21, 3734.22, and 3734.23)

Under current law, the Director of Environmental Protection may conduct investigations at locations where hazardous waste was treated, stored, or disposed of for the purpose of determining if the waste constitutes a substantial threat to public health or safety or is causing or contributing to air or water pollution or soil contamination and may conduct clean-up activities at such locations if he finds that such a threat exists. Further, the Director may acquire any hazardous waste facility or solid waste facility containing significant quantities of hazardous waste that because of the presence of hazardous waste constitutes an imminent and

substantial threat to public health or safety or results in air or water pollution or soil contamination. After acquisition the Director is required to perform closure or other measures necessary to abate conditions causing or contributing to air or water pollution or soil contamination or conditions that constitute a threat to public health or safety.

Current law requires all of these investigation, clean-up, and acquisition activities to be conducted with moneys in the Hazardous Waste Clean-up Fund. The bill authorizes the Director to expend moneys from the existing Environmental Protection Remediation Fund for those activities as well as the Hazardous Waste Clean-up Fund. Further, under the bill, moneys resulting from any agreement with a landowner to reimburse the Director for the costs of those activities or moneys recovered by the Director through judicial actions are required to be deposited in either the Hazardous Waste Clean-up Fund or the Environmental Protection Remediation Fund, from whichever Fund moneys were expended, rather than only the former Fund as in current law.

Environmental clean-up agreements

(R.C. 3734.22)

Current law authorizes the Director, before beginning to clean up any facility, to enter into an agreement with the owner of land on which the facility is located, or with the owner of the facility, specifying the measures to be performed and authorizing the Director, employees of the Environmental Protection Agency, or contractors retained by the Director to enter on the land and perform specified measures. Each agreement is required to contain provisions for the reimbursement of the state for the costs of the cleanup. Further, upon a breach of the reimbursement provisions by the owner of the land or facility, the Director must record the unreimbursed portion of the costs of cleanup at the office of the county recorder of the county in which the facility is located. Those recorded costs constitute a lien against the property on which the facility is located. The bill makes the reimbursement requirement optional. Thus, agreements may be entered into without a provision for reimbursement of the state's clean-up costs. Further, the requirement that the Director record unreimbursed costs upon breach of an agreement is also made optional by the bill.

Contract bidding requirements

(R.C. 3704.21 and 3704.23)

As discussed above, under current law, the Director may expend moneys to acquire property for the purpose of conducting clean-up activities or may conduct a cleanup without acquiring the property. In either case, the Director must

develop a plan for the cleanup. Such a plan may include entering into a contract with a contractor for purposes of the cleanup. Current law establishes bidding procedures for contractors if the cleanup is conducted on property acquired by the Director and under certain circumstances if the Director has not acquired property. The bill clarifies that the bidding procedures apply to all situations in which the Director conducts clean-up activities.

Exemption from DAS contracting requirements

(R.C. 123.01)

Current law requires the Director of Administrative Services to make contracts for and supervise the construction and repair of buildings under the control of a state agency with certain exceptions. The bill also exempts from this requirement any contracts for the construction of projects that are necessary to remediate conditions at a hazardous waste facility, solid waste facility, or other location at which the Director of Environmental Protection has reason to believe there is a substantial threat to public health or safety or the environment. The bill grants authority to enter into such contracts to the Director of Environmental Protection.

Exemption from fees for certain clean-up activities

(R.C. 3734.57 and 3734.573)

The bill specifies that state, solid waste management district, and local government solid waste disposal fees and solid waste management district solid waste generation fees do not apply to solid wastes, including, but not limited to, scrap tires, that are generated, transferred, or disposed of as a result of certain contracts providing for the expenditure of public funds concerning certain clean-up activities. Specifically, the fees do not apply to contracts entered into by the Administrator or Regional Administrator of the United States Environmental Protection Agency, the Director of Environmental Protection, or the Director of Administrative Services on behalf of the Director of Environmental Protection for the purpose of remediating conditions at a hazardous waste facility, solid waste facility, or other location at which the Administrator, Regional Administrator, or Director of Environmental Protection has reason to believe that there is a substantial threat to public health or safety or the environment or that conditions are causing or contributing to air or water pollution or soil contamination.

Repayment of clean-up costs to Hazardous Waste Clean-up Fund

(R.C. 3734.28 and 3745.12)

Under current law, the EPA is authorized to expend money from the Hazardous Waste Clean-up Fund to pay the costs of clean-up activities under the state statutes governing hazardous waste. Current law authorizes the EPA to recover the money expended for such a clean-up in a civil action. However, any money recovered is required to be deposited in the Immediate Removal Fund, which is used for other environmental clean-ups. The bill instead requires that money expended from the Hazardous Waste Clean-up Fund and recovered in a civil action be returned to the Hazardous Waste Clean-up Fund.

Scrap Tire Management Program

Fee on tire sales

(R.C. 3734.901)

Current law establishes a 50¢ per tire fee on the sale of tires. The fee provides revenue to defray the cost of administering and enforcing the law governing the management of scrap tires, rules adopted under that law, and terms and conditions of orders, variances, and licenses issued under that law; to abate accumulations of scrap tires; to make grants to promote research regarding alternative methods of recycling scrap tires and loans to promote the recycling or recovery of energy from scrap tires; and to defray the costs of administering the collection of the fee. Of the money generated from that collection, 96% must be deposited into the Scrap Tire Management Fund. The remaining 4% is generally used for administrative purposes and deposited in the Tire Fee Administrative Fund (see below). The fee is scheduled to sunset on June 30, 2006. The bill extends the sunset to June 30, 2011.

Funding for Department of Taxation's administration of fee on tire sales

(R.C. 3734.9010)

Under existing law, 4% of all amounts paid to the Treasurer of the State pursuant to the Scrap Tire Management Program must be certified directly to the credit of the Tire Fee Administrative Fund for appropriation to the Department of Taxation for use in paying the Department's costs in administering the fee on tires that is used to fund the Program. The bill reduces the amount of money that the Department receives from 4% to 2%.

Cost recovery for scrap tire cleanups

(R.C. 3734.85)

Current law establishes procedures by which the Director of Environmental Protection may order the removal of accumulations of scrap tires for transportation to a scrap tire storage, monocell, monofill, or recovery facility. If the person to whom an order is given fails to comply with the order, the Director may perform the necessary removal actions. In that case, the person to whom the removal order is issued is liable to the Director for the costs incurred by him in conducting the removal and is liable for other costs associated with the removal. Upon the written request of the Director, the Attorney General must bring a civil action against the person responsible for the accumulation of the scrap tires that were the subject of the removal operation for the recovery of the costs of the removal action. If the Director is unable to recover the costs through a civil action, he must certify them to the county recorder of the county in which the accumulation of scrap tires was located. The recorder must record the costs as a lien on the property. The costs constitute a lien until discharged.

The bill alters the procedures related to cost recovery by requiring the Director to keep an itemized record of costs and record the costs at the office of the county recorder after completing the actions for which the costs were incurred rather than after a civil action has been adjudicated.

Fees for air pollution control permits to install based on process weight rates

(R.C. 3745.11(F))

Current law requires a person to pay a fee for a permit to install under the Air Pollution Control Law for processes that are used in specified industries that are identified by applicable standard industrial classification codes. The specified industries include all of the following: bituminous coal and lignite mining; bituminous coal and lignite mining services; dimension stone; crushed and broken limestone; crushed and broken stone, not elsewhere classified; construction sand and gravel; industrial sand; cut stone and stone products; and minerals and earth, ground or otherwise treated. The bill revises the industrial classifications by eliminating seven classifications and adding nine classifications. The table below shows the current classifications eliminated by the bill and the classifications added by it:

Industrial classifications eliminated by the bill	Industrial classifications added by the bill
1211 Bituminous coal and lignite mining	Major group 10, metal mining
1213 Bituminous coal and lignite mining services	Major group 12, coal mining
1411 Dimension stone	Major group 14, mining and quarrying of nonmetallic minerals
1422 Crushed and broken limestone	
1427 Crushed and broken stone, not elsewhere classified	Industry group 204, grain mill products
1442 Construction sand and gravel	2873 Nitrogen fertilizers
1446 Industrial sand	2874 Phosphatic fertilizers
	4221 Grain elevators (storage only)
	5159 Farm related raw materials
	5261 Retail nurseries and lawn and garden supply stores

The bill retains two classifications: 3281 Cut stone and stone products, and 3295 Minerals and earth, ground or otherwise treated.

Extension of various fee-related provisions

Synthetic minor facility emissions fees

(R.C. 3745.11(D))

Under current law, each person who owns or operates a synthetic minor facility must pay an annual fee based on the sum of the actual annual emissions from the facility of particulate matter, sulfur dioxide, nitrogen dioxide, organic compounds, and lead in accordance with a fee schedule. "Synthetic minor facility" means a facility for which one or more permits to install or permits to operate have been issued for the air contaminant sources at the facility that include terms and conditions that lower the facility's potential to emit air contaminants below the major source thresholds established in rules adopted under existing law. Current law requires the fee to be paid through June 30, 2006. The bill extends the fee through June 30, 2008.

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, 2006, 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, 2006. Under the bill, the first tier fee is extended through June 30, 2008, and the second tier applies to applications submitted on or after July 1, 2008.

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, 2004, and January 30, 2005. The act extends payment of the fees and the fee schedules to January 30, 2006, and January 30, 2007.

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, 2004, and January 30, 2005. The bill continues the surcharge and requires it to be paid annually by January 30, 2006, and January 30, 2007.

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. The fee is due annually not later than January 30, 2004, and January 30, 2005. The bill continues the fee and requires it to be paid annually by January 30, 2006, and January 30, 2007.

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, 2006, and has to be paid annually prior to January 31, 2006. The bill extends the initial license and license renewal fee through June 30, 2008, and requires the fee to be paid annually prior to January 31, 2008.

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. Current law establishes a fee for such plan approval of $150 plus 0.35 of 1% of the estimated project cost. The fee cannot exceed $20,000 through June 30, 2006, and $15,000 on and after July 1, 2006. The bill specifies that the $20,000 limit applies to persons applying for plan approval

through June 30, 2008, and the $15,000 limit applies to persons applying for plan approval on and after July 1, 2008.

Current law establishes two schedules of fees that the Environmental Protection Agency 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, 2006, and a schedule with lower fees is applicable on and after July 1, 2006. The bill continues the higher fee schedule through June 30, 2008, and applies the lower fee schedule to evaluations conducted on or after July 1, 2008. The bill continues through June 30, 2008, a provision stating that an individual laboratory cannot be assessed a fee more than once in a three-year period unless the person requests the addition of analytical methods or analysts, in which case the person must pay $1,800 for each additional survey requested.

Certification of operators of water supply systems or wastewater systems

(R.C. 3745.11(O))

Current law establishes a $25 application fee through November 30, 2003, to take the examination for certification as an operator of a water supply system under the Safe Drinking Water Law or a wastewater system under the Water Pollution Control Law. Upon approval from the Director that an applicant is eligible to take the examination, the applicant must pay a fee in accordance with a fee schedule that is in existence through November 30, 2003. Current law then establishes a $45 application fee to take the examination for certification as an operator of a water supply system or a wastewater system beginning December 1, 2003, through November 30, 2006, and a $25 application fee on and after December 1, 2006. Upon approval from the Director that an applicant is eligible to take the examination, the applicant must pay a fee in accordance with a statutory schedule. A higher schedule is established through November 30, 2006, and a lower schedule applies on and after December 1, 2006. The bill eliminates the expired application fee and fee schedule, extends the higher application fee discussed above through November 30, 2008, applies the lower application fee beginning December 1, 2008, extends the existing higher fee schedule through November 30, 2008, and applies the lower fee schedule beginning December 1, 2008.

Application fees under Water Pollution Control Law and Safe Drinking Water Law

(R.C. 3745.11(S))

Current law requires any person applying for a permit, other than an NPDES permit, a variance, or plan approval under the Safe Drinking Water Law or the Water Pollution Control Law to pay a nonrefundable fee of $100 at the time the application is submitted through June 30, 2006, and a nonrefundable fee of $15 if the application is submitted on or after July 1, 2006. The bill extends the $100 fee through June 30, 2008, and applies the $15 fee on and after July 1, 2008.

Similarly, under existing law, a person applying for an NPDES permit through June 30, 2006, must pay a nonrefundable fee of $200 at the time of application. On and after July 1, 2006, the nonrefundable application fee is $15. The bill extends the $200 fee through June 30, 2008, and applies the $15 fee on and after July 1, 2008.

Distribution of federal funding for NPDES program administration

(Section 206.27)

The bill provides that on or after the date on which the United States Environmental Protection Agency (USEPA) approves the NPDES program to be administered by the Department of Agriculture under the Concentrated Animal Feeding Facilities Law, the Director of Environmental Protection, the Director of Agriculture, and the Director of Budget and Management must calculate the amount of compensation to be made to the Environmental Protection Agency and to the Department of Agriculture from federal moneys disbursed and received for purposes of administering the NPDES program and must calculate the amount of state matching funding that is required for administering that program. The Environmental Protection Agency and the Department of Agriculture may apply separately to the USEPA for each agency's respective share of the federal moneys. If the USEPA awards all federal moneys for administration of the NPDES program to one agency, that agency must transfer the appropriate amount of moneys to the other agency in accordance with the calculations of compensation made pursuant to the bill.

Section 401 water quality certifications

(R.C. 3745.114, 6111.30, 6111.31, and 6111.32)

Background

Under the Clean Water Act (also known as the Federal Water Pollution Control Act), persons that propose to dredge or fill waters of the state, including wetlands, must apply to the United States Army Corps of Engineers (Army Corps) for a permit under section 404 of that Act.[120] The permit commonly is referred to as a "section 404 permit." Generally, a section 404 permit is required before a person may dredge or fill waters of the state, including wetlands. In addition, the Clean Water Act requires persons to receive a water quality certification under section 401 of the Act from the state that the dredging or filling will not result in a violation of certain water quality standards. The receipt of the certification from the state is a precondition to the issuance of the section 404 permit issued by the Army Corps. This certification is commonly referred to as a section 401 water quality certification. The bill defines "section 401 water quality certification" to mean certification pursuant to section 401 of the Clean Water Act and the state Water Pollution Control Law and rules adopted under it that any discharge, as set forth in section 401, will comply with sections 301, 302, 303, 306, and 307 of the Clean Water Act.

Currently, most requirements and procedures pertaining to the issuance of section 401 water quality certifications are included in rules adopted by the Director of Environmental Protection under the Water Pollution Control Law. The bill establishes statutory procedures for the issuance of section 401 water quality certifications for impacts to wetlands, streams, and other waters of the state. The bill's requirements replace the current rules pertaining to the procedures for the issuance of section 401 water quality certifications.

Application procedures and requirements

Under the bill, applications for a section 401 water quality certification must be submitted on forms provided by the Director of Environmental Protection and must include all information required on those forms as well as all of the following:

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[120] *The Clean Water Act does not regulate isolated wetlands. State law thus has established a permit program for regulation of impacts to isolated wetlands. The program includes a system of tiered review for different categories of isolated wetlands.*

(1) A copy of a letter from the United States Army Corps of Engineers documenting its jurisdiction over the wetlands, streams, or other waters of the state that are the subject of the application;

(2) If the project involves impacts to a wetland, a wetland characterization analysis consistent with the Ohio Rapid Assessment Method;

(3) If the project involves a stream for which a specific aquatic life use designation has not been made, a use attainability analysis;

(4) A specific and detailed mitigation proposal, including the location and proposed legal mechanism for protecting the property in perpetuity;

(5) Applicable fees;

(6) Site photographs;

(7) Adequate documentation confirming that the applicant has requested comments from the Department of Natural Resources and the United States Fish and Wildlife Service regarding threatened and endangered species, including the presence or absence of critical habitat;

(8) Descriptions, schematics, and appropriate economic information concerning the applicant's preferred alternative, nondegradation alternatives, and minimum degradation alternatives for the design and operation of the project;

(9) The applicant's investigation report of the waters of the United States in support of a section 404 permit application concerning the project; and

(10) A copy of the United States Army Corps of Engineers' public notice regarding the section 404 permit application concerning the project.

Not later than 15 business days after the receipt of an application for a section 401 water quality certification, the Director must review the application to determine if it is complete and must notify the applicant in writing as to whether the application is complete. If the Director fails to notify the applicant within 15 business days regarding the completeness of the application, the application is considered complete. If the Director determines that the application is not complete, the Director must include with the written notification an itemized list of the information or materials that are necessary to complete the application. If the applicant fails to provide the information or materials within 60 days after the Director's receipt of the application, the Director may return the incomplete application to the applicant and take no further action on the application. If the application is withdrawn or returned to the applicant because it is incomplete, the

Director must return the review fee levied under the bill to the applicant, but must retain the application fee (see, "***Fees***," below).

The time period for approving or denying a section 401 water quality certification (see below) does not apply until the application is determined to be complete by the Director. Determining that an application is complete does not constitute a technical review or approval of the application.

Not later than 21 days after a determination that an application is complete, the applicant must publish public notice of the Director's receipt of the complete application in a newspaper of general circulation in the county in which the project that is the subject of the application is located. The public notice must be in a form acceptable to the Director. The applicant is required to promptly provide the Director with proof of publication. The applicant may choose, subject to review by and approval of the Director, to include in the public notice an advertisement for an antidegradation public hearing on the application pursuant to requirements in current law regarding antidegradation review. A public comment period of 30 days is required following the publication of the public notice.

Under the bill, if the Director determines that there is significant public interest in a public hearing as evidenced by the public comments received concerning the application and by other requests for a public hearing on the application, the Director or the Director's representative must conduct a public hearing concerning the application. The applicant must publish notice of the public hearing, subject to review and approval by the Director, at least 30 days prior to the date of the hearing in a newspaper of general circulation in the county in which the project that is the subject of the application is to take place. If a public hearing is requested concerning an application, the Director must accept comments concerning the application until five business days after the public hearing. Any public hearing must take place not later than 100 days after the application is determined to be complete.

The Director must forward all public comments concerning an application that are received through the public involvement process to the applicant not later than five business days after receipt of the comments by the Director. The applicant must respond in writing to written comments or to deficiencies identified by the Director during the course of reviewing the application not later than 15 days after receiving or being notified of them. The Director must issue or deny a section 401 water quality certification not later than 150 days after the application for the certification is received. The Director must provide an applicant for a section 401 water quality certification with an opportunity to review the certification prior to its issuance.

The bill requires the Director to maintain an accessible database that includes environmentally beneficial water restoration and protection projects that may serve as potential mitigation projects for projects in the state for which a section 401 water quality certification is required. A project's inclusion in the database does not constitute an approval of the project.

Use of standards and procedures to evaluate mitigation proposals

Under the bill, all substantive wetland, stream, or lake mitigation standards, criteria, scientific methods, processes, or other procedures or policies that are used in a uniform manner by the Director of Environmental Protection in evaluating the adequacy of a mitigation proposal contained in an application for a section 401 water quality certification must be adopted and reviewed in accordance with the Administrative Procedure Act's rule adoption provisions before those standards, criteria, or scientific methods have the force of law. Until that time, any such mitigation standards, criteria, scientific methods, processes, or other procedures or policies that are used by or approved for use by the Director to evaluate, measure, or determine the success, approval, or denial of a mitigation proposal, but that have not been subject to review under those provisions of the Administrative Procedure Act cannot be used as the basis for any certification or permit denial or as a standard applied to mitigation unless the applicant has been notified in advance that additional mitigation standards, criteria, scientific methods, processes, or procedures will be considered as part of the review process.

Mitigation requirements

The bill establishes mitigation requirements for wetland or stream impacts for which a section 401 water quality certification has been issued. The requirements vary depending on what type of body of water is being impacted. For impacts to one acre or less of category 1 or category 2 wetlands, the applicant must conduct mitigation within the same United States Army Corps of Engineers district as the impacts. As used in the bill, "category 1 wetland" and "category 2 wetland" mean those categories described in rules adopted under the Water Pollution Control Law and as determined to be a category 1 or category 2 wetland, respectively, through application of the Ohio Rapid Assessment Method (ORAM) for Wetlands version 5.0, including the ORAM version 5.0 quantitative score calibration dated August 15, 2000, unless an application for a section 401 water quality certification was submitted prior to February 28, 2001, in which case the permit applicant may elect to proceed in accordance with the ORAM version 4.1. ORAM is a scoring system used by the Ohio Environmental Protection Agency (OEPA) to determine into which category a given wetland fits.

For all other wetland or stream impacts, mitigation must occur in the following preferred order:

(1) On-site mitigation, provided that it is practicable and, if applicable, will provide wetland functions and values;

(2) Mitigation within the eight-digit United States Geological Survey watershed or within the service area of a mitigation bank approved by a mitigation bank review team appointed by the Director of Environmental Protection;

(3) Mitigation in an adjacent eight-digit United States Geological Survey watershed;

(4) Mitigation within the same United States Army Corps of Engineers district as the impacts.

Fees

Currently, there is no authority in state law for the OEPA to charge fees for the issuance of section 401 water quality certifications. The bill establishes a schedule of fees applicable to section 401 water quality certifications by requiring a person applying for a certification to pay an application fee of $200 at the time of application plus any of the following fees, as applicable:

(1) If the water resource to be impacted is a wetland, a review fee of $500 per acre of wetland to be impacted;

(2) If the water resource to be impacted is a stream, one of the following fees, as applicable:

(a) For an ephemeral stream, a review fee of $3 per linear foot of stream to be impacted, or $200, whichever is greater;

(b) For an intermittent stream, a review fee of $6 per linear foot of stream to be impacted, or $200, whichever is greater;

(c) For a perennial stream, a review fee of $10 per linear foot of stream to be impacted, or $200, whichever is greater.

The bill defines "ephemeral stream" to mean a stream that flows only in direct response to precipitation in the immediate watershed or in response to the melting of a cover of snow and ice and that has channel bottom that is always above the local water table. "Intermittent stream" is defined to mean a stream that is below the local water table and flows for at least a part of each year and that obtains its flow from both surface runoff and ground water discharge. Finally, "perennial stream" means a stream or a part of a stream that flows continuously during all of the calendar year as a result of ground water discharge or surface

water runoff. "Perennial stream" does not include an intermittent stream or an ephemeral stream.

(3) If the water resource to be impacted is a lake, a review fee of $3 per cubic yard of dredged or fill material to be moved.

One-half of all applicable review fees levied under the bill are due at the time of application for a section 401 water quality certification. The remainder of the fees must be paid upon the issuance of the certification. The total fee paid under the bill cannot exceed $25,000 per application. However, if the applicant is an Ohio county, township, or municipal corporation, the total fee cannot exceed $5,000 per application. All money collected from the fees must be deposited in the state treasury to the credit of the Surface Water Protection Fund created in current law for the purpose of funding the OEPA's administration of surface water protection programs.

The bill specifies that the new fees do not apply to state agencies or to projects that are authorized by the OEPA's general certifications of nationwide permits or general permits issued by the Army Corps.

Certification of professionals under Voluntary Action Program Law

(R.C. 3746.04 and 3746.071)

Current law requires the Director of Environmental Protection to adopt rules under the Voluntary Action Program Law that establish standards governing the conduct of certified professionals, criteria and procedures for the certification of professionals to issue no further action letters under that Law, and criteria for the suspension and revocation of those certifications. The issuance, denial, suspension, and revocation of those certifications are subject to the procedures established in the Environmental Protection Agency Law. Under that Law, such actions must be published in a newspaper of general circulation. The bill adds that certification renewals also must be published. However, the bill specifies that, in lieu of publishing an action regarding a certification in a newspaper of general circulation as required under the Environmental Protection Agency Law, an issuance, denial, renewal, suspension, or revocation must be published on the Environmental Protection Agency's web site and in the Agency's weekly review not later than 15 days after the date of the issuance, denial, renewal, suspension, or revocation of the certification and not later than 30 days before a hearing or public meeting concerning the action.

Current law allows the Director, in accordance with the Environmental Protection Agency Law, to suspend or revoke a certified professional's certification for a violation of or failure to comply with any or several

requirements and obligations governing certified professionals established under the Voluntary Action Program Law. The bill instead allows the Director to suspend or revoke a certification in accordance with rules adopted under the Voluntary Action Program Law rather than in accordance with the Environmental Protection Agency Law.

Clean Diesel School Bus Fund

(R.C. 3704.144)

The bill creates the Clean Diesel School Bus Fund in the state treasury consisting of money from gifts, grants, and contributions for the purpose of adding pollution control equipment to diesel-powered school buses, including contributions made pursuant to the settlement of an administrative or civil action brought at the request of the Director of Environmental Protection under the Air Pollution Control Law, the Construction and Demolition Debris Law, the Solid, Infectious, and Hazardous Waste Law, the Safe Drinking Water Law, or the Water Pollution Control Law. The Director must use money credited to the Fund to make grants to school districts in the state for the purpose of adding pollution control equipment to diesel-powered school buses and to pay the Environmental Protection Agency's costs incurred in administering the grant program. In addition, the Director may use money credited to the Fund to make grants to school districts for the purpose of maintaining pollution control equipment that is installed on diesel-powered school buses and to pay the additional cost incurred by a school district for using ultra-low sulfur diesel fuel instead of diesel fuel for the operation of diesel-powered school buses.

In making grants, the Director must give priority to school districts that are located in a county that is designated as nonattainment by the United States Environmental Protection Agency for the fine particulate national ambient air quality standard under the federal Clean Air Act. In addition, the Director may give a higher priority to a school district that employs additional measures that reduce air pollution from the district's school bus fleet.

The bill requires the Director to adopt rules establishing procedures and requirements that are necessary to implement the grant program, including procedures and requirements governing applications for grants.

GENERAL ASSEMBLY

- Requires state agencies that must submit a report, recommendation, or other similar document to the General Assembly in a hard copy format

to, when technologically feasible, submit it through electronic means, rather than in the hard copy format, and display it on the agency's web site.

Submission of legislative reports via electronic means

(R.C. 101.68(D))

The bill provides that, notwithstanding any statutory provision to the contrary, whenever a statute or rule requires a state agency to submit a report, recommendation, or other similar document to the General Assembly or its members, or a chamber of the General Assembly or the chamber's members, in a paper, book, or other hard copy format, the report, recommendation, or other similar document, to the extent technologically feasible, must be submitted through electronic means rather than in the hard copy format. Furthermore, the agency must display the report, recommendation, or other similar document on a web site it maintains.

DEPARTMENT OF HEALTH

- Requires the Director of Health to designate certain rural hospitals as critical access hospitals.
- Repeals the requirement that the Director make financial assistance available to county tuberculosis control programs.
- Eliminates the option that a county or district tuberculosis control unit be a county tuberculosis program receiving financial assistance from the Director.
- Repeals the requirement that the Director reimburse boards of county commissioners for the cost of detaining indigent persons with tuberculosis.
- Requires the Director to adopt rules to implement the "Choose Life" Fund.

- Provides that it is not the General Assembly's intent that the Department of Health create a new position to implement and administer the "Choose Life" Fund.

- Extends, until July 1, 2007, the scheduled termination of the moratorium on reviewing applications for certificates of need for long-term care beds.

- Requires specified health and safety standards and periods of operation to be met for a CON application to be reviewed under the moratorium's provisions requiring continued review of applications for the relocation of long-term care beds within the same county.

- Adds psychiatrists to the primary care specialists eligible for the Physician Loan Repayment Program to fill a primary care need in underserved areas of the state.

- Requires the Department to administer the J-1 Visa Waiver Program to recruit foreign-born physicians educated in the United States to serve in underserved areas of the state.

- Requires the Department to charge a fee of $3,571 for each J-1 Visa Program application it accepts.

- Increases the fees for birth records, death certificates, and divorce and dissolution of marriage decrees to provide funds for grants for family violence shelters.

- Authorizes the Public Health Council to adopt rules establishing an inspection fee for hospice care facilities not to exceed $1,750.

- Increases the application and annual renewal licensing and inspection fee for nursing homes and residential care facilities.

- Authorizes the Department to revoke or refuse to issue a license to operate a nursing home or residential care facility if the licensee or applicant demonstrates a long-standing pattern of violations of Ohio law governing nursing homes and residential care facilities that caused physical, emotional, mental, or psychosocial harm to one or more residents.

- Prohibits the transfer or assignment of the right to operate a nursing home during the adjudication of a license revocation.

- Exempts Medicare-qualified "religious nonmedical health care institutions" that rely solely on religious methods of healing from the nursing home laws requiring use of nurse aides who have undergone nurse aide training and competency evaluation programs.

- Eliminates a requirement that the Director convene the Nursing Facility Regulatory Reform Task Force if the Secretary of the U.S. Department of Health and Human Services approves development of an alternative regulatory procedure for nursing facilities subject to federal regulation.

- Increases the adult care facility inspection fee to $20 per bed (from $10) and requires that the fee be paid following each inspection and each issuance or renewal of a license.

- Increases radiology registration and inspection fees.

- Removes an exemption from applying for Medicaid that applies to applicants for the Program for Medically Handicapped Children for whom applying for Medicaid violates their religious beliefs.

- Requires the Public Health Council to revise rules to return financial eligibility requirements to the levels in effect prior to October 13, 2003.

- Creates the Legislative Committee on the Future Funding of the Bureau for Children with Medical Handicaps.

- Reimburses free clinics for 80%, up to $20,000, of the premiums the clinics pay for medical liability insurance coverage.

Critical access hospitals

(R.C. 3701.073)

Under federal Medicare law, certain rural hospitals must be designated as critical access hospitals in order to participate in the Medicare Rural Hospital Flexibility Program. The bill requires the Director of Health to designate certain hospitals registered as acute care hospitals with the Department of Health as critical access hospitals if the hospitals meet the following requirements:

(1) Do not have more than 25 acute care and swing beds in use at any time for the furnishing of extended care or acute care inpatient services;

(2) Have a length of stay not more than 96 hours per patient, on an annual average basis;

(3) Provide inpatient, outpatient, emergency, laboratory, radiology, and 24-hour emergency care services;

(4) Have network agreements for patient referral and transfer, a communication system for telemetry systems, electronic sharing of patient data, provision for emergency and non-emergency transportation, and assure credentialing and quality assurance;

(5) Was certified as a critical access hospital by the Centers for Medicare and Medicaid Services between January 1, 2001 and December 31, 2005, or is located in a rural area.[121]

Funding for county tuberculosis control programs and detention costs

(R.C. 339.72, 339.88, and 3701.146; R.C. 339.77 (repealed))

County tuberculosis programs

Each board of county commissioners is required to provide for the county to be served by a tuberculosis control unit by designating a county tuberculosis control unit or by entering into an agreement with one or more boards of county commissioners of other counties under which the boards jointly designate a district tuberculosis control unit. The entity designated the county or district tuberculosis control unit may be (1) a communicable disease control program operated by a local board of health, (2) a tuberculosis clinic established by a board of county commissioners, or (3) a tuberculosis program operated by a county receiving funds the Director of Health makes available for programs the Director determines acceptable.

The bill repeals law that requires the Director to make financial assistance available for acceptable county tuberculosis programs and eliminates such programs from the entities that may be designated as a county or district tuberculosis control unit.

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[121] *R.C. 3701.073. An area is designated as "rural" if: (1) It is an area within an Ohio metropolitan area designated as a rural area by the U.S. Department of Health and Human Services in accordance with certain requirements of federal rules, (2) It is a non-metropolitan county as designed by the U.S. Office of Management and Budget (OMB), (3) It is in a rural ZIP code within a metropolitan county as designated by OMB.*

The law to be repealed regarding financial assistance for acceptable county tuberculosis programs requires the Director of Health to make annual payments to boards of county commissioners on a per-active-case basis. The annual payment to a county must equal the funds appropriated for this purpose divided by the number of the county's active cases, as determined by the Director, for which a course of treatment the Director determines is appropriate was completed the previous fiscal year.[122]

Detention of persons with tuberculosis

A person with tuberculosis is subject to public health requirements, including a requirement that the person complete an entire treatment regimen that must include a course of antituberculosis medication. If the individual fails to take the medication, a county or district tuberculosis control unit must establish a procedure under which the person is required to be witnessed ingesting the medication by individuals the control unit designates. The control unit has the authority to issue an order compelling a person to comply with the public health requirements and to seek an injunction if the order is violated. If the person fails to comply with the injunction, the control unit may request that a probate court issue an order granting the control unit the authority to detain the person in a hospital or other place for examination and treatment. A control unit also has authority to issue an emergency detention order when the unit has reasonable grounds to believe that a person who has, or is suspected of having, tuberculosis poses a substantial danger to the health of other persons.

Current law permits a board of county commissioners to apply to the Director of Health for reimbursement of expenses of detaining indigent persons with tuberculosis. The Director must reimburse a board for the cost of detaining such indigents. Total payment cannot exceed the amount of funds appropriated for the cost of detention. Amounts appropriated for detention unexpended by the end of a fiscal year must be disbursed to boards of county commissioners for tuberculosis programs.

The bill repeals the law that requires the Director to reimburse boards of county commissioners for the cost of detaining indigent persons with tuberculosis and the law permitting the boards to apply for reimbursement.

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[122] *To justify the payments, the Director or Director's authorized agent, on request, is to be allowed access to a patient's medical records to verify the accuracy of information submitted as part of the process of receiving the payments. The payments must be denied if access to the medical records is denied or the records are unavailable.*

Administration and implementation of the "Choose Life" Fund

(R.C. 3701.65)

Under current law recently enacted by Sub. S.B. 156 of the 125th General Assembly, a person may apply to the Registrar of Motor Vehicles for the issuance of "Choose Life" license plates. For each application for registration and renewal the Registrar receives for these plates, the Registrar must collect a contribution of $20 and transmit it to the Treasurer of State for deposit in the "Choose Life" Fund. Money in the Fund is to be annually distributed by the Director of Health to any eligible private, nonprofit organization that completes an application form developed by the Director and is selected for funding.

The bill requires the Director of Health to adopt rules to implement the "Choose Life" Fund. It also provides that it is not the General Assembly's intent that the Department of Health create a new position to implement and administer the "Choose Life" Fund but that it use existing personnel.

Certificate of Need moratorium on long-term care beds

(R.C. 3702.141, 3702.51, and 3702.68; Sections 403.23 and 403.24)

Current law prohibits building or expanding the capacity of a long-term care facility without a certificate of need (CON) issued by the Director of Health. The Director is prohibited from accepting an application for a CON to recategorize hospital beds as skilled nursing beds. The Director is also prohibited from accepting certain CON applications until July 1, 2005.

The bill continues, until July 1, 2007, a provision scheduled to expire July 1, 2005, prohibiting the Director from accepting for review a CON application for any of the following purposes:

(1) Approval of beds in a new health care facility or an increase in beds in an existing health care facility, if the beds are proposed to be licensed as nursing home beds;

(2) Approval of beds in a new county home or county nursing home, or an increase of beds in an existing county home or county nursing home, if the beds are proposed to be certified as skilled nursing facility beds under Medicare or nursing facility beds under Medicaid;

(3) An increase of hospital beds registered as long-term care beds or skilled nursing facility beds or recategorization of hospital beds that would result in an increase of beds registered as long-term care beds or skilled nursing facility beds.

In the case of (1) and (2), above, the bill specifies that a facility is "existing" if it is licensed or has beds registered with the Department of Health as skilled nursing beds or long-term care beds and has provided services for at least 365 consecutive days within the 24-months immediately preceding the date a CON application is filed with the Director.

Continued review of CON applications during the moratorium

During the moratorium under existing law, the Director continues to be required to accept for review a CON application for nursing home beds in a health care facility, or skilled nursing facility beds or nursing facility beds in a county home or county nursing home, if the application concerns replacing or relocating existing beds within the same county. The Director also must accept for review an application seeking CON approval for existing beds located in an infirmary that is operated exclusively by a religious order, provides care exclusively to members of religious orders who take vows of celibacy and live by virtue of their vows within the orders as if related, and was providing care exclusively to members of the religious order on January 1, 1994.

Under the bill's continuation of the moratorium, the Director continues to be required to accept for review a CON application for approval of beds in a new facility or an increase in beds in an existing facility, if the proposed increase in beds is attributable solely to a replacement or relocation of existing beds in the same county. However, in the case of relocation of existing beds, the bill specifies that the relocation must be from an existing facility. As described above, the bill specifies that a facility is considered to be existing if it is licensed or has beds registered with the Department of Health as skilled nursing beds or long-term care beds and has provided services for at least 365 consecutive days within the 24-months immediately preceding the date the CON application is filed.

The bill prohibits the Director from approving a CON application for addition of long-term care beds to an existing facility by relocation of beds or for the development of a new health care facility by relocation of beds unless all of the following conditions are met:

(1) The existing facility to which the beds are being relocated has no life safety code waivers, no state fire code violations, and no state building code violations;

(2) During the 60-month period preceding the filing of the application, no notice of proposed revocation of the facility's license was issued to the operator of the existing facility to which the beds are being relocated or to any health care facility owned or operated by the applicant or any principal participant in the same corporation or other business;

(3) Neither the existing facility to which the beds are being relocated nor any health care facility owned or operated by the applicant or any principal participant in the same corporation or other business has had a long-standing pattern of violations of the CON law or deficiencies that caused one or more residents physical, emotional, mental or psychosocial harm.

Religious order infirmary beds

The bill also continues the requirement that CON applications pertaining to beds in an infirmary operated exclusively by certain religious orders be reviewed. The bill specifies, however, that the applications to be reviewed are those for the conversion of infirmary beds to long-term care beds.

Physician Loan Repayment Program

(R.C. 3702.71 and 3702.74, not in the bill)

Under current law, physicians providing primary care services in a primary care specialty may participate in the Physician Loan Repayment Program. Current law defines primary care services as professional comprehensive health services, which may include health education and disease prevention, treatment of uncomplicated health problems, diagnosis of chronic health problems, and overall management of health care services. Primary care specialties are defined as general internal medicine, pediatrics, obstetrics and gynecology, or family medicine. Physicians who participate in the program are required to provide primary care services in an underserved area of the state.

The bill would make physicians with a specialty in psychiatry eligible to participate in the Physician Loan Repayment Program if the physician intends to provide primary care services in an underserved area. The bill includes psychiatric services in the definition of primary care services.

J-1 Visa Waiver Program

(R.C. 3702.83)

Federal law requires a foreign-born person who wishes to pursue graduate medical education or training in the United States to obtain a J-1 Exchange Visitor Visa, or J-1 Visa. The J-1 Visa authorizes the person to enter the United States and remain until he or she has completed the graduate medical education or training, but requires that the person return to his or her home country on completing the education or training and remain there for at least two years before returning to the United States. This requirement may be waived if the person agrees to serve as a physician for at least three years in an area of the country

designated by the United States Secretary of Health and Human Services as a health professional shortage area.

Under the bill, the Department of Health must administer, in accordance with the Immigration and Nationality Act, the J-1 Visa Waiver Program to recruit, for the purpose of providing health care services in underserved areas of the state, foreign-born physicians seeking to obtain J-1 Visa waivers. The Department must accept and review applications for placement of those seeking waivers and, for each application accepted, charge a non-refundable fee of $3,571. Fees must be deposited with the State Treasurer and credited to the state's general operations fund.

Fee increase for birth certificates, death certificates, and divorce and dissolution of marriage decrees

(R.C. 3705.24 and 3705.242)

The Public Health Council is authorized by current law to adopt rules prescribing the fees that may be charged for various services provided by the state office of vital statistics, including fees for copies of birth and death records and fees for divorce and dissolution of marriage filings. In addition to the fees established by the Public Health Council, other fees may be charged for copies of these records, including fees charged by the local registrar or clerk of court, fees to modernize and automate the vital records system, and fees charged to benefit the Children's Trust Fund (R.C. 3109.14, not in the bill).

The bill creates new fees for copies of vital records as follows:

(1) $1.50 for each certified copy of a birth certificate, certification of birth, or death certificate;

(2) $5.50 on the filing for a divorce or dissolution of marriage.

The Director of Health, the Director's designee, a local commissioner of health, or a local registrar of vital statistics may collect the fees. If the fee is collected locally, the local official may retain a portion of the fee to cover administrative costs.

The fees are to be used to fund the Family Violence Prevention Fund, which the bill creates. The bill authorizes the Director of Public Safety to use money in the Fund to provide grants to family violence shelters.

Hospice care facility inspection fee

(R.C. 3712.03; Ohio Administrative Code §3701-19-05)

Current law requires the Department of Health to inspect hospice care facilities as necessary to determine compliance with the hospice care law and rules adopted under it. An administrative rule requires the Department to inspect hospice care facilities at the following times:[123]

(1) Prior to issuing a license to operate a hospice care program;

(2) At least once every three years, unannounced;

(3) At any time the Director of Health considers an inspection necessary, including inspections in response to a complaint.

The bill authorizes the Public Health Council to adopt rules establishing an inspection fee not to exceed $1,750.

Nursing home and residential care facility licensing fees

(R.C. 3721.02)

The Department of Health licenses and inspects nursing homes and residential care facilities.[124] The fee for an application and annual renewal licensing and inspection is $105 for each 50 persons in the home or facility's licensed capacity. The bill increases the fee to $170 for each 50 persons in the home or facility's licensed capacity.

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[123] *The Department of Health is not required to conduct the pre-licensure inspection or unannounced inspection of hospice care programs that are accredited or certified by an entity whose standards equal or exceed those provided by Ohio's hospice care law (R.C. Chapter 3712.) (O.A.C. 3701-19-04 and 3701-19-05).*

[124] *A nursing home is a home used for the reception and care of individuals who by reason of illness or physical or mental impairment require skilled nursing care and of individuals who require personal care services but not skilled nursing care. A residential care facility is a home that provides either (1) accommodations for 17 or more unrelated individuals and supervision and personal care services for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment or (2) accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and, to at least one of those individuals, limited skilled nursing care. (R.C. 3721.01.)*

Revocation of nursing home and residential care facility licenses

(R.C. 3721.03)

Grounds

Under current law, the Director of Health may issue an order revoking a license to operate a nursing home or residential care facility if the person, county home, or district home operating the nursing home or residential care facility has done any of the following:

(1) Violated any provisions of the nursing home law or rules adopted by the Public Health Council;

(2) Violated any order issued by the Director;

(3) Is not, or any of its principals are not suitable, morally or financially, to operate the nursing home or residential care facility;

(4) Is not furnishing humane, kind, and adequate treatment and care.

The bill creates an additional ground for revocation. Under the bill, a nursing home or residential care facility that has had a long-standing pattern of violations of the nursing home law or rules adopted under it causing physical, emotional, mental, or psychosocial harm to one or more residents may have its license revoked by order of the Director.

Prohibition on transfer of right to operate

The bill provides that once the Director notifies a license holder that the license holder's license to operate a nursing home or residential care facility may be revoked, the license holder may not assign or transfer the right to operate to another person or entity. This prohibition remains in effect until administrative proceedings under Ohio's Administrative Procedure Act (R.C. Chapter 119.) are complete or until the Director notifies the person, county home, or district home that the prohibition has been lifted.

If a license is revoked, the former license holder is not permitted to assign or transfer or consent to assignment or transfer of the right to operate the home. Any attempted transfer or assignment to another person or entity is void.

Rejection of license application

(R.C. 3721.07)

Current law requires any person seeking to operate a nursing home or residential care facility to apply for a license to the Director of Health. The Director must issue licenses to qualified applicants. The Director may not issue licenses to the following individuals or entities:

(1) Applicants who have been convicted of a felony or a crime involving moral turpitude;

(2) Applicants who have violated any rules made by the Public Health Council or any orders issued by the Director.

The bill additionally prohibits the Director from issuing licenses to the following individuals or entities:

(1) Any applicant whose license to operate was revoked because of any act or omission that jeopardized a resident's health, welfare, or safety;

(2) Any applicant whose license to operate was revoked because the applicant has a long-standing pattern of violations of nursing home law or rules that caused physical, emotional, mental, or psychosocial harm to one or more residents.

Religious nonmedical health care institutions: nurse aide training exemption

(R.C. 3721.21)

Under current law, a nursing home may not use individuals as nurse aides unless they have successfully completed a training and competency evaluation program approved by the Director of Health. A nurse aide is an individual who provides nursing and nursing-related services to residents in a nursing home, either as a member of the staff or as a volunteer.

The bill exempts "religious nonmedical health care institutions" from the nurse aide training requirement. Specifically, it provides that the term "nurse aide" does not include an individual providing nursing and nursing-related services in a religious nonmedical health care institution, if the individual (1) has been trained in the principles of nonmedical care and (2) is recognized by the institution as being competent in the administration of care within the religious tenets practiced by the institution's residents.

For purposes of these provisions, the bill defines a "religious nonmedical health care institution" as an institution that meets or exceeds the conditions to receive Medicare payments for inpatient hospital services or post-hospital extended care services furnished to an individual in such an institution. Under federal law, a "religious nonmedical health care institution" is defined primarily as an institution that provides only nonmedical nursing items and services exclusively to patients who choose to rely solely on a religious method of healing and for whom the acceptance of medical health services would be inconsistent with their religious beliefs. In addition, the institution must (1) be tax-exempt, (2) be lawfully operated, (3) provide nonmedical items and services through experienced nonmedical nursing personnel on a 24-hour basis, (4) not be owned by or affiliated with a provider of medical treatment or services, (5) have in effect a utilization plan that meets specified requirements, (6) provide the U.S. Secretary of Health and Human Services with information as required, and (7) meet any other requirements the Secretary establishes.[125]

Elimination of Nursing Facility Regulatory Reform Task Force

(Section 490.06)

The bill repeals an uncodified provision of Am. Sub. H.B. 95 of the 125th General Assembly (Section 147) requiring the Director of Health to request approval from the Secretary of the U.S. Department of Health and Human Services to develop an alternative regulatory procedure for nursing facilities. On receiving approval, the Director was to convene the Nursing Facility Regulatory Reform Task Force.

The Task Force was to review the effectiveness of regulatory procedures regarding the quality of care and quality of life of nursing facility residents, develop recommendations for improvements to the procedures, and evaluate the effect of various changes to nursing home law. It was to submit a report of its findings to the Speaker and Minority Leader of the House of Representatives and the President and Minority Leader of the Senate.

Adult care facility inspection fees

(R.C. 3722.04)

Under current law, the owner of an adult care facility[126] is required to pay an inspection fee of $10 per bed to the Director of Health when the facility's

[125] *42 United States Code 1395x(ss)(1).*

[126] *"Adult care facility" means any residence, facility, institution, hotel, congregate housing project, or similar facility that provides accommodations and supervision to*

license is issued and each time it is renewed. The owner is required to submit the fee not later than 30 days after the issuance or renewal of a license, other than a temporary license.

Under the bill, the owner is required to submit a fee of $20 per bed not later than 30 days after each of the following:

(1) Issuance or renewal of a license, other than a temporary license;

(2) The unannounced inspection of a facility required under the adult care facility law;

(3) Receipt of the report by the adult care facility of any investigation other than the two required under the adult care facility law if the facility was found to be in violation of that law.

Radiation control program fees for health care and radioactive waste facilities

(R.C. 3748.07 and 3748.13)

Continuing law requires the Director of Health to register and inspect sources of radiation. The bill increases registration and inspection fees by approximately 9% as shown in the following chart.

Inspection or registration fee	Prior fee	New fee
Biennial registration	$200	$218
First dental x-ray tube	$118	$129
Each additional x-ray tube at a location	$59	$64
First medical x-ray tube	$235	$256
Each additional medical x-ray tube at a location	$125	$136
Each unit of ionizing radiation-generating equipment capable of operating at or above 250 kilovoltage peak	$466	$508
First nonionizing radiation-generating equipment of any kind	$235	$256

three to sixteen unrelated adults, at least three of whom are provided personal care services, but does not include facilities such as hospices and nursing homes that provide skilled nursing care (R.C. 3722.01, not in the bill).

Inspection or registration fee	Prior fee	New fee
Each additional nonionizing radiation-generating equipment at a location	$125	$136
Assembler-maintainer inspection	$291	$317
Inspection for unlicensed or unregistered facility without pending license or registration	$363	$395
Review of shielding plans or the adequacy of shielding	$583	$635

Eligibility for the Program for Medically Handicapped Children

(R.C. 3701.023; Section 206.42.13)

The Program for Medically Handicapped Children is in the Department of Health and is known as the Bureau for Children with Medical Handicaps (BCMH). The bill makes two changes to the eligibility requirements for services under BCMH. First, the bill removes an exemption from the requirement that BCMH applicants apply for Medicaid. Under the exemption an applicant is not required to apply for Medicaid if applying violates the religious beliefs of the applicant, parent, or guardian. Second, the bill requires the Public Health Council to revise rules to return financial eligibility requirements to the levels in effect prior to October 13, 2003.

Removal of exemption for religious beliefs

Current law requires applicants for BCMH services to seek payment for medical expenses from all other third-party payers. This includes applying for Medicaid. Under current law, if applying for Medicaid violates the religious beliefs of a medically handicapped child or the parent or guardian of a medically handicapped child, the child, parent, or guardian is not required to apply for Medicaid to receive BCMH services. The bill removes this exemption.

BCMH eligibility

A rule changing financial eligibility levels for BCMH went into effect October 13, 2003. The bill requires the Public Health Council to revise the rule not later than December 1, 2005. As part of the revision, the Council is required to return the eligibility levels for fiscal years 2006 and 2007 to the levels in effect prior to October 13, 2003.

The bill also requires the Department of Health, beginning July 1, 2005, to contact all persons who lost eligibility or their parents or guardians to inform them of revisions made to the eligibility rules.

Legislative Committee on the Future Funding of the Bureau for Children with Medical Handicaps

(Section 206.42.12)

The bill creates the Legislative Committee on the Future Funding of the Bureau for Children with Medical Handicaps. The Committee is to examine issues involving BCMH operations, services, and funding and make recommendations to the Governor and members of the General Assembly. The bill requires the Committee to do the following:

(1) Examine the current status of the Bureau and recommend best practices to be used in assisting working parents who have children with special health needs;

(2) Review all existing statutes and programs in Ohio pertaining to the Bureau;

(3) Review payment strategies in other states that facilitate adequate care for children with chronic conditions and support their families;

(4) Review all funding sources for the Bureau including funding received from county levies, the state General Revenue Fund and other state-based sources, the federal Maternal and Child Health block grant of Title V of the "Social Security Act";

(5) Request testimony from parents of children with special health needs and the child themselves and from health care professionals and other individuals who provide services to Bureau patients.

Membership

The Committee will consist of the following individuals, who are not to be compensated:

(1) Three members of the House of Representatives, appointed by the Speaker of the House of Representatives, not more than two of whom may belong to the same political party as the Speaker;

(2) Three members of the Senate, appointed by the President of the Senate, not more than two of whom may belong to the same political party as the President;

(3) Six members of the general public, three appointed by the Speaker and three by the President, who suffer from a disease or disorder covered by BCMH, or family members of such individuals;

(4) The Director of Health, or the Director's designee;

(5) The Superintendent of Insurance, or the Superintendent's designee;

(6) The Director of Job and Family Services, or the Director's designee;

(7) One person designated by the County Commissioners Association of Ohio;

(8) One person designated by the Ohio Children's Hospital Association;

(9) One person designated by the Ohio Association of Health Plans;

(10) One person designated by the American Academy of Pediatrics;

(11) One person designated by the Ohio Hospital Association;

(12) One person designated by the Ohio Association of Health Commissioners;

(13) One person designated by the Ohio Nurses Association.

Report

The bill requires the Committee to submit a report, not later than December 31, 2006, including an analysis of the current system of services covered by BCMH and determinations and recommendations regarding how the state can best address the current and future needs of patients served by BCMH if necessary. The Committee is required to submit the report to the Governor, the President and Minority Leader of the Senate, and the Speaker and Minority Leader of the House of Representatives. The committee will cease to exist on submitting the report.

Reimbursement of medical liability insurance premiums paid by free clinics

(R.C. 2305.2341)

The bill creates the Medical Liability Insurance Program to reimburse "free clinics" for the premiums the clinics pay for medical liability insurance coverage

for clinic's staff and volunteer health care professionals and health care workers. The coverage must be limited only to the diagnostic, treatment, and care activities of the clinic. The program reimburses the clinics from money appropriated from the General Revenue Fund for 80% of the premiums' costs, up to $20,000. A free clinic must register with the Department of Health by January 31 of each year in order to participate and obtain reimbursement under the program. At the time of registration, the clinic must provide to the Department a statement of the number of volunteer and paid health care professionals who provide services at the clinic, a statement of the number of health care services rendered in a year, a signed form acknowledging that the clinic will follow its medical liability insurance policies, and a copy of the medical liability insurance policy. The bill defines "free clinic" to be any non-profit organization exempt from federal income taxation whose primary mission to provide health care services for free or for a minimal administrative fee. The bill places certain limitations on a clinic if the clinic elects to charge a minimal administrative fee.

OHIO HISTORICAL SOCIETY

- Requires the Ohio Historical Society to distribute money appropriated for grants or subsidies to other entities for site-related programs within 90 days of accepting a grant or subsidy application for the money and prohibits the Society from charging or retaining a fee for distributing the money to those entities.

Disbursement of funds by the Ohio Historical Society

(R.C. 149.30)

Current law authorizes the General Assembly to appropriate money to the Ohio Historical Society to carry out certain public functions. An appropriation by the General Assembly to the Society constitutes an offer to contract with the Society to carry out those functions for which appropriations are made. An acceptance by the Society of the appropriated funds constitutes an acceptance by the Society of that offer and is considered an agreement to perform those functions in accordance with the terms of the appropriation and the law and to expend the funds only for the purposes for which they have been appropriated.

Under law unchanged by the bill, the Society must faithfully expend and apply all money received from the state to the uses and purposes directed by law and for necessary administrative expenses. The bill specifies that if the General

Assembly appropriates money to the Society for grants or subsidies to other entities for site-related programs of the other entities, the Society, except for good cause, must distribute the money within 90 days of accepting a grant or subsidy application for the money. Additionally, the bill prohibits the Society from retaining or charging an administrative, service, or processing fee of any kind for distributing money to those entities.

DEPARTMENT OF INSURANCE

- Creates the School Employees Health Care Board, charged with designing life and medical insurance plans to be used by all persons employed by Ohio's public schools.

- Requires health insuring corporations providing coverage to Medicaid patients to post a $1million performance bond.

- Eliminates existing law provisions that exclude health insuring corporations covering Medicaid recipients from the statutes that otherwise require them to offer external reviews of denials of coverage.

- Removes the requirement that the Director of Health review an application to establish or operate a health insuring corporation (HMO) to ensure the HMO will meet specified minimum standards when the HMO is intended solely to provide services to Medicaid recipients and lengthens the period of time given the Superintendent of Insurance to issue or deny a certificate of authority to such an HMO.

- Eliminates an existing law provision that excludes health insuring corporations covering Medicaid recipients from the statutes that otherwise require them to make prompt payments.

- Requires additional moneys to be paid into the Department of Insurance Operating Fund; increases the fees the Superintendent of Insurance must charge; and eliminates the fee foreign insurance companies must pay for interest checks and coupons accruing on bonds and securities.

- Eliminates the exemption from the unauthorized foreign insurance tax for insurance companies that issue policies to "employer insureds."

- Eliminates the requirement that a licensed insurance company or certified health insuring corporation notify the Superintendent when the insurer is disciplined in another state.

- Eliminates the requirement that authorized foreign insurers publish their annual certificates of compliance and the requirement that the Superintendent issue annual certificates of compliance to those insurers.

- Clarifies that a continuing tax on money received from the unauthorized conduct of the business of insurance in Ohio does not apply to captive insurers and defines "captive insurer" for this purpose.

School Employees Health Care Board

(R.C. 9.83, 9.90, 9.901, 3311.19, 3313.12, 3313.202, 3313.33, 4117.03, and 4117.08)

The bill creates a new board, the School Employees Health Care Board, to design life and medical plans to be used by all persons employed by Ohio's public schools. The Board, in consultation with the Superintendent of Insurance, is required to negotiate with insurers authorized to do business in this state, and in accordance with competitive selection procedures, contract for plans meeting the Board's designs. For this purpose, a "public school" means a school in a city, local, exempted village, or joint vocational school district, and the educational service centers associated with those schools.

The Board consists of nine members, including individuals with experience with public school benefit programs, health care industry providers, and medical plan beneficiaries. The Governor, the Speaker of the House of Representatives, and the President of the Senate each are to appoint three members. Board members may not be employed by, represent, or otherwise be affiliated with any private entity providing services to the Board, employers, or employees.

The bill provides that members of the School Employees Health Care Board are to serve four-year terms. It contains fairly common provisions governing staggered initial appointments, service until successor is appointed, filling of vacancies, uncompensated service of Board members except for actual and necessary expenses, the initial meeting called by the Governor, election of a chairperson, minimum meetings (4) per year, and notice of meeting, applicability of the Open Meetings and Public Records Laws, what constitutes a quorum, and removal of a member for misconduct.

The School Employees Health Care Board must: (1) design multiple life and medical plans to provide an optimal combination of coverage, cost, choice, and stability, (2) include both state and regional preferred provider plans, (3) set goals for the employer and employee contributions to the premium cost, in order to encourage use of the plans, (4) set employee co-payments, deductibles, exclusions, limitations, formularies, and other responsibilities, (5) utilize cost-containment measures, and (6) annually create and distribute to the Governor, the Speaker of the House of Representatives, and the President of the Senate, a report covering the plan's background, coverage options, plan administration and operations, employee and employer contribution rates, the relationship between the rates and the School Employees Health Care Fund's balance, alternative employee and employer cost-sharing strategies, an evaluation of the effectiveness of cost-saving programs and efforts to control and manage member eligibility, and on efforts to prevent and detect fraud and to manage and monitor Board contracts. The bill requires the Board to release its initial designs for life and medical plans no later than March 15, 2006.

School districts offering employee health care benefits through consortiums of two or more districts, or consortiums of one or more districts and one or more political subdivisions or their agencies or instrumentalities, covering 5,000 or more employees as of January 1, 2005, may request permission from the School Employees Health Care Board to continue the use of the plans. The Board is required to grant its initial or continued approval based on an actuarial evaluation of the consortium's existing plan offerings, if the evaluation determines the consortium plans' benefits and costs are equivalent to or better than the Board's plans. Initial approval is for one year; approval each year thereafter requires annual re-application to and approval by the Board. The Board is to be given access to all relevant information prior to making its decision. Once a school district chooses to offer the Board's plans the district is thereafter prohibited from offering the consortium's plans. Members of a school district's board of education may obtain coverage under the plans, but are required to pay all of the premiums for that coverage if they elect to participate.

The bill authorizes the School Employees Health Care Board to contract with other state agencies as necessary to implement and operate the Board's life and medical plans, and requires it to contract with the Department of Administrative Services for central services until the Board is able to obtain the services from other sources. The Board must reimburse the Department of Administrative Services for those services. The Board's administrative duties include maintaining funds in the School Employees Health Care Fund (below) to provide for the long-term stability and solvency of the plans designed by the Board, to provide appropriate health care information and preventative care programs, and to coordinate contracts for services related to the Board's life and

medical plans. A school district's board of education is responsible for distributing detailed information about the Board's plans to the district's employees a minimum of 90 days prior to the start of employee coverage.

The bill also creates the School Employees Health Care Fund in the state treasury. Participating schools pay all employer and employee premiums for Board-designed plans to the School Employees Health Care Board for deposit into this fund. Money in the fund only may be used for the provision of life and medical benefits to public school employees and related expenses.

School district employees may continue to bargain collectively with regard to life and medical benefits, however, after the bill takes effect, those benefits must be obtained through the insurers contracted to provide the Board-designed life and medical plans. The employees may choose from any of the plans agreed to during collective bargaining. While the result may not affect the total of the premium paid to the School Employees Health Care Board, employees may agree during collective bargaining to pay a higher percentage of the premium than would otherwise be required under the Board plan. Employees may not be allowed to contribute a lesser percentage of premium than at the level set by the Board.

The bill also requires the Ohio Board of Regents to report to the Governor, the Speaker of the House of Representatives, and the President of the Senate within 18 months after the bill's effective date on the feasibility of setting up a similar program for public institutions of higher education.

Medicaid health insuring corporations to post performance bond

(R.C. 1751.03, 1751.271, 3903.14, and 3903.421)

The bill requires each health insuring corporation providing coverage to Medicaid recipients to post a performance bond in the amount of $1 million, as security to fulfill the health insuring corporation's obligations to its contracted providers for services rendered to Medicaid recipients in the event of liquidation or rehabilitation proceedings. The bond is payable to the Department of Insurance in the event that the health insuring corporation is placed in rehabilitation or liquidation proceedings. In lieu of a performance bond, the bill permits a Medicaid health insuring corporation to deposit securities that are acceptable to the Superintendent of Insurance in the amount of one million dollars, with the Superintendent; the health insuring corporation is entitled to the interest on these securities as long as the health insuring corporation remains solvent. The bond or securities become a special deposit upon the start of the delinquency proceedings and are subject to distribution under Chapter 3903. of the Revised Code.

The bill requires that the performance bond be issued by a surety company licensed with the Department. The bond or deposit, or any replacement bond or deposit, must be in a form acceptable to the Superintendent and must remain in effect for the duration of the health insuring corporation's license and thereafter until all claims against the Medicaid health insuring corporation have been paid in full. Documentation of the bond must be filed with the Superintendent prior to the issuance of a Medicaid health insuring corporation's certificate of authority. Annually thereafter, 30 days prior to the renewal of the health insuring corporation's certificate of authority, health insuring corporations are required by the bill to furnish the Superintendent with evidence that the required bond remains in effect.

Under the bill, a rehabilitation plan for a Medicaid health insuring corporation may include the use of the proceeds of the performance bond or securities first to pay the claims of the health insuring corporation's contracted providers for services rendered. Contracted providers with claims against the health insuring corporation are given first priority under the bill against the proceeds of the bond or securities, to the exclusion of other creditors. If the amount of the proceeds are not sufficient to satisfy all of the allowed claims of contracted providers for services rendered to Medicaid recipients, the contracted providers are to share in the proceeds pro rata, then any unpaid balance of contracted providers' claims are to be allowed for payment from the general assets of the estate consistent with the priorities as listed in Chapter 3903. of the Revised Code. If the amount of the proceeds exceeds the allowed claims of the contracted providers for services rendered to Medicaid recipients, however, the excess amount becomes a general asset of the health insuring corporation's estate, to be distributed to other claimants pursuant to the listed priorities.

External review of health insuring corporations covering Medicaid recipients

(R.C. 1751.89 and 5101.93)

As part of H.B. 4, enacted by the 123rd General Assembly, health insuring corporations must have in place procedures for external review of decisions denying coverage for medical services based on lack of medical necessity. External reviews must be conducted by an independent review organization or the Superintendent of Insurance. Currently, this requirement does not apply to entities that provide coverage to Medicaid recipients.

Under the bill, the provisions of law excluding health insuring corporations that provide coverage to Medicaid recipients from the external review requirements are eliminated.

Certificate of authority to establish or operate a health insuring corporation

(R.C. 1751.04 and 1751.05)

The bill excepts for a health insuring corporation (HMO) that covers solely Medicaid recipients, from the existing law requirement that the Director of Health review all HMO applications and accompanying documents and make findings as to whether the applicant for a certificate of authority has fulfilled certain requirements with respect to any basic health care services and supplemental health care services to be furnished by the applicant. Currently, the Superintendent of Insurance has 45 days to issue or deny a certificate of authority to establish or operate an HMO. The bill lengthens this time to 135 days for an HMO that covers solely Medicaid recipients. The review by the Director of Health and the 45-day time limit remain for certificates of authority for non-Medicaid HMOs.

Prompt payment requirements for health insuring corporations covering Medicaid recipients

(R.C. 3901.3814 and 5101.94)

Under current law, health insuring corporations providing coverage to Medicaid recipients are exempt from statutes that would otherwise require them to comply with prompt payment laws applicable to other health insuring corporations.

Under the bill, the provision of law excluding health insuring corporations that provide coverage to Medicaid recipients from the prompt payment requirements are eliminated. The bill requires the Department of Job and Family Services to determine whether a waiver of federal Medicaid requirements is necessary to implement this provision. If a waiver is necessary, the Director of Job and Family Services is required to apply to the U.S. Secretary of Health and Human Services for the waiver.

If the Director determines a waiver is unnecessary or receives approval of the waiver, the Department is required to notify the Department of Insurance so that the prompt payment requirements can be implemented. The bill provides that implementation must be effective 60 days after the Department of Insurance receives notice from the Department of Job and Family Services.

The Department of Job and Family Services is also required by the bill to give notice to each health insurance corporation providing coverage to Medicaid recipients of the prompt payment requirements and the implementation date of the provisions.

Additional moneys for the Department of Insurance Operating Fund and fee increases

(R.C. 3901.021 and 3905.40)

Under existing law, three-fourths of the fees collected for issuing certificates of compliance and copies of those certificates, along with other types of fees, must be credited to the Department of Insurance Operating Fund. The remaining one-fourth must be credited to the General Revenue Fund.

The bill requires seven-tenths of the fees collected for issuing certificates of compliance and copies of those certificates, filing each "statement," and issuing each certificate of authority or license and copies of those certificates or licenses be credited to the Operating Fund. The bill requires the remaining three-tenths be credited to the General Revenue Fund. The bill also requires other revenues collected by the Superintendent, such as registration fees for seminars or conferences and grants from private entities, be credited to the Operating Fund.

The bill increases the fees for all of the following:

(1) For filing each "statement," from $25 to $175;

(2) For issuing each certificate of authority or license, from $5 to $175;

(3) For issuing certificates of compliance or certified copies of the certificates, from $20 to $60.

The bill eliminates the requirement that a foreign insurance company doing business in the state pay for forwarding interest checks and coupons accruing upon bonds and securities.

Exemption for "employer insureds" from the unauthorized foreign insurance tax

(R.C. 3901.17 and 3905.36)

Current law imposes a tax on out-of-state insurers and other persons engaged in the business of insurance that are not authorized to do business in Ohio, if the insurer, its affiliate, or agent takes any of a number of listed actions in Ohio, by mail or otherwise any of which are considered to be the conduct of an insurance business in Ohio and subject the party taking the action to Ohio jurisdiction to the extent permitted by the state and federal constitutions. This tax, however, has several exemptions one of which is for contracts of insurance issued to an "employer insured" defined as an insured with at least 25 full-time employees and annual aggregate insurance premiums of at least $25,000, that

procures insurance by the use of a full-time employee acting as an insurance manager or buyer or by the use of a continuously qualified insurance consultant.

The bill ends this exemption, and additionally, ends an exemption to a requirement that an Ohio insured that obtains insurance providing coverage in Ohio, from an unauthorized foreign insurer, annually return a statement, under oath, to the Superintendent of Insurance, providing specified information on the insurance coverage and on premiums and other consideration paid for the insurance in the preceding 12 months.

Insurer's notification to Superintendent of Insurance concerning out-of-state discipline

(R.C. 3901.41)

Under existing law, a licensed insurance company or certified health insuring corporation must notify the Superintendent of Insurance within 30 days if the insurer is disciplined in another state in one of the following manners: (1) suspension or revocation of the right to transact business in the state, (2) receipt of an order to show cause why the insurer's license should not be suspended or revoked, or (3) penalized for violating the insurance laws of the state. If the Superintendent has knowledge that an insurer failed to provide the above notice, the Superintendent may order a hearing and require the insurer to show cause why the Superintendent should not suspend or revoke the insurer's right to transact business in this state or impose a monetary fine. The bill eliminates the above provisions.

Certificates of compliance for authorized foreign insurers

(R.C. 3901.78; R.C. 3901.781, 3901.782, 3901.783, and 3901.784 (repealed))

Under existing law, each insurance company authorized to do business in this state but not incorporated under the laws of this state is required to publish its annual certificate of compliance, which is issued by the Superintendent of Insurance. The insurance company or association of insurers must publish the certificate in a newspaper of general circulation in each county where the company or association has an agency. The bill eliminates the requirement these companies and associations publish their annual certificates of compliance.

Under existing law, the Superintendent is required to issue annual certificates of compliance to the above companies and associations. The Superintendent is permitted to issue other certificates of compliance upon request or in any other circumstance the Superintendent determines to be appropriate. The bill eliminates the requirement that the Superintendent issue annual certificates of

compliance. Under the bill, the Superintendent may issue certificates of compliance upon request or in any other circumstance the Superintendent determines to be appropriate.

Captive insurers exemption--tax on the unauthorized conduct of the business of insurance

(R.C. 3901.17 and 3905.36)

Continuing law levies a 5% tax on all premiums, fees, assessments, dues, and other consideration received by insurers, associations, and companies engaged, directly or indirectly, in the unauthorized conduct of the business of insurance in Ohio. The law does not apply to specified transactions and forms of insurance, but its application to transactions involving policies issued by a captive insurer is unclear. The bill specifies that the law does not apply to transactions involving policies issued by captive insurers. Captive insurers are defined by the bill as insurers owned and operated by one or more individuals, organizations, groups, or associations exclusively to self-insure risks of one or more affiliates of the parent organizations or individual owners or affiliates thereof, or the members of a group or association and its affiliates, and foreign insurers, licensed and operated in accordance with the captive insurance laws of their jurisdiction of domicile.

DEPARTMENT OF JOB AND FAMILY SERVICES

I. General

- Creates two new funds in the state treasury: the Support Services Federal Operating Fund and the Support Services State Operating Fund.

- Provides for money in the funds to be used to pay the costs of Ohio Department of Job and Family Services (ODJFS) for computer projects and the operating costs of the parts of ODJFS that provide general support services for ODJFS.

- Eliminates the provision of state law governing fiscal agreements between ODJFS and boards of county commissioners that concern consolidated funding allocations.

- Authorizes ODJFS to increase, without having to provide notice to a county and an opportunity for an administrative review, a county's share of public assistance expenditures if the federal government requires an

increase in the state's Temporary Assistance for Needy Families (TANF) maintenance of effort because of one or more county family services agencies' failure to meet a federal TANF requirement.

- Authorizes ODJFS to make the increase even if it results in a county having to pay more for public assistance expenditures than the cap established by current law permits.

- Authorizes ODJFS to recover excess payments made to county departments of job and family services, public children services agencies, and child support enforcement agencies without following current law that governs the Department's actions against such agencies.

- Specifically authorizes the Director of ODJFS to redetermine eligibility for certain programs administered by ODJFS.

- Includes as programs for which the Director of ODJFS may accept applications, determine eligibility, redetermine eligibility, and perform related administrative activities the Food Stamp program and other programs the Director determines will achieve administrative cost saving and efficiency through ODJFS's performance of those functions.

- Specifies that the Director of ODJFS may not conduct face-to-face interviews for certain public assistance programs if federal law requires a face-to-face interview to complete an eligibility determination for the program.

- Requires ODJFS, no later than March 1 of each year, to create a list of the 25 drugs most often dispensed to Ohio's Best Rx Program participants and determine the average percentage savings in the amount terminal distributors charge participants for each drug included on the list.

- Requires ODJFS to assess the feasibility of an interagency agreement with the Rehabilitation Services Commission whereby the Commission would perform disability determinations for certain programs and services offered by ODJFS or a county department of job and family services and submit a written report to the leaders of the Senate and House of Representatives.

- For FY 2006 and FY 2007, grants the Director of ODJFS certain powers under the Civil Service Law, and provides that the actions taken by the

Director pursuant to this temporary grant of authority may not be appealed to the State Personnel Board of Review.

II. Workforce Development

- Authorizes an additional action that ODJFS may take to enforce compliance with workforce development agreements and modifies the process used to review compliance actions.

- Specifies in Ohio law the Governor's authority to decertify a local workforce investment board and the reasons for which the Governor may decertify a board, as already provided in federal law.

- Allows the Governor to declare an emergency if the Governor finds that access to basic federal "Workforce Investment Act" services is not provided and to consult with chief elected officials in a local area to arrange for an alternative entity to temporarily provide WIA services.

III. Child Care

- Provides that if ODJFS uses geographic location or economic region as a factor in establishing reimbursement for providers of publicly funded child care, a location or region can be no larger than a county.

- Requires that reimbursement ceilings for providers of publicly funded child care be amounts that are not less than 65% of the market's usual and customary cost to the public based on the most recently conducted market rate survey required by federal regulations.

- Permits ODJFS to increase for FY 2007 the reimbursement ceilings for providers of publicly funded child care to not less than 65% of the market's usual and customary cost to the public if the estimated monthly average of children expected to enroll in publicly funded child care from December 2005 through March 2006 exceeds the actual number enrolled by at least 2,000.

- Eliminates a provision that limits co-payments for publicly funded child care to 10% of the family's income and requires that fees be calculated as permitted by federal law.

- Requires ODJFS to conduct a study of the market rates for the provision of child care.

- Requires new rates for the funding of publicly funded child care be established by July 1, 2006.

- Requires child care providers to cooperate in the study.

IV. Child Support Enforcement

- When a lump sum of $150 or more is due a child support obligor who is in arrears, authorizes issuance of an order requiring a portion of the lump sum be transmitted to the Office of Child Support that is sufficient to pay the arrearage in full, rather than the entire lump sum.

- Replaces a provision directing how the Office of Child Support must distribute the lump sum with a requirement that the Office distribute it in accordance with administrative rules.

- Permits the Office of Child Support to distribute child support amounts by means of electronic disbursement and requires a person receiving the child support to accept payment by electronic means.

- Creates in the state treasury a state special revenue fund, the Child Support Operating Fund, that will contain a portion of certain federal moneys related to child support enforcement and may be used by ODJFS for program and administrative purposes associated with ODJFS's program of child support enforcement.

- Authorizes ODJFS to retain $1.82 million of certain federal incentives received to reimburse ODJFS for the state share of payments it makes for mandatory contracts used by county child support enforcement agencies (CSEAs) for child support enforcement.

- Based on actual usage of optional contracts by each county, authorizes ODJFS to retain a portion of certain federal incentives that are paid to CSEAs to reimburse ODJFS for the state share of the contractual obligation for the monthly use of optional contracts by each agency for child support enforcement.

V. Child Welfare and Adoption

- Eliminates the requirement that a court prepare and send to ODJFS a summary of each proceeding for the adoption of a minor and the

requirement that ODJFS annually report on the assembled results compiled from these summaries.

VI. Title IV-A Temporary Assistance for Needy Families

- Permits ODJFS to establish and administer the Employment Retention Incentive Program in fiscal year 2007 using funds available under the TANF block grant.

- Creates the Title IV-A Demonstration Program under which ODJFS may provide funding to government agencies and not-for-profit entities administering a project designed to meet one of the four purposes of the TANF block grant.

- Requires an agreement between ODJFS and an entity administering a project under the Title IV-A Demonstration Program or a state agency administering certain programs funded with TANF funds to provide for the performance outcomes expected for the project or program and an evaluation to determine the success in achieving the performance outcomes.

- Creates the Kinship Permanency Incentive Program under which an initial one-time incentive payment and possible additional incentive payments are to be provided out of the TANF Block Grant to a kinship caregiver to help care for a child in the place of the child's parents.

- Provides that an assistance group meets the first step in determining income eligibility for Ohio Works First if the assistance group's gross income does not exceed the higher of 50% of the federal poverty guidelines or the current gross income maximum.

- Authorizes ODJFS to provide (1) additional incentives to teens participating in the Learning, Earning, and Parenting (LEAP) Program who attend an educational program designed to lead to a high school diploma or its equivalent and (2) an award to an individual who has successfully completed the LEAP Program and enrolls in post-secondary education.

VII. Medicaid

- Creates the offense of Medicaid eligibility fraud, prohibits making false or misleading statements, concealing an interest in property, or failing to

disclose certain transfers of property in an application for Medicaid benefits or in a document that requires a disclosure of assets for the purpose of determining eligibility to receive Medicaid benefits.

- Authorizes the Attorney General and the prosecuting attorney to bring a civil action for the recovery of Medicaid benefits improperly paid as a result of Medicaid eligibility fraud.

- Places in the Revised Code the administrative rule that specifies when a home becomes a "countable resource" for purposes of determining an aged, blind, or disabled individual's eligibility for Medicaid when the individual is institutionalized, but extends from six months to thirteen months the period of time during which the home is not a countable resource.

- Requires the Director of ODJFS to institute a Medicaid co-payment program not later than July 1, 2006.

- Limits the co-payment program to dental services, vision services, and prescription drugs (other than generic drugs).

- Permits a provider to consider an unpaid co-payment an outstanding debt and refuse service to the Medicaid recipient who owes the debt to the provider.

- Prohibits a provider from waiving a Medicaid co-payment and a provider or manufacturer from paying a co-payment on behalf of a Medicaid recipient.

- Authorizes the Auditor of State to audit providers of Medicaid services without a request from ODJFS.

- Authorizes the Auditor of State to conduct a single performance audit of the Medicaid program during fiscal years 2006 and 2007.

- Permits ODJFS to conduct reviews of the Medicaid program.

- Requires the Director of ODJFS to seek federal approval to reduce to 90% of the federal poverty guidelines the family income the parent of a child under age 19 may have and remain eligible for Medicaid.

- Requires ODJFS to apply for a federal Medicaid waiver to expand to five years the look-back period for determining whether any assets, not just assets in a trust, have been transferred for less than fair market value.

- Allows ODJFS to terminate or not renew a Medicaid provider agreement without an administrative hearing if the provider has not billed or otherwise submitted claims for payment for two or more years and has not left an active address with ODJFS.

- Permits ODJFS to recover overpayments made to Medicaid providers.

- Allows the overpayment recovery to occur at any time, including before or after a final fiscal audit or any other finding has been adjudicated and before or after the expiration date for issuing a final fiscal audit or finding.

- Requires that subsequent final fiscal audits or findings be reduced by the amount of any overpayments collected, as appropriate.

- Permits a state agency that administers a component of the Medicaid Program for ODJFS to commence actions to recover overpayments the state agency identifies.

- Requires the state agency to first seek voluntary repayment and permits the agency to negotiate a settlement, which must be approved by ODJFS before being implemented.

- Requires the state agency to hold an administrative hearing to collect the overpayment if voluntary repayment cannot be achieved.

- Provides that any final order resulting from a hearing held by the state agency must be issued by the Director of ODJFS.

- Permits ODJFS to issue a final administrative order under the Medicaid Program without holding an administrative hearing if notice of an opportunity for the hearing has been provided but the notified entity does not make a timely request for a hearing.

- Applies a substantially similar provision to state agencies seeking recovery of Medicaid overpayments identified in administering components of the Medicaid Program on ODJFS's behalf.

- Permits the Director of ODJFS to establish a step therapy system for the Medicaid program.

- Requires ODJFS to adopt rules establishing procedures for enforcing rules governing Medicaid services, including procedures for corrective action plans for, and imposing sanctions on, violators of the rules.

- States that ODJFS retains the ability to adopt, amend, or rescind rules to modify Medicaid coverage of dental services for individuals under 21 years of age.

- Requires ODJFS' rules regarding coverage for dental services for Medicaid recipients over 21 years of age to provide for coverage that is less in amount, duration, and scope than the coverage before the bill's effective date.

- States that ODJFS retains the ability to adopt, amend, or rescind rules to modify Medicaid coverage of vision services.

- Requires the Director of ODJFS to adopt rules specifying the amount, duration, and scope of dental services provided under Medicaid to recipients 21 years of age or older.

- Requires continuation of Medicaid coverage of vision services in the amounts, duration, and scope currently in effect.

- Extends the deadline for ODJFS to seek federal approval to provide assertive community treatment and intensive home-based mental health services under the Medicaid program from July 21, 2004, to July 21, 2006.

- Eliminates a requirement that any drug product used to treat mental illness, HIV, or AIDS be exempted from the Medicaid program's Supplemental Drug Rebate Program.

- Permits ODJFS to enter into or administer an agreement or cooperative arrangement with other states to create or join a multiple-state drug purchasing program.

- Permits ODJFS to receive a supplemental rebate negotiated under the Supplemental Drug Rebate Program for a drug dispensed to a Medicaid recipient pursuant to a prescription or for a drug purchased by a Medicaid

provider for administration to a Medicaid recipient in the provider's primary place of business.

- Prohibits the Medicaid program from providing reimbursement for prescription drugs for treatment of erectile dysfunction.

- Requires the Director of ODJFS to establish a State Maximum Allowable Cost Program for purposes of managing reimbursement for certain prescription drugs available under Medicaid.

- Requires the Director to identify drugs to be included in the Program and to update and review, on a weekly basis, the drugs included in the Program and the per unit amount ODJFS reimburses terminal distributors of dangerous drugs for each drug included in the Program.

- Permits the Director of ODJFS to establish an e-prescribing system under which certain Medicaid providers must use an electronic system when prescribing a drug for a Medicaid recipient.

- Modifies the composition of the Pharmacy and Therapeutics Committee of the Department of Job and Family Services to include an additional pharmacist.

- Provides that the Ohio Veteran's Home Agency is not required to qualify in the Medicare program all of the Medicaid-certified beds in a nursing facility that agency maintains and operates.

- Revises state law governing the Medicaid reimbursement methodology and procedures for nursing facilities and intermediate care facilities for the mentally retarded (ICFs/MR).

- Provides that an ICF/MR's Medicaid provider agreement does not have to include beds that are designated for respite care under a Medicaid waiver program.

- Permits the operator of a nursing facility or ICF/MR to enter into provider agreements for more than one facility.

- Increases the nursing home franchise permit fee to $6.25 per bed per day for fiscal years 2006 and 2007.

- Revises the law governing how money in the Nursing Facility Stabilization Fund is to be used.

- Permits ODJFS to withhold a Medicaid payment or terminate a Medicaid provider agreement if a facility subject to the nursing home franchise permit fee fails to pay the fee when due.

- Eliminates the exemption from the nursing home franchise permit fee available to certain facilities because of a federal Medicaid waiver.

- Exempts a nursing home maintained and operated by the Ohio Veteran's Home Agency from the nursing home franchise permit fee.

- Provides that the amount of the ICF/MR franchise permit fee for fiscal years 2006 and 2007 is the same as in fiscal year 2005 ($9.63 per bed per day).

- Permits ODJFS to withhold a Medicaid payment or terminate a Medicaid provider agreement if an ICF/MR fails to pay the franchise permit fee when due.

- Abolishes the Nursing Facility Reimbursement Study Council.

- Establishes requirements for nursing facilities and ICFs/MR that undergo a change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation in the Medicaid program.

- Requires ODJFS to implement, if federally approved, a program for making supplemental Medicaid payments to children's hospitals for qualifying inpatient services occurring in fiscal years 2006 and 2007.

- Eliminates an existing law provision that excludes health insuring corporations covering Medicaid recipients from the statutes that otherwise require them to make prompt payments.

- Eliminates existing law provisions that exclude health insuring corporations covering Medicaid recipients from the statutes that otherwise require them to offer external reviews of denials of coverage.

- Requires ODJFS to apply for a waiver of federal Medicaid requirements if necessary to implement the provision of the bill eliminating the exclusion.

- Requires ODJFS to apply for a waiver of federal Medicaid requirements if necessary to implement the amendment.

- Requires ODJFS, beginning October 1, 2007, to prepare an annual report for the General Assembly on the Medicaid care management system and ODJFS's ability to implement its various components.

- Creates the Medicaid Care Management Working Group to develop guidelines to be followed by ODJFS when entering into contracts with Medicaid managed care organizations.

- Requires a Medicaid provider not under contract with a Medicaid managed care organization to provide services to a Care Management System participant who is enrolled in a managed care organization when the participant is referred to the provider, and requires the noncontracting provider to accept from the organization, as payment in full, the amount derived from using Medicaid's fee-for-service reimbursement rate.

- Exempts a hospital from the requirement to accept referrals of mandatory managed care Medicaid recipients if the hospital (1) is located in a county in which Medicaid recipients are required to be enrolled in a health insuring corporation before January 1, 2006, (2) has entered into a contract before January 1, 2006, with at least one Medicaid health insuring corporation, and (3) remains under contract with at least one Medicaid health insuring corporation.

- Requires all Medicaid recipients in the category ODJFS identifies as "covered families and children" to be designated by January 1, 2006, for mandatory participation in the Medicaid care management system, and to be enrolled in health insuring corporations by December 31, 2006.

- Requires ODJFS, by January 1, 2006, to implement two pilot programs for the care management of the aged, blind, and disabled, with one pilot program generally applicable to noninstitutionalized persons and the other pilot program applicable to persons who require the level of care provided by nursing facilities.

- Requires ODJFS to create a care management pilot program for chronically ill children in at least three counties under which the children are to receive coordinated health care services through a "medical home" approach.

- Requires ODJFS to develop and implement a financial incentive program to improve and reward positive health outcomes through its Medicaid managed care contracts, with the program to be based on recommendations from the Medicaid Care Management Working Group.

- Requires Medicaid health insuring corporations to cover prescription drugs that protect against respiratory syncytial virus for Medicaid recipients who, as an infant born premature or other pediatric patient, are at risk for the respiratory syncytial virus.

- Requires a health insuring corporation (HIC) under contract with Medicaid to pay ODJFS a quarterly franchise permit fee from January 1, 2006, to July 1, 2007, to be used to pay for Medicaid services, administrative costs, and Medicaid contracts with HICs.

- Provides for the fee to be 4.5% of the Medicaid HIC's quarterly managed care premiums, unless (1) ODJFS adopts rules decreasing the percentage or increasing it to not more than 6% or (2) the fee is reduced or terminated to comply with federal law or because the fee does not qualify for matching federal funds.

- Permits ODJFS to take disciplinary actions against a Medicaid HIC for failing to pay the fee or failing to cooperate in an audit.

- Allows ODJFS to deny Medicaid payments to a hospital for direct graduate medical education costs if the hospital refuses without good cause to contract with a managed care organization that serves Medicaid recipients in the hospital's area who are required to be enrolled in a managed care organization, with an exception applicable to certain hospitals under contract with at least one Medicaid-contracting health insuring corporation before January 1, 2006.

- Requires the Medicaid interagency agreements between ODJFS and the Departments of Mental Health and Alcohol and Drug Addiction Services regarding Medicaid-covered alcohol, drug addiction, and mental health services to address procedures for reimbursement of providers, program oversight, and quality assurance.

- Establishes requirements for Medicaid-funded home and community-based waiver services that are an alternative to hospital, nursing facility, or intermediate care facility for the mentally retarded services.

- Requires that ODJFS and other state agencies and political subdivisions administering a home and community-based services waiver to maintain financial records documenting the costs of services provided under the waiver and make the records available to the United States Secretary of Health and Human Services and United States Comptroller General.

- Provides that ODJFS and other state agencies and political subdivisions are financially accountable for funds expended for services provided under a home and community-based services waiver.

- Requires state agencies and political subdivisions that contract with ODJFS to administer a home and community-based services waiver to provide ODJFS a written assurance that the agency or subdivision will not violate state law that establishes requirements for the waiver.

- Authorizes ODJFS to seek two or more Medicaid waivers under which home and community-based services are provided to individuals who need the level of care provided by a nursing facility or hospital.

- Requires ODJFS to administer such waivers.

- Permits ODJFS, after the first of any of the new Medicaid waivers begins to enroll eligible individuals, to seek federal approval to cease new enrollment in the Medicaid Waiver component of the Ohio Home Care Program.

- Authorizes ODJFS to transfer an individual enrolled in an ODJFS-administered Medicaid waiver program to another ODJFS-administered Medicaid waiver program if the individual is eligible for the Medicaid waiver program and the transfer does not jeopardize the individual's health or safety.

- Revises current law that permits ODJFS to seek Medicaid waivers to provide early intervention services for children under age three and therapeutic services for children with autism.

- Permits ODJFS to seek Medicaid waivers to provide specialized habilitative services for adults with autism.

- Requires that ODJFS seek federal authorization to (1) establish an ICF/MR deinstitutionalization pilot program under which individuals

receive deinstitutionalized services rather than ICF/MR services and (2) refuse to enter into or amend a Medicaid provider agreement with the operator of an ICF/MR if the provider agreement would authorize the operator to receive Medicaid payments for more ICF/MR beds than the operator receives before the pilot program begins implementation.

- Requires that ODJFS notify the Governor and General Assembly when ODJFS seeks the federal authorization.

- Creates the ICF/MR Deinstitutionalization Study Council to (1) consult with ODJFS on the rules implementing the program and (2) evaluate the pilot program and issue a report not later than December 31, 2007.

- Authorizes ODJFS to assign the administration of the pilot program to the Ohio Department of Mental Retardation and Developmental Disabilities (and transfer funds to pay for the nonfederal share of the pilot program's costs to ODMR/DD).

- Requires that ODJFS or ODMR/DD, whichever administers the pilot program, permit no more than 200 individuals to participate at one time.

- Terminates the pilot program on July 1, 2007, and leaves to future legislation the issue of implementing the program on a permanent and statewide basis.

- Permits ODJFS to seek a federal Medicaid waiver authorizing the Assisted Living Program under which supervision and personal care services are provided to not more than 1,800 individuals residing in a residential care facility.

- Requires ODJFS, if the Assisted Living Medicaid waiver is granted, to contract with the Department of Aging to administer the program.

- Reduces the number of months a Medicaid recipient must have continuously resided in a nursing facility before applying to participate in the Ohio Access Success Project.

- Requires the Director of ODJFS to apply for a federal waiver to implement a pilot program for providing up to 200 Medicaid recipients with vouchers to purchase health care services outside of a nursing facility in lieu of admission to a nursing facility.

- Provides that the application for the federal waiver must specify that an individual will not be eligible for the voucher pilot program unless the individual meets the same eligibility requirements for the Medicaid Assisted Living Program established by the bill.

- Requires ODJFS to institute a Medicaid Estate Recovery Program "to the extent permitted by federal law."

- Expands the Medicaid Estate Recovery Program to include any real and personal property and other assets in which an individual subject to recovery has any legal title or interest at the time of death, including assets conveyed to a survivor, heir, or assign of the individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

- Revises state law governing Medicaid estate recovery and liens to make it consistent with federal law, but permits ODJFS to limit the duration of an undue hardship waiver to the period during which the undue hardship exists and revises the provisions regarding whether an individual is a permanently institutionalized individual for purposes of estate recovery and liens.

- Requires the Medicaid Estate Recovery Program Administrator to develop a Medicaid estate recovery reporting form on which the person responsible for the estate must list all of a deceased person's real and personal property and other assets that are part of the estate and subject to the Medicaid Estate Recovery Program.

- Authorizes ODJFS to take certain actions as necessary to fulfill ODJFS' duties under the Medicare Prescription Drug, Improvement and Modernization Act of 2003.

- Requires ODJFS to enter into an agreement with the Department of Administrative Services to contract with a qualified vendor to develop a computer system to collect data.

- Requires ODJFS to seek the most federal participation available for the development and implementation of the Medicaid technology system.

- Creates the Medicaid Administrative Study Council to make recommendations as to the most effective organization of all executive agencies that administer services under the Medicaid program.

VIII. Hospital Care Assurance Program

- Delays the termination date of the Hospital Care Assurance Program (HCAP) from October 16, 2005 to October 16, 2007.

IX. Disability Medical Assistance

- Terminates the Disability Medical Assistance Program effective October 1, 2005.

- Specifies ODJFS's duties and procedures to deal with issues associated with termination of the Program.

X. Title XX Social Services

- Eliminates provisions requiring ODJFS and the Departments of Mental Health and Mental Retardation and Developmental Disabilities to each commission an entity independent of itself to conduct a biennial audit of its expenditures of funds received through the federal Title XX Social Services Block Grant.

- Requires social services providers to pay the cost of audits required by the state departments responsible for distributing federal Title XX funds and the departments' respective local agencies.

- Eliminates provisions specifying that the cost of an audit must be reimbursed under a subsequent or amended Title XX contract.

- Modifies ODJFS's rule-making authority for the Title XX program by specifying that rules pertaining to applicants and recipients are to be adopted under procedures requiring public hearings and other rules are to be adopted as internal management rules.

- Authorizes the federally allowed percentage of funds received under the Temporary Assistance for Needy Families (TANF) Block Grant to be used by ODJFS for the provision of Title XX social services.

- Provides that the use of TANF funds for Title XX services is not subject to other laws governing Title XX social services, and eliminates similar provisions of law.

- Establishes auditing procedures and rule-making powers for the use of TANF funds for Title XX social services.

XI. Food Stamp Program

- Requires ODJFS to implement a federally authorized exemption to the Food Stamp Program's work requirement for fiscal years 2006 and 2007.

I. General

Support Services Federal Operating Fund

(R.C. 5101.07)

The bill creates the Support Services Federal Operating Fund. If appropriate for the Fund, as determined by the Director of Job and Family Services, moneys received from the federal government are to be deposited into the Fund. The bill requires that money in the Fund be used to pay the federal share of the Ohio Department of Job and Family Services' (ODJFS) costs for computer projects and operating costs of the parts of ODJFS that provide general support services for ODJFS work units.

Support Services State Operating Fund

(R.C. 5101.071)

The bill creates the Support Services State Operating Fund. The Fund is to consist of payments made to it from other appropriation items by intrastate transfer voucher. The bill requires that money in the Fund be used for the Ohio Department of Job and Family Services' (ODJFS) costs for computer projects and the operating costs of the parts of ODJFS that provide general support services for ODJFS work units.

Consolidated funding allocations

(R.C. 5101.21)

Current law permits the Ohio Department of Job and Family Services (ODJFS) to enter into one or more written fiscal agreements with boards of county

commissioners under which financial assistance is awarded for duties of county family services agencies (county departments of job and family services, child support enforcement agencies, and public children services agencies) included in the agreements.

Current law requires that a fiscal agreement include a board of county commissioner's assurance that, if ODJFS establishes a consolidated funding allocation for two or more duties of a county family services agency included in the fiscal agreement, the board will require the agency to use funds available in the consolidated funding allocation only for the purpose for which the funds is appropriated. ODJFS is permitted to adopt rules governing the establishment of consolidated funding allocations.

The bill eliminates the fiscal agreement provision that concerns consolidated funding allocations and ODJFS's authority to adopt rules governing the establishment of such allocations.

Increase in county share of public assistance

(R.C. 5101.16 and 5101.163)

Current law requires that each board of county commissioners pay a percentage of the costs of certain public assistance programs, including Ohio Works First[127] and Medicaid. However, the amount that a board of county commissioners must pay for a state fiscal year cannot exceed 110% of the county's share for such costs for the immediately preceding state fiscal year.

The bill permits the Ohio Department of Job and Family Services (ODJFS) to increase a county's share of public assistance costs if the United States Secretary of Health and Human Services requires an increase in the state's maintenance of effort for the TANF block grant because of one or more failures, resulting from the actions or inactions of one or more county family services agencies,[128] to meet a federal TANF requirement. ODJFS is permitted to increase a county's share of public assistance costs only to the amount the county's county family services agencies are responsible for the increase in the state's maintenance of effort as determined pursuant to rules ODJFS is to adopt. The increase may cause a county's share of public assistance costs to exceed the 110% limit.

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[127] *Ohio has implemented the Temporary Assistance for Needy Families (TANF) program as Ohio Works First.*

[128] *A county's county family services agencies are the county department of job and family services, public children services agency, and child support enforcement agency.*

In requiring a county to increase its share of public assistance costs, ODJFS is not required to follow current law that governs ODJFS's disciplinary actions against such agencies. That current law requires ODJFS to provide counties notice and an opportunity for a hearing.

Recovery of excess payments made to county family services agencies

(R.C. 5101.244)

The bill provides that, if a county department of job and family services, public children services agency, or child support enforcement agency submits an expenditure report to the Ohio Department of Job and Family Services (ODJFS), ODJFS makes a payment to the agency based on the report, and ODJFS subsequently determines that the payment exceeds the allowable amount for the expenditure, ODJFS may adjust, offset, withhold, or reduce an allocation, cash draw, advance, reimbursement, or other financial assistance to the agency as necessary to recover the amount of the excess payment. ODJFS may take the action without following current law that governs ODJFS's disciplinary actions against such agencies.

Eligibility for certain programs administered by the Department of Job and Family Services

(R.C. 5101.47)

Under current law, the Director of Job and Family Services may accept applications, determine eligibility, and perform related administrative functions for Medicaid, the Children's Health Insurance Program parts I and II, publicly funded child day-care, and other programs the Director determines are supportive of children or families with at least one employed member. The bill specifically authorizes the Director to re-determine eligibility also. In addition, the bill permits the Director to perform these functions for additional programs: the Food Stamp program and other programs the Director determines will achieve administrative cost saving and efficiency through the Department of Job and Family Services' performance of those functions. The bill alters the law related to supportive programs, providing that the Director may perform any of the functions described above with regard to programs that support children, *adults*, or families, and eliminates the requirement that the families have at least one employed member.

The bill creates an exception to the authority that the Director otherwise has as discussed above. The Director may not conduct face-to-face interviews for a program discussed above if federal law requires a face-to-face interview to complete an eligibility determination for the program.

Statistics on frequently dispensed drugs under the Ohio's Best Rx Program

(R.C. 5110.39)

Current law requires ODJFS, by April 1, 2005, to create a list of the 25 drugs most often dispensed to Ohio's Best Rx Program participants under the Program and to determine the average percentage savings Program participants receive for each of these 25 drugs. The percentage savings is to be calculated by comparing the average amount that terminal distributors charge Program participants for each of the drugs, on a date selected by ODJFS, to the average of the terminal distributors' usual and customary charge for each of the drugs on that date. The bill requires ODJFS to calculate the prices annually no later than March 1.

ODJFS study of interagency agreement with Rehabilitation Services Commission

(Section 206.66.46)

The bill requires ODJFS to assess the feasibility of an interagency agreement between ODJFS and the Rehabilitation Services Commission whereby the Commission would perform disability determinations for programs and services offered by ODJFS or by a county department of job and family services in which disability is an eligibility requirement. The bill also requires ODJFS to estimate potential cost-savings and other advantages, as well as any potential disadvantages, that might result from such an agreement, and to determine how such an agreement could be implemented, including an estimate of the approximate time needed to implement it.

By not later than six months after the bill's effective date, ODJFS must prepare and submit a written report of its findings to the Speaker and Minority Leader of the House of Representatives and to the President and Minority Leader of the Senate.

Temporary civil service authority of the Director of Job and Family Services

(Section 569.06)

Overview

Among the various responsibilities of the Director of Administrative Services is the performance of certain duties under the Civil Service Law. Specifically, the Law requires the Director to carry out a variety of civil service-related functions with regard to officers and employees in the classified civil

service of the state, including, but not limited to, officers and employees of the Department of Job and Family Services (DJFS).

Changes made by the bill

Under the bill, for the period beginning on July 1, 2005, and ending on June 30, 2007 (FY 2006 and FY 2007), the Director of Job and Family Services is granted the authority to perform certain civil service-related functions with regard to employees of and positions in the DJFS that are in the classified civil service--which functions are normally the responsibility of the Director of Administrative Services. Specifically, during this period, the Director of Job and Family Services may do the following notwithstanding any contrary provision of the Civil Service Law:

- Establish, change, and abolish positions of employment in the DJFS that are in the classified civil service;

- Assign, reassign, classify, reclassify, transfer, reduce, promote, and demote DJFS *exempt employees* who are in the classified civil service, including, but not limited to, assigning or reassigning an employee to a bargaining unit classification if the Director of Job and Family Services determines that the classification is the proper classification for that employee.[129]

The bill provides that any actions taken by the Director pursuant to this temporary grant of authority that relate to DJFS exempt employees who are in the classified civil service and are subject to 5 C.F.R. 900.603 must be consistent with the requirements of that federal law.[130] Furthermore, if a DJFS exempt employee who is in the classified civil service and paid in accordance with Salary Schedule E-1 (the salary schedule that includes steps within its pay ranges) is to be assigned, reassigned, classified, reclassified, transferred, reduced, or demoted to a position in a *lower job classification* by the Director of Job and Family Services under the temporary grant of authority, the Director of Job and Family Services, or in the case of a transfer of the employee outside the DJFS, the Director of Administrative Services, must assign the exempt employee to the appropriate job classification

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[129] *"Exempt employee" means a permanent full-time or permanent part-time employee who is paid by warrant of the Auditor of State, whose position is included in the job classification plan the Director of Administrative Services establishes, and who is not subject to the Collective Bargaining Law--Chapter 4117. of the Revised Code (R.C. 124.152--not in the bill).*

[130] *5 C.F.R. 900.603 addresses standards for a merit system of personnel administration for intergovernmental personnel under federal civil service laws.*

and place him or her in pay step X (an amount of pay that does not fit into the pay steps established in Salary Schedule E-1). Such an employee must not receive an increase in compensation until the maximum rate of pay for that classification exceeds the employee's compensation.

Finally, the bill provides that actions taken by the Director of Job and Family Services pursuant to the temporary grant of authority are not subject to appeal to the State Personnel Board of Review.

II. Workforce Development

Compliance with workforce development agreements

(R.C. 5101.241)

Local areas receive financial assistance from the Ohio Department of Job and Family Services (ODJFS) to undertake workforce development activities. Ongoing law permits ODJFS to take action against local officials to enforce compliance with workforce development agreements, including, but not limited to, initiating mandamus actions to compel compliance, imposing fines, and withholding funding. The bill also allows ODJFS to issue a notice of intent to revoke approval of all or part of a local development plan effected that conflicts with state or federal law and then to effect the revocation.

Ongoing law also permits a party to request an administrative review of an action proposed to enforce the party's compliance with a workforce development agreement. Currently, depending upon the proposed action, the party may have 15 or 30 days to request an administrative review. If ODJFS receives a timely request, ODJFS is required to postpone taking its action for 15 or 30 days so that ODJFS and the party have an informal opportunity to resolve the dispute. If the informal opportunity fails to resolve the dispute, the Director appoints an administrative review panel to conduct a formal review. The bill modifies the dispute resolution process by removing the time requirements for the process and allowing the parties to develop a written resolution to the dispute at any time prior to submitting the written report described in the paragraph below. Thus, the formal review of the dispute and the informal dispute resolution process may occur at the same time.

Currently, at the conclusion of its review, the administrative review panel submits a report and recommendations for action to the Director. The Director may modify or reject the recommendations, but must give the reasons therefor. The bill eliminates the requirement for the Director to state the reasons for a modification or rejection of the panel's recommendations. The Director's final

action is binding and the bill provides the action is not subject to review; current law states only that the action is not subject to further "Departmental" review.

In addition to the disciplinary actions taken by the Director against local workforce development boards, the bill specifies in statute that the Governor, as stated in federal law, may decertify a local workforce development board for any of the following reasons in accordance with division (e) of section 117 of the "Workforce Investment Act of 1998" 112 Stat. 936, 29 U.S.C. 2801, as amended ("WIA"):

(1) Fraud or abuse;

(2) Failure to carry out the requirements of WIA, including failure to meet performance standards established by the federal government for two consecutive years.

Under the bill, if the Governor finds that access to basic WIA services is not being provided in a local area, the Governor may declare an emergency and in consultation with the chief elected officials of the local area affected, arrange for provision of these services through an alternative entity during the time period in which resolution of the problem preventing service delivery in the local area is pending. The bill specifies that an action taken by the Governor as described above is not subject to the appeals process provided in continuing law.

III. Child Care

Reimbursement determination for publicly funded child care

(R.C. 5104.30)

The Ohio Department of Job and Family Services (ODJFS) is the state agency authorized to reimburse child care providers for providing publicly funded child care to eligible individuals from state and federal funds provided for child care services. The level of reimbursement may be based on a number of variables including the type of care provided, the age or special needs of the child served, and the geographic location of the provider of child care services. The bill states that if ODJFS uses geographic location or economic region as a factor in determining reimbursement ceilings, ODJFS may not use a geographic location or economic region larger than a county.

Reimbursement ceilings for providers of publicly funded child care

(R.C. 5104.30)

The Department of Job and Family Services is the state agency authorized to reimburse child day-care providers for providing publicly funded child care to eligible individuals from state and federal funds provided for child care services. The Director of Job and Family Services is required to adopt rules in accordance with the Administrative Procedure Act (R.C. Chapter 119.) establishing reimbursement ceilings for providers of publicly funded child care. The bill requires that these reimbursement ceilings be amounts that are not less than 65% of the market's usual and customary cost to the public based on the most recently conducted market rate survey required by federal regulations.

Publicly funded child care reimbursement ceilings

(Section 206.67.12)

The bill requires the Department of Job and Family Services to estimate the monthly average of children that it expects to enroll in publicly funded child care from December of 2005 to March of 2006. The Department must later determine the actual number of children enrolled in publicly funded child care for that period. If the monthly estimate exceeds the actual enrollment numbers by at least 2,000 children, the Department is permitted to increase reimbursement for publicly funded child care in FY 2007. The reimbursement ceiling may be raised to at least 65% of the usual and customary cost to the public based on the most recent federally required market rate survey.

Fees for publicly funded child care

(R.C. 5104.38)

Under current law, the Director of Job and Family Services is required to establish by rule a schedule of fees that caretaker parents are required to pay for publicly funded child care. These fees are based on family income and size, and must generally be uniform for all types of publicly funded child care. Existing law provides that the fee cannot exceed 10% of the parent's family income. The bill eliminates the requirement that the fee not be in excess of 10% of the parent's family income, and instead provides that the fees must be calculated as permitted by federal law.

Market rate survey for publicly funded child care

(Section 206.67.13)

The bill requires ODJFS to conduct a study of market rates for the provision of child care in order to establish new rates for publicly funded child care. ODJFS must have new rates for publicly funded child care established by July 1, 2006. The bill requires all child care providers to participate in the study. Any child care provider who does not participate will not be permitted to receive publicly funded child care funds in fiscal year 2006.

IV. Child Support Enforcement

Lump sum payments sent to the Office of Child Support

(R.C. 3121.12)

Existing law

Under existing law, on receiving notice that a lump sum payment of $150 or more is to be paid to an obligor (the person who is obliged to pay child support under a child support order), the court or child support enforcement agency, as applicable, is required to do either of the following:

(1) If the obligor is in default under the support order or has any arrearages under the support order, issue an order requiring transmittal of the lump sum payment to the Office of Child Support in the Ohio Department of Job and Family Services;

(2) If the obligor is not in default under the support order and does not have any arrearages under the support order, issue an order directing the person who gave the notice to immediately pay the full amount of the lump sum to the obligor.

On receipt of the moneys, the Office of Child Support is required to pay the amount of the lump sum payment that is necessary to discharge all of the obligor's arrearages to the obligee and, within two business days after its receipt of the money, any amount that is remaining after the payment of the arrearages to the obligor.

But, federal law and regulations generally require that any amounts collected be treated first as payment on the required child support obligation for the month in which the amount was collected. If any amounts collected are in excess of that obligation, the excess amounts must be treated as payments on arrearages. (42 U.S.C. 657(a) and 45 C.F.R. 302.51(a)(1).) The Ohio

Administrative Code similarly requires payment received to be applied to current obligations before being applied to arrearages (O.A.C. 5101:1-31-14).

The bill

The bill makes two changes to current law. First, if the court or child support enforcement agency determines that the obligor is in default under the support order or has any arrearages under the support order, the bill authorizes the court or agency to issue an order requiring the transmittal of the portion of the lump sum payment sufficient to pay the arrearage in full. Second, the bill replaces the provision requiring the Office of Child Support to apply the payment to the arrearage and then transmit any remaining moneys to the obligor with a provision that requires the Office to distribute whatever portion of the lump sum it receives in accordance with administrative rules.

Electronic disbursement of child support

(R.C. 3121.50)

The bill permits the Office of Child Support in the Ohio Department of Job and Family Services to distribute child support amounts by means of electronic disbursement, rather than by check or warrant, unless otherwise prohibited from doing so by state or federal law. The bill also requires the person receiving the child support to accept payment by electronic means. The Director of Job and Family Services may adopt or amend rules under the Administrative Procedure Act (R.C. Chapter 119.) to assist in the implementation of this provision.

Child support operating fund

(R.C. 3125.191)

The bill creates in the state treasury the Child Support Operating Fund as a state special revenue fund. The Ohio Department of Job and Family Services (ODJFS) may deposit into the Fund a portion of the federal incentives related to the federal Child Support Enforcement laws contained in Title IV-D of the Social Security Act that ODJFS receives from the United States Department of Health and Human Services. ODJFS may use money in the Fund for program and administrative purposes associated with its State Child Support Enforcement Program.

Retention of federal incentives for child support enforcement programs

(Section 206.66.91)

The bill allows the Ohio Department of Job and Family Services (ODJFS) to retain $1.82 million of federal incentives given for successful implementation of child support enforcement programs. This money is to reimburse the state for its share of payments made for mandatory contracts used by county child support enforcement agencies (CSEAs) in child support enforcement. The bill also authorizes ODJFS to retain a portion of those same federal incentives for the state's share of monthly optional contracts used by county CSEAs. The amount retained by ODJFS is dependent on actual usage of the optional contracts by each county CSEA.

V. Child Welfare and Adoption

Summary of minor adoption proceedings

(R.C. 2151.416 and 3107.10)

The bill repeals provisions that require courts to send monthly summaries regarding minor adoption proceedings to the Ohio Department of Job and Family Services (ODJFS) and require ODJFS to annually report on the assembled results compiled from these summaries.

Under existing law, at the conclusion of each adoption proceeding, the court must prepare a summary of the proceeding, and each month send copies of the preceding month's summaries to ODJFS. The summary is required to contain the following:

(1) A notation of the nature and approximate value or amount of anything paid in connection with the proceeding and indicating the category to which any payment relates;

(2) If the court has not issued a decree because the final accounting in the case has not been filed, a notation of that fact and a statement of the reason for refusing to issue the decree, related to the financial data summarized under clause (1);

(3) If the adoption was arranged by an attorney, a notation of that fact.

Existing law prohibits the summary from identifying any person by name, but it may contain additional narrative material that the court considers useful to an analysis of the summary.

Existing law also requires ODJFS to annually report to the public and to the General Assembly on the results of these summaries, including a compilation and analysis of data submitted in the summaries.

The bill repeals these provisions.

VI. Title IV-A Temporary Assistance for Needy Families

Title IV-A of the Social Security Act authorizes the Temporary Assistance for Needy Families (TANF) block grant. States may receive federal funds under the TANF block grant to operate programs designed to meet one or more of the following purposes:

(1) Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;

(2) End the dependence of needy parents on government benefits by promoting job preparation, work, and marriage;

(3) Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies;

(4) Encourage the formation and maintenance of two-parent families.

Persons who receive assistance funded in part with federal TANF funds are subject to a number of federal requirements, including time limits and work requirements. Federal regulations define "assistance" as including cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs for such things as food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses. It includes such benefits even when they are provided in the form of payments to individual recipients and conditioned on participation in work experience, community service, or other work activities provided by federal TANF law. Unless specifically excluded, "assistance" also includes supportive services such as transportation and child care provided to unemployed families. All of the following are excluded from the definition of "assistance":

(1) Nonrecurrent, short-term benefits that are designed to deal with a specific crisis situation or episode of need, are not intended to meet recurrent or ongoing needs, and will not extend beyond four months;

(2) Work subsidies such as payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training;

(3) Supportive services such as child care and transportation provided to employed families;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support;

(7) Transportation benefits provided under a Job Access or Reverse Commute project to an individual who is not otherwise receiving assistance.[131]

The Ohio Department of Job and Family Services (ODJFS) is required to prepare and submit to the United States Department of Health and Human Services a state plan to receive federal funds under the TANF block grant. The state plan must provide for the following TANF programs: (1) Ohio Works First (OWF), (2) Prevention, Retention, and Contingency (PRC), (3) other TANF programs established by the General Assembly or an executive order issued by the Governor that are administered or supervised by ODJFS, and (4) components of OWF, PRC, and other ODJFS administered or supervised TANF programs that the state plan identifies as components.

Participants of OWF receive TANF-funded assistance and are therefore subject to the federal TANF requirements such as time limits and work requirements. State law governing PRC permits programs to provide benefits and services that are excluded from the definition of assistance in the federal TANF regulations. State law requires that other TANF programs also provide benefits and services that are excluded from the federal definition of assistance unless the state law or executive order establishing the programs provides otherwise.

New TANF programs

The bill creates two new TANF programs: the Employment Retention Incentive Program and the Title IV-A Demonstration Program.

[131] *42 C.F.R. 260.31.*

Employment Retention Incentive Program

(Section 206.67.10)

The bill permits the Ohio Department of Job and Family Services (ODJFS) to establish and administer the Employment Retention Incentive Program under which ODJFS provides cash payments to eligible assistance groups. The program may be created in fiscal year 2007.

If ODJFS establishes the program, the program's cash payments must be provided in a manner that enables them to be excluded from the definition of assistance in federal TANF regulations and instead be benefits that the federal regulations exclude from the definition of assistance. Each county department of job and family services is required to make eligibility determinations for the program and perform other administrative duties in accordance with rules that the bill requires ODJFS to adopt.

To be eligible for the program, an assistance group must meet all of the following requirements in accordance with rules ODJFS must adopt:

(1) The assistance group must apply in accordance with the application process established by the rules and using an application that contains all of the information required by the rules;

(2) The assistance group must have ceased to participate in OWF;

(3) The assistance group must include a member who was employed during the last month the assistance group participated in OWF;

(4) That member of the assistance group must remain employed;

(5) The assistance group must meet all other eligibility requirements established in the rules.

In addition to the rules discussed above, the bill requires that ODJFS adopt rules establishing (1) the application process for the program, including the process to verify eligibility for the program, (2) the amounts that eligible assistance groups are to receive as cash payments under the program, and (3) the frequency and duration that eligible assistance groups are to receive cash payments under the program. The rules establishing the application process may not require that applications be submitted to county departments of job and family services.

Title IV-A Demonstration Program

(R.C. 5101.803)

The bill creates the Title IV-A Demonstration Program to provide funding for innovative and promising prevention and intervention projects that meet one or more of the four purposes of the TANF block grant and are for individuals with specific and multiple barriers to achieving or maintaining self sufficiency and personal responsibility. ODJFS is permitted to provide funding for such projects to government entities and, to the extent permitted by federal law, private, not-for-profit entities with which ODJFS enters into agreements.

ODJFS is permitted to solicit proposals for entities seeking to enter into an agreement with ODJFS for the purpose of receiving funding under the Title IV-A Demonstration Program. ODJFS is to solicit the proposals in accordance with criteria ODJFS develops. ODJFS may enter into such agreements with an entity that meets the proposal's criteria and, if the entity's proposed project does not potentially affect persons in each county of the state, provides ODJFS evidence that the entity has notified the county department of job and family services of each county where persons may be affected by the project.[132] In developing the criteria, soliciting the proposals, and entering into the agreements, ODJFS must comply with all applicable federal and state laws, the Title IV-A state plan, amendments to the state plan, and federal waivers the United States Secretary of Health and Human Services grants.

Current law specifies a number of provisions that must be included in an interagency agreement between ODJFS and a state agency concerning the state agency's administration of a TANF program or component. The bill requires that an agreement between ODJFS and a government or private, not-for-profit entity regarding a project under the Title IV-A Demonstration Program also include the provisions. For example, the agreement must include a complete description of the benefits and services that are to be provided and the methods of administration. The bill also requires that such agreements include provisions for determining the expected performance outcomes and an evaluation to determine the success in achieving the performance outcomes.

A government entity or private, not-for-profit entity that receives funding to administer a project under the Title IV-A Demonstration Program is subject to

[132] *The notice to the county departments must be in writing.*

requirements current law establishes for county family services agencies[133] and state agencies that administer other TANF programs under the supervision of ODJFS. For example, the government and private, not-for-profit entities are prohibited from establishing a policy governing a project that is inconsistent with a policy the Director of ODJFS establishes. ODJFS must prescribe forms for applications, certificates, reports, records, and accounts of the entities and require reports and information from the entities as may be necessary or advisable regarding the program.

Current law provides that an authorized representative of ODJFS or a county family services agency or state agency administering a TANF program must have access to all records and information bearing thereon for the purposes of investigations. The bill provides that an authorized representative of a government entity or private, not-for-profit entity administering a project funded in whole or in part with funds provided under the Title IV-A Demonstration Program must have access to all records and information bearing on the project for the purpose of investigations.

Current law establishes a process for individuals to appeal a decision of a state or local government entity administering a public assistance program. Under this process, the individual may have a state hearing with ODJFS. That decision may be appealed to the Director of ODJFS or the Director's designee and ultimately to a court of common pleas. ODJFS is permitted to adopt rules establishing a different appeals process for certain TANF programs. The bill provides that the rules may establish a different appeals process for the Title IV-A Demonstration Program.

Kinship Permanency Incentive Program

(Primary R.C. 5101.802; ancillary R.C. 3125.18, 5101.35, 5101.80, 5101.801, and 5153.16; Sections 206.67.08)

The bill creates the Kinship Permanency Incentive Program. Under the Program an initial one-time incentive payment is to be given to a kinship caregiver[134] to defray the costs of initial placement of the minor child in the

[133] The following are county family services agencies: county departments of job and family services, child support enforcement agencies, and public children services agencies.

[134] A kinship caregiver is a person 18 years of age or older, caring for a child in place of the child's parents, and is related to the child in one of the following relationships: grandparents (including great-, great-great-, or great-great-great), siblings, aunts, uncles, nieces, nephews (including great-, great-great-, or great-great-great), first cousins, first cousins once removed, stepparents, stepsiblings, spouses or former spouses

kinship caregiver's home. The Program may provide additional permanency incentive payments for the minor child at six-month intervals for a total period not to exceed 36 months. The public children services agency in each county is to make all initial and ongoing eligibility determinations for the program under the supervision of ODJFS. The Director of ODJFS may terminate or reduce funding for the program if the Director determines that federal or state funds are insufficient to fund the program and the Director of Budget and Management approves the termination or reduction. A kinship caregiver may participate in the program if all of the following requirements are met:

(1) The kinship caregiver applies to a public children services agency;

(2) The child the kinship caregiver is caring for is a child with special needs as determined under existing ODJFS rules;[135]

(3) A juvenile court has adjudicated that the child is an abused, neglected, dependent, or unruly child and determined that it is in the child's best interest to be in the legal custody of the kinship caregiver or the probate court has determined that it is in the child's best interest to be in the guardianship of the kinship caregiver;

(4) The kinship caregiver is either the child's legal custodian or legal guardian;

(5) The child resides with the kinship caregiver pursuant to a placement approval process;

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of any of the above, and the legal guardian or custodian of the child (R.C. 5101.85, not in the bill).

[135] *To be classified as a child with "special needs" under these rules, the public children services agency must have determined that the child cannot be returned to the home of the child's parents and has one of the following conditions or factors that would require the child to receive adoption assistance or medical assistance: (1) the child is in a sibling group that should be placed together, (2) the child is a member of a minority or ethnic group, (3) the child's age, (4) the child has remained in custody of the public children services agency for more than one year, (5) the child has a medical condition, physical impairment, mental retardation, or a developmental disability, (6) the child has an emotional or behavioral problem, (7) the child has a social or medical history, or the child's family has a social or medical history, that may place the child at risk of acquiring a medical condition, a physical, mental, or developmental disability, or an emotional disorder, (8) has been in the home of the prospective adoptive parent(s) as a foster child for at least one year and would experience severe separation and loss if placed in another setting, (9) has experienced previous adoption disruption or multiple placements (Ohio Administrative Code §5101:2-47-30).*

(6) The gross income of the kinship caregiver's family does not exceed 200% of the federal poverty guidelines for a family of the same size.

Rulemaking

The bill requires the Director of Job and Family Services to adopt rules establishing the following:

(1) The application process for the program;

(2) The placement approval process through which a child is placed with a kinship caregiver;

(3) The initial and ongoing eligibility determination process for the program;

(4) The amount of the incentive payments provided under the program;

(5) The method by which the payments are provided to a kinship caregiver on behalf of an eligible child which shall not require a public children services agency to seek reimbursement from ODJFS;

(6) Anything else the Director considers necessary.

Reports

The bill requires ODJFS to prepare reports concerning both of the following:

(1) Stability and permanency outcomes for children for whom incentive payments are made under the Kinship Permanency Incentive Program;

(2) The total amount of payments made under the Program, patterns of expenditures made per child under the Program, and cost savings realized through the Program from placement with kinship caregivers rather than other out-of-home placements.

ODJFS must submit a report to the Governor, the Speaker and Minority Leader of the House of Representatives, and the President and Minority Leader of the Senate not later than December 31, 2008, and December 31, 2010.

Ohio Works First

The bill revises state law governing the Ohio Works First program (OWF).[136]

Gross income eligibility requirement

(R.C. 5107.10)

There are a number of eligibility requirements that an assistance group must meet to qualify to participate in OWF. One of the requirements is an income eligibility requirement. The income eligibility requirement has two steps. The bill modifies the first step.

Under current law, an assistance group's gross monthly income, less amounts disregarded, cannot exceed an amount specified in state law. For example, an assistance group with three members cannot have gross monthly income, less amounts disregarded, exceeding $630. The bill eliminates the specific dollar amounts and provides instead that an assistance group's gross monthly income, less amounts disregarded, cannot exceed the higher of (1) 50% of the federal poverty guidelines or (2) the dollar amount currently specified in state law.[137] The annual revisions that the United States Department of Health and Human Services makes to the federal poverty guidelines are to be applied starting on the first day of each July.

LEAP Program

(R.C. 5107.05, 5107.30, and 5107.301)

The Learning, Earning, and Parenting (LEAP) Program is a component of OWF under which participating teens[138] must attend an educational program that is designed to lead to the attainment of a high school diploma or its equivalent. The Ohio Department of Job and Family Services (ODJFS) is required to provide an incentive payment to teens who satisfy the LEAP Program's education

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[136] Ohio Works First provides cash assistance to poor families and individuals. It is part of the Temporary Assistance for Needy Families (TANF) program.

[137] This means, for example, that an assistance group with three members cannot have gross monthly income, less amounts disregarded, exceeding $653. Under current law, the gross income maximum is $630.

[138] "Teen" is defined as an OWF participant who is under age 18, or age 18 and in school, and a parent or pregnant.

requirements and reduce a teen's OWF cash assistance payment for failure or refusal, without good cause, to meet the requirements.

The bill authorizes ODJFS to provide, in addition to the incentive payment, other incentives to teens who satisfy the LEAP Program's education requirements. The bill requires that the Director of ODJFS adopt rules establishing the LEAP Program's incentives.

The Director is authorized by the bill to provide an award to individuals who successfully complete the LEAP Program's requirements and enroll in post-secondary education. If provided, the award is to be provided in accordance with rules the Director is authorized to adopt. The rules may specify the form that the award is to take and the requirements for receiving it.

VII. Medicaid

Medicaid is a health-care program for low-income children and families and for aged, blind, and disabled persons. The program is funded with federal, state, and county funds and was established by Congress in 1965 as Title XIX of the Social Security Act. Federal Medicaid law requires states participating in Medicaid to cover certain groups of persons and types of benefits and gives states options for covering other groups of persons and types of benefits.

Medicaid eligibility fraud

(R.C. 2307.65 and 2913.401)

Criminal offense

(R.C. 2913.401)

The bill creates the offense of Medicaid eligibility fraud. It prohibits a person from knowingly doing any of the following in an application for Medicaid benefits or in a document that requires a disclosure of assets for the purpose of determining eligibility to receive Medicaid benefits (R.C. 2913.401(B)):

(1) Making or causing to be made a false or misleading statement;

(2) Concealing an interest in property;

(3) Except as provided in paragraph (4), failing to disclose a transfer of property that occurred within 36 months before submission of the application or document;

(4) Failing to disclose a transfer of property that occurred within 60 months before submission of the application or document and was made to an irrevocable trust a portion of which is not distributable to the applicant for Medicaid benefits or the recipient of Medicaid benefits or to a revocable trust.

Under the bill, Medicaid eligibility fraud is a misdemeanor of the first degree if the value of the Medicaid benefits paid as a result of the violation is under $500. If the value is $500 or more and less than $5,000, the offense is a felony of the fifth degree. If the value is $5,000 or more and less than $100,000, the offense is a felony of the fourth degree. If the value is $100,000 or more, the offense is a felony of the third degree.

In addition to imposing a sentence under the preceding paragraph, the court must order a person who is guilty of Medicaid eligibility fraud to make restitution in the full amount of any Medicaid benefits paid on behalf of an applicant for or recipient of Medicaid benefits for which the applicant or recipient was not eligible plus interest at the rate applicable to judgments on unreimbursed amounts from the date on which the benefits were paid to the date on which restitution is made. The bill requires that amounts recovered as restitution and interest on those amounts be credited to the state general revenue fund and that any applicable federal share be returned to the appropriate federal agency or department.

The bill states that the remedies and penalties provided in the bill are not exclusive and do not preclude the use of any other criminal or civil remedy for any act that is in violation of the section prohibiting Medicaid eligibility fraud. The bill also declares that the section does not apply to a person who fully disclosed in an application for Medicaid benefits or in a document that requires a disclosure of assets for the purpose of determining eligibility to receive Medicaid benefits all of the interests in property of the applicant for or recipient of Medicaid benefits, all transfers of property by the applicant for or recipient of Medicaid benefits, and the circumstances of all those transfers.

The bill defines "Medicaid benefits" as benefits under the medical assistance program established under R.C. Chapter 5111. and defines "property" as any real or personal property or other asset in which a person has any legal title or interest.

Civil action

(R.C. 2307.65)

The bill authorizes the Attorney General to bring a civil action in the Franklin County Court of Common Pleas on behalf of the Ohio Department of Job and Family Services (ODJFS), and the prosecuting attorney of the county in which

Medicaid eligibility fraud occurs to bring a civil action in the court of common pleas of that county on behalf of the county department of job and family services, against a person who commits Medicaid eligibility fraud for the recovery of the amount of benefits paid on behalf of a person that either department would not have paid but for the violation minus any amounts paid in restitution under R.C. 2913.401 and for reasonable attorney's fees and all other fees and costs of litigation.

In a civil action authorized by the bill, if the defendant failed to disclose a transfer of property in violation of R.C. 2913.401, the court may also grant any of the following relief to the extent permitted by the relevant federal statute (42 U.S.C. 1396p):

(1) Avoidance of the transfer of property that was not disclosed to extent of the amount of benefits the department would not have paid but for the violation;

(2) An order of attachment or garnishment against the property;

(3) An injunction against any further disposition by the transferor or transferee, or both, of the property the transfer of which was not disclosed or against the disposition of other property by the transferor or transferee;

(4) Appointment of a receiver to take charge of the property transferred or of other property of the transferee;

(5) Any other relief that the court considers just and equitable.

The bill authorizes ODJFS or the county department of job and family services, to the extent permitted by 42 U.S.C. 1396p, to enforce a judgment obtained in a civil action for Medicaid eligibility fraud by levying on property the transfer of which was not disclosed in violation of R.C. 2913.401 or on the proceeds of the transfer of that property.

The bill states that the foregoing remedies do not apply if the transferee of the property the transfer of which was not disclosed in violation of R.C. 2913.401 acquired the property in good faith and for fair market value. The bill also provides that the foregoing remedies are not exclusive and do not preclude the use of any other criminal or civil remedy for any act that is in violation of R.C. 2913.401. Amounts of Medicaid benefits recovered in a civil action brought under the bill must be credited to the state general revenue fund, and any applicable federal share must be returned to the appropriate federal agency or department.

Aged, Blind, and Disabled Medicaid eligibility--the home as a countable resource

(R.C. 5111.011)

Ohio law requires the Director of Job and Family Services to adopt rules establishing eligibility requirements for Medicaid.[139] Accordingly, the Director has adopted rules that specify that an aged, blind, or disabled individual may qualify for Medicaid if the individual, among other requirements, meets certain financial criteria.[140] The financial criteria that are considered are income and "countable resources."[141] Countable resources are cash, personal property, and real property that an individual or spouse has an ownership interest in, has the legal ability to access in order to convert to cash, and is not legally prohibited from using for support and maintenance.[142]

The administrative rules provide that a home, or "homestead," is not a countable resource if it is the applicant's or recipient's principal place of residence.[143] However, a home becomes a countable resource if the applicant or recipient resides in a medical institution for six months or longer and does not have a spouse or certain relatives that live in the home.[144]

The bill places in the Revised Code the administrative rule that specifies when a home becomes a countable resource for purposes of determining an aged, blind, or disabled individual's eligibility for Medicaid, but modifies it to do the following:

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[139] *R.C. 5111.011(B).*

[140] *Ohio Department of Job and Family Services. "ABD Medicaid – Income & Resource Requirements," (visited May 24, 2005), accessible at <http://jfs.ohio.gov/ohp/consumers/abdFinReq.stm>.*

[141] *O.A.C. 5101:1-39-08 (regarding income) and 5101:1-39-05 (regarding resources).*

[142] *O.A.C. 5101:1-39-05.*

[143] *O.A.C. 5101:1-39-31.1.*

[144] *These relatives include a child who is under age twenty-one, blind, or disabled; a son or daughter who is age sixty-five or older and is financially dependent on the applicant or recipient for housing; and a sibling who has a verified equity and ownership interest in the home and resided in the home for at least one year immediately before the date the applicant or recipient was admitted to the medical institution. O.A.C. 5101:1-39-31.2.*

- Specify that it applies to Medicaid applicants and recipients who reside in nursing homes and intermediate care facilities for the mentally retarded.

- Extends to 13 months (from six months) the period of time during which the home is not a countable resource.

The bill maintains the exclusion in administrative rules that applies when a spouse or qualified relative, as explained above, resides in the home.

Medicaid co-payment program

(R.C. 5111.0112)

Current law authorizes the Director of Job and Family Services to establish a co-payment program under which Medicaid recipient may be charged a co-payment for services. The bill requires that the co-payment program be established.

The program must establish co-payment requirements for only dental services, vision services, and prescription drugs other than generic drugs, extent permitted by federal law. The director is to adopt rules governing the co-payment program.

The bill specifies that, with one exception, no Medicaid provider may refuse services to a Medicaid recipient who is unable to pay a co-payment for the service; however, this prohibition does not relieve a Medicaid recipient from the obligation to pay the co-payment, nor does it prohibit a provider from attempting to collect unpaid co-payments. No provider may waive a Medicaid recipient's obligation to pay the provider a co-payment, and no provider or drug manufacturer (including the manufacturer's representative, employee, independent contractor, or agent) may pay a co-payment on a Medicaid recipient's behalf.

The bill specifies an exception under which a provider must refuse service to a Medicaid recipient. If it is the provider's routine business practice to refuse service to any individual who owes the provider an outstanding debt, the bill permits the provider to consider an unpaid Medicaid co-payment as an outstanding debt and refuse service to a Medicaid recipient who owes the provider an outstanding debt. If the provider intends to refuse service to a Medicaid recipient who owes the provider an outstanding debt, the provider must notify the recipient of the provider's intent to refuse services.

Performance audit of Medicaid program

(R.C. 117.10; Section 206.66.49)

Current Ohio law requires the Auditor of State to audit all public offices[145] or accounts of private institutions, associations, boards, and corporations that receive public money for their use. The Auditor may audit the accounts of any Medicaid provider, if requested by the Department of Job and Family Services.

The bill expands the authority of the Auditor to audit providers of Medicaid services by eliminating the prerequisite of a request by the Department of Job and Family Services for an audit.

The bill authorizes the Auditor to conduct a single performance audit of the Medicaid program, during fiscal years 2006 and 2007, to be paid for by the Department of Job and Family Services. The audit may be conducted to determine ways of reducing or eliminating fraud, waste, and abuse in the program; making the program more efficient; and enhancing the program's results.

Reviews of the Medicaid program

(R.C. 5111.10 and 5111.85)

Under current law, the Ohio Department of Job and Family Services (ODJFS) may conduct reviews of Medicaid waivers. The reviews may include physical inspections of records and sites where services are provided and interviews of providers and recipients of the services. If ODJFS determines pursuant to a review that an individual or private or government entity has violated a rule governing a Medicaid waiver, ODJFS may establish a corrective action plan for the violator and impose fiscal, administrative, or both types of sanctions on the violator.

The bill broadens ODJFS's review authority to the entire Medicaid program. If a review exposes a violation of a rule governing Medicaid and the entity responsible for the entity is a board of county commissioners, county department of job and family services, public children services agency, or child

[145] *"Public office" means any state agency, public institution, political subdivision, or other organized body, office, agency, institution, or entity established by the laws of this state for the exercise of any function of government (R.C. 117.01).*

support enforcement agency, any disciplinary action ODJFS takes must be done in accordance with current law governing disciplinary actions against such entities.[146]

Medicaid eligibility reduction

(R.C. 5111.019; Section 206.66.39)

Current law provides that the parent of a child under age 19 is eligible for Medicaid if the parent (1) resides with the child, (2) has a family income of not more than 100% of the federal poverty guidelines, (3) is not otherwise eligible for Medicaid, and (4) satisfies all of the other relevant requirements established by rules of the Ohio Department of Job and Family Services (ODJFS). The bill restricts Medicaid eligibility by reducing the maximum income the parent may have and remain eligible for Medicaid; under the bill, the parent may have an income of not more than 90% of the federal poverty guidelines. The bill requires the Director of ODJFS to submit an amendment to the state Medicaid plan to the United States Secretary of Health and Human Services within 90 days of the bill's effective date. The change in eligibility requirements must be implemented by the effective date of federal approval, but not earlier than 90 days after the bill's effective date.

Medicaid look-back period

(R.C. 5111.011)

Federal law requires that states' Medicaid programs provide that institutionalized individuals and, at a state's option, noninstitutionalized individuals are ineligible for certain services for a period of time if the individual or individual's spouse disposes of assets for less than fair market value on or after the look-back date. For an institutionalized individual, the look-back date is a date that is a certain number of months before the first date that the individual is both an institutionalized individual and has applied for Medicaid. For a noninstitutionalized individual, the look-back date is a date that is a certain number of months before the date the individual applies for Medicaid or, if later, the date on which the individual disposes of assets for less than fair market value. The number of months used for the look-back depends on whether the assets are part of a trust. If the assets are not part of a trust, the number of months is 36

[146] *The types of disciplinary action that ODJFS may take against a board of county commissioners, county department of job and family services, public children services agency, or child support enforcement agency include requiring the entity to comply with a corrective action plan or to share with ODJFS a final disallowance of federal financial participation or sanction.*

(three years). If the assets are part of a trust, the number of months is 60 (five years).

The bill requires that the Director of Job and Family Services apply to the United States Secretary of Health and Human Services for a federal Medicaid waiver as necessary to make the number of months used for the look-back period be 60 regardless of whether the assets are part of a trust. If the waiver is not approved, the look-back period is to be the number of months specified in the federal law discussed above.

Termination of unused Medicaid provider agreements

(R.C. 5111.06(D))

Under existing law, to terminate or not renew an existing provider agreement with a Medicaid provider, the Ohio Department of Job and Family Services (ODJFS) must issue an order pursuant to an adjudication conducted in accordance with the Administrative Procedure Act (R.C. Chapter 119.). An adjudication is not required under certain circumstances, including when the provider has lost a required state license or has been terminated from participating in the Medicare Program.

The bill provides the ODJFS is not required to conduct an adjudication when a provider agreement is being terminated or not renewed because both of the following have occurred:

(1) The Medicaid provider has not billed or otherwise submitted a Medicaid claim to ODJFS for two years or longer;

(2) ODJFS has determined that the provider has moved from the address on record with ODJFS without leaving an active forwarding address with ODJFS.

The bill authorizes ODJFS to terminate or not renew the provider agreement by sending a notice explaining the proposed action to the address on record with ODJFS. The notice may be sent by regular mail.

Recovery of Medicaid overpayments

(R.C. 5111.06 and 5111.061)

Existing law requires ODJFS to take any action based on a final fiscal audit of a Medicaid provider by issuing an order pursuant to an adjudication conducted in accordance with the Administrative Procedure Act.

The bill authorizes ODJFS to recover, at any time, a Medicaid payment or portion of a payment made to a provider to which the provider is not entitled. Among the overpayments that may be recovered under the bill are the following:

(1) Payment for a service, or a day of service, not rendered;

(2) Payment for a day of service at a full per diem rate that should have been paid at a percentage of the full per diem rate;

(3) Payment of a service, or day of service, that was paid by, or partially paid by, a third party and the payment or partial payment was not offset against the amount Medicaid paid to reduce or eliminate the Medicaid payment;

(4) Payment when a Medicaid recipient's responsibility for payment was understated and resulted in an overpayment to the provider.

The bill specifies that ODJFS is authorized to recover overpayments prior to or after any of the following:

--Adjudication of a final fiscal audit in accordance with the Administrative Procedure Act, or expiration of the time to issue the final fiscal audit;

--Adjudication of a finding under any other provision of the Medicaid statutes or the rules adopted under those statutes, or expiration of the time to issue a finding under those statutes or rules.

The bill specifies that the recovery of an overpayment does not preclude ODJFS from subsequently issuing a final fiscal audit in accordance with the Administrative Procedure Act or issuing a finding under any other provision of the Medicaid statutes or rules. The bill requires, however, that a subsequent final fiscal audit or finding be reduced by the amount of the prior recovery, as appropriate.

The bill also specifies that nothing in its Medicaid overpayment recovery provisions limits ODJFS's authority to recover overpayments under any other provision of Ohio's statutes.

Recovery of Medicaid overpayments by other state agencies

(R.C. 5111.06 and 5111.914)

Existing law authorizes ODJFS to contract with another state agency to have the agency administer a component of the Medicaid program. The contract must be in the form of an interagency agreement.

Under the bill, if a state agency under an interagency agreement with ODJFS identifies that a Medicaid overpayment has been made to a provider, the state agency may commence actions to recover the overpayment on behalf of ODJFS. In recovering an overpayment, the state agency is required to comply with the following procedures:

--Seeking voluntary repayment. The state agency must attempt to recover the overpayment by notifying the provider of the overpayment and requesting voluntary repayment. Not later than five business days after notifying the provider, the state agency must notify ODJFS in writing of the overpayment. The state agency may negotiate a settlement of the overpayment and notify ODJFS of the settlement. A settlement negotiated by the state agency is not valid and cannot be implemented until ODJFS has given its written approval of the settlement.

--Holding administrative hearings. If the state agency is unable to obtain voluntary repayment, the agency must give the provider notice of an opportunity for a hearing in accordance with the Administrative Procedure Act. If the provider timely requests a hearing, the state agency must conduct the hearing to determine the legal and factual validity of the overpayment. On completion of the hearing, the state agency must submit its hearing officer's report and recommendation and the complete record of proceedings, including all transcripts, to the Director of ODJFS for final adjudication. The Director may issue a final adjudication order in accordance with the Administrative Procedure Act.

Attorney fees

Under the hearing process, the state agency must pay any attorney fees imposed under the Administrative Procedure Act. ODJFS is required to pay any attorney fees imposed under existing law when authorized parties prevail in an appeal of an agency's adjudication order.

Effect on other ODJFS actions

The bill specifies that its provisions on recovery of Medicaid overpayments by other state agencies do not preclude ODJFS from adjudicating a final fiscal audit under provisions of existing law, from recovering overpayments under the bill, or from taking any other actions authorized under Ohio's Medicaid statutes.

Final Medicaid orders when no hearing is requested

(R.C. 5111.062 and 5111.914(C))

The bill provides that ODJFS is not required to hold a hearing in accordance with the Administrative Procedure Act when ODJFS gives notice of

the opportunity for a hearing but the provider or other entity subject to the notice does not request a hearing or timely request a hearing in accordance with the Act. The Director of ODJFS is authorized to proceed by issuing a final adjudication order in accordance with the Administrative Procedure Act.

The bill specifies that these provisions apply to any action taken by ODJFS under existing law, the bill's Medicaid overpayment recovery provisions, or any other provision of the Medicaid statutes requiring ODJFS to give notice of an opportunity for a hearing. The bill also applies substantially equivalent provisions to state agencies that administer components of the Medicaid program for ODJFS and attempt to recover Medicaid overpayments through a hearing process.

Step therapy system for Medicaid

(R.C. 5111.028)

The bill permits the Director of Job and Family Services to establish a step therapy system for the Medicaid program. Under this system, a Medicaid provider must do the following:

(1) When prescribing an initial medical treatment for a Medicaid recipient, prescribe the least costly treatment that can be used to safely and effectively treat the Medicaid recipient's symptoms or to effect a cure for the recipient's medical condition.

(2) Sequentially prescribe increasingly more costly treatments after providing the Director with clinical substantiation that the previous treatment was unsafe or ineffective in treating the symptoms or effecting a cure.

A Medicaid provider does not have to follow the step therapy system if the treatment the recipient needs is an antiretroviral agent.

Rules governing state Medicaid plan services

(primary R.C. 5111.02 (new); other R.C. sections: 317.08, 317.36, 340.03, 340.16, 5107.26, 5111.02 (renumbered 5111.021), 5111.021 (renumbered 5111.022), 5111.022 (renumbered 5111.023), 5111.023 (renumbered 5111.0114), 5111.025, and 5119.61)

Current Revised Code section 5111.02 authorizes the Ohio Department of Job and Family Services (ODJFS) to adopt rules establishing the amount, duration, and scope of medical services to be included in the Medicaid program. The rules must establish the conditions under which services are covered and reimbursed, the method of reimbursement applicable to each covered service, and the amount

of reimbursement or, in lieu of such amounts, methods by which such amounts are to be determined for each covered service.

The bill requires that the rules adopted under R.C. 5111.02 include procedures for their enforcement that provide due process protections. The procedures are to include procedures for corrective action plans for, and imposing financial and administrative sanctions on, individuals and private and government entities that violate the rules.

Medicaid coverage of dental services

(Section 206.66.44)

The bill states that ODJFS retains the ability to adopt, amend, or rescind rules to modify Medicaid coverage of dental services for individuals under 21 years of age. This includes rules that limit or reduce covered services, reduce reimbursement levels, or subject covered services to co-payments. The bill requires the Director of ODJFS to adopt rules for coverage of dental services for Medicaid recipients 21 years of age or older. These rules must reduce the amount, duration, and scope of coverage to levels lower than current coverage levels.

Medicaid coverage of vision services

(Section 206.66.45)

States that ODJFS retains the ability to adopt, amend, or rescind rules to modify Medicaid coverage of vision services. This includes rules that limit or reduce covered services, reduce reimbursement levels, or subject covered services to co-payments.

Community mental health services

(R.C. 5111.023)

The state Medicaid plan covers certain mental health services provided by community mental health facilities. ODJFS is required to seek federal approval to provide assertive community treatment and intensive home-based mental health services as part of the community mental health services. Current law requires that ODJFS have sought the approval not later than July 1, 2004. The bill extends the deadline for seeking the approval to July 1, 2006.

Prohibition on reimbursement for erectile dysfunction drugs

(R.C. 5111.027)

The bill prohibits the Medicaid program from providing reimbursement for prescription drugs for treatment of erectile dysfunction, such as Viagra®, as part of the Medicaid prescription drug service.

Supplemental Drug Rebate Program

(R.C. 5111.082)

The Ohio Department of Job and Family Services (ODJFS) is permitted to establish a Supplemental Drug Rebate Program under which drug manufacturers may be required to provide ODJFS a supplemental rebate as a condition of having the drug manufacturer's drug products covered by the Medicaid program without prior approval. Current law requires ODJFS, if the Supplemental Drug Rebate Program is established, to exempt from the program all of a drug manufacturer's drug products that have been approved by the United States Food and Drug Administration for the treatment of (1) mental illness, including schizophrenia, major depressive disorder, and bipolar disorder and (2) HIV or AIDS.

The bill eliminates the requirement that a drug product used to treat mental illness, HIV, or AIDS be exempt from the Supplemental Drug Rebate Program.

The bill also authorizes ODJFS to receive a supplemental rebate negotiated under the Supplemental Drug Rebate Program for a drug dispensed to a Medicaid recipient pursuant to a prescription or for a drug purchased by a Medicaid provider for administration to a Medicaid recipient in the provider's primary place of business. Current law does not specify whether a supplemental rebate applies only to drugs dispensed to Medicaid recipients pursuant to a prescription.

Multiple-state drug purchasing program

(R.C. 5111.0114)

Under the bill, the Director of ODJFS may enter into or administer an agreement or cooperative arrangement with other states to create or join a multiple-state prescription drug purchasing program for the purpose of negotiating with manufacturers of dangerous drugs to receive discounts or rebates for dangerous drugs dispensed under Medicaid. Current law contains no similar provision.

State Maximum Allowable Cost Program for Medicaid drug reimbursement

(R.C. 5111.083)

The United States Department of Health and Human Services established the Federal Upper Limit Program in 1987 as a means of limiting the amount that Medicaid could reimburse for drugs with available generic equivalents--called "maximum allowable cost" (MAC) drugs.[147] Specifically, a "maximum allowable cost" drug is a drug for which at least three versions of the drug rated therapeutically equivalent exist and at least three suppliers for the drug are listed in the current editions of published national compendia.[148]

Under administrative rules, the Ohio Department of Job and Family Services cannot reimburse a pharmacy for MAC drugs, in the aggregate, at a rate higher than the Federal Upper Limit prices. Drugs that are not designated as MAC drugs are "estimated acquisition cost" (EAC) drugs. Administrative rules provide that reimbursement for an EAC drug must be based on the estimate of the wholesale acquisition cost (WAC)[149] for the drug determined by periodic review of pricing information from Ohio drug wholesalers, pharmaceutical manufacturers, and a pharmacy pricing update service. Maximum reimbursement for an EAC drug, excluding dispensing fees, is an amount equal to the WAC plus 9%. However, if the WAC for a drug cannot be determined, the reimbursement for an EAC drug, excluding dispensing fees, is an amount equal to the average wholesale price (AWP)[150] minus 12.8%.[151]

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[147] *Centers for Medicare and Medicaid Services. "Federal Upper Limits on Drugs," accessible at <http://www.cms.hhs.gov/medicaid/drugs/drug10.asp> (visited March 18, 2005).*

[148] *Id.*

[149] *The United States Department of Health and Human Services defines "wholesale acquisition cost" as the price paid by a wholesaler for a drug purchased from the wholesaler's supplier, typically the manufacturer of the drug. On financial statements, the total of wholesale acquisition cost amounts equals the wholesaler's cost of goods sold. Publicly disclosed or listed WAC amounts may not reflect all available discounts. United States Department of Health and Human Services, Health Resources and Services Administration, Pharmacy Services Support Center. "Glossary of Pharmacy-related Terms," (visited May 24, 2005), accessible at <http://pssc.aphanet.org/resources-glossary.htm>.*

[150] *The United States Department of Health and Human Services defines "average wholesale price" (AWP) to mean the national average of the list prices for a drug charged by pharmaceutical wholesalers to pharmacies. "AWP" is sometimes referred to*

The bill requires the Director of Job and Family Services to establish a State Maximum Allowable Cost Program for purposes of managing reimbursement for certain prescription drugs available under Medicaid.[152] The Director must do all of the following with respect to the Program:

- Identify and create a list of prescription drugs to be included in the Program.
- Update the list of prescription drugs described above on a weekly basis.
- Review the state maximum allowable cost for each drug included on the list described above on a weekly basis.

The Director may adopt rules in accordance with the Ohio Administrative Procedure Act (R.C. Chapter 119.) to implement this requirement.

Medicaid e-prescribing system

(R.C. 5111.084)

Under a provision created by the bill, the Director of Job and Family Services may establish an e-prescribing system for the Medicaid program. Under the e-prescribing system, certain Medicaid providers must use an electronic system when prescribing a drug for a Medicaid recipient. The e-prescribing system must eliminate the need for Medicaid providers to make prescriptions for Medicaid recipients by handwriting or telephone and provide Medicaid providers with an up-to-date, clinically relevant drug information database and a system of electronically monitoring Medicaid recipients' medical history, drug regimen compliance, and fraud and abuse.

The bill provides that, if the Director establishes an e-prescribing system, the Director must determine, before the beginning of each fiscal year, the ten

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as a "sticker price" because it is not the actual price that larger purchasers normally pay. "AWP" information is publicly available. Id.

[151] *O.A.C. 5101:3-9-05.*

[152] *According to a Congressional Budget Office report, many states have recently taken steps to establish state-specific upper limits for generic and brand-name drugs available under Medicaid--limits that are frequently lower than the federal upper limits. Congressional Budget Office. "Medicaid's Reimbursement to Pharmacies for Prescription Drugs," (Dec. 2004),* accessible at *<http://www.cbo.gov/ftpdocs/60xx/doc6038/12-16-Medicaid.pdf>.*

Medicaid providers that issued the most prescriptions for Medicaid recipients receiving hospital services during the calendar year preceding that fiscal year; notify those providers that they must use the e-prescribing system for the upcoming fiscal year; and require the ten providers to use the e-prescribing system. The bill also requires the Director to seek the most federal financial participation available for the development and implementation of the e-prescribing system.

Pharmacy and therapeutics committee

(R.C. 5111.085)

The bill increases the membership of the ODJFS Pharmacy and Therapeutics Committee from eight members to nine by including an additional pharmacist. This increases the number of pharmacists on the committee to three.

Ohio Veteran's Home Agency nursing facility beds

(R.C. 5111.21)

Current law requires that a nursing facility that elects to obtain and maintain eligibility for payments under the Medicaid program qualify all of its Medicaid-certified beds in the Medicare program. The bill provides that the Ohio Veteran's Home Agency is not required to qualify all of the Medicaid-certified beds in a nursing facility it maintains and operates in the Medicare program.

Medicaid reimbursement of long-term care services

Background

Current law requires the Ohio Department of Job and Family Services (ODJFS) to pay the reasonable costs of services that a nursing facility or intermediate care facility for the mentally retarded (ICF/MR) with a Medicaid provider agreement provides to Medicaid recipients.[153] The amount ODJFS pays a nursing facility or ICF/MR is determined by formulas established in the Revised Code.

[153] *A cost is reasonable if it is an actual cost that is appropriate and helpful to develop and maintain the operation of patient care facilities and activities and does not exceed what a prudent buyer pays for a given item or services. Reasonable costs may vary from provider-to-provider and from time-to-time for the same provider.*

Fiscal year 2006 reimbursement system for nursing facilities

(Section 206.66.23)

The bill establishes formulas in uncodified law to be used to determine nursing facilities' Medicaid reimbursement rate for services provided during fiscal year 2006. The system varies depending on whether a nursing facility has a valid Medicaid provider agreement on June 30, 2005, and filed a complete and adequate Medicaid cost report covering calendar year 2003.[154]

Facilities with 2003 cost report and June 30, 2005, provider agreement. If a nursing facility has a valid Medicaid provider agreement on June 30, 2005, and filed a complete and adequate 2003 cost report, the facility is to be paid a rate calculated using the method used to calculate the facility's rate for services provided on July 1, 2004, with the following modifications:

(1) The facility's 2003 cost report, rather than its 2004 cost report, is to be used.

(2) The maximum cost per case-mix unit for the facility's peer group is to be set at an amount equal to 98% of the maximum cost per case-mix unit that was set for the facility's peer group for direct care costs for services provided on July 1, 2004.

(3) The facility's quarterly case-mix score that is based on the data the facility submitted to ODJFS for the quarter ending December 31, 2004, is to be used for the average case-mix score that is used in the calculation of the facility's direct care costs.

(4) An inflation rate of 6.28% is to be used for the inflation rate used in the calculation of the facility's direct care costs.

(5) The annual average case-mix score that was used to calculate the facility's rate for direct care costs for services provided on June 30, 2005, is to be used.

(6) An inflation rate of .79% is to be used for the inflation rate used in the calculation of the facility's other protected costs.

(7) An inflation rate of .91% is to be used for the inflation rate used in the calculation of the facility's indirect care costs.

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[154] *With certain exceptions, the 2003 cost report was due by March 30, 2004.*

(8) The pre-inflation adjusted maximum rate for indirect care costs for the facility's peer group is to be set at an amount equal to 98% of the pre-inflation adjusted maximum rate for indirect care costs that was set for the facility's peer group for services provided on July 1, 2004.

(9) An inflation rate of negative .07% is to be used for the inflation rate used in the calculation of the maximum rate for indirect care costs for the facility's peer group.

(10) An inflation rate of 1.79% is to be used for the inflation rate used in certain calculations made in determining the facility's capital costs.

After those modifications are made, further adjustments are to be made to determine the facility's reimbursement rate. First, the facility's rate as determined with the above modifications is to be reduced by 6.62%; then the facility's rate per case-mix unit is to be determined by dividing that reduced rate by the facility's annual average case-mix score that was calculated above. Next the rate per case-mix unit for each of the nursing facilities in the facility's direct care peer group is to be arrayed from low to high.[155] The facility's estimated Medicaid costs is then determined by multiplying its modified rate, as reduced by 6.62% above and further adjusted by an amount equal to certain rate adjustments implemented during fiscal year 2005, by the number of its Medicaid days[156] for calendar year 2003 as reported to ODJFS on May 31, 2004, in the Medicaid Management Information System. Next, the total of the estimated Medicaid costs for all of the nursing facility's direct care peer group is determined.[157] The nursing facilities included in the array made above are to be divided into three sub-peer groups. The first sub-peer group is to consist of those nursing facilities with the lowest rate per case-mix unit whose combined estimated Medicaid costs equals, as close as possible, one-third of the total estimated Medicaid costs determined for all of the nursing facilities in the peer group. The second sub-peer group is to consist of

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[155] *A nursing facility in the facility's direct care peer group is excluded from the array if the nursing facility does not have a valid Medicaid provider agreement on June 30, 2005, and a 2003 cost report.*

[156] *"Medicaid days" is defined as all days during which a resident who is a Medicaid recipient eligible for nursing facility services occupies a bed in a nursing facility that is included in the facility's Medicaid-certified capacity. Therapeutic or hospital leave days for which payment is made are considered Medicaid days proportionate to the percentage of the nursing facility's per resident per day rate paid for those days.*

[157] *A nursing facility in the facility's direct care peer group is excluded from the calculation of the total estimated Medicaid costs if the nursing facility does not have a valid Medicaid provider agreement on June 30, 2005, and a 2003 cost report.*

those nursing facilities with the middle rate per case-mix unit whose combined estimated Medicaid costs equals, as close as possible, one-third of the total estimated Medicaid costs. The third sub-peer group is to consist of those nursing facilities with the highest rate per case-mix unit whose combined estimated Medicaid costs equals, as close as possible, one-third of the total estimated Medicaid costs.

The facility's rate may then be further adjusted depending on which sub-peer group the facility is placed in. If it is placed in the first sub-peer group, its rate is increased by 2.5%. If it is placed in the second sub-peer group, its rate is not changed. If it is placed in the third sub-peer group, its rate is reduced by 2.5%. The rate so determined is its final rate unless the facility pays the nursing home franchise permit fee. If it pays the franchise permit fee, the rate is increased by $1.95.

Facilities with June 30, 2005, provider agreement but no 2003 cost report. If a nursing facility has a valid Medicaid provider agreement on June 30, 2005, and is not required to file a cost report covering calendar year 2003, the facility's rate is to be 97% of the rate it was paid for nursing facility services provided on June 30, 2005, plus $1.95 if the facility pays the nursing home franchise permit fee.

Facilities that undergo a change of operator. The bill provides that if a nursing facility undergoes a change of operator on July 1, 2005, the facility is to be paid, for nursing facility services provided during fiscal year 2006, the rate that would have been paid to the exiting operator of the facility for such services provided on July 1, 2005. If a nursing facility undergoes a change of operator during the period beginning July 2, 2005, and ending June 30, 2006, the facility is to be paid, for nursing facility services the facility provides during the period beginning on the effective date of the change of operator and ending June 30, 2006, the rate paid to the exiting operator provided on the day immediately before the effective date of the change of operator.

Facilities that begin participation in Medicaid. If, during fiscal year 2006, a nursing facility obtains certification as a nursing facility from the Director of Health and begins participation in the Medicaid program, the facility is to be paid, for nursing facility services provided during the period beginning on the date the facility begins to participate in Medicaid and ending June 30, 2006, a rate that is the median of all rates paid to nursing facilities on July 1, 2005.

Rate for beds added to a nursing facility. The bill provides that if, during fiscal year 2006, one or more Medicaid-certified beds are added to a nursing facility with a valid Medicaid provider agreement for that fiscal year, the facility is to be paid a rate for the new beds that is the same as the facility's rate for the

Medicaid-certified beds that are in the facility on the day before the new beds are added.

Fiscal year 2007 reimbursement system for nursing facilities

(Section 206.66.24)

The bill provides in an uncodified section that a nursing facility that has a valid Medicaid provider agreement on June 30, 2006, and a valid Medicaid provider agreement for fiscal year 2007 is to be paid, for nursing facility services provided during fiscal year 2007, the rate the facility is paid for such services on June 30, 2006. The provisions applicable to fiscal year 2006 regarding a change of operator, initial participation in Medicaid, and addition of new beds are also applicable to fiscal year 2007.

Nursing facilities rates subject to franchise permit fee changes

(Sections 206.66.23 and 206.66.24)

The bill requires ODJFS to reduce nursing facilities' fiscal years 2006 and 2007 rates if the United States Centers for Medicare and Medicaid Services requires that the nursing home franchise permit fee be reduced or eliminated. The rates are to be reduced as necessary to reflect the loss to the state of the revenue and federal financial participation generated from the franchise permit fee.

Nursing facilities' rate adjustments for fiscal years 2006 and 2007

(Sections 206.66.23 and 206.66.24)

With two exceptions, the bill provides that a nursing facility's rate for fiscal year 2006 and 2007 is not to be adjusted. The first exception provides that an adjustment resulting from an audit of the facility's 2003 Medicaid cost report may be applied to the rate not later than July 1, 2008, as regards the fiscal year 2006 rate, and July 1, 2009, as regards the fiscal year 2009 rate. The second exception provides that the facility's rate may be adjusted to reflect a change in the facility's capital costs due to (1) a change of provider agreement that goes into effect before July 1, 2005, and for which a rate adjustment is not implemented before June 30, 2006, as regards the fiscal year 2006 rate, or June 30, 2007, as regards the fiscal year 2007 rate or (2) a reviewable activity for which a certificate of need application is filed with the Director of Health before July 1, 2005, costs are incurred before June 30, 2005, and a rate adjustment is not implemented before June 30, 2006, as regards the fiscal year 2006 rate, or June 30, 2007, as regards the fiscal year 2007 rate.

Fiscal years 2006 and 2007 reimbursement system for ICFs/MR

(Sections 206.66.22 and 206.66.27)

The bill provides in an uncodified section that an ICF/MR that has a valid Medicaid provider agreement on June 30, 2005, and a valid Medicaid provider agreement for fiscal years 2006 and 2007 is to be paid, for ICF/MR services provided during those fiscal years, the per diem rate the ICF/MR is paid on June 30, 2005. The provisions applicable to nursing facilities for fiscal years 2006 and 2007 regarding a change of operator, initial participation in Medicaid, and addition of new beds, are also applicable to ICFs/MR for fiscal years 2006 and 2007. An adjustment necessitated by an audit of an ICF/MR's 2003 Medicaid cost report may be applied to the ICF/MR's per diem rate for fiscal years 2006 and 2007.

The bill authorizes the Director of ODJFS to increase the rate paid to an ICF/MR for fiscal years 2006 and 2007 by an amount specified in rules to reimburse the ICF/MR for active treatment day programming because of the termination of the community alternative funding system.[158]

Reimbursement formula revised

(primary R.C. 5111.20; R.C. 5111.02, 5111.21, 5111.22, 5111.221, 5111.222, 5111.223, 5111.23, 5111.231 (5111.232), new 5111.231, 5111.235, 5111.24, 5111.241, 5111.242, 5111.243, 5111.244, 5111.25, 5111.251, 5111.254, 5111.255, 5111.257 (5111.258), new 5111.257, 5111.26, 5111.261, 5111.262 (repealed), 5111.263, 5111.264, 5111.265, 5111.266, 5111.27, 5111.28, 5111.29, 5111.291, 5111.30, 5111.31, 5111.32, and 5111.33)

The bill substantially revises the Revised Code's Medicaid reimbursement formula for nursing facilities. But, because of uncodified provisions of the bill establishing rates for fiscal years 2006 and 2007,[159] the revisions will not affect facilities' rates until fiscal year 2008.

Costs centers. Among the revisions are changes to the categories into which nursing facilities' costs are placed for the purpose of calculating reimbursement rates. The categories are referred to as cost centers. Current law establishes four cost centers: capital, direct, indirect, and other protected. The bill provides that some of the current cost centers are no longer applicable to nursing

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[158] *See "**Community alternative funding system terminated**" in the part of this analysis concerning the Department of Mental Retardation and Developmental Disabilities.*

[159] *See "**Fiscal year 2006 reimbursement system for nursing facilities**" and "**Fiscal year 2007 reimbursement system for nursing facilities**" above.*

facilities, establishes a new cost center for nursing facilities called ancillary and support costs, and makes other changes to the cost centers. The following table compares the nursing facilities' cost centers under current law and their cost centers under the bill.

	NFs' current cost centers	NFs' proposed cost centers
Capital costs	Cost of ownership and nonextensive renovation. "Costs of ownership" are the actual expenses incurred for all of the following: (1) depreciation and interest on any capital assets that cost $500 or more per item, including buildings, building improvements that are not approved as nonextensive renovations, equipment, extensive renovations, and transportation equipment, (2) amortization and interest on land improvements and leasehold improvements, (3) amortization of financing costs, and (4) except as provided in indirect care costs, lease and rent of land, building, and equipment. The costs of capital assets of less than $500 per item may be considered capital costs of ownership in accordance with a provider's practice. "Costs of nonextensive renovation" are the actual expenses incurred for depreciation or amortization and interest on renovations that are not extensive renovations.	Cost of ownership only. The part of the costs of ownership concerning depreciation and interest on capital assets that cost $500 or more per item no longer includes (1) extensive renovations or (2) equipment for which the costs were reported as administrative and general costs on the facility's Medicaid cost report covering calendar year 1992.
Direct care costs	Costs for all of the following: (1) registered nurses, licensed practical nurses, and nurse aides employed by the facility, (2) direct care staff, administrative nursing staff, medical directors, social services staff, activities staff, psychologists and psychology assistants, social	Does not include costs for social services staff, activities staff, psychologists, psychology assistants, social workers, or counselors. Includes costs for medical supplies, emergency oxygen, habilitation supplies, and universal precautions supplies.

	NFs' current cost centers	NFs' proposed cost centers
	workers and counselors, habilitation staff, qualified mental retardation professionals, program directors, respiratory therapists, habilitation supervisors, and other persons holding degrees qualifying them to provide therapy, (3) purchased nursing services, (4) quality assurance, (5) training and staff development, employee benefits, payroll taxes, and workers' compensation premiums or self-insurance claims and related costs for personnel listed above, other than purchased nursing services, (6) consulting and management fees related to direct care, (7) allocated direct care home office costs, and (8) other direct-care resources specified as direct care costs in rules.	
Other protected costs	Costs for (1) medical supplies, (2) real estate, franchise, and property taxes, (3) natural gas, fuel oil, water, electricity, sewage, and refuse and hazardous medical waste collection, (4) allocated other protected home office costs, and (5) any additional costs defined as other protected costs in rules.	None
Indirect care costs	All reasonable costs that are not capital, direct care, or other protected costs. Includes costs for all of the following: habilitation supplies, pharmacy consultants, medical and habilitation records, program supplies, incontinence supplies, food, enterals, dietary supplies and personnel, laundry, housekeeping, security,	None

	NFs' current cost centers	NFs' proposed cost centers
	administration, liability insurance, bookkeeping, purchasing department, human resources, communications, travel, dues, license fees, subscriptions, home office costs not otherwise allocated, legal services, accounting services, minor equipment, maintenance and repairs, help-wanted advertising, informational advertising, start-up costs, organizational expenses, other interest, property insurance, employee training and staff development, employee benefits, payroll taxes, and workers' compensation premiums or self-insurance claims and related costs for personnel listed above. Also includes the cost for equipment, including vehicles, acquired by operating lease executed before December 1, 1992, if the costs are reported as administrative and general costs on the facility's Medicaid cost report covering calendar year 1992.	
Ancillary and support	None	All reasonable costs incurred by a nursing facility that are not direct care or capital costs. Includes costs for all of the following: activities, social services, pharmacy consultants, medical and habilitation records, program supplies, incontinence supplies, food, enterals, dietary supplies and personnel, laundry, housekeeping, security, administration, medical equipment, utilities, liability insurance, bookkeeping,

	NFs' current cost centers	NFs' proposed cost centers
		purchasing department, human resources, communications, travel, dues, license fees, subscriptions, home office costs not otherwise allocated, legal services, accounting services, minor equipment, maintenance and repairs, help-wanted advertising, informational advertising, start-up costs, organizational expenses, other interest, property insurance, employee training and staff development, employee benefits, payroll taxes, and workers' compensation premiums or self-insurance claims and related costs for personnel listed above. Also includes costs for equipment, including vehicles, acquired by operating lease executed before December 1, 1992, if the costs are reported as administrative and general costs on the facility's Medicaid cost report for the cost reporting period covering calendar year 1992.

Direct care costs. The bill revises the formula used to determine a nursing facility's rate for direct care costs. Under the bill, a nursing facility's direct care rate is to be determined semi-annually by multiplying the cost per case-mix unit determined for the facility's direct care peer group by the facility's semiannual case-mix score.

The bill requires that ODJFS determine each direct care peer group's cost per case-mix unit at least once every ten years. The first time ODJFS makes the determination, it must use information from calendar year 2003. ODJFS may select which calendar year to use for subsequent determinations. The year used is called the "applicable calendar year." To determine a direct care peer group's cost per case-mix unit, ODJFS must do all of the following:

(1) Determine the cost per case-mix unit for each nursing facility in the peer group for the applicable calendar year by dividing each facility's desk reviewed, actual, allowable, per diem direct care costs for the applicable calendar year by the facility's annual average case-mix score for the applicable calendar year.

(2) Identify which nursing facility in the peer group is at the 25th percentile of the cost per case-mix unit. In making this determination, ODJFS must exclude nursing facilities that participated in the Medicaid program under the same provider for less than twelve months in the applicable calendar year and nursing facilities whose direct care costs are more than one standard deviation from the mean desk-reviewed, actual, allowable, per diem direct care cost for all nursing facilities in the nursing facility's peer group for the applicable calendar year.

(3) Calculate the amount that is seven per cent above the cost per case-mix unit for the nursing facility identified under (2) above.

(4) Multiply the amount calculated under (3) above by the rate of inflation for the 18-month period beginning on the first day of July of the applicable calendar year and ending the last day of December of the calendar year immediately following the applicable calendar year using the employment cost index for total compensation, health services component, published by the United States Bureau of Labor Statistics.

A case-mix score is the measure of the relative direct-care resources needed to provide care and habilitation to a nursing facility resident. Current law requires that ODJFS calculate an annual average case-mix score for each nursing facility using, in part, data for each resident, regardless of payment source, from a resident assessment instrument specified in rules. The bill requires that ODJFS also determine a semiannual case-mix score for each nursing facility. The semiannual case-mix score, however, is to use, in part, data for each resident who is a Medicaid recipient. The annual average case-mix score is to be used in determining peer groups' cost per case-mix units. The semiannual case-mix score is to be used to determine a specific nursing facility's rate for direct care costs.

For the purposes of calculating case-mix scores, nursing facilities and ICFs/MR must submit complete assessment data for each resident not later than 15 days after the end of each calendar quarter. Current law requires nursing facilities to submit the data to ODJFS. The bill requires nursing facilities to submit the data to the Department of Health and, if required by ODJFS rules, ODJFS. ICFs/MR continue to be required to submit the data to ODJFS.

Whereas current law permits the Director of ODJFS to adopt rules governing the submission of resident assessment data, the bill requires that ODJFS adopt rules addressing the resident assessment data issue. The bill eliminates a provision that permits rules establishing procedures for facilities to correct assessment information to prohibit nursing facilities and ICFs/MR from submitting corrections, for the purpose of calculating its annual average case-mix score, after a certain amount of time.[160]

Capital costs. The bill also revises the formula used to determine a nursing facility's rate for capital costs. Under the bill, a nursing facility's rate for capital costs is to be the median rate for capital costs for the nursing facilities in the facility's capital peer group. ODJFS is required to determine the median rate for capital costs for each peer group at least once every ten years. As with the rate for direct care costs, ODJFS must use information from calendar year 2003 the first time it makes the determination and may select which calendar year to use for subsequent determinations. To determine a peer group's median rate for capital costs, ODJFS must do both of the following:

(1) Use the greater of each nursing facility's actual inpatient days for the applicable calendar year or the inpatient days the facility would have had for the applicable calendar year if its occupancy rate had been 100%. For the purpose of determining a nursing facility's occupancy rate, ODJFS must include any beds that the nursing facility removes from its Medicaid-certified capacity after June 30, 2005, unless the facility also removes the beds from its licensed bed capacity.

(2) Exclude nursing facilities that participated in the Medicaid program under the same provider for less than twelve months in the applicable calendar year and nursing facilities whose capital costs are more than one standard deviation from the mean, desk-reviewed, actual, allowable, per diem capital cost for all nursing facilities in the nursing facility's peer group for the applicable calendar year.

Ancillary and support costs. A nursing facility's rate for the new cost center ancillary and support costs is to be the facility's ancillary and support peer group's rate for such costs. ODJFS is required to determine each peer group's rate for ancillary and support costs at least once every ten years. As with the rate for direct care costs and capital costs, ODJFS must use information from calendar year 2003 the first time it makes the determination and may select which calendar

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[160] *For ICFs/MR, the time is two calendar quarters after the end of the quarter to which the information pertains or, if the information pertains to the quarter ending the 31st day of December, after the 31st day of the following March. For nursing facilities, the time is the earlier of the time applicable to ICFs/MR or the deadline established by federal regulations.*

year to use for subsequent determinations. To determine a peer group's rate for ancillary and support costs, ODJFS must do all of the following:

(1) Determine the rate for ancillary and support costs for each nursing facility in the peer group for the applicable calendar year by using the greater of the facility's actual inpatient days for the applicable calendar year or the inpatient days the facility would have had for the applicable calendar year if its occupancy rate had been 90%. For the purpose of determining a facility's occupancy rate, ODJFS is to include any beds that the facility removes from its Medicaid-certified capacity unless the facility also removes the beds from its licensed bed capacity.

(2) Identify which nursing facility in the peer group is at the 25th percentile of the rate for ancillary and support costs for the applicable calendar year. In making this determination, ODJFS must exclude nursing facilities that participated in the Medicaid program under the same provider for less than twelve months in the applicable calendar year and nursing facilities whose ancillary and support costs are more than one standard deviation from the mean desk-reviewed, actual, allowable, per diem ancillary and support cost for all nursing facilities in the facility's peer group for the applicable calendar year.

(3) Calculate the amount that is three per cent above the rate for ancillary and support costs for the nursing facility at the 25th percentile identified under (2) above.

(4) Multiply the amount calculated under (3) above by the rate of inflation for the 18-month period beginning on the first day of July of the applicable calendar year and ending the last day of December of the calendar year immediately following the applicable calendar year using the consumer price index for all items for all urban consumers for the North Central region, published by the United States Bureau of Labor Statistics.

Tax costs. In addition to a rate for the three cost centers discussed above, the bill requires that ODJFS pay a nursing facility a rate for certain tax costs. The tax costs are real estate taxes, personal property taxes, corporate franchise taxes, and commercial activity taxes. ODJFS is required to determine a nursing facility's rate for these tax costs at least once every ten years. As with the rate for direct care, capital, and ancillary and support costs, ODJFS must use information from calendar year 2003 the first time it makes the determination and may select which calendar year to use for subsequent determinations. To determine a nursing facility's rate for tax costs, ODJFS must divide the facility's desk-reviewed, actual, allowable, tax costs paid for the applicable calendar year by the number of inpatient days the facility would have had if its occupancy rate had been 100% during the applicable calendar year.

Franchise permit fee rate. Under current law, the first one dollar of the nursing home franchise permit fee that a nursing facility pays is reimbursed through the other protected cost center. The remaining amount of the franchise permit fee is reimbursed using money in the Nursing Facility Stabilization Fund. The bill requires instead that ODJFS pay a nursing facility a rate for the franchise permit fees it pays. The rate is to equal the amount of the franchise permit fee for the fiscal year for which the rate is paid.

Quality incentive payment. The bill establishes a quality incentive payment for each nursing facility placed in the first, second, or third quality tier groups provided for by the bill. Nursing facilities placed in the first group are to receive the highest payment. Nursing facilities placed in the second group are to receive the second highest payment. Nursing facilities placed in the third group are to receive the third highest payment. Nursing facilities placed in the fourth group are not to receive a payment. The mean payment, weighted by Medicaid days, is to be two per cent of the average rate for all nursing facilities calculated under the nursing facility reimbursement formula, excluding the part of the formula regarding the quality incentive payment. Nursing facilities placed in the fourth group must be included for the purpose of determining the mean payment.

ODJFS is required to place each nursing facility in one of the four tier groups annually. Each tier group must consist of one quarter of all nursing facilities participating in the Medicaid program. Which group a nursing facility is placed in depends on how many quality points the facility earns. The first group is to consist of the quarter of nursing facilities individually awarded the most number of quality points. The second, third, and fourth groups are to consist of the quarters of nursing facilities individually awarded the second, third, or fourth most number of quality points.

A nursing facility earns one quality point for each of the following accountability measures the facility meets:

(1) Having no health deficiencies on the facility's most recent standard survey;

(2) Having no health deficiencies with a scope and severity level greater than E, as determined under nursing facility certification standards for the Medicaid program, on the facility's most recent standard survey;

(3) Having resident satisfaction above the statewide average;

(4) Having family satisfaction above the statewide average;

(5) Having a number of hours of employing nurses that is above the statewide average;

(6) Having an employee retention rate that is above the average for the facility's direct care peer group;

(7) Having an occupancy rate that is above the statewide average;

(8) Having a Medicaid utilization rate that is above the statewide average;

(9) Having a case-mix score for direct care costs that is above the statewide average.

Adjustments directed by future legislation. The bill requires that ODJFS adjust the rate determined for a nursing facility as directed by the General Assembly through the enactment of law governing Medicaid payments to nursing facilities. This is to include any law that (1) establishes factors by which the rates are to be adjusted and (2) establishes a methodology for transitioning rates from the fiscal year 2007 amount to rates determined for subsequent fiscal years. ODJFS is required to prepare a report that includes a recommendation on the methodology that should be used for the transition. ODJFS must submit the report to the Governor, President and Minority Leader of the Senate, and Speaker and Minority Leader of the House of Representatives not later than June 30, 2006.

Amortization cost not an allowable cost. The bill provides that if one or more Medicaid-certified beds are relocated from a nursing facility to another nursing facility owned by a different individual or private or government entity and the application for the certificate of need authorizing the relocation is filed with the Director of Health on or after July 1, 2005, amortization of the cost of acquiring operating rights for the relocated beds is not an allowable cost for the purpose of determining the facility's Medicaid reimbursement rate.

Setting a nursing facility's initial rates. ODJFS uses a nursing facility's Medicaid cost report covering a previous calendar year when determining the facility's Medicaid reimbursement rate. This is not possible when a nursing facility is new to the Medicaid program and therefore does not have a prior Medicaid cost report. The bill revises the system for setting a nursing facility's initial reimbursement rate to reflect the revisions to the reimbursement formula.

Reconsideration of rates. Current law requires the Director of ODJFS to adopt rules establishing a process under which a nursing facility, ICF/MR, or group or association of facilities, may seek reconsideration of their Medicaid reimbursement rate. The rules must provide that when Medicaid certified beds are added to an existing facility, replaced at the same site, or subject to a change of

ownership or lease, ODJFS, through the rate reconsideration process, must, subject to certain limitations, increase the facility's rate for capital costs proportionately to account for the costs of the beds that are added, replaced, or subject to a change of ownership or lease. The bill provides that this requirement no longer applies to nursing facilities and provides instead that a nursing facility's rate for added, replaced, or renovated Medicaid certified beds is the same rate for the nursing facility's existing beds. The bill also provides that this requirement no longer applies to an ICF/MR that is subject to a change of ownership or lease. Instead, the bill's provisions regarding change of operator apply.[161]

Current law provides that the rules concerning reconsideration of Medicaid reimbursement rates must include a means by which ODJFS may increase a nursing facility or ICFs/MR's rate on demonstration that the facility's actual, allowable costs have increased because of extreme circumstances. The rules must specify the circumstances that would justify a rate increase because of extreme circumstances. In the case of nursing facilities, such circumstances must (1) include increased security costs for an inner-city nursing facility and an increase in workers' compensation experience rating of greater than five per cent for a nursing facility that has an appropriate claims management program and (2) exclude a change of ownership that results from bankruptcy, foreclosure, or findings of violations of Medicaid certification requirements. The bill provides that the rate reconsideration process for extreme circumstances no longer applies to nursing facilities. The bill also adds a new circumstance to be considered an extreme circumstance warranting a rate reconsideration for an ICF/MR: natural disasters.

Refund of excess depreciation

(R.C. 5111.25 and 5111.251)

A nursing facility or ICF/MR that is sold may be required to refund to ODJFS the amount of excess depreciation paid to the facility for each year it operated under a Medicaid provider agreement and prorated according to the number of Medicaid patient days for which the facility received payment. The bill eliminates current law that specifies that the amount of the refund depends on when the facility is sold, including that no refund is due if the facility is sold after ten or more years of operation under the provider agreement.

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[161] *See "**Change of operator, closure, and voluntary termination and withdrawal**" below.*

Medicaid cost report's due date after change of provider

(R.C. 5111.26)

The bill provides that if a nursing facility undergoes a change of provider that ODJFS determines is an arm's length transaction, the new provider must submit a Medicaid cost report to ODJFS for that facility not later than 90 days after the end of the facility's first full three calendar months of operation after the change of provider. However, a nursing facility is not required to file a cost report for a calendar year if it undergoes a change of provider that is an arm's length transaction after October 1 of that calendar year.

If a nursing facility undergoes a change of provider that ODJFS determines is not an arm's length transaction, the new provider is required to file a Medicaid cost report at the same time the previous provider would have been required to file the previous provider's next cost report if the previous provider had not ceased to be the provider.[162] The new provider's cost report must cover the portion of the calendar year during which the new provider operated the nursing facility and the portion of the calendar year during which the previous provider operated the facility.

Medicaid provider agreements

(R.C. 5111.20, 5111.21, 5111.22, 5111.221, 5111.222, 5111.23, and 5111.31)

One condition for a nursing facility or ICF/MR to obtain Medicaid payments for providing services to Medicaid recipients is for the facility to enter into a Medicaid provider agreement with ODJFS. The bill provides that the provider agreement is between a provider of a nursing facility or ICF/MR and ODJFS. The bill defines "provider" as an operator with a Medicaid provider agreement. "Operator" is defined by the bill as a person or governmental entity responsible for the daily operating and management decisions for a nursing facility or ICF/MR.

A provider agreement is required by current law to contain a provision under which ODJFS agrees to make payments to the nursing facility or ICF/MR for patients eligible for services under the Medicaid program. The bill requires instead that the provider agreement include a provision under which ODJFS

[162] *The previous provider would have had to file the previous provider's next Medicaid cost report within 90 days after the end of the calendar year unless granted a 14-day extension.*

agrees to make payments to a provider for Medicaid-covered services the nursing facility or ICF/MR provides to a resident who is a Medicaid recipient.

With a certain exception, a provider agreement is required to include any part of a nursing facility or ICF/MR that meets Medicaid certification standards. Current law provides that a provider agreement is not required, unless otherwise required by federal law, to include licensed nursing home beds that a nursing facility adds during the period beginning July 1, 1987, and ending July 1, 1993. The bill establishes an exception for beds in an ICF/MR that are designated for respite care under a Medicaid waiver program. This exception too is limited to the extent permitted by federal law.

The bill provides that an operator of a nursing facility or ICF/MR may enter into Medicaid provider agreements for more than one nursing facility or ICF/MR.

Nursing home franchise permit fee

(R.C. 3721.50, 3721.51, 3721.511 (repealed), 3721.52, 3721.541, 3721.56, 3721.561, 3721.58, 5111.20, 5111.235, and 5111.266)

Nursing homes and hospitals with skilled nursing facility, long-term care, or nursing home beds are required to pay an annual franchise permit fee. For fiscal years 2003 through 2005, the fee is $4.30 multiplied by the product of (1) the number of the nursing home's beds or hospital's skilled nursing facility, long-term care, or nursing home beds and (2) the number of days in the fiscal year for which the fee is imposed.

Fee increased for FY 2006 and 2007. Current law provides that the fee is to be reduced to $1 per bed per day starting in fiscal year 2006. The bill increases the fee to $6.25 for fiscal years 2006 and 2007. It is reduced to $1 starting in fiscal year 2008.

Uses of money collected from the franchise permit fee. The first $1 collected from the franchise permit fee is required to be deposited into the Home and Community-Based Services for the Aged Fund. Money in that fund must be used to pay for the Medicaid program, including the PASSPORT waiver component, and the Residential State Supplement Program.

The remaining amount of the fee is required to be deposited into the Nursing Facility Stabilization Fund. Uncodified law currently governs how money in that fund is to be used. ODJFS is required to use that money to (1) make Medicaid payments to nursing facilities, (2) make payments to each nursing facility for each Medicaid day in fiscal year 2005 in an amount equal to 76.74% of the franchise permit fee that the facility pays for fiscal year 2005 divided by the

facility's inpatient days for calendar year 2003,[163] and (3) make payments to each nursing facility for fiscal year 2005 in an amount equal to $2.25 per Medicaid day for the purpose of enhancing quality of care.

The bill codifies (places in the Revised Code) the law governing the use of the money in the Nursing Facility Stabilization Fund and provides for that money to be used to make Medicaid payments to nursing facilities.

The bill requires that a provider of a nursing facility filing its Medicaid cost report with ODJFS report as a nonreimbursable expense the entire cost of the nursing facility's franchise permit fee.

Sanctions for failure to pay franchise permit fee. Current law authorizes ODJFS to penalize a nursing home or hospital that fails to pay the full amount of the franchise permit fee when due. The penalty is a 5% assessment on the amount overdue.

The bill provides that, in addition to assessing the penalty, ODJFS may do either of the following:

(1) Withhold an amount equal to the amount overdue and penalty assessed from a Medicaid payment due the nursing facility or hospital until the nursing facility or hospital pays the fee and penalty.

(2) Terminate the nursing facility or hospital's Medicaid provider agreement.

The bill provides that ODJFS may make the withholding without providing notice to the nursing facility or hospital and without conducting an adjudication under the Administrative Procedure Act (R.C. Chapter 119.).[164]

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[163] *"Medicaid days" is defined as all days during which a resident who is a Medicaid recipient eligible for nursing facility services occupies a bed in a nursing facility that is included in the facility's Medicaid-certified capacity. Therapeutic or hospital leave days for which payment is made are considered Medicaid days proportionate to the percentage of the nursing facility's per resident per day rate paid for those days. The definition of "inpatient days" is similar to the definition of "Medicaid days" except that it applies to all of a nursing facility's residents, regardless of whether they are a Medicaid recipient or private-pay patient.*

[164] *The provision of the bill authorizing ODJFS to withhold a Medicaid payment without notice or an adjudication raises the question of whether it may violate the 14th Amendment to the United States Constitution which prohibits states from depriving a person of life, liberty, or property without due process of law.*

Exemptions from the franchise permit fee. Certain nursing homes are exempt from the nursing home franchise permit fee. Nursing homes operated by a county and nursing homes that are certified as an ICF/MR rather than a nursing facility are exempt.[165] ODJFS was required to seek a federal Medicaid waiver to exempt (1) the Widow's Home of Dayton, Ohio, Masonic Home of Springfield, and Holy Family Home of Parma and (2) any nursing home that is exempt from state income taxation as a home for the aged, exempt from federal income taxation under section 501 of the Internal Revenue Code, provide services for the life of each resident without regard to the resident's ability to continue to pay, and does not have a Medicaid provider agreement.[166]

The bill eliminates the exemptions available because of the federal Medicaid waiver. It provides, however, a new exemption for a nursing home maintained and operated by the Ohio Veteran's Home Agency.

ICF/MR franchise permit fee

(R.C. 5112.30, 5112.31, and 5112.341)

Current law imposes a franchise permit fee on each ICF/MR for the purpose of generating revenue for home and community-based services for individuals with mental retardation or a developmental disability. In fiscal year 2005, the amount of the fee is $9.63 multiplied by the product of (1) the number of Medicaid-certified beds on the first day of May of the calendar year in which the fee is determined by (2) the number of days in the fiscal year beginning on the first day of July of the same calendar year.

Delay of adjustment for inflation. Ordinarily, ODJFS is required to adjust the fee for each fiscal year in accordance with a composite inflation factor established in rules. The bill provides that the fee is to remain at $9.63 per bed per day for fiscal years 2006 and 2007 and adjusted in accordance with the composite inflation factor for subsequent fiscal years.

Sanctions for failure to pay franchise permit fee. Current law authorizes ODJFS to penalize an ICF/MR that fails to pay the full amount of the franchise permit fee when due. The penalty is a 5% assessment on the amount overdue.

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*[165] ICFs/MR are subject to a different franchise permit fee. See "**ICF/MR franchise permit fee**" below.*

[166] ODJFS is permitted to limit the number of nursing homes that qualify for an exemption on the basis of meeting those requirements. The limitation may be imposed to ensure that the franchise permit fee satisfies a federal requirement that the fee be generally redistributive.

The bill provides that, in addition to assessing the penalty, ODJFS may do either of the following:

(1) Withhold an amount equal to the amount overdue and penalty assessed from a Medicaid payment due the ICF/MR until the ICF/MR pays the fee and penalty.

(2) Terminate the ICF/MR's Medicaid provider agreement.

The bill provides that ODJFS may make the withholding without providing notice to the ICF/MR and without conducting an adjudication under the Administrative Procedure Act (R.C. Chapter 119.).[167]

Nursing Facility Reimbursement Study Council abolished

(R.C. 5111.34 (repealed); Sections 403.05 and 403.06)

Current law establishes the Nursing Facility Reimbursement Study Council to review, on an ongoing-basis, the system for reimbursing nursing facilities under Medicaid. The Council's membership includes state legislators, state agency directors, and representatives of Medicaid recipients and nursing home organizations.

The bill abolishes the Council.[168]

Change of operator, closure, and voluntary termination and withdrawal

Current law requires the owner of a nursing facility or ICF/MR operating under a Medicaid provider agreement to provide written notice to the Ohio Department of Job and Family Services (ODJFS) at least 45 days before entering into a contract of sale for the facility or voluntarily terminating participation in Medicaid. The bill eliminates this requirement and establishes new requirements for a nursing facility or ICF/MR that undergoes a change of operator, facility closure, voluntary termination, or voluntary withdrawal of participation. The new requirements do not apply, however, to a nursing facility or ICF/MR that

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[167] *The provision of the bill authorizing ODJFS to withhold a Medicaid payment without notice or an adjudication may raise the question of whether it violates the 14th Amendment to the United States Constitution which prohibits states from depriving a person of life, liberty, or property without due process of law.*

[168] *The bill, in addition to removing the Council from the list of entities scheduled to be sunset on December 31, 2010, unless renewed by the General Assembly, makes a technical change in that list by removing a duplicate reference to the Consumer Advisory Committee to the Rehabilitation Services Commission.*

undergoes a facility closure, voluntary termination, voluntary withdrawal of participation, or change of operator before October 1, 2005, if the exiting operator provided written notice to ODJFS before July 1, 2005.

Change of operator

(R.C. 5111.65)

A change of operator occurs when an entering operator becomes the operator of a nursing facility or ICF/MR in the place of the exiting operator.[169] Actions that constitute a change of operator include the following:

(1) A change in an exiting operator's form of legal organization, including the formation of a partnership or corporation from a sole proprietorship;

(2) A transfer of all the exiting operator's ownership interest in the operation of the nursing facility or ICF/MR to the entering operator, regardless of whether ownership of any or all of the real property or personal property associated with the facility is also transferred;

(3) A lease of the nursing facility or ICF/MR to the entering operator or the exiting operator's termination of the exiting operator's lease;

(4) If the exiting operator is a partnership, dissolution of the partnership;

(5) If the exiting operator is a partnership, a change in composition of the partnership unless the change does not cause the partnership's dissolution under state law or the partners agree that the change does not constitute a change in operator;

(6) If the operator is a corporation, dissolution of the corporation, a merger of the corporation into another corporation that is the survivor of the merger, or a consolidation of one or more other corporations to form a new corporation.

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[169] *The bill defines "entering operator" as the individual or private or governmental entity that will become the operator of a nursing facility or ICF/MR when a change of operator occurs. "Exiting operator" is defined as (1) an operator that will cease to be the operator of a nursing facility or ICF/MR on the effective date of a change of operator, (2) an operator that will cease to be the operator of a nursing facility or ICF/MR on the effective date of a facility closure, (3) an operator of an ICF/MR that is undergoing or has undergone a voluntary termination, or (4) an operator of a nursing facility that is undergoing or has undergone a voluntary withdrawal of participation. The "operator" is the individual or private or governmental entity responsible for the daily operating and management decisions for a nursing facility or ICF/MR.*

The following, alone, do not constitute a change of operator:

(1) A contract for an entity to manage a nursing facility or ICF/MR as the operator's agent, subject to the operator's approval of daily operating and management decisions;

(2) A change of ownership, lease, or termination of a lease of real or personal property associated with a nursing facility or ICF/MR if an entering operator does not become the operator in place of an exiting operator;

(3) If the operator is a corporation, a change of one or more members of the corporation's governing body or transfer of ownership of one or more shares of the corporation's stocks, if the same corporation continues to be the operator.

Facility closure

(R.C. 5111.65)

The bill defines "facility closure" as discontinuance of the use of the building, or part of the building, that houses the facility as a nursing facility or ICF/MR that results in the relocation of all of the facility's residents. A facility closure occurs regardless of any of the following:

(1) The operator completely or partially replacing the facility by constructing a new facility or transferring the facility's license to another facility;

(2) The facility's residents relocating to another of the operator's facilities;

(3) Any action the Department of Health takes regarding the facility's certification under federal Medicaid law that may result in the transfer of part of the facility's survey findings to another of the operator's facilities;

(4) Any action the Department of Health takes regarding the facility's license as a nursing home;

(5) Any action the Department of Mental Retardation and Developmental Disabilities takes regarding the facility's license as a residential facility.

The bill provides that a facility closure does not occur if all of the nursing facility or ICF/MR's residents are relocated due to an emergency evacuation and one or more of the residents return to a Medicaid-certified bed in the nursing facility or ICF/MR not later than 30 days after the evacuation occurs.

Voluntary termination and withdrawal of participation

(R.C. 5111.65)

The bill provides that a voluntary termination is an operator's voluntary election to terminate the participation of an ICF/MR in the Medicaid program but to continue to provide service of the type provided by a residential facility for individuals with mental retardation or a developmental disability. "Voluntary withdrawal of participation" is defined as an operator's voluntary election to terminate the participation of a nursing facility in the Medicaid program but to continue to provide service of the type provided by nursing homes.

Notice of facility closure or voluntary termination or withdrawal

(R.C. 3721.19, 5111.65, and 5111.66)

The bill requires an exiting operator or owner[170] of a nursing facility or ICF/MR participating in the Medicaid program to provide ODJFS written notice of a facility closure, voluntary termination, or voluntary withdrawal of participation. The notice is due not less than 90 days before the effective date of the closure or voluntary termination or withdrawal. The effective date of a facility closure is the last day that the last of the nursing facility or ICF/MR residents resides in the facility. The effective date of a voluntary termination is the day the ICF/MR ceases to accept Medicaid patients. The effective date of a voluntary withdrawal of participation is the day the nursing facility ceases to accept new Medicaid patients other than the individuals who reside in the nursing facility on the day before the effective date of the voluntary withdrawal.

The notice to ODJFS must include all of the following:

(1) The name of the exiting operator and, if any, the exiting operator's authorized agent;

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[170] *The bill defines "owner" as an individual or private or governmental entity that has at least 5% ownership or interest, either directly, indirectly, or in any combination, in any of the following regarding a nursing facility or ICF/MR: (1) the land on which the facility is located, (2) the structure in which the facility is located, (3) any mortgage, contract for deed, or other obligation secured in whole or in part by the land or structure on or in which the facility is located, or (4) any lease or sublease of the land or structure on or in which the facility is located. "Owner" does not mean a holder of a debenture or bond related to the nursing facility or ICF/MR and purchased at public issue or a regulated lender that has made a loan related to the facility unless the holder or lender operates the facility directly or through a subsidiary.*

(2) The name of the nursing facility or ICF/MR that is the subject of the written notice;

(3) The exiting operator's Medicaid provider agreement number for the nursing facility or ICF/MR that is the subject of the written notice;

(4) The effective date of the closure or voluntary termination or withdrawal;

(5) The signature of the exiting operator's or owner's representative.

Notice of change of operator

(R.C. 5111.65 and 5111.67)

An exiting operator or owner and entering operator are required to provide ODJFS written notice of a change of operator if the nursing facility or ICF/MR participates in the Medicaid program and the entering operator seeks to continue the facility's participation. The written notice must be provided to ODJFS not later than 45 days before the effective date of the change of operator if the change does not entail the relocation of residents. The written notice is due not later than 90 days before the effective date of the change of operator if the change entails the relocation of residents. The effective date of a change of operator is the day the entering operator becomes the operator. The notice must include all of the following:

(1) The name of the exiting operator and, if any, the exiting operator's authorized agent;

(2) The name of the nursing facility or ICF/MR that is the subject of the change of operator;

(3) The exiting operator's Medicaid provider agreement number for the facility that is the subject of the change of operator;

(4) The name of the entering operator;

(5) The effective date of the change of operator;

(6) The manner in which the entering operator becomes the facility's operator, including through sale, lease, merger, or other action;

(7) If the manner in which the entering operator becomes the facility's operator involves more than one step, a description of each step;

(8) Written authorization from the exiting operator or owner and entering operator for ODJFS to process a Medicaid provider agreement for the entering operator;

(9) The signature of the exiting operator's or owner's representative.

The entering operator is required to include a completed application for a Medicaid provider agreement with the notice. Also, the entering operator must attach all the proposed or executed leases, management agreements, merger agreements and supporting documents, and sales contracts and supporting documents relating to the facility's change of operator.

Determination of potential Medicaid debt

(R.C. 5111.68)

On notification of a facility closure, voluntary termination, voluntary withdrawal of participation, or change of operator, ODJFS is required by the bill to determine the amount of any overpayments made under Medicaid to the exiting operator, including overpayments the exiting operator disputes, and other actual and potential debts the exiting operator owes or may owe to ODJFS and the United States Centers for Medicare and Medicaid Services (CMS). In making the determination, ODJFS is required to include all of the following that ODJFS determines is applicable:

(1) Refunds for excess depreciation due to ODJFS under current law and any other amount ODJFS properly finds to be due after a final fiscal audit;

(2) Interest owed to ODJFS and CMS;

(3) Final civil monetary and other penalties for which all right of appeal has been exhausted;

(4) Money owed ODJFS and CMS from any outstanding final fiscal audit, including a final fiscal audit for the last fiscal year or portion thereof in which the exiting operator participated in Medicaid.

If ODJFS is unable to make the determination before the effective date of the entering operator's provider agreement or the effective date of the closure or voluntary termination or withdrawal, ODJFS is required to make a reasonable estimate of the overpayments and other debts for the period.[171] ODJFS must make

[171] *See "**Provider agreement with entering operator**" below.*

the estimate using information available to ODJFS, including prior determinations of overpayments and other debts.

Withholdings

(R.C. 5111.25 (renumbered 5111.27), 5111.251 (repealed), and 5111.681)

Under current law, ODJFS is required to provide for a bank, trust company, or savings and loan association to hold in escrow the amount of the last two monthly Medicaid payments to a nursing facility or ICF/MR before a sale or termination of participation in Medicaid or, if the owner fails, within the required time, to notify ODJFS before entering into a contract of sale for the nursing facility or ICF/MR, the amount of the first two monthly payments made to the facility after ODJFS learns of the contract. However, if the amount the owner will be required to refund to ODJFS is likely to be less than the amount of the two monthly payments otherwise put into escrow, ODJFS must do either of the following:

(1) Withhold the amount of the owner's last monthly payment or, if the owner fails, within the required time, to notify ODJFS before entering into a contract of sale for the nursing facility or ICF/MR, the amount of the first monthly payment made after ODJFS learns of the contract;

(2) If the owner owns other facilities that participate in Medicaid, obtain a promissory note in an amount sufficient to cover the amount likely to be refunded.

The bill requires, with a certain exception, that ODJFS, instead, withhold the greater of the following from payment due an exiting operator under Medicaid:

(1) The total amount of any Medicaid overpayments to the exiting operator, including overpayments the exiting operator disputes, and other actual and potential debts, including any unpaid penalties, the exiting operator owes or may owe to ODJFS and CMS under Medicaid;

(2) An amount equal to the average amount of monthly payments to the exiting operator under Medicaid for the 12-month period immediately preceding the month that includes the last day the exiting operator's provider agreement is in effect or, in the case of a voluntary withdrawal of participation, the effective date of the voluntary withdrawal.

The bill permits ODJFS to choose to not make the withholding if an entering operator (1) enters into a nontransferable, unconditional, written agreement with ODJFS to pay ODJFS any debt the exiting operator owes ODJFS under Medicaid and (2) provides ODJFS a copy of the entering operator's balance sheet that assists ODJFS in determining whether to make the withholding.

Final cost report

(R.C. 5111.29 (renumbered 5111.30), 5111.682, 5111.683, and 5111.684)

The bill requires an exiting operator to file with ODJFS a cost report unless ODJFS waives this requirement.[172] The cost report is due not later than 90 days after the last day the exiting operator's Medicaid provider agreement is in effect or, if the exiting operator voluntarily withdraws from Medicaid participation, the effective date of the voluntary withdrawal. The cost report must cover the period that begins with the day after the last day covered by the operator's most recent previous cost report required under current law and ends on the last day the operator's provider agreement is in effect or the effective date of the voluntary withdrawal.[173] The cost report must include, as applicable, the sale price of the nursing facility or ICF/MR, a final depreciation schedule that shows which assets are transferred to the buyer and which assets are not, and any other information ODJFS requires.

All payments under Medicaid for the period the cost report covers are deemed overpayments until the date ODJFS receives the properly completed cost report if the exiting operator fails to file the cost report within the required time. ODJFS is permitted to impose on the exiting operator a penalty of $100 for each calendar day the properly completed cost report is late. The penalty is subject to an adjudication conducted in accordance with the Administrative Procedure Act.

The bill prohibits ODJFS from providing an exiting operator final payment under Medicaid until ODJFS receives all properly completed cost reports required by current law and the bill.

Determination of actual Medicaid debt

(R.C. 5111.29 (renumbered 5111.30) and 5111.685)

ODJFS is required to determine the actual amount of debt an exiting operator owes ODJFS under Medicaid by completing all final fiscal audits not already completed and performing all other appropriate actions ODJFS determines

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[172] *The bill gives ODJFS sole discretion over whether to waive the cost report requirement for an exiting operator.*

[173] *Current law requires nursing facilities and ICFs/MR to file with ODJFS an annual cost report covering the previous calendar year or the portion of the previous calendar year during which the facility participated in Medicaid. The bill eliminates provisions of the law governing the cost report that concern Medicaid reimbursement rates for nursing facilities and ICFs/MR.*

to be necessary. ODJFS must issue a debt summary report on the actual amount of debt not later than 180 days after the date the exiting operator files the properly completed cost report required by the bill with ODJFS, or, if ODJFS waives the cost report requirement, 180 days after the date ODJFS waives the cost report. The report must include ODJFS's findings and the amount of debt ODJFS determines the exiting operator owes ODJFS and CMS under Medicaid.[174]

Release of withholdings

(R.C. 5111.686 and 5111.687)

The bill establishes time frames for ODJFS to release the amount withheld from an exiting operator. ODJFS must release the withholdings 181 days after the date the exiting operator files a properly completed cost report required by the bill unless ODJFS issues a report on the exiting operator's actual Medicaid debt not later than 180 days after the date the cost report is filed. If the cost report is waived, the release must be made 181 days after the date ODJFS issues the waiver unless ODJFS issues the report on actual Medicaid debt not later than 180 days after the date ODJFS waives the cost report. If ODJFS issues the report on actual Medicaid debt not later than 180 days after the cost report is filed or 180 days after the date the cost report is waived, the release must be made not later than 60 days after the exiting operator agrees to a final fiscal audit resulting from the report. The amount released is to be reduced by any amount the exiting operator owes ODJFS and CMS under Medicaid.

ODJFS is permitted, at its sole discretion, to release a withholding if an exiting operator submits to ODJFS written notice of a postponement of a change of operator, facility closure, or voluntary termination or withdrawal and the transactions leading to that action are postponed for at least 30 days but less than 90 days after the date originally proposed. ODJFS is required to release a withholding if the exiting operator submits to ODJFS written notice of a cancellation or postponement of a change of operator, facility closure, or voluntary

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[174] *Only the parts of the report concerning the following are subject to an adjudication conducted in accordance with the Administrative Procedure Act: (1) any adverse finding that ODJFS makes as the result of a final fiscal audit, (2) adverse findings that result from an exception review of resident assessment data submitted after the effective date of a facility's rate that is based on the assessment data, (3) overpayments deemed to exist due to a late cost report, (4) penalties for failure to file the cost report required by the bill; failure to provide written notice of sale or voluntary termination of participation in Medicaid pursuant to law in effect before the effective date of this part of the bill; or failure to furnish documentation requested during an audit within 60 days of the request, and (5) penalties imposed by rules.*

termination or withdrawal and transactions leading to that action are canceled or postponed for more than 90 days after the date originally proposed.[175]

Provider agreement with entering operator

(R.C. 5111.671, 5111.672, 5111.673, 5111.674, and 5111.675)

ODJFS is permitted by the bill to enter into a Medicaid provider agreement with an entering operator becoming the operator of a nursing facility or ICF/MR pursuant to a change of operator if the entering operator (1) provides ODJFS a properly completed written notice of the change of operator, (2) furnishes to ODJFS copies of all the fully executed leases, management agreements, merger agreements and supporting documents, and sales contracts and supporting documents relating to the change of operator, and (3) is eligible for Medicaid payments.[176]

The exiting operator is to be considered the operator of the nursing facility or ICF/MR for purposes of Medicaid, including Medicaid payments, until the effective date of the entering operator's provider agreement. The entering operator's provider agreement is to go into effect at 12:01 a.m. on the effective date of the change of operator if ODJFS receives the properly completed written notice of the change of operator within the required time and the entering operator furnishes to ODJFS the required materials not later than ten days after the effective date of the change of operator. The provider agreement is to go into effect at 12:01 a.m. on a date ODJFS determines if either or both of those times frames are not met. If ODJFS is to determine the date the provider agreement is to go into effect, ODJFS must make the determination as follows:

(1) The effective date must give ODJFS sufficient time to process the change of operator, assure no duplicate payments are made, make a required withholding, and withhold the final payment to the exiting operator until 180 days after the exiting operator submits to ODJFS a properly completed cost report or ODJFS waives the requirement to submit the cost report.[177]

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[175] After ODJFS receives a written notice regarding cancellation or postponement of a change of operator, facility closure, or voluntary termination or withdrawal, new written notice of a change of operator, closure, or voluntary termination or withdrawal is required if that action is commenced at a future time.

[176] To be eligible for Medicaid payments, a nursing facility or ICF/MR operator must apply for and maintain a valid license to operate, if so required by law, and comply with all applicable state and federal laws.

*[177] See "**Withholdings**" and "**Final cost report**" above.*

(2) The effective date must not be earlier than the later of the effective date of the change of operator or the date that the exiting operator or owner and entering operator comply with the requirement to submit a notice of the change of operator.

(3) The effective date must not be later than a certain number of days after the later of the dates under (2) above. The number of days is 45 if the change of operator does not entail the relocation of residents. The number of days is 90 if the change entails the relocation of residents.

The entering operator must do all of the following:

(1) Comply with all applicable federal laws;

(2) Comply with current law governing provider agreements and all other applicable state laws;

(3) Comply with all the terms and conditions of the exiting operator's provider agreement, including, but not limited to, any plan of correction, health and safety standards, ownership and financial interest disclosure requirements of federal regulations, civil rights requirements of federal regulations, additional requirements ODJFS imposes, and any sanctions relating to remedies for violation of the provider agreement.

If the entering operator does not agree to a provider agreement that includes all the terms and conditions of the exiting operator's provider agreement, the entering operator and ODJFS may enter into a provider agreement under current law rather than under the bill. The nursing facility or ICF/MR must obtain certification from the Department of Health and the effective date of the provider agreement cannot precede the date of certification, the effective date of the change of operator, or the date the properly completed written notice of the change of operator is submitted to ODJFS.

Rate adjustment following change of operator

(R.C. 5111.676)

The bill gives the Director of ODJFS permission to adopt rules governing adjustments to the Medicaid reimbursement rate for a nursing facility or ICF/MR that undergoes a change of operator. If adopted, the rules must be adopted in accordance with the Administrative Procedure Act. No rate adjustment resulting from a change of operator may be effective before the effective date of the entering operator's Medicaid provider agreement.

Compliance with federal law on voluntary withdrawal

(R.C. 5111.661)

An operator is required by the bill to comply with federal law regarding restrictions on transfers or discharges of nursing facility residents if the operator's nursing facility undergoes a voluntary withdrawal of participation. That federal law provides that a voluntary withdrawal is not an acceptable basis for the transfer or discharge of residents residing in the facility on the day before the effective date of the voluntary withdrawal and the facility's Medicaid provider agreement is to continue in effect for such residents.[178] Additionally, the federal law requires that the facility provide notice to each individual who begins to reside in the facility after the voluntary withdrawal that the facility does not participate in Medicaid with respect to that resident and the facility may transfer or discharge the resident from the facility when the resident is unable to pay the charges of the facility.

Supplemental Medicaid payment program for children's hospitals

(Section 206.66.79)

The bill requires the Ohio Department of Job and Family Services to create a program under which it makes supplemental Medicaid payments to children's hospitals for inpatient services based on federal upper payment limits. The Department must apply for federal approval of a state Medicaid plan amendment to implement the program, and must implement the program if federal approval is received. Under the program, the Department is required to pay children's hospitals the federally allowable supplemental payment for hospital discharges qualifying for the program in fiscal years 2006 and 2007. The amount used for the program cannot exceed $6 million (state share) plus the corresponding federal match, if available.

Medicaid care management

(R.C. 5111.16)

Current law requires the Ohio Department of Job and Family Services (ODJFS) to establish a care management system as part of the Medicaid program. ODJFS is required to implement the system in some or all counties and must designate the Medicaid recipients who are required or permitted to participate.

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[178] *Because the Medicaid provider agreement continues in effect for the residents in the facility before the voluntary withdrawal goes into effect, the facility continues to be subject to federal Medicaid laws regarding those residents as long as they continue to reside in the home. (42 U.S.C.A. 1396r(c)(2)(F).)*

Under the system, ODJFS may require or permit participants to obtain health care services from providers designated by ODJFS and through managed care organizations under contract with ODJFS.

Care management annual report

(R.C. 5111.16(D))

The bill requires ODJFS to prepare an annual report on the care management system. The report must address ODJFS's ability to implement the various components of the system, including the changes to the system required by the bill. Each annual report must be submitted to the General Assembly, with the first report due by October 1, 2007.

Care management working group

(R.C. 5111.161)

The bill creates the Medicaid Care Management Working Group, consisting of the following members:

(1) Three individuals representing Medicaid health insuring corporations, one appointed by the President of the Senate, one appointed by the Speaker of the House of Representatives, and one appointed by the Governor;

(2) One individual representing programs that provide enhanced care management services, appointed by the Governor;

(3) Four individuals representing health care professional and trade associations, appointed as follows:

--One representative of the American Academy of Pediatrics, appointed by the President of the Senate;

--One representative of the American Academy of Family Physicians, appointed by the Speaker of the House of Representatives;

--One representative of the Ohio State Medical Association, appointed by the President of the Senate;

--One representative of the Ohio Hospital Association, appointed by the Speaker of the House of Representatives.

(4) One individual representing behavioral health professional and trade associations, appointed by the Speaker of the House of Representatives;

(5) Two individuals representing consumer advocates, one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives;

(6) One individual representing county departments of job and family services, appointed by the President of the Senate;

(7) Three individuals representing the business community, one appointed by the President of the Senate, one appointed by the Speaker of the House of Representatives, and one appointed by the Governor;

(8) The Director of Job and Family Services or the Director's designee;

(9) The Director of Health or the Director's designee;

(10) The Director of Aging or the Director's designee.

The members of the Working Group are to serve at the pleasure of their appointing authorities. Vacancies are to be filled in the manner provided for original appointments.

The bill requires the Working Group to develop guidelines to be followed by the ODJFS when entering into contracts with managed care organizations for purposes of the Medicaid care management system. The Working Group must consult regularly with the Departments of Insurance, Aging, Alcohol and Drug Addiction Services, Mental Health, Mental Retardation and Developmental Disabilities, and the Rehabilitation Services Commission.

In developing the guidelines for managed care contracts, the Working Group is required to do all of the following:

(1) Examine the best practice standards used in managed care programs and other health care and related systems to maximize patient and provider satisfaction, maintain quality of care, and obtain cost-effectiveness;

(2) Consider the most effective means of facilitating the expansion of the care management system and increasing consistency within the system;

(3) Make recommendations for coordinating the regulatory relationships involved in the Medicaid care management system;

(4) Make recommendations for improving the resolution of contracting issues among the providers involved in the care management system;

(5) Make recommendations to ODJFS for creating a financial incentive program to improve and reward positive health outcomes through care management contracts. In making recommendations for the financial incentive program, the Working Group must include all of the following:

--Standards and procedures by which care management contractors may receive financial incentives for positive health outcomes measured on an individual basis;

--Specific measures of positive health outcomes, particularly among individuals with high-risk health conditions;

--Criteria for determining what constitutes a completed health outcome;

--Methods of funding the program without requiring an increase in appropriations.

The bill requires the Working Group to prepare an annual report on its activities. The report must be submitted to the President of the Senate, Speaker of the House of Representatives, and Governor. The report is to include any findings and recommendations the Working Group considers relevant to its duties. The initial report must be completed not later than December 31, 2005, with subsequent reports to be submitted each year by the last day of December.

Care management reimbursement rates for noncontracting providers

(R.C. 5111.162)

Under the bill, when a participant in the Medicaid care management system is enrolled in a Medicaid managed care organization and the organization refers the participant to a Medicaid health care provider that is not under contract with the organization, the provider is required to provide the service for which the referral was made and must accept from the organization, as payment in full, the amount derived from the reimbursement rate used by ODJFS to reimburse other providers of the same type for providing the same service to a Medicaid recipient who is not enrolled in a Medicaid managed care organization. An exception to the required acceptance of this "fee-for-service" reimbursement rate applies to a hospital, if all of the following are the case:

(1) The hospital is located in a county in which participants in the care management system are required before January 1, 2006, to be enrolled in a Medicaid managed care organization that is a health insuring corporation;

(2) The hospital has entered into a contract before January 1, 2006, with at least one health insuring corporation serving the participants who are required to be enrolled;

(3) The hospital remains under contract with at least one health insuring corporation serving participants in the care management system who are required to be enrolled in a health insuring corporation.

The Director of ODJFS is required to adopt rules specifying the circumstances under which a Medicaid managed care organization is permitted to refer a patient to a provider that is not under contract with the organization. The Director may adopt any other rules necessary to implement the bill's provisions on reimbursement of noncontracting providers. The rules are to be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

Mandatory managed care for covered families and children

(R.C. 5111.16(B)(2))

In the case of Medicaid recipients in the category ODJFS identifies as "covered families and children," the bill requires the care management system to be implemented in all counties and requires ODJFS to designate all individuals included in the category for participation. ODJFS must designate the participants not later than January 1, 2006. Not later than December 31, 2006, ODJFS must ensure that all participants are enrolled in Medicaid-contracting health insuring corporations.

Care management pilot programs for the aged, blind, and disabled

(R.C. 5111.163 and 5111.164)

The bill requires ODJFS to develop two care management pilot programs for individuals who receive Medicaid on the basis of being aged, blind, or disabled. Each program is to be implemented not later than July 1, 2006, and each program must be evaluated by ODJFS.

The pilot program participants are to be designated by ODJFS. Unless federal waivers are received, ODJFS cannot designate individuals who are included in one or more of the Medicaid recipient groups specified in federal regulations as groups that cannot be made subject to mandatory managed care.

ODJFS may cease operation of either of the pilot programs if it determines that (1) requiring the individuals designated for participation in the pilot program is not a cost-effective means of providing Medicaid services to the individuals, (2) there is sufficient information for ODJFS to evaluate the pilot program's

effectiveness, or (3) any other reason exists to justify the pilot program's termination.

Rules may be adopted as ODJFS determines necessary to implement the pilot programs. The rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

Pilot Program 1. Under one pilot program, ODJFS may exclude from participation some or all individuals who are included in one or more of the following groups of Medicaid recipients:

(1) Individuals who are under twenty-one years of age;

(2) Individuals who are institutionalized;

(3) Individuals who become eligible for Medicaid by spending down their income or resources to a level that meets the Medicaid program's financial eligibility requirements;

(4) Individuals who are dually eligible for Medicaid and Medicare;

(5) Individuals to the extent that they are receiving services through a Medicaid waiver component.

When entering into contracts with managed care organizations to implement the pilot program, ODJFS is permitted to contract only with health insuring corporations.

Pilot Program 2. To be designated for participation in ODJFS's other pilot program, an individual must meet both of the following conditions:

(1) Be fifty-five years of age or older;

(2) Require the level of care provided by a nursing facility.

When entering into contracts with managed care organizations to implement the pilot program, ODJFS is permitted to include provisions that permit a managed care organization to pay nursing facilities according to rates that differ from the rates ODJFS uses to reimburse nursing facilities for their services.

Care management pilot program for chronically ill children

(R.C. 5111.165)

The bill requires the Department of Job and Family Services to create a Medicaid care management pilot program for chronically ill children. As defined

in the bill, a "chronically ill child" is an individual under age 21 years who meets the conditions established in state law for Medicaid eligibility on the basis of being blind or disabled. The Department is required to adopt rules as necessary to implement the program, including rules that specify standards and procedures to be used in designating which children are required to participate in the program.

Purposes of the pilot program

The bill provides that the purpose of the pilot program is to determine whether occurrences of acute illnesses and hospitalizations among chronically ill children can be prevented or reduced by establishing a medical home for these children where care is administered proactively and in an accessible, continuous, family-centered, coordinated, and compassionate setting.

The medical home for chronically ill children is required to comply with all of the following:

(1) Provide a physician, with specialized experience in pediatrics, to serve as the care coordinator for each child;

(2) Allow a child to receive care from any health care practitioner appropriate to the child's needs, with oversight and direction from the care coordinator;

(3) Require the care coordinator to establish a relationship of mutual responsibility with the child's parents to develop a long-term disease prevention strategy and provide disease management and education services.

Implementation and operation of the pilot program

The Department is required to implement the program not later than October 1, 2006, or later if the Department has not yet received federal approval. The pilot program will run until October 1, 2008, unless the Department determines that the care management system is not a cost-effective means of providing Medicaid services to chronically ill children or the combined state and federal cost of the program reaches $3 million. The pilot is to operate in at least three counties, with Hamilton and Muskingum counties given priority.

The bill requires Medicaid to provide reimbursement for the reasonable and necessary costs of the services associated with care coordination including case management, care plan oversight, preventive care, health and behavior care assessment and intervention, and any service modifier that reflects the provision of prolonged services or additional care.

Pilot program evaluation

The Department is required to maintain statistics on physician expenditures, hospital expenditures, preventable hospitalizations, and any other matters the Department deems necessary. Relying on these statistics, the Department is required to conduct an evaluation of the pilot program's effectiveness.

Prompt payment requirements for health insuring corporations covering Medicaid recipients

(R.C. 3901.3814 and 5101.94)

Under current law, health insuring corporations providing coverage to Medicaid recipients are exempt from statutes that would otherwise require them to comply with prompt payment laws applicable to other health insuring corporations.

Under the bill, the provision of law excluding health insuring corporations that provide coverage to Medicaid recipients from the prompt payment requirements are eliminated. The bill requires the Department of Job and Family Services to determine whether a waiver of federal Medicaid requirements is necessary to implement this provision. If a waiver is necessary, the Director of Job and Family Services is required to apply to the U.S. Secretary of Health and Human Services for the waiver.

If the Director determines a waiver is unnecessary or receives approval of the waiver, the Department is required to notify the Department of Insurance so that the prompt payment requirements can be implemented. The bill provides that implementation must be effective 60 days after the Department of Insurance receives notice from the Department of Job and Family Services.

The Department of Job and Family Services is also required by the bill to give notice to each health insurance corporation providing coverage to Medicaid recipients of the prompt payment requirements and the implementation date of the provisions.

External review of health insuring corporations covering Medicaid recipients

(R.C. 1751.89 and 5101.93)

As part of H.B. 4, enacted by the 123rd General Assembly, health insuring corporations must have in place procedures for external review of decisions denying coverage for medical services based on lack of medical necessity. External reviews must be conducted by an independent review organization or the

Superintendent of Insurance. Currently, this requirement does not apply to entities that provide coverage to Medicaid recipients.

Under the bill, the provisions of law excluding health insuring corporations that provide coverage to Medicaid recipients from the external review requirements are eliminated.

Performance-based financial incentives in managed care contracts

(R.C. 5111.17)

The bill requires ODJFS to develop and implement a financial incentive program to improve and reward positive health outcomes through the Medicaid contracts entered into with managed care organizations. ODJFS is to base the program on recommendations made by the bill's Medicaid Care Management Working Group. The Director of ODJFS is permitted to adopt rules under the Administrative Procedure Act (R.C. Chapter 119.) to implement the program.

Mandated coverage of respiratory virus drugs

(R.C. 5111.172)

Under the bill, when ODJFS enters into a Medicaid contract with a health insuring corporation, ODJFS must require the health insuring corporation to provide coverage of prescription drugs that protect against respiratory syncytial virus. The coverage is to be applicable to Medicaid recipients enrolled in the health insuring corporation who, as an infant born premature or other pediatric patient, are at risk for respiratory syncytial virus. In providing the coverage, the health insuring corporation must (1) cover the drugs in at least the same amount, duration, and scope as the Medicaid program's coverage of the drugs under its fee-for-service system and (2) establish access requirements for the drugs that are less or no more restrictive than the access requirements for the drugs under the fee-for-service system.

Medicaid managed care franchise permit fee

(R.C. 5111.177)

Under Ohio's Medicaid law, the Ohio Department of Job and Family Services (ODJFS) can contract with managed care organizations, including health insuring corporations (HICs), to provide services for Medicaid recipients. The bill establishes a temporary fee to be charged to Medicaid HICs, and procedures for enforcing the fee and specifies how the fee is to be used.

Franchise permit fee

The bill requires each Medicaid HIC[179] to pay a franchise permit fee for each calendar quarter occurring between January 1, 2006, and June 30, 2007. The fee is equal to 4.5% of the managed care premiums the HIC receives in the applicable calendar quarter, excluding the amount of any managed care premiums returned or refunded to enrollees, members, or premium payers. The managed care premium amount that is to be used in calculating the fee includes any premium payment, capitation payment, or other payment the Medicaid HIC receives for providing, or arranging for the provision of, health care services to its members or enrollees in Ohio.

ODJFS is authorized to adopt rules decreasing the fee, or increasing the fee to no more than 6% of managed care premiums received. However, the bill requires ODJFS to reduce or terminate collection of the fee if it determines that (1) the reduction or termination is required to comply with federal law or (2) the fee does not qualify as a state share of Medicaid expenditures eligible for federal financial participation.

The fee is to be paid on or before the 30th day following the quarter to which the fee applies. When submitting the fee, the Medicaid HIC must file a report that includes all information required by ODJFS and any necessary supporting documentation.

The Director of ODJFS is authorized by the bill to adopt rules in accordance with Ohio's Administrative Procedure Act (R.C. Chapter 119.) to implement and administer the fee program.

Audits

Under the bill, ODJFS may audit the records of any Medicaid HIC to determine whether the HIC is in compliance with the fee requirements. An audit pertaining to a particular calendar quarter may be conducted at any time during the five years following the date the fee was due.

Penalties

The bill provides that any HIC that fails to pay the franchise permit fee is subject to any or all of the following penalties:

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[179] *The bill defines "Medicaid health insuring corporation" as a HIC that holds a certificate of authority as a HIC under Ohio law and has entered into a contract with ODJFS to serve Medicaid recipients.*

(1) A monetary penalty of $500 for each day any part of the fee remains unpaid, not to exceed an amount equal to 5% of the total fee due for the calendar quarter;

(2) Withholdings from future managed care premiums paid by Medicaid;

(3) Termination of the HIC's Medicaid provider agreement.

None of these penalties replaces the requirement that the HIC pay the franchise permit fee due.

Enforcement procedures

The bill authorizes ODJFS to withhold future managed care premiums from any Medicaid HIC that fails to pay the franchise permit fee until the fee is paid. ODJFS may withhold an amount equal to the past due franchise fee and does not need to provide notice to the HIC of the withheld premiums.

Under the bill, ODJFS may commence actions to terminate the Medicaid provider agreement between ODJFS and the HIC for the following reasons:

(1) Failure to pay the franchise permit fee;

(2) Failure to pay a penalty imposed for failing to pay the fee;

(3) Failure to cooperate with an audit.

Adjudication procedures

The bill provides two procedures for resolving disputes between ODJFS and a Medicaid HIC. First, the HIC may request a hearing in accordance with the Administrative Procedure Act if the dispute arises from either of the following:

(1) ODJFS has determined that the HIC owes an additional franchise permit fee or penalty as the result of an audit;

(2) ODJFS is proposing to terminate the HIC's Medicaid provider agreement and the law regarding Medicaid provider agreements requires a hearing.[180]

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[180] *Generally, ODJFS must provide a hearing when it proposes to terminate a Medicaid provider agreement. Under certain circumstances, a hearing is not required. These circumstances include when the provider has been found guilty or pled guilty to acts of criminal activity related to provision of Medicaid services or failure to maintain a license required to provide Medicaid services. (R.C. 5111.06.)*

For disputes that do not require a hearing, the HIC may ask ODJFS to reconsider any dispute related to the franchise permit fee. Once ODJFS reconsiders its decision, that decision is not subject to appeal. When conducting a reconsideration, ODJFS must, at a minimum, do the following:

(1) Specify the time frame within which the HIC must act in order to exercise its opportunity for reconsideration;

(2) Permit the HIC to present written arguments or other materials to support its position.

Managed care assessment fund

Under the bill, the money collected from the franchise permit fee is to be credited to the Managed Care Assessment Fund. The bill requires ODJFS to use the money to pay for Medicaid services, administrative costs, and contracts with Medicaid HICs.

Medicaid payments for graduate medical education costs

(R.C. 5111.19 and 5111.191)

Current law allows the Ohio Department of Job and Family Services (ODJFS), through the Medicaid program, to reimburse providers who serve Medicaid recipients for the costs associated with graduate medical education. The amount of reimbursement is established by ODJFS in rules. A provider may be reimbursed for treatment of all Medicaid recipients, including recipients enrolled with a managed care organization under contract with ODJFS. The managed care organization can pay the provider, in which case ODJFS will include in its payment to the organization an amount sufficient to cover the costs of reimbursement. Alternatively, ODJFS can directly reimburse the provider for the costs of education. If ODJFS reimburses the provider, the provider cannot seek payment from the organization and the organization is not required to pay the provider for education costs.

The bill allows ODJFS to deny payment to a hospital for direct graduate medical education costs associated with the delivery of services to any Medicaid recipient if the hospital refuses, without good cause, to contract with a managed care organization that serves participants in the Medicaid care management system who are required to be enrolled in a managed care organization and the organization serves the area in which the hospital is located. ODJFS must specify, in rule, what constitutes good cause.

The bill provides an exception to ODJFS's authority to deny payment for direct graduate medical education cost if all of the following are the case:

(1) The hospital is located in a county in which participants in the care management system are required before January 1, 2006, to be enrolled in a Medicaid managed care organization that is a health insuring corporation;

(2) The hospital has entered into a contract before January 1, 2006, with at least one health insuring corporation serving the participants who are required to be enrolled;

(3) The hospital remains under contract with at least one health insuring corporation serving participants in the care management system who are required to be enrolled in a health insuring corporation.

Approval of Medicaid plan

(Section 206.66.51)

The bill permits ODJFS to submit to the U.S. Secretary of Health and Human Services an amendment to the state Medicaid plan to implement the provision of law that would allow ODJFS to deny Medicaid payments for direct graduate medical education costs to hospitals for failure to contract with managed care organizations. On the Secretary's approval of the plan, ODJFS is authorized to implement the provision.

Medicaid coverage of alcohol, drug addiction, and mental health services

(R.C. 5111.911; Section 206.67.18)

Current law permits ODJFS to enter into interagency agreements with other state agencies to administer components of the Medicaid program. In the case of the Departments of Mental Health and Alcohol and Drug Addiction Services, the agreements must require or specify how providers will be paid and the responsibilities of each Department for reimbursing providers, including program oversight and quality assurance.

The bill provides that the interagency agreements between ODJFS and the Departments must require or specify (1) a process for making payment to providers and (2) procedures for program oversight and quality assurance. The bill specifies that the payment procedures apply to providers of alcohol, drug addiction, and mental health services covered by Medicaid under the federal option of covering rehabilitative services.

The bill's requirements to modify the elements of the interagency agreements must be implemented, to the maximum extent possible, in a manner that is consistent with the *State of Ohio Community Behavioral Health Medicaid Business Plan*, which was finalized in August 2004 by ODJFS, the Departments of

Mental Health and Alcohol and Drug Addiction Services, and the Ohio Association of Behavioral Health Authorities.

As soon as practicable, ODJFS, the Departments of Mental Health and Alcohol and Drug Addiction Services, in conjunction with behavioral health providers, must specify procedures consistent with federal law for the implementation of the Plan. If it is determined that any portion of the Plan does not comply with federal law, the Departments, in conjunction with behavioral health providers, must specify procedures to work toward implementation of that portion of the Plan. A report of the progress of the Plan's implementation must be submitted to the Speaker and to the Senate President not later than March 1 and October 1 of each year until all components of the Plan have been fully implemented.

General requirements for home and community-based services waivers

(R.C. 5111.851, 5111.852, 5111.853, 5111.854, and 5111.855)

The bill establishes general requirements for Medicaid waivers that provide home and community-based services as an alternative to hospital, nursing facility, or intermediate care facility for the mentally retarded (ICF/MR) services. The requirements are as follows:

(1) Only an individual who qualifies for a waiver is to receive the waiver's services.

(2) A level of care determination[181] must be made as part of the process of determining whether an individual qualifies for a waiver and must be made each year after the initial determination if, during such a subsequent year, the state agency or political subdivision administering the waiver determines there is a reasonable indication that the individual's needs have changed.

(3) A written plan of care or individual service plan based on an individual assessment of the services that an individual needs to avoid needing admission to a hospital, nursing facility, or ICF/MR must be created for each individual determined eligible for a waiver.

[181] *The bill defines "level of care determination" as a determination of whether an individual needs the level of care provided by a hospital, nursing facility, or ICF/MR and whether the individual, if determined to need that level of care, would receive such services if not for a home and community-based services waiver.*

(4) Each individual determined eligible for a waiver must receive that waiver's services in accordance with the individual's level of care determination and written plan of care or individual service plan.

(5) No individual is to receive services under a waiver while the individual is a hospital inpatient or resident of a skilled nursing facility, nursing facility, or ICF/MR.

(6) No individual is to receive prevocational, educational, or supported employment services under a waiver if the individual is eligible for such services that are funded with federal funds provided under federal labor law regarding rehabilitation services or the federal Individuals with Disabilities Education Act.

(7) Safeguards must be taken to protect the health and welfare of individuals receiving services under a waiver, including safeguards established in rules governing waivers and safeguards established by licensing and certification requirements that are applicable to the providers of the waiver's services.

(8) No services are to be provided under a waiver by a provider that is subject to standards that federal law governing the Supplemental Security Income program requires be established if the provider fails to comply with the standards applicable to the provider.

(9) An individual determined to be eligible for a waiver, or such individual's representatives, must be informed of the waiver's services, including any choices that the individual or representative may make regarding the services, and given the choice of either receiving services under the waiver or, as appropriate, hospital, nursing facility, or ICF/MR services if such services are available.

The bill authorizes the Ohio Department of Job and Family Services (ODJFS) to review and approve, modify, or deny written plans of care and individual service plans that the bill requires be created for individuals determined eligible for a home and community-based services waiver. If a state agency or political subdivision contracts with ODJFS to administer a waiver and approves, modifies, or denies a written plan of care or individual service plan pursuant to the agency or subdivision's administration of the waiver, ODJFS is permitted to review the agency or subdivision's approval, modification, or denial and order the agency or subdivision to reverse or modify the approval, modification, or denial. ODJFS is to be granted full and immediate access to any records that ODJFS needs to implement these duties.

State agencies and political subdivisions that administer a home and community-based services waiver are required to maintain, for a period of time

ODJFS must specify, financial records documenting the costs of services provided under the waiver. This includes records of independent audits. The state agency or political subdivision must make the financial records available on request to the United States Secretary of Health and Human Services, United States Comptroller General, and their designees.

The bill provides that state agencies and political subdivisions administering a home and community-based services waiver are financially accountable for funds expended for services provided under the waiver.

Each state agency and political subdivision that contracts with ODJFS to administer a home and community-based services waiver, or one or more aspects of such a waiver, is required to provide ODJFS a written assurance that the agency or subdivision will not violate the bill's requirements regarding such waivers.

Medicaid waivers administered by the Ohio Department of Job and Family Services

(R.C. 5111.97 (renumbered 5111.86) and 5111.856)

Current law authorizes the Ohio Department of Job and Family Services (ODJFS) to submit a request to the United States Secretary of Health and Human Services to obtain waivers of federal Medicaid requirements that would otherwise be violated in the creation and implementation of two Medicaid home and community-based services programs to replace the Ohio Home Care Program. In the request, ODJFS may specify, among other things, that one of the replacement programs will provide home and community-based services to individuals in need of nursing facility care and the other will provide services to individuals in need of hospital care. The individuals may include individuals enrolled in the Ohio Home Care Program. As the replacement programs are implemented, ODJFS must reduce the maximum number of individuals who may be enrolled in the Ohio Home Care Program by the number of individuals who are transferred to the replacement programs. When all individuals who are eligible to be transferred are transferred, ODJFS may seek federal approval to terminate the Ohio Home Care Program.

The bill repeals these provisions effective October 1, 2005, and provides instead that ODJFS may request federal approval to create and implement two or more Medicaid waiver programs under which home and community-based services are provided to individuals who need the level of care provided by a nursing facility or hospital. The requests may specify the maximum number of individuals who may be enrolled in each of the waivers included in the requests, the maximum amount the Medicaid program may expend each year for each individual enrolled in the waivers, and the maximum amount the Medicaid

program may expend each year for all individuals enrolled in the waivers. If approved, ODJFS is to administer the waivers.

ODJFS is permitted, after the first of any such waivers begins enrollment, to seek federal approval to cease enrolling additional individuals in the Medicaid Waiver component of the Ohio Home Care Program.

The bill authorizes ODJFS to transfer an individual enrolled in an ODJFS-administered Medicaid waiver program to another ODJFS-administered Medicaid waiver program if the individual is eligible for the Medicaid waiver program and the transfer does not jeopardize the individual's health or safety. The transfer may be made from any ODJFS-administered Medicaid waiver program to any ODJFS-administered Medicaid waiver program, not just those the bill authorizes. The transfers are to be done to the extent necessary for the efficient and economical administration of Medicaid waiver programs.

Medicaid waivers for individuals with autism or developmental delays or disabilities

(R.C. 5111.87)

Current law authorizes the Director of ODJFS to apply to the federal government for one or more Medicaid waivers under which home and community-based services are provided in the form of either or both of (1) early intervention services for children under age three that are provided or arranged by county boards of mental retardation and developmental disabilities and (2) therapeutic services for children who have autism and are under age six at the time of enrollment. The bill provides instead that the Director may apply for one or more Medicaid waivers under which home and community-based services are provided in the form of (1) early intervention and supportive services for children under age three who have developmental delays or disabilities the Director determines are significant, (2) therapeutic services for children of any age who have autism, and (3) specialized habilitative services for individuals who are age 18 or older and have autism.

The bill places limits on the waivers concerning therapeutic services for children with autism and specialized habilitative services for adults with autism. Neither such waiver may provide services that are available under another Medicaid waiver program. No waiver concerning therapeutic services for children with autism may provide services to an individual that the individual is eligible to receive through an individualized education program.

Current law authorizes the Director of Mental Retardation and Developmental Disabilities (MR/DD) to request that the Director of ODJFS apply

for one or more of the Medicaid waivers authorized by current law. The bill provides that the Director of MR/DD and Director of Health may request that the Director of ODJFS apply for one or more of the Medicaid waivers the bill authorizes.

ICF/MR deinstitutionalization pilot program

(R.C. 5111.88 to 5111.889)

The bill requires that the Director of ODJFS apply for a federal Medicaid waiver authorizing an intermediate care facility for the mentally retarded (ICF/MR) deinstitutionalization pilot program under which ICFs/MR, other than ICFs/MR operated by the Ohio Department of Mental Retardation and Developmental Disabilities (ODMR/DD), may volunteer to convert from providing ICF/MR services to providing deinstitutionalized services and individuals with MR/DD who are eligible for ICF/MR services may volunteer to receive instead the deinstitutionalized services. The Director is also required to amend the state Medicaid plan to authorize the Director, beginning on the first day that the ICF/MR deinstitutionalization pilot program begins implementation, to refuse to enter into or amend a Medicaid provider agreement with the operator of an ICF/MR if the provider agreement would authorize the operator to receive Medicaid payments for more ICF/MR beds than the operator receives on the day before that day. The Director is required to notify the Governor and General Assembly when the Director applies for the waiver and amends the plan. The Director is not required to apply for the waiver and amend the plan at the same time.

If the United States Secretary of Health and Human Services approves the waiver, ODJFS is permitted to contract with ODMR/DD to assign the day-to-day administration of the pilot program to ODMR/DD and transfer funds to the nonfederal share of the costs of the pilot program to ODMR/DD.

ODJFS or ODMR/DD, whichever administers the pilot program, is required to implement the pilot program as follows:

(1) Permit no more than 200 individuals to participate at one time;

(2) Select, from among volunteers only, enough ICFs/MR to convert from providing ICF/MR services to providing deinstitutionalized services as necessary to accommodate each individual participating in the pilot program and ensure that the ICFs/MR selected cease to provide ICF/MR services once the conversion takes place;

(3) Permit individuals who reside in an ICF/MR that converts under the pilot program to choose whether to participate in the pilot program or transfer to another ICF/MR;

(4) Ensure that no individual receiving ICF/MR services on the effective date of this provision of the bill suffers an interruption in Medicaid-covered services that the individual is eligible to receive;

(5) Collect information as necessary for the ICF/MR Deinstitutionalization Study Council to be able to conduct an evaluation;

(6) Terminate the pilot program on July 1, 2007.

The bill creates the ICF/MR Deinstitutionalization Study Council. The Council is to consist of the following:

(1) Two members of the House of Representatives;

(2) Two members of the Senate;

(3) The Directors of ODJFS and ODMR/DD, or their designees;

(4) One representative each of Advocacy and Protective Services, Inc.; the ARC of Ohio; the Ohio League for the Mentally Retarded; People First of Ohio; the Association of County Boards of Mental Retardation and Developmental Disabilities; the Ohio Provider Resource Association; and the Ohio Health Care Association.

The Council is required to conduct an evaluation of the pilot program. All of the following are to be examined as part of the evaluation:

(1) The deinstitutionalized services' effectiveness in meeting the health and welfare needs of the participants;

(2) The participants' satisfaction with the services;

(3) The impact that the conversion from providing ICF/MR services to providing deinstitutionalized services has on the ICFs/MR;

(4) The program's cost effectiveness;

(5) Feedback about the pilot program from the participants, participants' families and guardians, county boards of mental retardation and developmental disabilities, and providers;

(6) Other matters the Council considers appropriate.

The Council is required to prepare a report not later than December 31, 2007. The report must be provided to the Governor and General Assembly. The Council is to include in the report recommendations for changes that the Council determines are necessary for the pilot program to be implemented effectively statewide. The Council ceases to exist on the issuance of the report.

Assisted living Medicaid waiver

(R.C. 5111.89 to 5111.893)

The bill authorizes the Ohio Department of Job and Family Services (ODJFS) to submit a request to the U.S. Secretary of Health and Human Services for a waiver of federal Medicaid requirements in order to create and implement a program under which assisted living services are provided to not more than 1,800 eligible Medicaid recipients. The bill defines "assisted living services" as home and community-based services providing personal care, homemaking, chores, attendant care, medication oversight, and therapeutic social and recreational programming. If the U.S. Secretary approves the waiver request, ODJFS is required to contract with the Department of Aging for the Department of Aging to administer the Assisted Living Medicaid program. The contract is subject to the Director of Budget and Management's approval.

Eligibility

(R.C. 5111.891)

To be eligible for the Assisted Living Medicaid program, an individual must meet all of the following requirements:

(1) Require an intermediate level of care;[182]

(2) At the time of application for the Assisted Living Medicaid program, be either (1) a resident in a nursing home seeking to move to a residential care facility who would remain in a nursing home if not for the Assisted Living

[182] *An Ohio administrative rule provides that an individual requires an intermediate level of care if (1) the individual's physical and mental condition and resulting service needs have been evaluated and it is determined that the individual requires more than a level of minimum care, the individual's needs do not meet the level of skilled care, and the individual does not qualify for treatment in an intermediate care facility, and (2) the individual requires hands-on assistance with at least one activity of daily living and is unable to perform self-administration of medication and requires medication administration to be performed by another person (Ohio Administrative Code §5101:3-3-06).*

Medicaid program or (2) a participant in certain Medicaid waiver components[183] who would move to a nursing facility if not for the Assisted Living Medicaid program;

(3) At the time of receiving services under the Assisted Living program, reside in either (1) a residential care facility, including a residential care facility owned or operated by a metropolitan housing authority that has a contract with the U.S. Department of Housing and Urban Development to receive an operating subsidy or rental assistance for the residents, or (2) a county or district home;

(4) Meet all other eligibility requirements established under rules adopted by the ODJFS or the Department of Aging related to the Assisted Living program.

Facility staffing requirements

(R.C. 5111.892)

The bill requires a residential care facility or county or district home providing services under the Assisted Living Medicaid waiver to have on site staff, 24 hours a day, individuals who are qualified to do all of the following:

(1) Meet the scheduled and unpredicted needs of individuals in the Assisted Living program in a manner that promotes the individuals' dignity and independence;

(2) Provide supervision services for those individuals;

(3) Help keep the individuals safe and secure.

Evaluation of Assisted Living program

(R.C. 5111.893)

The bill provides that if the Assisted Living Medicaid waiver is approved by the Secretary, the Director of Aging must contract with a person or government entity to evaluate the program's cost effectiveness. The Director must provide results of the evaluation to the Governor, President and Minority Leader of the Senate, and Speaker and Minority Leader of the House of Representatives not later than June 30, 2007.

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[183] *The bill provides that if the individual seeking admission to the Assisted Living Medicaid waiver component is not in a nursing facility seeking transfer to a residential care facility, the individual must be a participant in the PASSPORT program, the Choices program, or a Medicaid waiver component administered by ODJFS. The Department of Aging administers the PASSPORT and Choices programs.*

Appropriations related to the Assisted Living Medicaid waiver

(Section 206.66.36)

The bill provides that once ODJFS enters into a contract with the Department of Aging to administer the Assisted Living program, ODJFS must submit quarterly reports to the Director of Budget and Management outlining the estimated costs of the program for the upcoming quarter, including the state and federal share of the costs. On receipt of the estimated costs, the Director of Budget and Management must make the necessary transfers and increases within the General Revenue Fund. The funds transferred and increased are appropriated under the bill.

Ohio Access Success Project

(R.C. 5111.88 (renumbered 5111.97))

The Director of Job and Family Services is permitted to establish, to the extent funds are available, the Ohio Access Success Project to help Medicaid recipients transition from residing in a nursing facility to residing in a community setting. There are a number of eligibility requirements for the Ohio Access Success Project. Among other requirements, a Medicaid recipient must receive Medicaid-funded nursing facility services at the time of application and need the level of care provided by nursing facilities.

The bill changes one of the eligibility requirements. Under current law, a Medicaid recipient must have resided continuously in a nursing facility for not less than 18 months before applying to participate in the Ohio Access Success Project. The bill reduces the number of months to six.

Medicaid voucher pilot program

(R.C. 5111.971)

The bill requires the Director of Job and Family Services to apply for a waiver of federal Medicaid requirements to implement a pilot program for providing up to 200 Medicaid recipients with vouchers for use by the recipients or their families or representatives to purchase health care services outside of a nursing facility in lieu of admission to a nursing facility.

In requesting the waiver, the Director is required to specify the following:

(1) That the program will be limited to not more than 200 Medicaid recipients;

(2) That an individual will not be eligible to participate unless the individual meets all of the following requirements:

(a) Needs an intermediate level of care as determined in rules adopted by the Department of Job and Family Services;[184]

(b) At the time the individual applies for the voucher, the individual is a nursing facility resident seeking to move to a residential care facility or a county or district home and would remain in the nursing facility if not for the voucher or a participant of any long-term Medicaid waiver component who would move to a nursing facility if not for the voucher;

(c) Meets all other eligibility requirements for the voucher program.

(3) That a participant will be given a voucher in an amount not exceeding 75% of the cost that the Medicaid program would incur for care provided to the individual in a nursing facility;

(4) That the services of a fiscal intermediary and other case management services will be available to a participant when needed.

Once the Director obtains the waiver, the Director must enter into an interagency agreement with the Director of Aging to allow the Department of Aging to administer the program. The bill allows both Directors to adopt rules necessary to implement the voucher program.

Medicaid Estate Recovery Program

Overview

Medicaid estate recovery is a federal requirement that states seek from the estates of certain deceased Medicaid recipients the cost of certain correctly paid Medicaid benefits. Federal law gives states some discretion in how to define

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[184] *Ohio Administrative Code §5101:3-3-06 defines "intermediate level of care" as a determination that an individual requires services beyond a protective level of care but does not require a skilled level of care nor do the individual's needs meet the criteria for an intermediate care facility for the mentally retarded and at least one of the following applies: (1) the individual requires hands-on assistance with at least two activities of daily living, (2) the individual requires hands-on assistance with at least one activity of daily living and is unable to perform self-administration of medication and requires medication administration to be performed by another person, (3) the individual requires one or more skilled nursing or skilled rehabilitation services at less than skilled level of care, or (4) the individual requires the presence of another person 24-hours a day due to a cognitive impairment.*

"estate" for the purposes of Medicaid estate recovery systems. A state may limit recovery to assets included in an individual's probate estate or permit recovery against any real or personal property or other assets in which the individual had any legal title or interest at the time of death, to the extent of the interest. (42 U.S.C. 1396p(b)(4).) Currently, Ohio limits recovery to the assets included in the Medicaid recipient's probate estate (R.C. 5111.11). The bill expands Ohio's Medicaid Estate Recovery Program to permit recovery against any real or personal property or other assets in which the individual had any legal title or interest at the time of death, to the extent of the interest. The bill also amends the Medicaid Estate Recovery Program law to make it more closely parallel federal law.

Generally

(R.C. 5111.11)

Existing law. For the purpose of recovering the cost of services correctly paid under Medicaid to a recipient age 55 or older, the Ohio Department of Job and Family Services (ODJFS) must institute an estate recovery program against the property and estates of Medicaid recipients to recover Medicaid correctly paid on their behalf to the extent that federal law and regulations permit the implementation of a program of that nature. ODJFS must seek to recover Medicaid correctly paid only after the recipient and the recipient's surviving spouse, if any, have died and only at a time when the recipient has no surviving child who is under age 21 or blind or permanently and totally disabled.

ODJFS may enter into a contract with any individual or private entity under which the individual or private entity administers the estate recovery program on ODJFS's behalf or performs any of the functions required to carry out the program. The contract may provide for the individual or private entity to be compensated from the property recovered from the estates of Medicaid recipients or may provide for another manner of compensation agreed to by the individual or private entity and ODJFS. Regardless of whether it is administered by ODJFS or an individual or private entity under contract with ODJFS, the program must be administered in accordance with applicable requirements of federal law and regulations and state law and rules.

The bill. The bill requires ODJFS to institute a Medicaid Estate Recovery Program "to the extent permitted by federal law." It also expands the definition of "estate" from which recovery may be made.[185] Under the program, ODJFS is required to generally do both of the following:

[185] *The bill relocates ODJFS' authority to contract with any individual or private entity to administer the Medicaid Estate Recovery Program on behalf of ODJFS or perform*

(1) For the costs of services the Medicaid program correctly pays on behalf of an institutionalized individual[186] of any age, seek adjustment or recovery from the individual's estate or on the sale of property of the individual or spouse that is subject to a Medicaid estate recovery lien;

(2) For the costs of services the Medicaid program correctly pays on behalf of an individual 55 years of age or older who is not a permanently institutionalized individual, seek adjustment or recovery from the individual's estate.

Exceptions

(R.C. 5111.11(C))

Under the bill, no adjustment or recovery may be made from a permanently institutionalized individual's estate or on the sale of property of a permanently institutionalized individual that is subject to a Medicaid estate recovery lien or from a non-institutionalized individual's estate while: (1) the individual's spouse is alive, or (2) a child of the individual (if the child is under age 21 or is considered blind or disabled under the federal law governing the Supplemental Security Income Program) is alive.

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functions required to carry out the program. (R.C. 5111.11(B) and (D) and 5111.112 and conforming changes in R.C. 3721.15, 5111.113 (renumbered from R.C. 5111.112), 5111.114 (renumbered from R.C. 5111.113), and 5731.39.) The bill also permits ODJFS to contract with a government entity, not just an individual or private entity, to perform functions required to carry out the program.

[186] Under the bill, "permanently institutionalized individual" means an individual who: (1) is an inpatient in an institution, (2) is required, as a condition of the Medicaid program paying for the individual's services in the institution, to spend for costs of medical or nursing care all of the individual's income except for an amount for personal needs specified by ODJFS, and (3) cannot reasonably be expected to be discharged from the institution and return home.

"Institution" means a nursing facility, intermediate care facility for the mentally retarded, or a medical institution.

For the purpose of determining whether an individual meets the definition of "permanently institutionalized individual," the bill creates a rebuttable presumption that the individual cannot reasonably be expected to be discharged from an institution and return home if either of the following is the case: (1) the individual declares that he or she does not intend to return home, or (2) the individual has been an inpatient in an institution for at least six months without a discharge plan.

Also, under the bill no adjustment or recovery may be made from a permanently institutionalized individual's home that is subject to a Medicaid estate recovery lien while either of the following lawfully reside in the home:

(1) The permanently institutionalized individual's sibling who resided in the home for at least one year immediately before the date of the permanently institutionalized individual's admission to the institution and on a continuous basis since that time;

(2) The permanently institutionalized individual's child who provided care to the permanently institutionalized individual that delayed the individual's institutionalization and resided in the home for at least two years immediately before the date of the permanently institutionalized individual's admission to the institution and on a continuous basis since that time.

Waiver

(R.C. 5111.11(D))

The bill requires, rather than permits as under existing law, ODJFS to waive seeking adjustment or recovery of Medicaid correctly paid if the Director of Job and Family Services (ODJFS Director) determines that adjustment or recovery would work an undue hardship. The bill, however, permits ODJFS to limit the duration of an undue hardship waiver to the period during which the undue hardship exists.

Definition of "estate"

(R.C. 5111.11(A)(1))

Under existing law, "estate" means, for the purposes of the Medicaid estate recovery law, all property to be administered under the Probate Code and property that would be administered under that Code if it were not subject to certain release from administration provisions.[187]

The bill expands the definition to also include other assets, including interests in property. Under the bill, "estate" includes both (1) all real and personal property and other assets to be administered under the Probate Code and property that would be administered under that Code if it were not subject to certain release from administration provisions, and (2) any other real and personal

[187] *Certain small estates and intestate estates that go entirely to the surviving spouse may obtain a release or summary release from administration under the Probate Code (R.C. 2113.03 and 2113.031).*

property and other assets in which an individual had any legal title or interest at the time of death[188] (to the extent of the interest), including assets conveyed to a survivor, heir, or assign of the individual through joint tenancy, tenancy in common, survivorship, life estate, living trust, or other arrangement.

Notice to the Medicaid Estate Recovery Program Administrator

(R.C. 2117.061)

Current law. Under current law, the person responsible for the estate of a decedent who was 55 years of age or older at the time of death must determine whether the decedent was a Medicaid recipient. If the decedent was a recipient, the person responsible for the estate must give written notice to that effect to the Medicaid Estate Recovery Program administrator not later than 30 days after the occurrence of the granting of letters testamentary, the administration of the estate, or the filing of an application for release from administration or summary release from administration. The person responsible for the estate must also mark the appropriate box on the appropriate probate form to indicate compliance with the aforementioned requirement.

The bill. The bill requires the administrator to prescribe a Medicaid estate recovery reporting form for purposes of facilitating the written notice that a person responsible for the estate of a decedent must give to the administrator. The bill provides that the form, at the minimum, must require the person responsible for the estate to list all of the decedent's real and personal property and other assets that are part of the decedent's estate. The form must include a statement printed in bold letters informing the person responsible for the estate that knowingly making a false statement on the form constitutes the crime of falsification, a misdemeanor of the first degree.

The bill also requires the person responsible for the estate to submit a properly completed Medicaid estate recovery reporting form not later than 30 days after the occurrence of any of the events described above. The probate court is also required to send a copy of the completed probate form to the administrator.

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[188] *Under the bill, "time of death" is prohibited from being construed to mean a time after which a legal title or interest in real or personal property or other asset may pass by survivorship or other operation of law due to the death of the decedent or terminate by reason of the decedent's death.*

Conforming changes

(R.C. 5111.11 and 5111.111)

The bill specifies that the Medicaid Estate Recovery Program authorizes ODJFS to seek adjustment, as well as recovery. This amendment mirrors federal law, but the meaning of "adjustment" is unclear.

Medicaid estate recovery liens

(R.C. 5111.111)

When lien may be imposed. Under existing law, ODJFS may place a lien against the property of a Medicaid recipient or recipient's spouse that ODJFS may recover as part of the Medicaid Estate Recovery Program. Existing law excludes from the lien property of a recipient of home and community-based services,[189] and the spouse of such a recipient.

Under the bill, generally, no lien may be imposed against the property of an individual before the individual's death on account of Medicaid paid or to be paid on the individual's behalf. But, ODJFS generally may impose a lien against the real property of a Medicaid recipient *who is a permanently institutionalized individual* and against the real property of the recipient's spouse, including any real property that is jointly held by the recipient and spouse. The lien may be imposed on account of Medicaid paid or to be paid on the recipient's behalf.

But, under the bill no lien may be imposed against the home of a Medicaid recipient if any of the following lawfully resides in the home: (1) the recipient's spouse, (2) the recipient's child who is under 21 years of age or is considered to be blind or disabled under the federal law governing the Supplemental Security Income Program, or (3) the recipient's sibling who has an equity interest in the home and resided in the home for at least one year immediately before the date of the recipient's admission to the institution.

Certificate. Under existing law, when Medicaid is paid on behalf of any person in circumstances under which federal law and regulations and this provision permit the imposition of a lien, the ODJFS Director or a person designated by the Director *may* sign a certificate to that effect.

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[189] *"Home and community-based services" means services provided pursuant to a waiver under 42 U.S.C.A. 1396n.*

The bill *requires* the ODJFS Director or a person designated by the Director to sign a certificate to effectuate a lien required to be imposed under these provisions.

Recording and duration of the lien. Under existing law, the county department of job and family services must record the certificate, or a certified copy, in the county real estate mortgage records of every county in which real property of the recipient or spouse is situated. From the time of recording the certificate, the lien attaches to all real property of the recipient or spouse described in the certificate for all amounts of aid that are paid or that are paid thereafter. Upon recording the certificate, all persons are charged with notice of the lien and the ODJFS' rights under it. ODJFS may waive the priority of its lien to provide for certain costs and fees. The lien remains until satisfied.

The bill specifies that a lien imposed with respect to a Medicaid recipient under the Medicaid estate recovery lien provisions dissolves on the recipient's discharge from the institution and return home.

Administrator of Medicaid Estate Recovery Program

(R.C. 2113.041(A))

The bill clarifies that the affidavit that the Medicaid Estate Recovery Program Administrator may present to a financial institution requesting that the financial institution release account proceeds to recover the cost of services correctly provided to a Medicaid recipient applies to a Medicaid recipient who is subject to the Medicaid Estate Recovery Program.

State Medicaid plan amendment

(Section 206.66.48)

The bill requires the ODJFS Director to submit a state Medicaid plan amendment to the United States Secretary of Health and Human Services as necessary for the implementation of the bill's changes to the Medicaid Estate Recovery Program.

ODJFS' duties under the Medicare Prescription Drug, Modernization and Improvement Act of 2003

(R.C. 329.04 and 5111.98)

The bill authorizes the Ohio Department of Job and Family Services (ODJFS) to take, as necessary to fulfill ODJFS' duties under the Medicare

Prescription Drug, Improvement, and Modernization Act of 2003, any of the following actions:

(1) Adopting rules;

(2) Assigning duties to county departments of job and family services;

(3) Making payments to the United States Department of Health and Human Services from appropriations made to ODJFS for that purpose.

Rules must be adopted as follows:

- If the rules pertain to ODJFS' duties regarding service providers, they must be adopted in accordance with the Administrative Procedures Act (R.C. Chapter 119.).

- If the rules pertain to ODJFS' duties regarding individuals' eligibility for services, they must be adopted in accordance with R.C. 111.15.[190]

- If the rules pertain to ODJFS' duties regarding financial and operational matters between ODJFS and county departments, they must be adopted in accordance with R.C. 111.15 as if they were internal management rules.

Medicaid Data system

(R.C. 5111.915)

The bill requires ODJFS to enter into an agreement with the Department of Administrative Services to contract with a qualified vendor through competitive selection to develop a computer system to collect data. The system is to be used to enhance fraud and abuse detection, improve program management and budgeting, and improve performance measurement capabilities of all state agencies serving Medicaid recipients.[191] The Department of Administrative Services is required to take all necessary steps to receive and review bids for the data system within 90 days after the effective date of this section. The Department of Job and Family

[190] *Adoption of rules under R.C. Chapter 119. requires a public hearing; adoption of rules under R.C. 111.15 does not.*

[191] *Agencies serving Medicaid recipients include the Departments of Aging, Alcohol and Drug Addiction Services, Health, and Mental Health, and Mental Retardation and Developmental Disabilities, as well as ODJFS.*

Services is required to seek enhanced federal funding for 90% of the funds required to establish the data system.[192]

The Department of Administrative Services may contract only with a qualified vendor who has performed the following services prior to the Department accepting the vendor's bid:

(1) Successfully implemented a data system in another state;

(2) Demonstrated the ability to link, at a minimum, data sets related to Medicaid, Temporary Assistance for Needy Families (TANF), and vital records information.

Medicaid information technology system

(Section 203.12.69)

The bill requires ODJFS to work with the Ohio Department of Administrative Services (ODAS) on the development of a Medicaid information technology system. ODAS is responsible for conducting a study to determine the technology needs of those agencies that administer components of the Medicaid program and for ensuring that those needs are integrated into a Medicaid information technology system. ODJFS must seek the most federal financial assistance available for developing and implementing the system. ODAS is required to seek the most federal financial assistance available for the study.

Medicaid Administrative Study Council

(Section 206.66.52)

The bill creates the Medicaid Administrative Study Council to make recommendations as to the most effective organization of all executive agencies that administer services under the Medicaid program. The Council is to be comprised of the following individuals:

(1) The Director of Job and Family Services or the Director's designee;

(2) The Director of Aging or the Director's designee;

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[192] *As currently drafted, it is unclear whether the system is a computer system or a data system, whether the Department of Administrative Services is to use the traditional system of competitive selection to select a vendor, which Department is actually responsible for paying for the system, and other issues.*

(3) The Director of Drug and Alcohol Addiction Services or the Director's designee;

(4) The Director of Health or the Director's designee;

(5) The Director of Mental Health or the Director's designee;

(6) The Director of Mental Retardation and Developmental Disabilities or the Director's designee;

(7) The Director of Budget and Management or the Director's designee;

(8) The State Chief Information Officer or the Officer's designee;

(9) An individual appointed by the Speaker of the House of Representatives;

(10) An individual appointed by the President of the Senate.

(11) A representative of the Governor, appointed by the Governor.

The bill requires the Governor to appoint a member of the Council to serve as chairperson of the Council. The Council must make recommendations regarding the following:

(1) The optimal administrative structure for the administration of the Medicaid program, including recommendations on whether the fiscal and operational objectives of the Medicaid program would be best achieved through creation of a new department, utilization of existing administrative agencies, or some other administrative structure. The Council must include in its considerations of an optimal structure the role of local government entities that administer Medicaid services in such a structure.

(2) A centralized financing function to coordinate the activities of all executive agencies that deliver Medicaid services.

(3) If the Council's recommendations include the future creation of a Medicaid department, recommendations regarding the following:

(a) The scope and structure of the department;

(b) A business plan to direct the transition of the Medicaid program from ODJFS and other executive agencies to the new department including a plan to address the fiscal and operational impact of the transition;

(c) Resources required to implement the business plan described above.

In developing its recommendations, the Council must consider the recommendations of the Ohio Commission to Reform Medicaid and the fiscal and operational impact on (1) county departments of job and family services and other local government entities that perform Medicaid administrative functions and (2) the remaining duties of ODJFS and other state agencies.

The Council may also study the feasibility of developing a plan to create a unified long-term care budget managed across all state and local agencies and service settings, as recommended by the Ohio Commission to Reform Medicaid. The plan must designate the Department of Aging as the state agency responsible for the unified budget and require the Director of Aging, in consultation with the Director of ODJFS, to designate a unified long-term care budget officer to manage the unified budget.

The Council must submit a written report of its findings to the Governor not later than December 31, 2006.

VIII. Hospital Care Assurance Program

Under the Hospital Care Assurance Program (HCAP), (1) hospitals are annually assessed an amount based on their total facility costs and (2) government hospitals make annual intergovernmental transfers to the Ohio Department of Job and Family Services (ODJFS). ODJFS distributes to hospitals money generated by assessments, intergovernmental transfers, and federal matching funds generated by the assessments and transfers. A hospital compensated under HCAP must provide, without charge, basic, medically necessary, hospital-level services to Ohio residents who are not recipients of Medicare or Medicaid and whose income does not exceed the federal poverty guidelines.

HCAP is scheduled to terminate on October 16, 2005. The bill delays the termination until October 16, 2007. (Sections 403.17 and 403.18)

IX. Disability Medical Assistance

Elimination of Disability Medical Assistance Program

(R.C. 9.24, 127.16, 131.23, 323.01, 329.04, 329.051, 2305.234, 2744.05, 3111.04, 3119.54, 3317.029, 3317.10, 3702.74, 4123.27, 4731.65, 4731.71, 5101.181, 5101.26, 5101.31, 5101.36, 5110.01, 5110.05, 5112.03, 5112.08, 5112.17, 5115.20, 5115.22, and 5115.23; Section 206.66.42; R.C. 5115.10, 5115.11, 5115.12, 5115.13, and 5115.14 (repeal))

Under law in existence prior to the enactment of the 2004-2005 biennium main operating budget bill (Am. Sub. H.B. 95 of the 125th General Assembly), Ohio had a Disability Assistance Program for low income persons who were

generally ineligible for assistance under the Ohio Works First Program, the federal Supplemental Security Income Program, and Medicaid. Law enacted by H.B. 95 separated the Disability Assistance Program into two programs: the Disability Financial Assistance Program and the Disability Medical Assistance Program. It required the Ohio Department of Job and Family Services (ODJFS) to establish distinct requirements, eligibility determination procedures, administrative rules, and potential limitations for each program.

To be eligible for the Disability Medical Assistance Program, current law and administrative rules provide that an individual must:

- Be "medication dependent";[193]
- Be ineligible for any category of Medicaid;[194]
- Be an Ohio resident;[195]
- Be a United States citizen, qualified alien, or meet certain citizenship requirements;[196]
- Be in a living arrangement other than a county home, city infirmary, jail, or public institution;
- Assign parental support and third party payments for medical care to the Department;[197]
- Be a member of an "assistance group"[198] or "family group."[199]

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[193] *An individual is "medication dependent" if a physician has certified that the individual is under ongoing treatment for a chronic medical condition requiring continuous prescription medication for a long-term, indefinite period of time and for whom the loss of such medication would result in a significant risk of a medical emergency and loss of employability which will last at least nine months. Ohio Administrative Code (O.A.C.) 5101:1-42-01.*

[194] *R.C. 5115.11.*

[195] *Residency qualifications are established in O.A.C. 5101:1-39-54.*

[196] *Citizenship qualifications are established in O.A.C. 5101:1-38-02.3.*

[197] *O.A.C. 5101:1-38-02.2.*

[198] *An "assistance group" is defined as applicants for or recipients of disability medical assistance who are living together and treated as a unit for purposes of determining*

A person who is eligible for the Disability Medical Assistance Program may receive "covered services." Defined in administrative rule, "covered services" include a specified number of outpatient and inpatient visits, prescription drug services, medical supply services, laboratory and radiological services, and dental services limited to extractions and radiographs.[200]

Pursuant to ODJFS rule-making authority, a county department of job and family services administers the Disability Medical Assistance Program in a particular county.[201] The Program receives no federal funding and has a capped appropriation that may limit the number of individuals approved for assistance.[202]

The bill terminates the Disability Medical Assistance Program effective October 1, 2005. However, it maintains current law to the extent necessary for ODJFS to carry out duties to deal with issues associated with the termination of the Program. The bill also permits ODJFS to take reasonable steps to inform Program recipients about the termination of the Program and requires county departments of job and family services to take action with respect to termination activities when requested by ODJFS.

X. Title XX Social Services

Title XX of the Social Security Act authorizes a block grant program under which states receive federal funds to be used for social services. In Ohio, the funds are divided among three state agencies: the Departments of Job and Family Services, Mental Health, and Mental Retardation and Developmental Disabilities.

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eligibility for disability medical assistance. The assistance group is formed by selecting all of the covered individuals who are medication dependent from the family group. The assistance group must contain the following covered individuals: (1) an individual, (2) a married couple. O.A.C. 5101:1-42-01(B)(3).

[199] A "family group" is defined as the assistance group, and any persons related to any member of the assistance group by blood, adoption, or marriage who are living in the same home as the assistance group. O.A.C. 5101:1-42-01(B)(2).

[200] O.A.C. 5101:3-23-01(B).

[201] R.C. 5115.13; O.A.C. 5101:1-42-01.

[202] O.A.C. 5101:1-42-01(A).

Audits of state agency Title XX expenditures

(R.C. 5101.46(F))

Under current law, each of the three state agencies receiving Title XX funds must commission an entity independent of itself to conduct an audit of its Title XX expenditures. The audits must occur at least biennially and copies must be submitted to the General Assembly and the United States Secretary of Health and Human Services.

The bill eliminates the requirement of independent, biennial audits of the three state agencies' Title XX expenditures.

Audits of Title XX social services providers

(R.C. 5101.46(F))

Current law authorizes the three state agencies that receive Title XX funds, as well as their respective local agencies,[203] to require an entity under contract to provide Title XX social services to submit to an audit on the basis of alleged misuse or improper accounting of funds. The cost of the audit must be reimbursed under a subsequent or amended Title XX contract with the provider. If there are adverse findings in the audit, the state or local agency may terminate or refuse to enter into a Title XX contract with the provider.

The bill expressly requires a social services provider to reimburse the state or local agency for the cost of an audit, while eliminating the provision specifying that the cost is to be reimbursed under a subsequent or amended Title XX contract. If an audit demonstrates that the provider is responsible for one or more adverse findings, the bill requires the provider to reimburse the appropriate state or local agency the amount of the adverse findings. The bill continues the agency's authority to terminate or refuse to enter into Title XX contracts with the provider.

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[203] *For the Ohio Department of Job and Family Services, a local agency is a county department of job and family services; for the Department of Mental Health, it is a board of alcohol, drug addiction, and mental health services; for the Department of Mental Retardation and Developmental Disabilities, it is a county board of mental retardation and developmental disabilities.*

Rules governing the Title XX program

(R.C. 5101.46)

Current law permits the Ohio Department of Job and Family Services (ODJFS) to adopt rules as necessary to carry out the purposes of the Title XX statutes. Generally, the rules must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.), which requires public hearings. However, internal management rules governing fiscal and administrative matters can be adopted under procedures that do not require public hearings.

The bill authorizes ODJFS to adopt rules to implement and carry out the Title XX statutes, and eliminates the provision specifying that ODJFS may adopt rules "as necessary." Rules governing ODJFS's financial and operational matters or matters between ODJFS and county departments of job and family services must be adopted as internal management rules. Rules governing eligibility for services, program participation, and other matters pertaining to applicants and participants must be adopted in accordance with the Administrative Procedure Act.

Use of TANF funds for Title XX social services

(R.C. 5101.461 (primary); 329.04, 5101.35, and 5101.821)

Title IV-A of the Social Security Act, the federal law authorizing the Temporary Assistance for Needy Families (TANF) Block Grant, allows states to use a percentage of the funds they receive for Title XX social services.[204] Current law in Ohio includes provisions specifying that the Ohio Department of Job and Family Services' (ODJFS) distribution of TANF funds for Title XX services is not subject to other provisions governing the distribution of Title XX funds.

The bill creates a separate statute governing the use of TANF funds for Title XX social services. Under the bill, ODJFS is expressly permitted to use TANF funds for purposes of providing Title XX social services, to the extent authorized by federal law. The bill specifies that the amount used cannot exceed the maximum amount permitted by federal law. It also specifies that the funds and the provision of social services with the funds are not subject to other statutes governing Title XX social services.

[204] *42 United States Code 604.*

Audits of TANF/Title XX social service providers

The bill authorizes ODJFS and any county department of job and family services to require an entity under contract to provide Title XX social services with TANF funds to submit to an audit on the basis of alleged misuse or improper accounting of funds. If an audit is required, the social services provider is required to reimburse ODJFS or the county department for the cost of the audit.

If an audit demonstrates that a social services provider is responsible for one or more adverse findings, the bill requires the provider to reimburse ODJFS or the county department the amount of the adverse findings. The amount cannot be reimbursed with the TANF funds received to provide social services. ODJFS and the county departments are authorized to terminate or refuse to enter into a contract with a social services provider if there are adverse findings that are the responsibility of the provider.

Rules governing TANF/Title XX social services

The bill permits ODJFS to adopt rules to implement and carry out the purposes of the statute governing the use of TANF funds for Title XX social services. Rules governing ODJFS's financial and operational matters or matters between ODJFS and county departments are to be adopted as internal management rules under procedures that do not require public hearings. Rules governing eligibility for services, program participation, and other matters pertaining to applicants and participants must be adopted in accordance with the Administrative Procedure Act (R.C. Chapter 119.), which requires public hearings.

XI. Food Stamp Program

The Food Stamp Program is a federal program administered by ODJFS and county departments of job and family services. It is designed to raise the nutritional levels of low-income individuals and families.

Food Stamp Program work requirements

(Section 206.67.24)

Under federal law governing the Food Stamp Program, no physically and mentally fit individual age 18 to 50 is eligible for food stamp benefits if, during the preceding 36-month period, the individual received food stamp benefits for not less than three months during which the individual failed to (1) work at least 20 hours per week, averaged monthly, (2) participate in and comply with the requirements of a work program for 20 hours or more per week, or (3) participate in and comply with the requirements of a workfare program. The federal law provides certain exceptions to this work requirement.

One of the exceptions is that a state may request that the United States Secretary of Agriculture waive the applicability of the work requirement to any group of individuals in the state if the Secretary makes a determination that the area in which the individuals reside has an unemployment rate of over 10% or does not have a sufficient number of jobs to provide employment for the individuals. The act requires ODJFS to request that the Secretary issue the waiver for fiscal years 2006 and 2007. ODJFS is required to make monthly determinations of which counties the waiver is to be in effect in. No individual may be exempted from the work requirements for more than a total of 12 months during the fiscal biennium.

ODJFS is required by the act to report to the Speaker and Minority Leader of the House of Representatives and President and Minority Leader of the Senate on receipt or rejection of the waiver.

JUDICIARY/SUPREME COURT

- Provides a $500 vehicle allowance per month for the chief justice and the justices of the Supreme Court.
- Requires the clerk of the Medina Municipal Court to be elected, not appointed, and be compensated in the same manner as other elected clerks of municipal courts having a territory population of 100,000 or more.
- Removes an indigent person's right to appointed counsel in certain civil proceedings in juvenile court.

Vehicle allowance for Supreme Court justices

(R.C. 141.04)

Current law provides that the annual salaries of the chief justice of the Supreme Court and of the justices of the Supreme Court are payable from the state treasury and, for each calendar year from 2002 through 2008, the annual salaries of the chief justice and the justices must be increased by an amount equal to the adjustment percentage for that year multiplied by the compensation paid the preceding year. The adjustment percentage for a year is the lesser of the following: (1) 3% or (2) the percentage increase, if any, in the consumer price

index over the 12-month period that ends on September 30 of the immediately preceding year, rounded to the nearest 1/10 of 1%.

The bill provides that, in addition to the salaries payable pursuant to the provision described above, the chief justice and the justices are entitled to a vehicle allowance of $500 per month, payable from the state treasury. This allowance must be increased on January 1 of each odd numbered year by an amount equal to the percentage increase, if any, in the consumer price index for the immediately preceding 24-month period for which information is available.

Medina municipal court clerk

(R.C. 1901.31; Section 509.03)

Election

Under continuing law, clerks of municipal courts may be either appointed or elected. For municipal courts with a population in the court territory of 100,000 or more, clerks of the courts generally are elected in the same manner as judges are elected to those courts. That is, they generally are elected on the nonpartisan ballot for terms of six years). The manner in which those judges, and the associated clerks, are nominated depends upon whether municipal charter provisions apply to the court.

Under existing law, regardless of the territory of the Medina Municipal Court, the clerk of that Court is required to be appointed by the judges of that Court. The clerk must hold office until the clerk's successor is similarly appointed and qualified. The bill eliminates this specific appointment provision, so that the general rule applicable to municipal courts with a population in the court territory of 100,000 or more will apply. Thus, under the bill, the clerk of the Medina Municipal Court must be elected on the nonpartisan ballot for a term of six years.

The bill requires the clerk of the Medina Municipal Court to be elected by the qualified electors of the territory of the court at the first general election that occurs not less than six months after the bill's effective date for non-appropriation provisions. The term of the clerk elected in that general election must commence on January 1 of the following year and continue until the clerk's successor is elected and qualified according to the normal schedule for the election of the judge of that court. The bill provides that the current clerk of the Medina Municipal Court will continue in office until the elected clerk takes office. If the office becomes vacant prior to that date, the judges of the Medina Municipal Court must appoint a clerk to serve until the elected clerk takes office.

Compensation

For certain municipal courts, including the Medina Municipal Court, the clerk receives the annual compensation that the presiding judge of the court prescribes, if the court's revenue for the preceding year equals or exceeds the expenditures for the operation of the court payable from the city treasury, or the annual compensation that the legislative authority prescribes, if the court's revenue for the preceding year is less than the expenditures for the operation of the court. Generally, in a municipal court with a population in the court territory of 100,000 or more, the clerk receives annual compensation equal to 85% of the salary of a judge of the court.

The bill eliminates the specific compensation provision applicable to the clerk of the Medina Municipal Court. Thus, under the bill, the general rule applicable to municipal courts with a population in the court territory of 100,000 or more will apply. Under the bill, then, the clerk of the Medina Municipal Court will receive annual compensation equal to 85% of the salary of the judge of the court.

Removal of the right to counsel for indigents in certain civil juvenile proceedings

(R.C. 2151.352)

Current law gives any child, a child's parents or custodian, or any other person in loco parentis of a child the right to representation by legal counsel at all stages of proceedings in juvenile courts under R.C. Chapter 2151. or 2152. If the person is indigent and is unable to employ counsel, the person is entitled to have counsel appointed pursuant to R.C. Chapter 120. Counsel appointed pursuant to R.C. Chapter 120. include state public defenders, county public defenders, joint county public defenders, and counsel appointed through a county appointed counsel system.

For certain civil matters only, the bill removes an indigent person's right to appointed counsel when the person is a party to a proceeding in juvenile court. Under the bill, a child, a child's parents or custodian, or any other person in loco parentis of the child is entitled to representation by legal counsel at all stages of a juvenile court proceeding. However, if the party is indigent, the party is not entitled to appointed counsel in a civil matter if the court is exercising jurisdiction pursuant to one of the following bases listed in R.C. 2151.23(A)(2), (3), (9), (10), (11), (12), or (13); (B)(2) through (6); (C); (D); or (F)(1) or (2):

(1) To determine the custody of any child not a ward of another Ohio court;

(2) To hear and determine any application for a writ of habeas corpus involving the custody of a child;

(3) To hear and determine requests for the extension of temporary custody agreements and requests for court approval of certain permanent custody agreements;

(4) To hear and determine applications for consent to marry;

(5) To hear and determine a request for an order for the support of any child if the request is not ancillary to an action for divorce, dissolution of marriage, annulment, or legal separation, a criminal or civil action involving an allegation of domestic abuse, or an action for support under the Uniform Interstate Family Support Act;

(6) To hear an action under R.C. 121.38 concerning an agency dispute with a county Family and Children First Council's decision regarding a child's services;

(7) To hear and determine a violation of the compulsory attendance laws;

(8) To determine the paternity of a child born out of wedlock;

(9) Any action under the Uniform Interstate Family Support Act;

(10) To hear and determine an application for a child support order for any child if the child is not a ward of another Ohio court;

(11) To hear and determine an action under R.C. 3111.28 regarding the rescission of an acknowledgment of paternity;

(12) To hear and determine a motion for relief from a paternity determination or support order under R.C. 3119.961;

(13) Certain actions for divorce or legal separation that involve the custody or care of children;

(14) All matters as to custody and support of children after a divorce decree has been granted.

LEGISLATIVE SERVICE COMMISSION

- Requires the Legislative Service Commission to create and maintain an Internet-accessible electronic database of each Ohio school district's current and historical revenue and expenditures.

Ohio school district revenue and expenditure database

(R.C. 103.132)

The bill requires the Legislative Service Commission, in conjunction with the Legislative Information Systems Office, to establish and maintain an electronic database containing current and historical revenue and expenditure data for each Ohio school district. The database must be easy to use and readily accessible through the Internet.

LOCAL GOVERNMENT

- Permits agencies and instrumentalities of political subdivisions to establish and maintain individual and joint self-insurance programs to provide health care benefits to officers and employees of the agency or instrumentality.

- Provides new procedures for the county mechanisms, county comprehensive family service coordination plans, and dispute resolution processes of family and children first county councils and modifies membership provisions.

- Permits a county, juvenile, or municipal court judge to use surplus money in that court's indigent drivers alcohol treatment fund to pay the cost of electronic continuous alcohol monitoring devices or the cost of the continued use of such devices.

- Raises the bid amount under the Competitive Bidding on County Purchases Law for which a bond or other specified form of bid guaranty is required from in excess of $10,000 to in excess of $25,000.

- Requires a joint board of county commissioners that has organized a district for the establishment and support of a juvenile detention facility, school, forestry camp, or other facilities to approve all district contracts and the district's annual budget and gives the joint board exclusive authority to retain legal counsel for the district.

- Transfers the power to fix the compensation of the librarian and up to two assistant librarians of a law library association's law library from the judges of the court of common pleas to the association's board of trustees.

- Pursuant to a graduated schedule for calendar year 2007 through calendar year 2010, generally apportions the responsibility for payment of the compensation of the librarian and up to two assistant librarians of an association's law library, as well as the payment of the costs of the space, utilities, furniture, and fixtures of the association's law library, between the board of county commissioners and the association's board of trustees.

- Beginning in calendar year 2011, requires the association's board of trustees to assume full financial responsibility for paying the librarian's and all assistant librarians' compensation as well as the costs of the space, utilities, furniture, and fixtures for the association's law library.

- Generally continues a county's responsibility to provide a law library association with space and utilities for its law library in the county courthouse or elsewhere in the county.

- Eliminates the county's responsibility to (1) pay the librarian's and up to two assistant librarians' compensation and the costs of the space, utilities, furniture, and fixtures for the association's law library if the association itself obtains space for its law library and (2) provide a law library association with space and utilities for its law library in the county courthouse or elsewhere in the county if the association itself obtains space for its law library.

- Eliminates the authority of boards of election to procure health care coverage for their members and employees and instead provides that these members and employees will be covered by the same health care coverage the board of county commissioners procures for other county officers and employees.

- Retains the authority of a board of elections to apply to the court of common pleas to fix the amount of the board's necessary appropriation when the board contends the board of county commissioners has failed to appropriate a sufficient amount to cover its necessary and proper expenses, but limits these necessary and proper expenses to expenses *for the purpose of conducting elections*.

- Prohibits a board of elections from incurring any obligation involving the expenditure of money unless there are moneys sufficient in the funds

appropriated therefore to meet the obligation--the sufficiency being determined in accordance with the Tax Levy Law.

- Permits a board of elections to make transfers out of accounts that contain funds designated for the purpose of conducting elections only as provided in the Tax Levy Law.

- Abolishes the County Electronic Voting Machine Maintenance Fund.

- Creates the Task Force on Law Library Associations and requires it to study and make specified recommendations as to the structure, funding, and administration of law library associations' law libraries.

- Generally requires boards of county commissioners to provide office space and utilities to their county's general health district's board of health through FY 2006; generally requires them to pay in FY 2007 through FY 2009 specified decreasing proportions of the cost of the office space and utilities; specifies that they have no obligation to provide or pay for the office space and utilities after FY 2009; permits them in FY 2010 and thereafter to contract to provide the office space and utilities; and permits them in any fiscal year, in their discretion and notwithstanding the aforementioned fiscal year limitations, to provide the office space and utilities free of charge.

- Relieves a board of county commissioners of its office space and utilities obligations if the board of health of the county's general health district acquires office space on its own in any of several specified manners.

- Provides that a general health district special levy can be used to cover the costs of its office space and utilities.

- Permits a political subdivision to require payment of deductibles under its liability insurance or self-insurance program from accounts or funds in its treasury from which a loss was directly attributable, and provides a procedure to transfer the deductible and the costs of either program from the appropriate funds or accounts to the subdivision's general revenue fund.

- Creates the ten-legislator Local Government and Library Revenue Distribution Task Force to study potential sources of state funding for the Local Government Fund, Library and Local Government Support Fund,

and Local Government Revenue Assistance Fund that have the capacity to allow for growth in funding levels and to provide stability in funding levels, and then to report its recommendations and suggested implementing legislation to the Governor and General Assembly.

- Creates the Local Government Public Notice Task Force to study local government public notice requirements and issue a report that includes recommendations for meeting those requirements in alternative more economical and efficient ways, considering what is also practical.

- Establishes a distinct method of appointment for the board of trustees of regional transit authorities created by two municipal corporations and one county with a population of at least 500,000 and provides that a board member appointed under this method serves at the pleasure of the appointing authority.

- Mandates one resident member be appointed to a metropolitan housing authority by the chief executive officer of the most populous city in the district, when a resident member is required by federal law, and specifies that any metropolitan housing authority to which two additional members were appointed under current law (because the district had 300 or more assisted housing units and no member who resided in such a unit) must continue to have those additional members.

- Authorizes a board of county commissioners in a county with a population of 600,000 or more to establish and provide local funding options for constructing and equipping a convention center, in addition to its authority under current law to assist in doing so.

- Authorizes a board of county commissioners in a county with a population of 500,000 or more to establish and provide local funding options for the support of arts and cultural organizations operating in a regional arts and cultural district in which the county is included.

- Requires the board of county commissioners in a county with a population of 500,000 or more that creates a regional arts and cultural district under an alternative statutory procedure, to appoint a three-member board of trustees for the district, instead of serving itself as the district's governing board.

- Permits a county to maintain and operate a facility to encourage the study of and promote the sciences, either by itself or by contract with a nonprofit corporation, and to levy a voter-approved property tax to provide for and maintain such a facility.

Health care benefits for agencies of political subdivisions

(R.C. 9.833)

Continuing law grants political subdivisions, including municipal corporations, townships, counties, school districts, and other bodies corporate and politic smaller than the state, the authority to provide health care benefits to the subdivision's officers and employees through individual or joint self-insurance programs. The bill extends this authority to agencies and instrumentalities of political subdivisions. The bill requires an agency or instrumentality that establishes and maintains a self-insurance health care program to reserve the funds necessary to cover the potential costs of the program in a special fund established by resolution duly adopted by the agency's or instrumentality's governing board. Funding costs may be allocated among funds on the basis of relative exposure and loss experience.

Procedure changes to family and children first county councils

(R.C. 121.37, 121.38, 121.381, and 121.382)

Under current law, each board of county commissioners must establish a county family and children first council to facilitate the provision of services to children and families by various agencies, including local boards of education and health, the county boards of alcohol, drug addiction, and mental health services, and mental retardation and developmental disabilities, and the county department of job and family services.

Membership of county family and children first councils

Current law requires each county family and children first council to include at least three individuals whose families are receiving or have received services from an agency represented on the council or another county's council. The bill prohibits individuals who are employed by an agency represented on the council from serving as family representatives on a county council.

County council executive committee

Current law allows a family and children first county council to delegate any of its powers and duties to an executive committee established from the membership of the county council. The bill requires that an executive committee of a county council include at least one family county council representative. This family representative may not serve on the executive committee if the representative has a family member employed by an agency represented on the council.

Procedures for the county service coordination mechanism

Currently, each county must develop a service coordination mechanism that includes a procedure for each of the following:

(1) Assessment of the needs of any child, including a child who is abused, neglected, dependent, unruly, or delinquent and under the jurisdiction of the juvenile court, or a child whose parent or custodian is voluntarily seeking services;

(2) Assessment of the service needs of the family of any child, including a child whose parent or custodian is voluntarily seeking services;

(3) Development of a comprehensive joint service plan that designates service responsibilities among the various state and local agencies that provide relevant services (renamed "family service coordination plan" by the bill);

(4) Resolution of disputes among the agencies providing services.

The bill combines and modifies the first two procedures by requiring that each county develop a service coordination mechanism that assesses the service needs and strengths of any child or the family of any child that has been referred to the council for service coordination, including a child whose parent or custodian is voluntarily seeking services, and for ensuring that parents and custodians are afforded the opportunity to participate.

The bill requires county councils to develop the following procedures in addition to those required by current law:

(1) A means by which an agency, including a juvenile court, or a family voluntarily seeking service coordination can refer itself to the county council;

(2) A procedure ensuring that a family and all appropriate staff from involved agencies, including a representative from the appropriate school district, are notified of and invited to participate in all family service coordination plan meetings;

(3) A procedure that permits a family to initiate a meeting to develop or review the family's service coordination plan and allows the family to invite a family advocate, mentor, or support person of the family's choice to participate in any such meeting;

(4) A procedure for ensuring that a family service coordination plan meeting is conducted before a non-emergency out-of-home placement for all multi-need children, or within ten days of a placement for emergency placements of multi-need children. The family service coordination plan is to outline how the county council members will jointly pay for services, where applicable, and provide services in the least restrictive environment.

(5) A procedure for monitoring the progress and tracking the outcomes of each service coordination plan requested in the county including monitoring and tracking children in out-of-home placements to assure continued progress, appropriateness of placement, and continuity of care after discharge from placement with appropriate arrangements for housing, treatment, and education;

(6) A procedure for protecting the confidentiality of all personal family information disclosed during service coordination meetings or contained in the comprehensive family service coordination plan;

(7) A local dispute resolution process to resolve disputes between a child's parents or custodians and the county council regarding service coordination.

The bill provides that the county service coordination mechanism shall serve as the guiding document for coordination of services in a county. For children who are receiving services under the Help Me Grow program administered by the Ohio Department of Health, the bill states that the service coordination mechanism must be consistent with the Department's rules regarding the Help Me Grow program.

Changes to the county council comprehensive joint service plan

Under current law, each county is required to develop a comprehensive joint service plan that designates service responsibilities among the state and local agencies that provide services to children and includes a service coordination process for dealing with a child who is alleged to be unruly. The bill would require the renamed comprehensive family service coordination plan to do the following:

(1) Designate an individual, approved by the family, to track the progress of the family service coordination plan, schedule reviews, and facilitate the family service coordination plan meeting process;

(2) Ensure that the assistance and services provided are responsive to the strengths and needs of the family, as well as the family's culture, race, and ethnic group, by allowing the family to offer information and suggestions and participate in decisions. The bill requires that identified assistance and services be provided in the least restrictive environment possible.

(3) Include timelines for completion of goals specified in the plan with regular reviews to monitor progress;

(4) Include a plan for dealing with short-term crisis situations and safety concerns.

Changes to the service coordination process for children alleged to be unruly

Current law requires the comprehensive joint service plan to include a service coordination process for dealing with a child who is alleged to be unruly. Currently, the service coordination process may also include:

(1) An assessment of the needs and strengths of the child and the child's family and the services they need;

(2) Designation of the person or agency to conduct the assessment of the child and the child's family and designation of the instruments to be used to conduct the assessment;

(3) Designation of the agency to provide case management services to the child and the child's family;

(4) An emphasis on the personal responsibilities of the child and the parental responsibilities of the parents, guardian, or custodian of the child;

(5) Involvement of local law enforcement agencies and officials.

The bill modifies two of these elements. First, the assessment of needs and strengths of the child and the child's family is conducted under the procedures of the county council mechanism. Second, the service coordination process does not need to designate an agency to provide case management services to the child and the child's family.

One requirement of the service coordination process is to include methods to divert the child from the juvenile court system, which can include a number of actions including providing the child and the child's family a short-term respite from a short-term crisis situation involving a confrontation between the child and the parents, guardian, or custodian.

Under the bill, the method for dealing with short-term crisis situations is no longer part of the service coordination process. Instead, it is part of the service coordination plan (*See* "***Changes to the county council comprehensive family service coordination plan***" above).

Dispute resolution processes

Current law requires the county council to include in its mechanism a dispute resolution procedure to resolve conflict among agencies. In addition to using dispute resolution for agency disputes, the bill authorizes the county councils to use their dispute resolution processes to resolve disputes between an agency and the parents or custodians of a child receiving services from the agency. Disputes between the agency and the recipient of services must be conducted under new procedures. The county council is required to inform the parents or custodians of their right to use the dispute resolution process. The bill states that a parent or custodian may use the dispute resolution process only for disputes regarding service coordination. Parents or custodians are required to use existing local agency grievance procedures for disputes not related to service coordination. The bill states that the dispute resolution process is in addition to and does not replace other rights or procedures available to parents or custodians.

Under the bill, a parent or custodian who disagrees with a decision made by a county council regarding services for a child may initiate the dispute resolution process. Not later than 60 days after the parent or custodian initiates the process, the council is required to make findings regarding the dispute and issue a written determination of its findings. The bill also provides that each agency that is the subject of the dispute must continue providing its services or funding for its services to the child or family for the duration of the dispute resolution process.

Bids and their guaranties for county purchases

(R.C. 307.88(A))

Current law provides that bids submitted under the Competitive Bidding on County Purchases Law must be in a form prescribed by the contracting authority and filed in a sealed envelope at the time and place mentioned in the newspaper, trade paper or other publication, electronic mail, and/or Internet notices advertising an invitation for bids. Although competitive bidding generally is required under the Law when anything is to be purchased, leased, leased with an option or agreement to purchase, or constructed by a county or contracting authority at a *cost in excess of $25,000* (R.C. 307.86--not in the bill), and although newspaper publication notice of any purchase, lease, lease with an option or agreement to purchase, or construction contract is mandated under the Law only when the contract is in excess of $25,000 (R.C. 307.87--not in the bill), the Law

also states that a bid *in excess of $10,000* for a contract for the construction, demolition, alteration, repair, or reconstruction of *an improvement* generally must meet the bid guaranty requirements of the Public Improvements Law, which mandates that a bid be accompanied by a specified bond, or certified check, cashier's check, or letter of credit, conditioned as prescribed in the Public Improvements Law.[205 and 206] The bill raises the bid threshold to bids *in excess of $25,000* before compliance with the Public Improvements Law's bid guaranty requirements is necessary.

Current law also specifies that if a bid is in excess of $10,000 and for *any other contract* authorized under the Competitive Bidding on County Purchases Law--i.e., a non-public improvement contract, it must be accompanied by a bond or certified check, cashier's check, or money order on a solvent bank or savings and loan association, in a reasonable amount stated in the notices advertising the proposed contract, but not to exceed 5% of the bid, conditioned that the bidder, if the bidder's bid is accepted, will execute a contract in conformity to the invitation for bids and the bid. The bill raises the bid threshold for non-public improvement contracts to in excess of $25,000 before a described bid guaranty must accompany a submitted bid.

Authority of joint board of county commissioners over a district for the operation of juvenile detention home or certain other facilities

(R.C. 2151.652 and 2152.44)

The bill requires a joint board of county commissioners that has organized a district for the establishment and support of a school, forestry camp, or other facility or facilities under R.C. 2151.65 (not in the bill) or that has organized a district for the establishment and support of a detention facility under R.C. 2152.41 (not in the bill) to approve all contracts entered into by or on behalf of the district and to approve the district's annual budget. The bill gives to the joint board the exclusive authority to retain legal counsel for the district.

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[205] *A "contracting authority" is any board, department, commission, authority, trustee, official, administrator, agent, or individual with authority to contract for or on behalf of the county or any county agency, department, authority, commission, office, or board (R.C. 307.92--not in the bill).*

[206] *Under current law, there is a potential exception to compliance with the Public Improvements Law bid guaranty requirements. The board of county commissioners, by a unanimous vote, may permit a contracting authority to exempt bids from some or all of those bid guaranty requirements if the estimated cost is more than $10,000 but less than $25,000 (R.C. 307.88(B)).*

Law libraries

Overview

(R.C. 3375.48 and 3375.55)

Current law requires the law library association in each county ("association") that receives fines and penalties, and moneys arising from forfeited bail, under certain statues to furnish to all members of the General Assembly, the officers of the county in which the association is located, the officers of the townships and municipal corporations in that county, and the judges of the courts in that county admission to the association's law library and the use of its books free of charge. The bill continues this requirement and adds materials and equipment of the law library to the free of charge use.

Setting of compensation for law librarians

(R.C. 3375.48)

An association's board of trustees appoints a librarian and assistant librarians for its law library. Current law gives the judges of the court of common pleas of the county the power to fix the compensation of the librarian and up to two assistant librarians, and that compensation is payable 100% from the county treasury. Under the bill, this compensation fixing power is transferred from the judges of the court of common pleas to the association's board of trustees. Generally, the board of trustees is also responsible under the bill for paying the compensation of the librarian and all of the assistant librarians--but see the bill's costs payment schedule provisions below.

Provision of space and utilities

(R.C. 3375.49)

Under current law, the board of county commissioners must provide suitable rooms with sufficient and suitable bookcases in the county courthouse for the use of the association's law library or, if there are no suitable rooms in the courthouse, any other suitable rooms in the county seat with sufficient and suitable bookcases. Additionally, the board must provide heat and light for the rooms. This provision must be 100% at the county's expense.

The bill generally continues these responsibilities by requiring the board of county commissioners to provide a law library association with *space and utilities* for its law library in the county courthouse or in any other building in the county. However, the bill also provides that, if at any point the association's board of trustees rents, leases, lease-purchases, or otherwise acquires space for its law

library, or constructs, enlarges, renovates, or otherwise modifies buildings or other structures to provide space for the use of its law library, the board of county commissioners has no further obligation to provide the association with the space and utilities. And, as discussed below, the bill modifies the county's payment responsibility for the costs of the space and utilities for the association's law library.

Payment of compensation and costs

(R.C. 3375.48, 3375.49, and 3375.54)

Current law requires a board of county commissioners to make certain payments with regard to an association's law library. Specifically, the board must pay the compensation of the librarian and up to two assistant librarians of the law library, as well as the costs of providing suitable rooms, sufficient and suitable bookcases, heating, and lighting for the law library.

As part of the previously discussed changes made by the bill, responsibility for payment of the *compensation* of the librarian and up to two assistant librarians of an association's law library, as well as the *costs* of the space, utilities, furniture, and fixtures of an association's law library is gradually transferred from the board of county commissioners to the association's board of trustees pursuant to the following schedule:

Calendar Year	Responsibility to pay the compensation and costs
Through 2006	The board of county commissioners must pay 100%.
2007	The board of county commissioners must pay 80%, and the association's board of trustees must pay 20%.
2008	The board of county commissioners must pay 60%, and the association's board of trustees must pay 40%.
2009	The board of county commissioners must pay 40%, and the association's board of trustees must pay 60%.
2010	The board of county commissioners must pay 20%, and the association's board of trustees must pay 80%.
2011 and thereafter	The association's board of trustees must pay 100%.

However, if at any point the association's board of trustees rents, leases, lease-purchases, or otherwise acquires space for its law library, or constructs, enlarges, renovates, or otherwise modifies buildings or other structures to provide space for the use of its law library, the board of county commissioners has no

further responsibility to pay the compensation and costs in accordance with the latter schedule.

Task Force on Law Library Associations

(Section 501.03)

Appointments. The bill creates the Task Force on Law Library Associations, which is comprised of the following 13 members:

- One member appointed by the Speaker of the House of Representatives;
- One member appointed by the Minority Leader of the House of Representatives;
- One member appointed by the President of the Senate;
- One member appointed by the Minority Leader of the Senate;
- Three members appointed by the Ohio Judicial Conference, two of whom must be judges who are members of the Conference and one of whom must be a law librarian associated with an association;
- Three members appointed by the County Commissioners' Association of Ohio;
- Three members appointed by the Ohio State Bar Association, two of whom must be attorneys licensed to practice law in Ohio and one of whom must be a law librarian associated with an association.

Appointments to the Task Force must be made by September 1, 2005, and vacancies are to be filled in the manner provided for original appointments.

Task force duties. The bill charges the Task Force with the following duties:

- Gather information on and study the current state of the associations, with particular emphasis on the structure, funding, and administration of their law

libraries, and on the effect of technology on, and access to, their law libraries.

- Make recommendations on the structure, funding, and administration of these law libraries presently and over the next five calendar years.

- Make recommendations as to how to ensure that these law libraries remain open and may be made available to members of the public.

The Task Force must report its findings and recommendations to the Speaker and Minority Leader of the House of Representatives, the President and Minority Leader of the Senate, and the Chief Justice of the Supreme Court by October 31, 2006.

The Task Force ceases to exist upon the submission of its report and is not subject to the Sunset Review Law.

Spending authority of county boards of elections

(R.C. 305.171, 3501.141, and 3501.17)

Insurance law changes

Current law authorizes the board of elections of a county to contract, purchase, or otherwise procure and pay all or any part of the cost of group insurance policies that may provide benefits for hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, or prescription drugs and that may provide sickness and accident insurance, or group life insurance, or a combination of any of those types of insurance or coverage for the *full-time employees* of the board and their *immediate dependents*. The bill eliminates this independent authority to contract, purchase, or otherwise procure and pay all or any part of the cost of those group health and life insurance coverages (repeal of R.C. 3501.141) and instead explicitly includes board employees and their immediate dependents under the provisions of current law that authorize boards of county commissioners to procure and pay all or part of the cost of group health and life insurance coverages for county officers and employees and their immediate dependents (R.C. 305.171).

In addition, current law authorizes a board of elections to procure and pay all or any part of the cost of group hospitalization, surgical, major medical, or sickness and accident insurance or a combination of those types of insurance or coverage for the *board members* and their *dependents* when a member's term

begins. The bill eliminates this authority too (repeal of R.C. 3501.141), and instead explicitly includes board members and their immediate dependents under the provisions of current law that authorize boards of county commissioners to procure and pay all of part of the cost of group health and life insurance coverages for county officers and employees and their immediate dependents (R.C. 305.171).

Mandamus actions

Current law requires the expenses of a board of elections to be paid from the county treasury in the same manner that other county expenses are paid--pursuant to board of county commissioners' appropriations. If a board of county commissioners fails to appropriate an amount sufficient to provide for the *necessary and proper expenses* of the board of elections, the board of elections may apply to the court of common pleas (i.e., commence a mandamus action) to fix the amount necessary to be appropriated. The bill generally retains the authority of a board of elections to apply to the court of common pleas but specifies that the mandamus action would be based on the board of county commissioners failure to provide for the necessary and proper expenses of the board of elections *pertaining to the conduct of elections* (R.C. 3501.17(A)).

Incurring obligations and fund transfers

Current law prohibits a board of elections from incurring any obligation involving the expenditure of money unless there are moneys sufficient in the funds appropriated therefor to meet the obligation. The bill retains that prohibition and adds that the sufficiency of the funds must be determined in accordance with the Tax Levy Law (certificates of sufficient available unencumbered funds). It also permits a board of elections to make transfers out of accounts that contain funds designated for the purpose of conducting elections only as provided in the Tax Levy Law. (R.C. 3501.17(A).)

County Electronic Voting Machine Maintenance Fund

(R.C. 3506.17)

Under the federal Help America Vote Act of 2002 (HAVA), the state receives money from the federal government for the purpose of implementing its provisions in Ohio (e.g., purchasing voting machines, providing for voter education, etc.). Current law requires that all moneys so received by the state that are not approved for release by the Controlling Board as of the first federal election that occurs after January 1, 2006, be deposited in the state treasury to the credit of the County Electronic Voting Machine Maintenance Fund. The Secretary of State must adopt rules for the fair and equitable distribution of the moneys in the Fund, which may only be used for the purposes for which they were received

under HAVA and only be expended pursuant to a plan approved by the Controlling Board. The bill abolishes the Fund-related provisions as part of corresponding changes in its appropriation provisions related to the Secretary of State's office for FY 2006 and FY 2007.

General health district office space and utilities

(R.C. 3709.29 and 3709.34)

Existing law

Current law provides that a board of county commissioners, as well as the legislative authority of a city, "may" furnish suitable quarters for any board of health or health department having jurisdiction over all or a major part of the county or city. The Ohio Attorney General has opined that a board of county commissioners is *required to provide and pay* for "office space and utilities" under this law. (See 1996 Op. Att'y Gen. No. 96-016, 1989 Op. Att'y Gen. No. 89-038, 1986 Op. Att'y Gen. No. 86-037, 1985 Op. Att'y Gen. No. 85-003, and 1980 Op. Att'y Gen. No. 80-086.)

Changes proposed by the bill

Separation and county responsibility in general. The bill separates current law's provision for cities furnishing suitable quarters for their board of health or health department from new provisions for counties and their general health district board of health. In separating the provisions, the bill reflects the Attorney General's interpretation of current law and specifically generally *requires* (but see "***Caveat***," below) a board of county commissioners to provide "office space and utilities" for the board of health having jurisdiction over the county's general health district through FY 2006. Thereafter, the board of county commissioners generally must make reduced *payments* for the office space and utilities until FY 2010, at which time the board will no longer have a duty to provide or pay for the office space and utilities.

Schedule of responsibility for payments. The board of county commissioners' reduced payments for FY 2007, 2008, and 2009 are to be determined as follows:

- The board of county commissioners must make a written estimate of the total cost for the ensuing fiscal year of providing the office space and utilities to the board of health no later than September 30 of 2006, 2007, and 2008. This estimate must include (1) the total square feet of space to be used by the board of health, (2) the total square feet of any common areas that should be reasonably allocated

to the board of health and the method for making this allocation, (3) the actual cost per square foot for both the space used by and the common areas allocated to the board of health, (4) an explanation of the method used to determine the actual cost per square foot, (5) the estimated cost of providing utilities, including an explanation of how this cost was determined, and (6) any other estimated costs the board of county commissioners anticipates will be incurred to provide the office space and utilities, including an explanation of them and the rationale used to determine them.

- The board of county commissioners must forward a copy of the estimate to the director of the board of health not later than October 5 in 2006, 2007, and 2008. The director then must review the estimate and notify the board of county commissioners within 20 days of its receipt whether the director agrees with the estimate or has specific objections to it, including the reasons for any objections. If the director agrees, the estimate becomes the "final estimate of total costs" upon which the county's and the board of health's respective responsibilities for making payments will be based in the ensuing fiscal year. Failure of the director to timely submit objections is "deemed" to mean agreement with the board of county commissioners' estimate.

- If the director so objects within the 20-day period, the board of county commissioners must review the specific objections and may send a revised estimate to the director within ten days after receiving the objections. The director then must respond to this revised estimate within ten days after its receipt. If the director disagrees with a revised estimate, the director must send specific objections to the board of county commissioners within the ten-day period. But, if the director agrees with it, the revised estimate is the "final estimate of total costs" upon which the county's and the board of health's respective responsibilities for making payments will be based in the ensuing fiscal year. If the director fails to timely respond to a revised estimate, that estimate is "deemed" to be the final estimate of total costs.

- If the director timely objects to the original estimate and there is no revision to it by the board of county commissioners, or if the director timely and specifically objects to a revised estimate, the probate judge of the county must determine the final estimate of total costs and certify this amount to the director and the board of county

commissioners before January 1 of the ensuing fiscal year to which the estimate applies.

- Once the final estimate of total costs is established, the county generally must pay the following percentages of the estimate: 60% for FY 2007; 40% for FY 2008; and 20% for FY 2009. The board of health will be responsible for the remainder of any costs incurred in excess of these amounts for office space and utilities, including any unanticipated or unexpected increases in costs beyond the final estimate of total cost.

Fiscal year 2010 and thereafter--generally. In FY 2010, although the board of county commissioners will no longer be obligated to provide or pay for office space or utilities for the board of health of the general health district, it may enter into a contract with the board of health to provide it with office space and utilities. Any such contract cannot be made or renewed for a term of more than four years. In addition, in the discretion of the board of county commissioners, it may provide office space and utilities for the board of health free of charge--even in FY 2007 through FY 2009.

Caveat. Notwithstanding the bill's provisions imposing responsibility upon a county to provide office space and utilities to the board of health of its general health district through FY 2006 and imposing responsibility upon a county to make payments for the office space and utilities as described under "***Schedule of responsibility for payments***," above, during FY 2007 through FY 2009, if the board of health rents, leases, lease-purchases, or otherwise acquires office space to facilitate the performance of its functions, or constructs, enlarges, renovates, or otherwise modifies buildings or other structures for that purpose, the board of county commissioners is relieved of its statutory responsibilities to either provide or pay in any percentage for the board of health's office space and utilities.

General health district levy. The bill also specifies that a property tax special levy outside the ten-mill limitation to provide a general health district's board of health with sufficient funds to carry out its general health district program as authorized by continuing law may include the board's costs for office space and utilities.

Treatment of political subdivision insurance and self-insurance costs and deductibles

(R.C. 2744.08 and 2744.082)

Under current law, a political subdivision is permitted to use public funds to obtain insurance to cover the subdivision and its employees' potential liability

for injury, death, or loss to persons or property caused by the subdivision or its employees in connection with a governmental or proprietary function. (As used in this law, an "employee" includes an elected or appointed official.) In addition, regardless of whether the subdivision obtains such insurance, it may establish and maintain a self-insurance program for that potential liability. The subdivision is permitted to allocate the costs of the insurance and self-insurance programs among the funds or accounts in the subdivision's treasury on the basis of relative exposure and loss experience.

In addition to the allocation of costs among funds or accounts for insurance and self-insurance program costs, the bill permits the subdivision to require any deductibles under either type of program to be paid from funds or accounts in the subdivision's treasury from which a loss was directly attributable. The bill further provides that if the subdivision makes such an allocation as provided under current law or requires the payment of deductibles from specific funds or accounts as provided in the bill, the subdivision's fiscal officer, pursuant to an ordinance or resolution of the subdivision's legislative authority, must transfer amounts equal to those costs or deductibles from the funds or accounts to the subdivision's general fund if both of the following apply: (1) the subdivision requests payment from the employee responsible for the funds or accounts for those costs or deductibles, and (2) the employee receiving the request fails to remit payment within 45 days after the date the request is received. The bill also exempts these transfers by the fiscal officer from existing law governing transfers between funds of a political subdivision.

Local Government and Library Revenue Distribution Task Force

(Section 503.12)

The bill creates a Local Government and Library Revenue Distribution Task Force consisting of the following members:

- Five members of the House of Representatives appointed by the House Speaker, with at least two appointments from the minority party.
- Five members of the Senate appointed by the Senate President, with at least two appointments from the minority party.
- One nonvoting member appointed by the Ohio Library Council.
- One nonvoting member appointed by the County Commissioners' Association of Ohio.
- One nonvoting member appointed by the Ohio Municipal League.

- One nonvoting member appointed by the Ohio Township Association.

- One nonvoting member appointed by the Ohio Parks and Recreation Association."

All of the appointments must be made within 30 days after the bill's effective date. The Task Force must designate one of its members as its chairperson. The Tax Commissioner will call the Task Force's initial organizational meeting.

The Task Force must study potential sources of state funding for the Local Government Fund, the Library and Local Government Support Fund, and the Local Government Revenue Assistance Fund that have the capacity to allow for growth in funding levels and to provide stability in funding levels. Additionally, the Task Force must consider changes to the codified funding formulae for the local government funds that reflect Ohio's tax code reform, and must seek interested parties' input and testimony. The Task Force must submit a report to the Governor and the General Assembly not later than December 1, 2006, setting forth its recommendations for sources for the three funds and suggested legislation to implement the recommendations. The Task Force will cease to exist upon issuing its report. The Tax Commissioner must provide the Task Force staff assistance, and it can also request assistance from the Legislative Service Commission.

Boards of trustees for certain regional transit authorities

(R.C. 306.331; Section 503.15)

Under current law, a regional transit authority (RTA) may be created by any county, any two or more counties, municipal corporations, or townships, or any combination of these entities for one or more of a variety of purposes generally pertaining to the provision of transit facilities. The board of trustees of an RTA created by the exclusive action of a county must be appointed by the board of county commissioners of that county. A board of trustees created by two or more political subdivisions must consist of the number of members having the qualifications provided for in the resolutions or ordinances creating the RTA. Similarly, the creating resolutions or ordinances, or any amendments to them, may establish which public officers will have appointing authority for the members of the board of trustees. Current law authorizes those appointing authorities to remove a trustee at any time for misfeasance, nonfeasance, or malfeasance in office.

The bill prescribes a distinct appointment method for any RTA created by two municipal corporations and one county with a population of at least 500,000. In this situation, the board of trustees must consist of nine members, six appointed by the board of county commissioners, two appointed by the most populous

municipal corporation included in the RTA, and one appointed by the second most populous municipal corporation in the county, regardless of whether it is a member of the RTA. A trustee appointed under this method serves at the pleasure of the appointing authority.

Trustees appointed under the bill, like those appointed under current law, must take an oath or affirmation to honestly, faithfully, and impartially perform the duties of office and to have no personal interest in any contract let by the RTA. Similarly, a majority of the board of trustees constitutes a quorum, and an affirmative vote of the quorum is necessary for any action to be taken by the RTA. No vacancy in the board impairs the rights of a quorum to exercise all rights and perform all the duties of the RTA.

Once the trustees are appointed under the bill, the same requirements apply as apply to RTA boards of trustees appointed under current law: staggered initial terms followed by three-year terms, eligibility for reappointment dependent on the creating resolutions or ordinances, annual selection of a president and vice-president, and appointment of a nonmember secretary-treasurer as fiscal officer. The secretary-treasurer is to serve at the pleasure of the board under the bill.

The board of trustees must hold regular and special meetings in a time, place, and manner established in its bylaws. The board meetings must be open to the public except executive sessions, as set forth in the Open Meetings Law.

Finally, the bill provides that, on its effective date, the existing appointment and removal provisions established by the resolutions and ordinances governing the board of trustees of any RTA affected by the bill are void. The county and municipal corporations with authority to appoint the board members must appoint a new board of trustees within five days after the bill's effective date in accordance with its distinct appointment method. On that fifth day, the affected RTA's board as constituted on the bill's effective date is dissolved, and the board appointed under the bill must meet and organize. However, the bill does not affect the validity of any action of the affected RTA's board taken before the bill's effective date.

Metropolitan housing authorities

(R.C. 3735.27)

Current law

Under current law, all metropolitan housing authorities must have five or six members who are residents of the district in which they serve. Members are appointed by local officials as specified in that law. Membership requirements

and appointing authorities differ for the categories of metropolitan housing authorities.

Current law also requires that *an additional two members* be appointed to a metropolitan housing authority for a district that has 300 or more assisted housing units and that does not have at least one member who resides in an assisted housing unit. The chief executive officer of the most populous city in the district must appoint one of the additional members, who must reside in an assisted housing unit, and the board of county commissioners must appoint the other additional member, who need not reside in an assisted housing unit.

Changes proposed by the bill

The bill modifies the requirements discussed in the preceding paragraph by instead requiring *one "resident member"* to be appointed to any metropolitan housing authority *when required by federal law*. That resident member must be appointed, similar to current law, by the chief executive officer of the most populous city in the district for a five-year term. The bill also specifies that any metropolitan housing authority to which two additional members were appointed pursuant to current law as described in the preceding paragraph must continue to have those two additional members.

Local funding options for construction of convention center

(R.C. 307.695)

Current law authorizes a board of county commissioners to enter into an agreement with a convention and visitors' bureau operating in the county under which the bureau agrees to construct and equip a convention center with revenues from an excise tax the board levies on lodging transactions in the county. Current law defines "convention center" as any structure expressly designed and constructed for the purposes of presenting conventions, public meetings, and exhibitions; it includes parking facilities that serve the center and any personal property used in connection with any such structure or facilities.

The bill authorizes a board of county commissioners in a county with a population of 600,000 or more, in addition to its authority under current law as described above, to establish and provide local funding options for constructing and equipping a convention center.

Local funding options for support of arts organizations

(R.C. 3381.15)

Current law authorizes the board of county commissioners of any county to appropriate annually from available moneys to the credit of the county general fund that portion of the expense of a regional arts and cultural district that the county is required to pay as provided in the resolution that created or enlarged the district. A regional arts and cultural district may consist of a single county, or of two or more counties, municipal corporations, or townships, or of any combination of these political subdivisions and is authorized to make grants to support (1) the operating or capital expenses of arts or cultural organizations located within the district or (2) acquiring, constructing, equipping, furnishing, repairing, remodeling, renovating, enlarging, improving, or administering artistic or cultural facilities.

The bill authorizes a board of county commissioners in a county with a population of 500,000 or more, in addition to its authority under current law as described above, to establish and provide local funding options for the support of arts and cultural organizations operating within the regional arts and cultural district in which the county is included.

Governing board for certain regional arts and cultural districts

(R.C. 3381.02, 3381.04, 3381.05, 3381.06, and 3381.07)

Under current law, a regional arts and cultural district is a political subdivision that may be created by one county, or by two or more counties, municipal corporations, or townships, or by any combination of counties, townships, and municipal corporations--provided certain contiguous requirements are satisfied when multiple political subdivisions are involved. The district may be created pursuant to alternative procedures in R.C. 3381.03 (not in the bill) and R.C. 3381.04. If created under R.C. 3381.03, the district must have a *board of trustees* appointed in a specified manner (R.C. 3381.05). But, if the district is created under R.C. 3381.04--which applies only to counties with a population of 500,000 or more--by one such county, the *board of county commissioners* of that county must serve as the district's governing board.

The bill provides instead that, for a regional arts and cultural district created under R.C. 3381.04's alternative procedure in a county with a population of 500,000 or more, the governing board is to be a three-member board of trustees appointed by the board of county commissioners. The members of such an appointed board must satisfy the same qualifications, and serve in the same manner and with the same duties, as currently are provided for the appointed

boards of trustees of other regional arts and cultural districts (R.C. 3381.05, 3381.06, and 3381.07).

County maintenance, operation, and support of a facility to encourage the study of and promote the sciences

(R.C. 307.76(B) and 5705.19(Z))

The bill permits a board of county commissioners to maintain and operate a facility to encourage the study of and promote the sciences, including, but not limited to, natural history. Alternatively, it may contract with or contribute to any nonprofit corporation that is organized to encourage the study of and promote the sciences, to maintain and operate such a facility. In addition, the bill permits a board of county commissioners to levy a voter-approved property tax for funds to provide and maintain a facility that encourages the study of and promotes the sciences.

OHIO LOTTERY COMMISSION

- Creates in the state treasury the Charitable Gaming Oversight Fund in which the State Lottery Commission must deposit money it receives from the Attorney General under an agreement between the two agencies for the Commission to carry out certain duties under the Charitable Gaming Law on the Attorney General's behalf.

- Authorizes money in the Fund not necessary for the Commission to perform its agreed to charitable gaming oversight, licensing, and monitoring functions to be transferred by the Office of Budget and Management to the Lottery Profits Education Fund.

Creation of the Charitable Gaming Oversight Fund

(R.C. 3770.061)

The bill creates in the state treasury the Charitable Gaming Oversight Fund. The State Lottery Commission must credit to the Fund any money it receives from the Attorney General's Office under any agreement the Commission and the Office have entered into under a provision of the Charitable Gaming Law that authorizes the Attorney General to enter into a written contract with another state agency to delegate to that agency powers of the Attorney General under the Law (R.C. 2915.08(I)--not in the bill). The Commission must use money in the Fund to

provide oversight, licensing, and monitoring of charitable gaming activities in accordance with the agreement and the Law.

Not later than July 1 of each fiscal year or as soon as possible thereafter, the Commission may certify to the Office of Budget and Management (OBM) any unobligated fund balances not necessary to be used for the latter purposes. The Commission may request OBM to transfer these balances to the Lottery Profits Education Fund, which under current law must be used solely for the support of elementary, secondary, vocational, and special education programs or as provided in applicable bond proceedings for the payment of debt service on obligations issued to pay the cost of capital facilities.

DEPARTMENT OF MENTAL HEALTH

- Requires that the Department of Mental Retardation and Developmental Disabilities transfer the administrative duties related to the operation of the Ohio Family and Children First Cabinet Council to the Department of Mental Health.

- Creates the Family and Children First Administration Fund to fund the administrative costs of the Ohio Family and Children First Cabinet Council.

- Revises the method for determining the amount a patient, patient's estate, or liable relative is to be charged for inpatient care and treatment at a hospital under the control of the Department of Mental Health.

- Requires the Department of Mental Health, with other state or local government agencies that purchase prescription drugs, to study intrastate consolidated prescription drug purchasing systems and to submit a report of its findings by not later than January 1, 2006.

- Changes to June 30, 2006 the date by which the Director of Mental Health must revise a rule regarding the certification standards for the partial-hospitalization community mental health service.

Transfer of Ohio Family and Children First Cabinet Council administrative duties

(Section 209.09.16)

The bill requires the Department of Mental Retardation and Developmental Disabilities to transfer the administrative duties related to the operation of the Ohio Family and Children First Cabinet Council to the Department of Mental Health. As part of the transfer, all of the following must occur on July 1, 2005, or as soon as possible thereafter as the Departments are able to make the transfers:

(1) Individuals employed by the Department of Mental Retardation and Developmental Disabilities on June 30, 2005, to perform administrative functions for the Cabinet Council must be transferred to the Department of Mental Health.

(2) The assets, liabilities, equipment, and records, irrespective of form or medium, related to the Cabinet Council's duties are to transfer or be transferred to the Department of Mental Health.

(3) The Department of Mental Health must assume the obligations of the Cabinet Council's administrative duties.

Family and Children First Administration Fund

(R.C. 121.373)

The bill creates the Family and Children First Administration Fund in the state treasury. The fund is to consist of money that the Director of Budget and Management transfers from one or more funds of one or more agencies represented on the Ohio Family and Children First Cabinet Council. The Director is permitted to transfer only money that state or federal law permits to be used for the Cabinet Council's administrative duties. Money in the fund must be used to pay the Cabinet Council's administrative costs.

Billing methodology for Department of Mental Health hospital inpatients

Current law

(R.C. 5121.01 to 5121.05, 5101.06 to 5121.12, and 5121.21)

Under current law, the Departments of Mental Health and Mental Retardation and Developmental Disabilities must, at least annually, compute the cost to support a patient in a hospital controlled by the Department of Mental Health or a resident in an institution controlled by the Department of Mental Retardation and Developmental Disabilities. The costs the Departments compute

must be based on the projected average per capita cost of the care and treatment of patients and residents.

The patient or resident and the estate or liable relatives of the patient or resident[207] are jointly and severally liable for the cost of support of a patient or resident. Annually, each department must determine the ability of the foregoing persons to pay for the costs and the amounts the department will charge each person. To make these determinations, the departments must investigate these persons' financial conditions. All investigations and determinations must be completed within 90 days after a patient or resident is admitted.

In general, a patient or resident *without* dependents is liable for the full cost of support; however, a patient or resident may enter into an agreement with the department by which payments may be made at some future point in time.

A patient or resident *with* dependents, or a liable relative with or without dependents, is liable for a certain percentage of the cost of support for the first 30 days of admission according to a sliding scale based on adjusted gross annual income and number of dependents. Income is adjusted for items associated with the needs of dependents and medical, funeral, and related expenses. "Dependent" includes the liable relative and any person who receives more than half the person's support from the patient, resident, or the patient or resident's liable relative. A person may claim an additional dependent if:

- The liable relative is blind;
- The liable relative is over age 65;
- A dependent child is a college student with expenses in excess of $50 per month;
- The services of a housekeeper, costing in excess of $50 per month, are required if the person who normally keeps house for minor children is the patient or resident.

Beyond the 30th day of care and treatment, the patient or resident with dependents, or liable relative with or without dependents, is charged an amount equal to a percentage of a base support rate that is currently around $8.40 per day.[208] The percentage the departments will charge a particular patient, resident,

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[207] *Liable relatives are (1) the patient's or resident's spouse and (2) if the patient or resident is under age 18, the patient's or resident's parents (R.C. 5121.06(A)).*

[208] *Beginning January 1, 1978, the Departments are required to increase the base rate when the consumer price index average is more than 4.0 for the preceding calendar year*

or liable relative is determined according to the sliding scale mentioned above that is based on the person's adjusted gross annual income and number of dependents. If the departments determine that a person is liable for less than 50% of the base support rate, but the patient or resident either has a liable relative with an estate valued at more than $1,500 or the patient or resident has a dependent and an estate valued at more than $1,500, an amount equal to 50% of the cost of support or base rate support amount must be paid.

If the patient or resident is covered by an insurance policy or other contract that pays for the care and treatment of mental illness or mental retardation, the insurer or other payor is liable for an amount equal to the lesser of the cost of support or the benefits provided under the policy or contract. A patient or resident must assign any payments or reimbursements received to the respective department. If the patient or resident refuses to assign payments or received reimbursements within ten days of receipt, the patient's or resident's liability for the services equals the patient's or resident's cost of support plus the benefits provided under the policy or contract. However, the patient or resident is not liable for an amount in excess of the respective department's actual cost to support the patient or resident.

If a patient or resident is the beneficiary of a supplemental services trust for persons with disabilities, the law governing these trusts applies to the determination of the patient's or resident's financial condition.[209]

The departments may enter into extended payment agreements with patients, residents, or liable relatives. However, the departments are precluded from taking a security interest, mortgage, or lien against the principal family residence of a patient, resident, or liable relative with dependents. The department must commence all actions to enforce collection of payments within six years after the date of default of an agreement to pay costs of support or the date a payment becomes delinquent.

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by not more than the average for such calendar year (R.C. 5121.04(B)(2)). Tonya Fasone, of the Department of Mental Health, stated that the base rate is approximately $8.40 per day at the present time.

[209] The primary law governing supplemental services trusts is R.C. 1339.51. In short, assets used to create these trusts must come from a person without a legal obligation of support and cannot belong to the beneficiary. Expenditures from these trusts are limited to "supplemental services"--things that are considered non-necessities like recreational items, vacations, or items for which Medicaid or other third-party payors have denied payment. David A. Zwyer, Esq. "Estate and Future Planning for Ohioans with Disabilities and Their Families," Ohio Developmental Disabilities Council (Feb. 2004).

A liable relative who pays an amount owed one of the departments may recover from other persons under the following circumstances:

- Any liable person may recover from the patient or resident, the patient's or resident's guardian, or from the executor or administrator of the patient's or resident's estate the full amount of payment made by the liable relative.

- Any liable relative may recover from the patient's or resident's spouse the full amount of payment made by the liable relative.

- A minor patient's or resident's mother may recover from the minor patient's or resident's father the full amount of payment made by the mother.

The bill

The bill revises current law to establish a separate methodology for the Department of Mental Health to follow in determining how much a patient, patient's estate, and liable relatives must be charged for a patient's *inpatient* care and treatment at a hospital established, controlled, or supervised by the Department of Mental Health. The separate methodology applicable to inpatients appears in a new part of R.C. Chapter 5121. beginning at R.C. 5121.30.

The billing methodology in current law (see "***Current law***," above) remains applicable to residents in facilities under the jurisdiction of the Department of Mental Retardation and Developmental Disabilities and to community mental health services recipients who receive state-operated community mental health services.

In addition, because a separate billing methodology is established for inpatients, the bill repeats miscellaneous provisions of current law in the new part of R.C. Chapter 5121. to show that these provisions apply not only to residents and community mental health services recipients, but to inpatients as well. These provisions deal with the following:

- Traveling and incidental expenses incurred in conveying patients to hospitals and clothing them (R.C. 5121.31);

- Discovery tools the Department may use to investigate a patient's, estate's, or liable relative's financial condition (R.C. 5121.38);

- Submission of patient or liable relative financial information to the Department by managing officers of Department institutions (R.C. 5121.39);

- Extended payment plans negotiated between the Department and the patient, patient's estate, or patient's liable relative (R.C. 5121.44);

- Patient commitments to hospitals pursuant to judicial proceedings (R.C. 5121.50);

- Appointment of a guardian on the petition of a Department agent (R.C. 5121.51);

- Burial and cremation of indigents who die while admitted to a hospital (R.C. 5121.53);

- Recovery by a liable relative or parent from certain persons for amounts paid by that relative or parent for a patient's care (R.C. 5121.54).

Determination of applicable per diem charge and ancillary per diem rate (R.C. 5121.32). The bill requires the Department of Mental Health to annually determine the applicable per diem charge and ancillary per diem rate for each hospital[210] operated by the Department. In determining this charge and rate, the Department must consider the average actual per diem cost of maintaining and treating a patient at the hospital or, at the Department's discretion, the average actual per diem cost of maintaining and treating a patient in a unit of the hospital.

General rule--full applicable per diem charge applies (R.C. 5121.33 and 5121.34). The general rule under the new methodology is that that unless certain exceptions apply (see "***Exceptions to the general rule***," below), the Department of Mental Health must charge a patient, patient's estate, or liable relative an amount equal to the sum of the following:

- The applicable per diem charge multiplied by the number of days the patient was admitted to the hospital;

- An amount that was previously billed but not paid.

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[210] "Hospital" is defined in the bill to mean an institution, hospital, or other place established, controlled, or supervised by the Department of Mental Health under R.C. Chapter 5119. (R.C. 5121.10(D)).

As in current law, a patient, patient's estate, and liable relatives are jointly and severally liable for the total amount owed as determined by the Department.

Exceptions to the general rule (R.C. 5121.35, 5121.43, 5121.46, 5121.47, 5121.49, and 5121.52). The Department of Mental Health must charge a person an amount that differs from the amount computed under the general rule, however, if any of the following is true:

- The person qualifies for a discount;
- The patient has insurance coverage that pays for mental health services;
- The person is a member of a family unit that has more than one patient admitted to a hospital;
- The person has paid all amounts charged by the Department for the care and treatment of a particular patient for 15 consecutive years;
- The person has paid amounts charged by the Department for the care and treatment of more than one patient for a total of 15 consecutive years;
- The person has petitioned the Department for a release from, or a modification or cancellation of, charges and the petition has been granted;
- The patient or liable person has died and the Department has decided to waive the presentation of any claim for support against the decedent's estate because a dependent of the person will directly benefit from the person's estate.

Discounts (R.C. 5121.36, 5121.37, and 5121.55). A person may qualify for a discount either by filing an application for a discount with the Department of Mental Health within 120 days of admission to a hospital or by being assessed as eligible for a discount by the Department through a financial assessment process. The bill provides that the Department must charge a person an amount discounted from the amount computed pursuant to the general rule for the first 30 days of inpatient care and treatment if the following are true:

- The person's countable assets have a value not greater than an amount equal to 50% of the gross annual income that corresponds with the family size of the patient, estate, or liable relative under the federal poverty guidelines;

- The person's gross annual income does not exceed 400% of the federal poverty level.[211]

The amount of the discount for the first 30 inpatient days varies according to a sliding scale based on the person's annual gross income and the number of days the person is admitted. For example, a single person with no dependents who has an annual gross income no greater than 175% of the federal poverty level receives a 100% discount for the first 14 days of inpatient care and treatment; conversely, a similar single person with an annual gross income at 399% of the federal poverty level receives a 10% discount for the first 14 days.

A patient who is charged a discount for the first 30 inpatient days and who has an annual gross income not greater than 175% of the federal poverty level can not be charged beyond the 30th day. A patient who similarly qualified for a discount and has an annual gross income greater than 175% of the federal poverty level must be charged an amount equal to the sum of the following for the days the patient is admitted beyond the 30th day:

- The ancillary per diem rate multiplied by the number of days the patient was admitted to the hospital;

- An amount that was previously charged but not paid.

The bill requires the Director of Mental Health to adopt rules in accordance with the Ohio Administrative Procedure Act (R.C. Chapter 119.) regarding the application form a person must use to apply for a discount as described above.

Insurance coverage (R.C. 5121.43). If a patient is covered by an insurance policy or other contract that provides for payment of expenses associated with the care and treatment of mental illness, the bill provides that the new billing methodology is inapplicable to the extent that the policy or contract is in force. The patient's insurer or other third party payor must pay for the patient's support obligation in amounts equal to the lesser of the amount computed under the general rule (see "***General rule--full applicable per diem charge applies***," above) or the benefits provided under the policy or contract.

An insured, policy owner, or other person must assign payment of all assignable benefits directly to the Department of Mental Health and pay to the Department, within ten days of receipt, all insurance or other benefits received as

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[211] *Under the federal poverty guidelines for 2004 (the most recent year for which these guidelines are available), a single person with no dependents would qualify for a discount if the person's countable assets do not exceed $4,655 and gross annual income does not exceed $37,240.*

reimbursement or payment for expenses incurred by the patient or for any other reason. If the insured, policy owner, or other person refuses to assign payment to the Department or refuses to pay received reimbursements or payments to the Department within ten days of receipt, the total liability of the insured, policy owner, or other person equals the sum of the amount computed under the general rule (see "***General rule--full applicable per diem charge applies***," above) and the amounts payable under the terms of the policy or contract. Despite this provision, the bill limits an insurer's or payor's liability by providing that in no event can total liability exceed the Department of Mental Health's actual cost of providing care and treatment to the patient.

The bill also provides that the Department may disqualify patients and liable relatives who have retained third party funds for future discounts. The Attorney General, at the Department's request, may petition a court to compel the insured, owner, or other person having an interest in the policy or contract to comply with the foregoing assignment requirements.

Delinquent payments (R.C. 5121.45). The bill requires the Department of Mental Health to commence an action to enforce the collection of a delinquent payment[212] not later than six years after the later of the following:

- The last date the Department received money to satisfy the delinquent payment;

- The date the charge was due.

In all actions to enforce the collection of delinquent payments, a court must receive into evidence the proof of claim document made by the Department, as the state party, together with all debts and credits. The bill provides that the proof of claim document is prima-facie evidence[213] of the facts stated in the document.

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[212] *The bill defines "delinquent payment" as an amount owed by a patient, patient's estate, or liable relative to the Department of Mental Health for which the person has failed to do either of the following not later than 90 days after the service associated with the charge was incurred: (1) make payment in full, or (2) make payment in accordance with the terms of an extended payment agreement entered into under the bill.*

[213] *"Prima-facie evidence" means the document, "on its face," is sufficient to prove the facts stated in the document unless there is substantial contradictory evidence.*

Consolidated prescription drug purchasing program

(Section 209.06.15)

The bill requires the Department of Mental Health, with the Bureau of Workers' Compensation, Department of Rehabilitation and Correction, Department of Youth Services, and any other state or local government agency that purchases prescription drugs (other than the Department of Job and Family Services, for purposes of the Medicaid program) to do the following:

(1) Study intrastate consolidated prescription drug purchasing systems currently in effect in other states;

(2) Estimate potential cost-savings and other advantages, including any potential disadvantages, that might result if Ohio were to consolidate its executive agencies' prescription drug purchases under a prescription drug purchasing program;

(3) Design a consolidated prescription drug purchasing program appropriate to the prescription drug purchasing needs of the state.

The Department must, by not later than January 1, 2006, prepare and submit a report of its findings to the Governor, the Speaker and Minority Leader of the House, and the President and Minority Leader of the Senate. The report must include an analysis of any costs Ohio may incur in creating a consolidated prescription drug purchasing program.

Revision of partial-hospitalization rule

(Section 403.07)

Current law prohibits a board of alcohol, drug addiction, and mental health services from contracting with a community mental health agency to provide community mental health services included in the board's community mental health plan unless the services are certified by the Director of Mental Health.[214] The Director is required to adopt rules establishing certification standards for the community mental health services.

A provision of an act passed by the 125th General Assembly (Am. Sub. S.B. 189) required the Director to revise the rule regarding the certification standards for the partial-hospitalization community mental health service not later

[214] *Revised Code § 5119.611, not in the bill.*

than June 30, 2005. The bill amends this provision by requiring the Director to revise the rule not later than June 30, 2006.

DEPARTMENT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

- Terminates the community alternative funding system for services for persons with mental retardation or a developmental disability effective July 1, 2005.

- Repeals state law governing the certification of habilitation centers.

- Eliminates state law giving county boards of mental retardation and developmental disabilities (county MR/DD boards) Medicaid local administrative authority regarding Medicaid case management services.

- Eliminates a requirement that the Department of Mental Retardation and Developmental Disabilities (ODMR/DD) pay the nonfederal share of Medicaid case management services if the services are provided by an agency with which ODMR/DD has contracted to provide protective services.

- Permits the Director of ODMR/DD to enter into an agreement with a county board of MR/DD under which ODMR/DD pays the nonfederal share of Medicaid home and community-based services if the agreement is necessary for such services to be available statewide.

- Provides that a certified habilitation center may provide Medicaid case management services until the earlier of (1) an amendment to the state Medicaid plan that provides that only county MR/DD boards may provide Medicaid case management services and (2) the habilitation center ceases to meet the certification requirements.

- Eliminates a requirement that ODMR/DD adopt rules governing contracts between a county MR/DD board and a provider of services to individuals with mental retardation or a developmental disability.

- Increases the administrative fee county MR/DD boards are charged for Medicaid paid claims for case management services and ODMR/DD-administered home and community-based services to 1½% (from 1%) of

the total value of paid claims; clarifies what services are subject to the fee; and changes how ODMR/DD and the Department of Job and Family Services may use moneys collected from the fee.

- Authorizes a county MR/DD board, through the next biennium, to give priority for services to no more than 400 individuals under age 22 who have service needs of an unusual scope or intensity due to a mental or physical condition.

- Revises the law governing the certification of home and community-based services provided under a Medicaid waiver administered by the Department of Mental Retardation and Developmental Disabilities.

- Authorizes a county MR/DD board to continue to use, until December 31, 2007, criteria specified in rules to determine, when two or more individuals qualify for priority on a waiting list for home and community-based services, the order in which the individuals will be given priority.

Community alternative funding system terminated

(primary R.C. 5111.041 (repealed); other R.C. sections: 127.16, 140.01, 3323.021, 3702.51, 3721.01, 3722.01, 3722.02, 5111.042, 5123.01, 5123.041 (repealed), 5123.046, 5123.047, 5123.048 (repealed), 5123.049, 5123.0412, 5123.34, 5123.71, 5123.76, 5126.01, 5126.035, 5126.042, 5126.054, 5126.055, 5126.056, 5126.057, 5126.12, and 5705.091; Sections 206.66.78 and 209.09.09)

The bill repeals a requirement that the Medicaid program cover habilitation center services. The repeal goes into effect July 1, 2005. The system by which the Medicaid program pays for habilitation center services is often referred to as the community alternative funding system (CAFS).

As part of the termination of the Medicaid program's coverage of habilitation center services, the Department of Job and Family Services (ODJFS) is no longer required to adopt rules governing this issue.[215] State law requiring

[215] *ODJFS rules governing habilitation center services provide that such services include the following services: active treatment, skills development, counseling and social work, nursing and delegated nursing, occupational therapy, physical therapy, psychology, speech language pathology and audiology, and transportation.*

that a county board of mental retardation and developmental disabilities (county MR/DD board) or school district pay the nonfederal share of Medicaid expenditures for habilitation center services under certain circumstances is also eliminated.

Current law defines "habilitation center services" as services provided by a habilitation center certified by the Department of Mental Retardation and Developmental Disabilities (ODMR/DD). ODMR/DD is currently required to certify habilitation centers that meet certification requirements established in ODJFS rules. The bill repeals the requirement that ODMR/DD certify habilitation centers.

Each county MR/DD board is required to certify to ODMR/DD the average number of individuals age 16 or older receiving adult services such as job training, vocational evaluation, and community employment services daily during the first full week of October. A separate count must be made for persons enrolled in traditional adult services who are eligible for but not enrolled in active treatment[216] under CAFS, persons enrolled in traditional adult services who are eligible for and enrolled in active treatment under CAFS, and persons enrolled in traditional adult services but who are not eligible for active treatment under CAFS. ODMR/DD is required to pay county MR/DD boards an annual state subsidy based on the counts. The bill eliminates the references to CAFS with the result that a separate count must be made for, and the annual state subsidy is based on, persons enrolled in traditional adult services who are eligible for but not enrolled in active treatment, persons enrolled in traditional adult services who are eligible for and enrolled in active treatment, and persons enrolled in traditional adult services but who are not eligible for active treatment.

ODJFS and ODMR/DD are authorized by the bill to inform individuals who received habilitation center services under CAFS on June 30, 2005, and such individuals' representatives about alternative services that may be available to the individuals. ODJFS is permitted to require county departments of job and family services, and ODMR/DD is permitted to require county MR/DD boards, to provide such information to the individuals and their representatives.

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[216] *"Active treatment" is defined as a continuous treatment program that includes aggressive and consistent implementation of a program of specialized and generic training, treatment, health services, and related services and is directed toward the acquisition of behaviors necessary for an individual with mental retardation or a developmental disability to function with as much self-determination and independence as possible and toward the prevention of deceleration, regression, or loss of current optimal functional status.*

The bill provides that habilitation center services provided before July 1, 2005, are subject to the laws, rules, standards, guidelines, and orders regarding habilitation center services that were in effect at the time the services were provided.

ODJFS is permitted to use funds appropriated to it for the purpose of habilitation center services, and ODMR/DD may use funds appropriated to it for such purpose, to satisfy a claim or contingent claim for habilitation center services provided before July 1, 2005, if ODJFS or ODMR/DD receives the claim or contingent claim before July 1, 2006. Neither department has any liability to satisfy (1) a claim for services provided on or after July 1, 2005 or (2) a claim for services provided before July 1, 2005, if the department receives the claim on or after July 1, 2006.

The bill provides that an individual may initiate or continue a state hearing, administrative appeal, or appeal to a court of common pleas regarding a decision or order concerning habilitation center services that were available before July 1, 2005. However, a decision resulting from such a hearing or appeal may not extend an individual's eligibility for habilitation center services beyond June 30, 2005. The hearing and appeals system may not be utilized to contest the July 1, 2005, termination of CAFS.

Neither of the following are abrogated by CAFS's termination: (1) the right of recovery that ODJFS and a county department of job and family services have regarding habilitation center services provided before July 1, 2005, and (2) the right to medical support or payments from a third party that is assigned to ODJFS for such services.

The bill authorizes the Director of Job and Family Services to adopt rules as necessary to terminate CAFS on July 1, 2005.

Medicaid case management services

(primary R.C. 5126.055; other R.C. sections: 5111.042, 5123.047, and 5126.057; Section 209.09.10)

Medicaid case management services are case management services provided to an individual with mental retardation or a developmental disability that the state Medicaid plan requires. Medicaid case management services, along with certain home and community-based waiver services and habilitation center services, are Medicaid-funded services that the Department of Mental Retardation and Developmental Disabilities (ODMR/DD) administers pursuant to an interagency agreement with the Department of Job and Family Services (ODJFS).

County boards of mental retardation and developmental disabilities (county MR/DD boards) are given Medicaid local administrative authority to perform certain tasks for individuals seeking or receiving Medicaid case management, habilitation center, or ODMR/DD-administered home and community-based services. The tasks include providing ODMR/DD and ODJFS recommendations regarding services individuals should receive and, if either department approves, reduces, or terminates a service because of the county MR/DD board's recommendation, present the department with the reasons for the recommendations at a state hearing available to individuals unhappy with a decision regarding public assistance.

As part of the termination of the Medicaid program's coverage of habilitation center services, the bill repeals the law giving county MR/DD boards Medicaid local administrative authority regarding that service. The bill also repeals the law giving county MR/DD boards such authority regarding Medicaid case management services. With the repeal of the authority, county MR/DD boards are no longer required to perform the tasks associated with the authority. The bill maintains law giving county MR/DD boards Medicaid local administrative authority regarding ODMR/DD-administered home and community-based services.[217]

State law specifies when ODMR/DD or a county MR/DD board must pay the nonfederal share of Medicaid expenditures for Medicaid case management services. ODMR/DD is responsible for the nonfederal share if (1) the services are provided to an individual who a county MR/DD board has determined is not eligible for county MR/DD board services or (2) the services are provided to an individual by a public or private agency with which ODMR/DD has contracted to provide protective services to the individual. Otherwise, a county MR/DD board is responsible for the nonfederal share.

The bill eliminates the requirement that ODMR/DD pay the nonfederal share if the services are provided to an individual by a public or private agency with which ODMR/DD has contracted to provide protective services to the individual. The bill also eliminates law providing that a county MR/DD board is responsible for paying the nonfederal share only if it has Medicaid local administrative authority for Medicaid case management services.

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[217] *An official with ODMR/DD states that county MR/DD boards may continue to perform Medicaid local administrative authority tasks regarding Medicaid case management services as part of their Medicaid local administrative authority tasks regarding ODMR/DD-administered home and community-based services.*

As discussed earlier,[218] the bill eliminates the requirement that ODMR/DD certify habilitation centers. The bill provides, however, that a habilitation center holding on June 30, 2005, a valid certificate is permitted to provide Medicaid case management services until the earlier of the following:

(1) The date the United States Secretary of Health and Human Services approves an amendment to the state Medicaid plan that provides that only county MR/DD boards may provide Medicaid case management services;

(2) The habilitation center ceases to meet the certification requirements in effect on June 30, 2005.

Medicaid home and community-based services

(R.C. 5123.047 and 5123.048)

Medicaid home and community-based services are services provided to an individual with mental retardation or other developmental disability under a Medicaid waiver component administered by ODMR/DD. Under current law, ODMR/DD is required to pay the nonfederal share of Medicaid expenditures for home and community-based services if either of the following apply:

(1) The services are provided to an individual with mental retardation or other developmental disability who a county board of MR/DD has determined is not eligible for county board services;

(2) The services are provided to an individual with mental retardation or other developmental disability who was given priority for home and community-based services.[219]

The bill adds a circumstance under which ODMR/DD must pay the nonfederal share of home and community-based services. ODMR/DD must pay the nonfederal share of home and community-based services if ODMR/DD enters into an agreement with a county board of MR/DD to pay for such expenditures in order to make the services available statewide.

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[218] *See "**Community alternative funding system terminated**" above.*

[219] *ODMR/DD may give priority to certain individuals on the waiting list to receive home and community-based services if the individual is seeking to move from an institutional setting to a home and community-based setting under certain conditions (R.C. 5126.042(D)(3)).*

Rules governing service contracts

(R.C. 5126.035)

State law establishes requirements for contracts between a county board of mental retardation and developmental disabilities (county MR/DD board) and a provider of services to an individual with mental retardation or a developmental disability. Such a service contract must include a general operating agreement component and an individual service needs addendum. The service contract must comply with all applicable statewide Medicaid requirements if the provider is to provide home and community-based services administered by the Department of Mental Retardation and Developmental Disabilities (ODMR/DD) or Medicaid case management services.[220]

Current law also requires that a services contract comply with rules that the Director of ODMR/DD is required to adopt. The bill eliminates the requirement that the Director adopt such rules and, accordingly, the requirement that a service contract comply with the rules.[221]

Fee increase for county boards of mental retardation and developmental disabilities

(R.C. 5123.0412)

Current law requires the Department of Mental Retardation and Developmental Disabilities (ODMR/DD) to charge a county board of mental retardation and developmental disabilities (county MR/DD board) 1% of the total value of all Medicaid paid claims for case management services and ODMR/DD-administered home and community-based services. The bill increases the fee to 1½% of all paid claims for these services.

Clarification of services subject to fee

Current law provides that the fee is equal to 1% of all Medicaid paid claims for Medicaid case management services and ODMR/DD-administered home and community-based services for which the county MR/DD board contracts or provides itself.

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[220] *The requirement to comply with all applicable statewide Medicaid requirements also applies if the provider is to provide habilitation center services.*

[221] *An official with ODMR/DD stated that no such rules have been adopted.*

The bill provides that the fee is equal to 1½% of all paid claims for Medicaid case management services and ODMR/DD-administered home and community-based services provided during the year to an individual eligible for services from the county MR/DD board without reference to a contractual relationship with the board or service by the board itself.

Use of fees collected

Current law allows ODMR/DD and the Department of Job and Family Services (ODJFS)[222] to use the fees for two primary purposes:

(1) Administrative and oversight costs of habilitation center services, Medicaid case management services, and ODMR/DD-administered home and community-based services that a county MR/DD board develops or that a county MR/DD board provides for by contract with a person or government entity;

(2) Providing technical support to the county MR/DD boards.

The bill makes two changes. First, the fees collected may no longer be used for the administration and oversight of habilitation services. Second, the bill clarifies that, with regard to ODMR/DD-administered home and community-based services provided by county MR/DD boards, the fees may be used for any administrative or oversight cost related to the provision of these services without reference to a contractual relationship between the county MR/DD board and the service provider.

Priority waiting lists for home and community-based services

(R.C. 5126.042)

Current law requires a county board of mental retardation and developmental disabilities (county MR/DD board) to create waiting lists for the programs and services it offers if the demand for such services exceeds the available resources. Separate waiting lists may be created for each of the services offered by the county MR/DD board. The law provides that as federal Medicaid funds become available, individuals who are eligible for home and community-based services administered by the Department of Mental Retardation and Developmental Disabilities (ODMR/DD) and meet certain requirements should be given priority for services over other individuals on the waiting list. The individuals eligible for this priority are those who are less than 22 years old and have one of the following needs that is unusual in scope or intensity:

[222] *The fees collected are split between ODMR/DD and ODJFS pursuant to an interagency agreement between the two departments.*

(1) Severe behavior problems for which a behavior support plan is needed;

(2) An emotional disorder for which anti-psychotic medication is needed;

(3) A medical condition that leaves the individual dependent on life-support medical technology;

(4) A condition affecting multiple body systems for which a combination of specialized medical, psychological, education, or habilitation services are needed;

(5) A condition the county MR/DD board determines to be comparable in severity to any of the above listed conditions and places the individual at risk of institutionalization.

Current law provides that only 400 individuals may be given such priority in fiscal years 2004 and 2005. The bill provides that 400 individuals may be given priority in 2006 and 2007.

Current law provides that when two or more individuals on a waiting list for ODMR/DD-administered home and community-based services have priority for services, a county MR/DD board may use criteria developed by ODMR/DD to determine which individual may obtain services first. Current law also requires ODMR/DD to adopt rules establishing the criteria to be used by county MR/DD boards. The bill extends these provisions through December 31, 2007.

Home and community-based services under the Department of MR/DD

(R.C. 5111.871, 5123.045, 5123.16, 5123.41, and 5126.055; Section 209.09.27)

Under current law, the Department of Job and Family Services contracts with the Department of Mental Retardation and Developmental Disabilities (DMR/DD) to provide home and community-based services under a Medicaid waiver program. Current law allows the following entities to be reimbursed by Medicaid for providing home and community-based services through DMR/DD:

(1) Entities certified by MR/DD to provide home and community-based services;

(2) Entities certified as supported living providers under MR/DD law;

(3) Residential facilities licensed under MR/DD law.

The bill revises the law governing home and community-based service providers who are certified by DMR/DD to provide those services. The bill

requires DMR/DD to adopt rules establishing or specifying procedures to be adopted by the providers and sets out the administrative requirements for certifying providers or terminating the certification of providers.

The bill specifies that the intent of the amendments to the law governing home and community-based service providers is to continue the requirement that reimbursement by the Medicaid program is limited to settings of not more than four individuals and/or the owner of the residence is not the provider of the services to the individuals living in that residence, although the purpose of this provision is not clear.

DEPARTMENT OF NATURAL RESOURCES

- With respect to the amount of the fee that must accompany an application for an oil or gas well permit under existing law, does all of the following: (1) retains the current fee of $250, but applies it only to permits to conduct activities in a township with a population of fewer than 5,000 and to the revision or reissuance of an existing permit, (2) increases the fee to $500 for permits to conduct activities in townships with a population of 5,000 to 9,999, (3) increases the fee to $750 for permits to conduct activities in townships with a population of 10,000 to 14,999, and (4) increases the fee to $1,000 for permits to conduct activities in townships with a population of 15,000 or more or in municipal corporations regardless of population; and exempts an application for a permit to plug back an existing well from the permit fee.

- Eliminates authorization for the Chief of the Division of Natural Areas and Preserves to enter into an agreement with the United States Department of Commerce for the purpose of receiving grants pertaining to Old Woman Creek National Estuarine Research Reserve because oversight of the Reserve has been transferred to the Division of Wildlife.

- Requires the Chief of the Division of Water to adopt rules designating certain classes of dams that are to be inspected periodically by registered professional engineers hired by the dam owners rather than being inspected by the Chief, and requires the rules to establish standards and procedures governing such private inspections.

- Changes one of the funding sources that the Division of Wildlife uses to pay school districts in which land owned by the state and administered by

the Division is located from federal wildlife restoration funds to fines, penalties, and forfeitures credited to the Wildlife Fund.

- Specifies that persons under the age of 18 qualify for a youth hunting license, youth deer or wild turkey permit, and youth fur taker permit rather than persons under the age of 16 as in current law, and allows nonresident youths to obtain a youth fur taker permit.

- Eliminates the requirement that a person carry a fur taker permit affixed to a hunting license, and instead requires only that the person carry the fur taker permit.

- Eliminates the requirement that a person's signature be written across the face of a fur taker permit, and instead requires only that the signature be written on the permit.

- Specifies that a person on active duty in the Armed Forces of the United States who is stationed in this state is eligible to obtain a resident hunting or fishing license regardless of whether the person qualifies as a resident of this state.

- Prohibits the trapping, capturing, removal, relocation, or control of native or nonnative wildlife without an annual wildlife control operators permit issued by the Division of Wildlife, and requires the adoption of rules establishing procedures for the issuance of the permits and for record-keeping pertaining to the permits.

- Prohibits the Division of Parks and Recreation from adopting rules establishing a fee for parking a motor vehicle in a state park or for admission to a state park.

- Requires the Division of Parks and Recreation to adopt rules establishing a discount program for park services and rentals, but not for the purchase of merchandise, for all persons who are issued a Golden Buckeye Card.

- Eliminates the Parks and Recreation Depreciation Reserve Fund, which is used to maintain revenue-producing facilities of the Division of Parks and Recreation.

- Establishes the Watercraft Revolving Loan Fund consisting of money appropriated to it, money from the repayment of loans, and money from

other specified sources, and authorizes the Director of Natural Resources to use money in the Fund to make loans for marine recreational facilities and projects related to the use of light draft vessels, including refuge harbors.

- Establishes procedures and requirements governing the revolving loan program that the Fund supports.

- Requires every nonresident owner or operator of a snowmobile, off-highway motorcycle, or all-purpose vehicle to obtain a $5 temporary operating permit and eliminates registration reciprocity.

- Requires the Tax Commissioner, rather than the Treasurer of State as in current law, to credit 14.2% of the money collected from the severance tax on coal to the Coal Mining Administration and Reclamation Reserve Fund rather than the Reclamation Forfeiture Fund when the balance in the former Fund drops below $2 million during a fiscal year.

Fees for oil and gas well permits

(R.C. 1509.06, 1509.072, and 1509.31)

Current law requires each application for an oil or gas well permit to be accompanied by a nonrefundable fee of $250. The bill retains the fee, but applies it only to permits to conduct activities in a township with a population of fewer than 5,000. The bill then increases the nonrefundable fee for other oil or gas well permits as follows:

(1) $500 for a permit to conduct activities in a township with a population of 5,000 or more, but fewer than 10,000;

(2) $750 for a permit to conduct activities in a township with a population of 10,000 or more, but fewer than 15,000; and

(3) $1,000 for a permit to conduct activities in a township with a population of 15,000 or more or in a municipal corporation regardless of population.

The bill requires the use of the most recent federal decennial census when determining populations for purposes of calculating fee amounts. In addition, the bill requires each application for the revision or reissuance of a permit to be accompanied by a nonrefundable fee of $250.

Finally, the bill exempts an application for a permit to plug back an existing well from the fee requirements.

Old Woman Creek National Estuarine Research Reserve

(R.C. 1517.02 and 1533.28 (not in the bill))

Current law authorizes the Chief of the Division of Natural Areas and Preserves, with the approval of the Director of Natural Resources, to enter into an agreement with the United States Department of Commerce for the purpose of receiving grants to continue the management, operation, research, and programming at Old Woman Creek National Estuarine Research Reserve. However, the Department of Natural Resources has transferred the oversight of the Reserve to the Division of Wildlife and has transferred to that Division the authority to enter into the grant agreement with the United States Department of Commerce regarding the Reserve. The Division of Wildlife has existing legal authority to enter into such agreements with federal agencies. The bill, therefore, eliminates the provision creating the authority for the Chief of the Division of Natural Areas and Preserves to enter into such a grant agreement.

Privatization of inspection of certain dams

(R.C. 1521.062)

Current law requires, with certain exceptions, all dams, dikes, and levees that are constructed in Ohio to be inspected periodically by the Chief of the Division of Water to ensure that continued operation and use of a dam, dike, or levee does not constitute a hazard to life, health, or property. The bill specifies that the Chief is not required to inspect dams that, in accordance with rules adopted under the bill, are required to be inspected by registered professional engineers who have been approved for that purpose by the Chief.

The bill specifies that the Chief, in accordance with the Administrative Procedure Act, must adopt and may amend or rescind rules that do all of the following: (1) designate classes of dams for which dam owners must obtain the services of a registered professional engineer to periodically inspect the dams and to prepare reports of the inspections for submittal to the Chief, (2) establish standards in accordance with which the Chief must approve or disapprove registered professional engineers to inspect dams together with procedures governing the approval process, (3) establish schedules, standards, and procedures governing periodic inspections and standards and procedures governing the preparation and submittal of inspection reports, and (4) establish provisions regarding enforcement of the bill's provisions concerning dam inspections and rules adopted under them.

The bill specifies that, in accordance with the rules, the owner of a dam that is in a class of dams that is designated in the rules for inspection by registered professional engineers must obtain the services of a registered professional engineer who has been approved by the Chief to conduct the periodic inspection of dams pursuant to schedules and other standards and procedures established in the rules. The bill retains a provision specifying that intervals between periodic inspections must be determined by the Chief, but cannot exceed five years. Under the bill, a dam that is designated under the rules for inspection by a registered professional engineer, but that is not inspected within a five-year period may be inspected by the Chief at the owner's expense.

Under both current law and the bill, an inspection report must be prepared following the inspection of a dam, dike, or levee. Current law requires the Chief to furnish the owner a report of the inspection and to inform the owner of any required repairs, maintenance, investigations, and other remedial and operational measures. The bill eliminates a provision authorizing the Chief to use inspection reports prepared for the owner of the dam, dike, or levee by a registered professional engineer.

The bill requires a registered professional engineer who inspects a dam that is in the class of dams that is designated in the rules for inspection by registered professional engineers to prepare a report of the inspection in accordance with the rules and to provide the inspection report to the dam owner who must submit it to the Chief. In the case of a dam, dike, or levee that the Chief inspects, the bill retains the requirement that the Chief furnish a report of the inspection to the owner of the dam, dike, or levee. It also retains the requirement that the Chief inform the owner of any required repairs, maintenance, investigations, and other remedial and operational measures, but applies the requirement to any dam, dike, or levee that has been inspected, either by the Chief or by a registered professional engineer, and that is the subject of an inspection report prepared or received by the Chief.

Division of Wildlife's sources of funding for payments to school districts

(R.C. 1531.27)

Current law requires the Chief of the Division of Wildlife to pay to the treasurers of counties in which lands owned by the state and administered by the Division are located an annual amount equal to 1% of the total value of the lands exclusive of improvements. The money must be used for school purposes in the local school districts. The payments must be made from funds accruing to the Division from the sale of hunting or fishing licenses and federal wildlife restoration funds. The Director of Natural Resources determines the allocation of amounts to be paid from those sources.

The bill changes one of the funding sources that the Division uses to pay school districts. It removes federal wildlife restoration funds and replaces them with fines, penalties, and forfeitures credited to the Wildlife Fund.

Youth hunting licenses and permits; fur taker permits

(R.C. 1533.10, 1533.11, and 1533.111)

Existing law specifies that persons under the age of 16 qualify for a youth hunting license, youth deer or wild turkey permit, and youth fur taker permit. The bill raises the age qualification for the youth license and permits to persons under the age of 18.

Additionally, current law requires each applicant for a fur taker permit who is an Ohio resident and under the age of 16 years to procure a special youth fur taker permit. In addition to changing the age qualification (see above), the bill eliminates the requirement that an applicant for a youth permit be an Ohio resident.

Finally, current law requires every person, while hunting or trapping fur-bearing animals on lands of another, to carry the person's fur taker permit affixed to his hunting license with his signature written across the face of the permit. The bill makes two changes in this provision. First, it eliminates the requirement that the person's fur taker permit be affixed to the hunting license and instead requires only that the person carry the fur taker permit. Second, it eliminates the requirement that a person's signature be written across the face of a fur taker permit and instead requires only that the signature be written on the permit.

Resident hunting and fishing licenses for certain military personnel

(R.C. 1533.10, 1533.11, 1533.111, 1533.112, 1533.12, and 1533.32)

Current law authorizes every person on active duty in the Armed Forces of the United States, while on leave or furlough, to take or catch fish of the kind lawfully permitted to be taken or caught within the state, to hunt any wild bird or wild quadruped lawfully permitted to be hunted within the state, and to trap fur-bearing animals lawfully permitted to be trapped within the state without procuring a fishing license, a hunting license, a fur taker permit, or a wetlands habitat stamp required by the laws governing hunting, fishing, and trapping, provided that the person must carry on the person when fishing, hunting, or trapping a card or other evidence identifying the person as being on active duty in the Armed Forces of the United States, and provided that the person is not otherwise violating any of the hunting, fishing, and trapping laws of this state. In order to hunt deer or wild turkey, such a person must obtain a special deer or wild

turkey permit, as applicable, but the person need not obtain a hunting license in order to obtain such a permit.

Except for the persons described above who are on active duty in the Armed Forces of the United States and who, because they are on leave or furlough, may hunt, fish, or trap without procuring a fishing license, a hunting license, a fur taker permit, or a wetlands habitat stamp, the bill requires every person on active duty in the Armed Forces of the United States who is stationed in this state and who wishes to engage in an activity for which a license, permit, or stamp is required under the laws governing hunting, fishing, and trapping to obtain the requisite license, permit, or stamp. The bill specifies that such a person who is stationed in this state is eligible to obtain a resident hunting or fishing license regardless of whether the person qualifies as a resident of this state. To obtain a resident hunting or fishing license, the person must present a card or other evidence identifying the person as being on active duty in the Armed Forces of the United States and as being stationed in this state.

Wildlife control operators permit

(R.C. 1533.122 and 1533.99)

The bill specifies that, unless otherwise provided by rules adopted by the Chief of the Division of Wildlife, a person who traps, captures, removes, relocates, or controls native or nonnative wildlife must obtain an annual wildlife control operators permit issued by the Division under the bill and must conduct those activities in accordance with the bill and the rules adopted under it. Unless otherwise provided by those rules, a wildlife control operators permit expires on March 15 of each year and the fee for such a permit is $100. While engaged in trapping, capturing, removal, relocation, or control of native or nonnative wildlife, a person must carry the person's wildlife control operators permit and must exhibit the permit to any law enforcement officer requesting it.

The bill requires the Chief to adopt, in accordance with current law, rules governing the trapping, capturing, removal, relocation, and control of native or nonnative wildlife by wildlife control operators. The rules must establish procedures for the issuance of wildlife control operators permits and for the record-keeping that is required under the bill, including procedures for the annual submission of records (see below). In addition, the rules may establish requirements and procedures for the administration of an examination prior to the issuance of a permit. The rules may require the examination to test knowledge of current wildlife rules, animal life history, control methods, and other pertinent information. The rules may require that an applicant for a wildlife control operators permit pass the examination in order to receive a permit and may

establish a fee for the administration of the test. In addition, the rules may require an applicant to satisfy minimum standards established in the rules.

The bill specifies that in accordance with the rules, a person who has been issued a wildlife control operators permit and who has engaged in the trapping, capturing, removal, relocation, or control of native or nonnative wildlife must keep accurate, legible, written records of all of the following: (1) the county and township where native or nonnative wildlife have been trapped, captured, removed, relocated, or controlled, (2) the date on which the native or nonnative wildlife were captured and the method used to trap, capture, remove, relocate, or control the native or nonnative wildlife, (3) the species and number of native or nonnative wildlife trapped, captured, removed, relocated, or controlled, (4) the disposition of native or nonnative wildlife trapped, captured, removed, relocated, or controlled, and (5) any other information required by the Chief. All records must be kept on forms provided by the Division for a period of three years and be made available for inspection by a representative of the Division at reasonable hours.

A summary of the information compiled for the previous year under items (1), (3), and (4) above must be submitted to the Division with an application for renewal of a wildlife control operators permit. A person who fails to submit the summary with an application for renewal by March 15 of the year in which the person's permit expires must be denied a renewal of the permit.

The bill prohibits a person from violating its provisions related to wildlife control operators permits or a rule adopted pursuant to those provisions. Whoever violates that prohibition is guilty of a misdemeanor of the third degree.

State park fees

Prohibition against rules establishing state park admission and parking fees

(R.C. 1541.03 and 1533.18 and 1533.181, not in the bill)

Current law specifies that all lands and waters dedicated and set apart for state park purposes are under the control and management of the Division of Parks and Recreation to protect, maintain, and keep in repair. The Division has authority to adopt rules necessary for the proper management of state parks, including the establishment of fees and charges for admission to state parks and for use of facilities in them. The bill generally retains the Division's authority over the state parks and the authority to adopt rules for that purpose. However, the bill prohibits the Division from adopting rules establishing fees or charges for parking a motor vehicle in a state park or for admission to a state park.

Discount program for Golden Buckeye Card holders

(R.C. 1541.03)

The bill requires the Division to adopt rules establishing a discount program for all persons who are issued a Golden Buckeye Card. The discount program must provide a discount for all park services and rentals, but cannot provide a discount for the purchase of merchandise.

Current law requires that every Ohio resident who is 65 years of age or older or who is permanently and totally disabled and who furnishes evidence of that age or disability in a manner prescribed by Division rule must be charged one-half of the regular fee for camping, except on weekends and holidays designated by the Division. Such a person cannot be charged more than 90% of the regular charges for state recreational facilities, equipment, services, and food service operations utilized by the person at any time of year, whether maintained or operated by the state or leased for operation by another entity. The bill retains the discounts for camping and state recreational facilities, equipment, services, and food service operations, but qualifies that those discounts apply unless otherwise provided by Division rule.

Elimination of Parks and Recreation Depreciation Reserve Fund

(R.C. 1541.221)

Current law specifies that notwithstanding the statute governing the State Park Fund, 10% of the receipts from revenue-producing facilities of the Division of Parks and Recreation in the Department of Natural Resources must be transferred quarterly from the State Park Fund to the Parks and Recreation Depreciation Reserve Fund. The purpose of the latter Fund is to maintain the revenue-producing facilities in the best economic operating condition. The bill eliminates the Parks and Recreation Depreciation Reserve Fund, thus retaining all of the receipts from the revenue-producing facilities in the State Park Fund.

Watercraft Revolving Loan Fund and related program

(R.C. 1547.721, 1547.722, 1547.723, 1547.724, 1547.725, and 1547.726)

The bill creates the Watercraft Revolving Loan Fund in the state treasury. The Fund consists of money appropriated or transferred to it, money received and credited to the Fund under the revolving loan program established by the bill, and any grants, gifts, or contributions of moneys received for deposit to the credit of the Fund.

The bill requires the Director of Natural Resources to use money in the Fund for the purpose of a revolving loan program under which he makes loans in accordance with the bill for eligible projects and takes actions under the bill necessary to fulfill that purpose. Under the bill, the Director may delegate any of his duties or responsibilities involving the program to the Chief of the Division of Watercraft.

For purposes of the revolving loan program, the bill defines "eligible project" as a project that involves the acquisition, construction, establishment, reconstruction, rehabilitation, renovation, enlargement, improvement, equipping, furnishing, or development of either of the following: (1) marine recreational facilities, or (2) refuge harbors and other projects for the harboring, mooring, docking, launching, and storing of light draft vessels. The bill requires the Director to adopt rules in accordance with the Administrative Procedure Act that are necessary to implement the program, including rules that define "marine recreational facilities," "refuge harbors," and "light draft vessels."

The bill authorizes the Director to establish separate accounts in the Watercraft Revolving Loan Fund for particular projects or otherwise. Income from the investment of money in the Fund must be credited to the Fund, and, if the Director so requires, to particular accounts in the Fund.

The bill specifies that with the approval of the Controlling Board, and subject to the other applicable provisions of the bill, the Director may lend moneys in the Fund to public or private entities for the purpose of paying the allowable costs of an eligible project. The bill requires the Director's rules to define what constitutes the "allowable costs" of an eligible project.

Loans may be made under the program only if the Director determines that all of the following apply: (1) the project is an eligible project and is economically sound, (2) the borrower is unable to finance the necessary allowable costs through ordinary financial channels upon comparable terms, (3) the repayment of the loan will be adequately secured by a mortgage, lien, assignment, or pledge at a level of priority as the Director may require, and (4) the amount of the loan does not exceed 90% of the total cost of the project.

The bill specifies that these determinations of the Director are conclusive for purposes of the validity of a loan commitment evidenced by a loan agreement that he signs. Further, the Director's determinations that a project constitutes an eligible project and that the costs of such a project are allowable costs together with all other determinations relevant to the project or to an action taken or agreement entered into pursuant to the revolving loan program are conclusive for purposes of the validity and enforceability of rights of parties arising from actions taken and agreements entered into under the program.

The Director may take any actions necessary or appropriate with respect to a loan made under the revolving loan program, including facilitating the collection of amounts due on a loan. The bill also specifically authorizes the Director to do any of the following with respect to the program: (1) establish fees, charges, rates of interest, times of payment of interest and principal, and other terms, conditions, and provisions of and security for loans made from the Watercraft Revolving Loan Fund that the Director determines to be appropriate and in furtherance of the purpose for which the loans are made, (2) retain the services of or employ financial consultants, appraisers, consulting engineers, superintendents, managers, construction and accounting experts, attorneys, and employees, agents, and independent contractors that the Director determines to be necessary and fix the compensation for their services, (3) receive and accept from any person grants, gifts, contributions of money, property, labor, and other things of value to be held, used, and applied only for the purpose for which the grants, gifts, and contributions are made, and (4) enter into appropriate agreements with other governmental entities to provide for payment of allowable costs related to the development of eligible projects for which loans have been made from the Fund, the operation of facilities associated with eligible projects, and any governmental action that a governmental entity is authorized to take, including undertaking on behalf and at the request of the Director any action that he is authorized to undertake pursuant to the revolving loan program.

Under the bill, all state agencies must cooperate with and provide assistance to the Director as is necessary for the administration of the revolving loan program. The bill defines "state agency," by reference to existing law, as every organized body, office, or agency established by the laws of the state for the exercise of any function of state government.

Finally, the bill requires all money received by the state from the repayment of loans made from the Fund, including interest, fees, and charges associated with such loans, to be deposited to the credit of the Watercraft Revolving Loan Fund.

Nonresident operation of all-purpose and other special vehicles

(R.C. 4519.02 and 4519.09)

Current law establishes registration reciprocity for a nonresident to operate a snowmobile, off-highway motorcycle, or all-purpose vehicle in this state if the person lives in a state that has a registration requirement for those vehicles that is similar to Ohio's registration law. If the nonresident owner or operator of the special vehicle lives in a state that does not have a registration requirement similar to Ohio's, the person must obtain a $5 temporary operating permit that is valid for up to 15 days in order to operate the vehicle in Ohio.

The bill eliminates registration reciprocity and requires every nonresident owner or operator of a snowmobile, off-highway motorcycle, or all-purpose vehicle to obtain a $5, 15-day temporary operating permit to operate the vehicle in Ohio.

Distribution of money from severance tax on coal

(R.C. 5479.02)

Under current law, specified percentages of the money received from the severance tax on coal must be credited to the following funds: Geological Mapping Fund, Reclamation Forfeiture Fund, Coal Mining Administration and Reclamation Reserve Fund, and Unreclaimed Lands Fund. When the Chief of the Division of Mineral Resources Management finds at any time during a fiscal year that the balance of the Coal Mining Administration and Reclamation Reserve Fund is below $2 million, the Chief must certify that fact to the Director of Budget and Management. Upon receipt of the Chief's certification, the Director must direct the Treasurer of State to credit, during the remainder of the fiscal year for which the certification is made, the 14.2% of the money collected from the severance tax on coal that is usually credited to the Reclamation Forfeiture Fund instead to the Coal Mining Administration and Reclamation Reserve Fund. The bill requires the Tax Commissioner, rather than the Treasurer of State, to credit the 14.2% of the money collected on the severance tax on coal to the Coal Mining Administration and Reclamation Reserve Fund when directed by the Director of Budget and Management.

OHIO BOARD OF NURSING

- Requires the Board of Nursing to establish and conduct a pilot program for the use of medication aides in 80 nursing homes and 40 residential care facilities.
- Creates the Medication Aide Advisory Council.
- Continues the use of medication aides after the pilot program ends by permitting any nursing home or residential care facility to use medication aides.

Medication Aide Pilot Program

(R.C. 3721.011, 4723.32, 4723.61 to 4723.69, 4723.91)

The bill requires the Board of Nursing, in consultation with the Medication Aide Advisory Council, to conduct a pilot program for the use of medication aides in nursing homes and residential care facilities.[223] The program must be commenced not later than May 1, 2006 and be conducted until July 1, 2007. During this period, a nursing home or residential care facility participating in the Program may use one or more medication aides to administer prescription medications to its residents. To be used as a medication aide, an individual must be certified by the Board, and the nursing home or residential care facility using the medication aide must ensure that all of the bill's requirements for use of medication aides are met.

Medication Aide Advisory Council

The bill creates the Medication Aide Advisory Council, which is to make recommendations to the Board of Nursing in establishing and creating the pilot program. The Council is comprised of the following members:

(1) A registered nurse working in long-term care who is appointed by the Ohio Nurses Association;

(2) A licensed practical nurse working in long-term care who is appointed by the Licensed Practical Nurse Association of Ohio;

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[223] *For purposes of this section, "medication" means a drug, as defined in the Revised Code (R.C. 4729.01); "prescription medication" means a drug that may be dispensed only on a prescription. "Nurse" means (1) a registered nurse or (2) a licensed practical nurse who has completed a course in medication administration.*

Nursing homes and residential care facilities are licensed by the Ohio Department of Health. A residential facility is a facility that provides accommodations for 17 or more unrelated individuals and supervision and personal care services for three or more of those individuals who are dependent on the services of others by reason of age or physical or mental impairment; or a facility that provides accommodations for three or more unrelated individuals, supervision and personal care services for at least three of those individuals who are dependent on the services of others by reason of age or physical or mental impairment, and, to at least one of those individuals, any of the skilled nursing care (R.C. 3721.01).

A nursing home is a facility that provides care to persons who by reason of illness or physical or mental impairment required skilled nursing care or personal care services (R.C. 3721.01).

(3) A registered nurse who has experience in researching gerontology issues, appointed by the Ohio Nurses Association;

(4) An advanced practice nurse who has experience in gerontology, appointed by the Ohio Association of Advanced Practice Nurses;

(5) A representative of the Ohio Health Care Association who is appointed by the Association;

(6) A representative of the Association of Ohio Philanthropic Homes, Housing, and Services for the Aging who is appointed by the Association;

(7) A representative of the Ohio Academy of Nursing Homes who is appointed by the Academy;

(8) A representative of the Ohio Assisted Living Association who is appointed by the Association;

(9) A representative of the Ohio Association of Long Term Care Ombudsmen who is appointed by the Association;

(10) A representative of the Office of State Long-term Care Ombudsperson Program who is appointed by the Ombudsperson;

(11) A representative of the American Association of Retired Persons who is appointed by the Association;

(12) A representative of facility residents and families of facility residents who is appointed by the Board of Nursing;

(13) A representative of the Senior Care Pharmacy Alliance who is appointed by the Alliance;

(14) A representative of nurse aides who is appointed by the Director of Health;

(15) A representative of the Department of Health with expertise in the Department's Competency Evaluation Program who is appointed by the Director;

(16) A representative of the Department of Job and Family Services who is appointed by the Director.

Members of the council serve at the pleasure of their appointing authorities. A member or representative of the Board of Nursing must serve as the Council chairperson. Council members receive no compensation for their service.

Council duties

The Medication Aide Advisory Council is to make recommendations to the Board of Nursing in establishing and conducting the pilot program. The Council must make recommendations to the Board regarding the design and operation of the program, including a method of collecting data through reports submitted by participating nursing homes and residential care facilities, and protection of the health and welfare of the residents of facilities participating in the program and using medication aides after the program terminates. The Council must also make recommendations on the content of the course of instruction required to obtain certification as a medication aide, including the examination to be used to evaluate the ability to administer prescription medication safely and the score that must be attained to pass the examination and whether a medication aide may administer a prescription drug through a gastrostomy or jejunostomy tube and if so, the amount and type of training the medication aide needs to be adequately prepared to do so.[224] The Council is also required to make recommendations to the Board of Nursing regarding the Board's adoption of administrative rules and any other issue it considers relevant to the use of medication aides in nursing homes and residential care facilities.

Program operation

Not later than February 1, 2006, the Board of Nursing, in consultation with the Medication Aide Advisory Council, is to design the program and establish standards to govern medication aides, nursing homes, and residential care facilities participating in the Program. The standards must include training requirements for medication aides and for staff members of participating facilities. The Board must also select facilities to participate in the Program. The Board must establish standards to protect the health and safety of the residents of the nursing homes and residential care facilities participating in the program.

The bill specifies that the Board of Nursing must operate the pilot program in a manner "consistent with human protection and other ethical concerns typically associated with research studies involving live subjects."

Evaluation and report

With the assistance of the Medication Aide Advisory Council, the Board of Nursing must evaluate the pilot program. In conducting the evaluation, the Board must do all of the following:

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[224] *Gastrostomy is the surgical insertion of a feeding tube into the stomach. Jejunostomy is the surgical insertion of a feeding tube into the jejunum, part of the small intestine.*

- Assess whether medication aides are able to safely administer prescription medications to nursing home and residential care facility residents;

- Determine the financial implications of nursing homes and residential care facilities utilizing medication aides;

- Consider any other issue the Board or Council considers relevant to the evaluation;

- Prepare and submit a report of its findings to the Board and the Council.

The bill requires the Board of Nursing to prepare a report derived from the evaluation of the pilot program. The report must be submitted not later than March 1, 2007 to the Governor, the President and Minority Leader of the House of Representatives, the Speaker and Minority Leader of the Senate, and the Director of Health.

Use of medication aides after pilot program terminates

Beginning July 1, 2007, the bill permits any nursing home or residential care facility to use one or more medication aides certified by the Board of Nursing. To use medication aides, the nursing home or residential care facility must ensure all of the bill's requirements for use of medication aides are met.

Medication aides

The bill requires an individual seeking certification as a medication aide to apply to the Board of Nursing on a form it prescribes. If the application is submitted on or after July 1, 2007, it must be accompanied by the certification fee established in rules. The Board must issue a medication aide certificate to an applicant if the applicant satisfies all of the following requirements:

- Is at least 18 years of age;

- Has a high school diploma or a high school equivalence diploma;

- If the applicant is to practice as a medication aide in a nursing home, is a certified nurse aide;

- If the applicant is to practice as a medication aide in a residential care facility, is a certified nurse aide or has at least one year of direct care experience in a residential care facility;

- Successfully completes the course of instruction provided by a training program approved by the Board;

- Successfully completes all other requirements established in rules.

If a medication aide certificate is issued on the basis of having at least one year of direct care experience working in a residential care facility, the Board must state on the certificate that it is valid for use only in a residential care facility. A medication aide certificate is valid for two years unless earlier suspended or revoked. The certificate may be renewed in accordance with procedures specified by the Board in rules. To be eligible for renewal, an applicant must pay the renewal fee established in rules and meet all renewal qualifications specified in rules. The Board may deny, suspend, or revoke a medication aide certificate for reasons specified in rules. Any such action taken by the Board must be in accordance with the Administrative Procedure Act (R.C. Chapter 119.).

A certified medication aide may administer prescription medications to the residents of nursing homes and residential care facilities that use medication aides in accordance with the law governing the use of medication aides. Responsibility for the administration must be delegated to the medication aide by a nurse.[225] The bill requires that delegation of medication administration be carried out in accordance with the rules for nursing delegation adopted by the Board. A nurse who has delegated to a medication aide responsibility for the administration of prescription medications to the residents of a nursing home or residential care facility is not permitted to withdraw the delegation on an arbitrary basis or for any purpose other than patient safety.

Medication aides may administer only oral, topical, vaginal, or rectal medications, medications administered as drops to the eye, ear, or nose, or medications prescribed with a designation authorizing or requiring administration on an as-needed basis (but only if a nursing assessment of the patient is completed before the medication is administered). They cannot administer any medication that requires dosage calculations, or any medication that is a Schedule II controlled substance.[226] A certified medication aide is prohibited from administering prescription medications by injection, intravenous therapy procedures, or splitting pills for the purpose of changing the dose being given. A nursing home or residential care facility using medication aides must ensure that

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[225] *Delegation must be in accordance with rules governing nursing delegation adopted under the nursing law (Revised Code Chapter 4723.).*

[226] *Controlled substances are drugs, such as narcotics, that are subject to special restrictions because of the potential for abuse (R.C. 3719.01).*

the medication aides do not have access to any schedule II controlled substances within the home or facility for use by its residents.

Medication aide training programs

A person or government entity seeking approval to provide a medication aide training program must apply to the Board of Nursing on a form prescribed by the Board. If the application is submitted on or after July 1, 2007, it must be accompanied by the fee established by the Board. The bill requires the Board to approve the applicant to provide the medication aide training program if the content of the course of instruction to be provided meets the standards specified by the Board in rules, including:

- At least 70 hours of instruction, including both classroom instruction on medication administration and at least 20 hours of supervised clinical practice in medication administration;

- A mechanism for evaluating whether an individual's reading, writing, and mathematical skills are sufficient for the individual to be able to administer prescription medications safely;

- An examination that tests the ability to administer prescription medications safely and that meets the requirements established by the Board by rule.

The Board may deny, suspend, or revoke the approval granted to the provider of a medication aide training program for reasons specified in rules it adopts. Any such action must be in accordance with the Administrative Procedure Act.

Participating facilities

Notwithstanding provisions in current law that prohibit the employment of an individual other than a licensed nurse to perform nursing tasks (including administering medication), a nursing home or residential care facility that participates in the Medication Aide Pilot Program may, during the period the pilot program is operated, utilize one or more medication aides to administer medications, including prescription medications, to participating residents.

To participate in the pilot program, a nursing home or residential care facility must volunteer by applying to the Board of Nursing on a form provided by the Board. To be eligible to participate, the facility must agree to observe the standards established by the Board for the use of medication aides and meet the following requirements:

- If the facility is a nursing home, it must have been found in the two most recent surveys or inspections of the home that the home is free from deficiencies with regard to the administration of medication.

- If the facility is a residential care facility, it must be free of deficiencies related to the provision of skilled nursing care or the administration of medication.

The Board must select from the eligible facilities 80 nursing homes and 40 residential care facilities to participate in the pilot program. As a condition of participation in the program, the nursing home or residential care facility must pay a participation fee established in rules adopted by the Board. The fee is not reimbursable under Medicaid.

The Board may terminate a participating facility's participation in the pilot program on receipt of evidence the Board finds credible that the facility's continued participation in the pilot program poses an imminent danger, risk of serious harm, or jeopardy to a participating resident.

Immunity from liability and disciplinary actions

The bill provides that a registered nurse, or licensed practical nurse acting at the direction of a registered nurse, who delegates medication administration to a certified medication aide is not liable in damages to any person or government entity in a civil action for injury, death, or loss to person or property that allegedly arises from an action or omission of the medication aide in performing the medication administration, if the delegating nurse delegates the medication administration in accordance with the bill and the rules to be adopted for use of medication aides.

The bill provides immunity from disciplinary action by the Board of Nursing or any other government entity regulating that person's professional practice, as well as immunity from civil liability, to a person employed by a nursing home or residential care facility that uses certified medication aides who reports a medication error in good faith. The immunity is limited to reporting of the error rather than the error itself. Under the bill, a "medication error" means a failure to follow the prescriber's instructions when administering a prescription medication to a participating resident.

Rules

The bill requires the Board of Nursing, in consultation with the Medication Aide Advisory Council, to adopt rules governing the use of medication aides.

Initial rules must be adopted not later than February 1, 2006. The rules must establish or specify all of the following:

- Fees, in an amount sufficient to cover the costs incurred by the Board, for participation in the pilot program, certification as a medication aide, and approval of a medication aide training program;
- Requirements to obtain a medication aide certificate;
- Procedures for renewal of medication aide certificates;
- Standards for medication aide training programs, including the examination to be administered by the training program to test an individual's ability to administer prescription medications safely;
- Reasons for denying, revoking, or suspending a medication aide certificate or approval of a medication aide training program;
- Other standards and procedures the Board considers necessary to implement the law governing the use of medication aides in nursing homes and residential care facilities.

OHIO OCCUPATIONAL THERAPY, PHYSICAL THERAPY, AND ATHLETIC TRAINERS BOARD

- Replaces one occupational therapist member of the Occupational Therapy, Physical Therapy, and Athletic Trainers Board with a licensed occupational therapy assistant at the time of the next Board appointment.
- Allows a person to practice physical therapy without a prescription or referral from a physician or nurse if the person completed two years of practical experience as a licensed physical therapist prior to December 31, 2004.

Occupational Therapy, Physical Therapy, and Athletic Trainers Board membership

(R.C. 4755.03; Section 503.18)

Current Ohio law requires the Occupational Therapy, Physical Therapy, and Athletic Trainers Board to consist of sixteen members divided as such: five licensed physical therapists, five occupational therapists, and four athletic trainers. The bill replaces an occupational therapist member with a licensed occupational therapy assistant at the time of the next Board appointment.

Practice of physical therapy without prescription or referral

(R.C. 4755.48)

Current Ohio law allows a person to practice physical therapy without a prescription or referral from a physician or nurse if the person completed two years of practical experience as a licensed physical therapist prior to December 31, 2003. The bill extends this authority to persons who completed the experience prior to December 31, 2004.

OHIO PUBLIC DEFENDER COMMISSION

- Requires the court to assess a non-refundable $25 application fee to a defendant in a criminal case or a party in a juvenile court case who requests or is provided a state public defender, a county or joint county public defender, or any other counsel appointed by the court and allows the court to waive or reduce the fee upon a finding that the person lacks the financial resources that are sufficient to pay the fee.

- Prohibits a court, state public defender, county or joint county public defender, or any other court-appointed counsel from denying a person the assistance of counsel solely due to the person's failure to pay the application fee.

- Requires the clerk of the court that assessed the fee to forward all such application fees to the county treasurer, requires the county to retain 80% of the application fees to offset the costs of providing legal representation to indigent persons, and requires the county auditor to remit 20% of the application fees to the State Public Defender for deposit into the state treasury to the credit of the Client Payment Fund.

- Provides that if a case is bound over to the court of common pleas and the person failed to pay the application fee in the municipal court or county court, or if a case involving an alleged delinquent child is transferred to the court of common pleas, the court of common pleas must assess the application fee.

- Changes how much a county is required to pay the State Public Defender for legal representation of an indigent defendant from 50% of the actual cost of representation to (1) for the amount identified as legal fees, 100% less the state reimbursement rate, as calculated by the State Public Defender for the month the case terminated, and (2) 100% of the amount identified as expenses.

- Requires a county to pay the State Public Defender 100% of the cost of investigation or mitigation services provided by the State Public Defender to private appointed counsel or to a county or joint county public defender.

- Allows funds in the state treasury's County Representation Fund to also be used to pay for investigation or mitigation services provided by the State Public Defender.

Background information

(R.C. 120.05, 120.06, 120.13, 120.15, 120.23, 120.25, and 120.33)

Ohio has a State Public Defender, as well as county and joint county public defenders, who provide legal representation to indigent adults and juveniles who are charged with the commission of an offense. In lieu of using a county public defender or joint county public defender to represent indigent persons, the board of county commissioners of any county may adopt a resolution to pay counsel who are either personally selected by the indigent person or appointed by the court. The State Public Defender, county public defenders, and joint county public defenders are required to determine whether or not the person is indigent, subject to review by the court. The applicable public defender must investigate the financial status of each person to be represented, at the earliest time the circumstances permit, and may require the person represented to disclose the records of public or private income sources and property, otherwise confidential, which may be of aid in determining indigency.

When the State Public Defender is designated by the court or requested by a county public defender or joint county public defender to provide legal representation for an indigent person in any case other than certain cases the State Public Defender defends because of a contract with a county public defender commission or a joint county public defender commission, the State Public Defender must send to the county in which the case is filed an itemized bill for 50% of the actual cost of the representation. The county, upon receipt of the itemized bill, must pay the 50%. Money received from the counties is to be deposited in the state treasury's County Representation Fund for the use of the State Public Defender's legal representation of indigent defendants when designated by the court or requested by a county or joint county public defender.

Operation of the bill

Application fee for indigent defendants and parties in juvenile court

(R.C. 120.36)

Under current law, if a person represented by a state public defender, county public defender, or joint county public defender has, or may reasonably be expected to have, the means to meet some part of the cost of the services rendered to the person, the person must reimburse the State Public Defender, county public defender, or joint county public defender in an amount that the person can reasonably be expected to pay. If it is determined by the State Public Defender, county public defender, joint county public defender, or the court that the legal representation was provided to a person not entitled to representation, the person may be required to reimburse the State Public Defender, county public defender, or joint county public defender for the costs of the representation provided.

The bill provides that if a person who is a defendant in a criminal case or a party in a case in juvenile court requests or is provided a state public defender, a county or joint county public defender, or any other counsel appointed by the court, the court in which the criminal case is filed or the juvenile court, whichever is applicable, must assess, unless the application fee is waived or reduced, a non-refundable application fee of $25. The court must direct the person to pay the application fee to the clerk of the court that assessed the fee. The person must pay the application fee at the same time the person files an affidavit of indigency or a financial disclosure form with the court or within seven days of that date. If the person does not pay the application fee within that seven-day period, the court must assess the application fee at sentencing or at the final disposition of the case. The court must assess an application fee one time per case. An appeal must not be considered a separate case for the purpose of assessing the application fee. The court may waive or reduce the fee upon a finding that the person lacks financial

resources that are sufficient to pay the fee or the payment of that fee would result in an undue hardship.

The bill prohibits a court, state public defender, county or joint county public defender, or other counsel appointed by the court from denying a person the assistance of counsel solely due to the person's failure to pay the application fee. A person's present inability, failure, or refusal to pay the application fee does not disqualify that person from legal representation.

The bill provides that the application fee is separate from and in addition to any other amount assessed against a person who is found to be able to contribute toward the cost of the person's legal representation.

The bill requires the clerk of the court that assessed the fees to forward all application fees collected pursuant to the above-described provisions to the county treasurer for deposit in the county treasury. The county must retain 80% of the application fees to offset the costs of providing legal representation to indigent persons. Each month, the county auditor must remit 20% of the application fees to the State Public Defender, who must deposit the remitted fees into the state treasury to the credit of the Client Payment Fund. The State Public Defender may use that money in accordance with the law creating the Fund.

The bill requires each clerk of court, on or before the first day of March of each year, to provide the State Public Defender and the State Auditor a report including all of the following:

(1) The number of persons in the previous calendar year who requested or were provided a state public defender, county or joint county public defender, or other counsel appointed by the court;

(2) The number of persons in the previous calendar year for whom the court waived the application fee;

(3) The dollar value of the assessed application fees in the previous calendar year;

(4) The amount of assessed application fees collected in the previous calendar year;

(5) The balance of unpaid assessed application fees at the open and close of the previous calendar year.

The bill provides that if a case if bound over to the court of common pleas and the person failed to pay the application fee in the municipal court or the county court, or if a case involving an alleged delinquent child is transferred to the

court of common pleas for prosecution as an adult, the court of common pleas must assess the application fee at the initial appearance of the defendant or the child.

The bill defines "clerk of court" to mean the clerk of the court of common pleas of the county, the clerk of the juvenile court of the county, the clerk of a municipal court in the county, the clerk of a county-operated municipal court, or the clerk of a county court in the county, whichever is applicable. The bill also provides that "county-operated municipal court" has the same meaning as in R.C. 1901.03 (the Auglaize county, Brown county, Clermont county, Columbiana county, Crawford county, Darke county, Hamilton county, Hocking county, Jackson county, Lawrence county, Madison county, Miami county, Morrow county, Ottawa county, Portage county, or Wayne county municipal court).

Billing practices of the State Public Defender

(R.C. 120.06(D), 120.13(F), and 120.23(I))

The bill modifies how much a county is required to pay the State Public Defender for legal representation. The bill requires the State Public Defender to send the county in which the case is filed a bill detailing the actual cost of the legal representation that separately itemizes legal fees and expenses. The county, then, is responsible for paying the State Public Defender (1) for the amount identified as legal fees in the itemized bill, 100% less the state reimbursement rate, as calculated by the State Public Defender for the month the case terminated, and (2) 100% of the amount identified as expenses in the itemized bill.

After payment of the itemized bill, the bill permits the county to submit the cost of the expenses (excluding legal fees) to the State Public Defender for reimbursement pursuant to R.C. 120.33.

The bill also specifies that if the State Public Defender provides investigation or mitigation services to private appointed counsel or to a county or joint county public defender, other than in certain cases when the Defender has a contract with a county public defender commission or a joint county public defender commission pursuant to R.C. 120.04(C)(7), the State Public Defender is required to send to the county in which the case is filed a bill itemizing the actual cost of the provided services. The county, then, is required to pay 100% of the amount as set forth in the itemized bill. Upon payment of the bill, the county may submit the cost of the investigation and mitigation services to the State Public Defender for reimbursement pursuant to R.C. 120.33.

Finally, the bill permits funds in the County Representation Fund, discussed above, to be used by the State Public Defender to provide investigation or

mitigation services, including investigation or mitigation services to private appointed counsel or a county or joint county public defender, as approved by the court.

DEPARTMENT OF PUBLIC SAFETY

- Creates the Division of Criminal Justice Services in the Department of Public Safety, abolishes the Office of Criminal Justice Services, and generally transfers the Office's personnel and functions to the Division.

- Prohibits a court from ordering the Bureau of Motor Vehicles to delete a record of conviction unless the court finds that the deletion is necessary to correct an error, and prohibits the Bureau from complying with such an order unless it states that the deletion is to correct an error.

- Permits the Bureau, when considering an application for a commercial driver's license (CDL), to conduct any inquiries necessary to ensure that issuance or renewal of the CDL would not violate state or federal law.

- Prohibits a court from granting limited driving privileges to operate a commercial motor vehicle to any person whose driver's license or CDL has been suspended or who has been disqualified from operating a commercial motor vehicle.

- Defines a certain type of all-purpose vehicle as a "utility vehicle" and provides that utility vehicles are neither motor vehicles for certain purposes nor all-purpose vehicles.

- Provides that sellers of utility vehicles are not subject to the motor vehicle dealer licensing law unless they sell other vehicles that are motor vehicles.

- Provides that sellers of all-purpose vehicles and off-highway motorcycles are subject only to the motor vehicle dealer licensing law, and provides that persons who sell only snowmobiles are not required to register with any state official.

- Establishes that a person operating a police SWAT vehicle who does not hold a commercial driver's license (CDL) does not violate the requirement to have a CDL when operating a commercial motor vehicle.

- Allows persons currently eligible to obtain any of a number of special license plates for display of a "motor home" to obtain them for use on "recreational vehicles," which include motor homes, travel trailers, truck campers, fifth wheel trailers, and park trailers.

Creation of the Division of Criminal Justice Services in the Department of Public Safety and abolition of the Office of Criminal Justice Services

(R.C. 108.05, 109.91, 141.011, 181.251 (5502.63), 181.51 (5502.61), 181.52 (5502.62), 181.54 (5502.64), 181.55 (5502.65), 181.56 (5502.66), 2152.74, 2901.07, 2923.25, 3793.09, 4112.12, 5120.09, 5120.51, 5139.01, and 5502.01; Section 209.51)

The bill creates a Division of Criminal Justice Services in the Department of Public Safety, abolishes the existing Office of Criminal Justice Services, and generally transfers to the Division the personnel and functions of the Office. These provisions, and related changes made in the bill, are discussed in more detail under "**OFFICE OF CRIMINAL JUSTICE SERVICES**," above.

Bureau of Motor Vehicles, deletion of conviction

(R.C. 4501.37)

Current law prohibits any court from reversing, suspending, or delaying any order issued by the Registrar of Motor Vehicles, or from enjoining, restraining, or interfering with the Registrar or a deputy registrar in the performance of official duties, except as otherwise provided in existing law. The bill prohibits a court from ordering the Bureau of Motor Vehicles to delete a record of conviction unless the court finds that deletion of the record of conviction is necessary to correct an error. The Bureau is prohibited from complying with a court order that directs the deletion of a record of conviction unless the order states that the record of conviction is being deleted in order to correct an error.

Commercial driver's licenses

(R.C. 4506.07, 4506.101, and 4506.161)

An application for a commercial driver's license (CDL), restricted CDL, or commercial driver's temporary instruction permit must contain certain specified information as required by the Revised Code, rule, and federal law. The bill provides that in considering an application for any of the above, the Bureau of

Motor Vehicles may conduct any inquiries necessary to ensure that issuance or renewal would not violate any provision of state or federal law.

In addition, the bill provides both of the following:

(1) Notwithstanding any provision of state law, the Bureau cannot issue or renew a CDL if issuance or renewal would violate federal law.

(2) No court may grant limited driving privileges to operate a commercial motor vehicle to any person whose driver's license or CDL has been suspended or who has been disqualified from operating a commercial motor vehicle.

Utility vehicles and the motor vehicle dealer licensing law

(R.C. 4501.01, 4517.01, and 4519.01)

Current law

All dealers in new motor vehicles and generally all persons who sell six or more motor vehicles in a 12-month period must be licensed either as a new motor vehicle dealer or a used motor vehicle dealer under the motor vehicle dealer licensing law (R.C. Chapter 4517.). For purposes of that law, a motor vehicle ". . . also includes 'all-purpose vehicle' . . . [as] defined in section 4519.01 of the Revised Code . . . ." If a person sells motorized vehicles that are not "motor vehicles" within the meaning of that term as contained in the motor vehicle dealer licensing law, the person is not selling motor vehicles and therefore is not required to obtain any type of motor vehicle dealer's license.

An all-purpose vehicle is a motor vehicle for purposes of the motor vehicle dealer licensing law, so persons who sell them (other than five or fewer sales in a twelve-month period) must obtain a motor vehicle dealer's license. "All-purpose vehicle" is defined in the special vehicles law (R.C. Chapter 4519.) as "any self-propelled vehicle designed primarily for cross-country travel on land and water, or on more than one type of terrain, and steered by wheels or caterpillar treads, or any combination thereof . . . *but excluding any self-propelled vehicle not principally used for purposes of personal transportation*." (Emphasis added.)

Operation of the bill

The bill clarifies what is and is not an all-purpose vehicle by (1) eliminating the phrase "but excluding any self-propelled vehicle not principally used for purposes of personal transportation" from the definition of all-purpose vehicle in the special vehicles law, (2) enacting the new term "utility vehicle" and defining it, and (3) specifying that "all-purpose vehicle" does not include a "utility vehicle." The bill defines a "utility vehicle" as a "self-propelled vehicle designed with a bed,

principally for the purpose of transporting material or cargo in connection with construction, agriculture, forestry, grounds maintenance, lawn and garden, materials handling, or similar activities." The bill also specifically provides (1) in the general motor vehicle law definitions that a utility vehicle is not a motor vehicle, and (2) in the special vehicle law that a utility vehicle is not an all-purpose vehicle.

Since the bill provides in the general motor vehicle law definitions that a utility vehicle is not a motor vehicle, and that definition of "motor vehicle" is utilized in the motor vehicle dealer licensing law, the bill excludes from the motor vehicle dealer licensing law any person who sells *only* utility vehicles. These persons may sell utility vehicles without obtaining a motor vehicle dealer's license so long as they do not sell other motorized vehicles that are motor vehicles. In such a case, the person would have to obtain a dealer's license for those other vehicles that are motor vehicles.

In addition, since the bill provides in the general motor vehicle law definitions that a utility vehicle is not a motor vehicle, and that definition of "motor vehicle" applies to the certificate of title law, under the bill utility vehicles are not subject to the certificate of title law.

Repeal of dealer registration provisions of the special vehicle law

(R.C. 4519.06 and 4519.07)

Current law requires dealers who sell snowmobiles, off-highway motorcycles, and all-purpose vehicles to register with the Registrar of Motor Vehicles under the special vehicles law. Thus, persons who sell off-highway motorcycles and all-purpose vehicles are required to obtain a motor vehicle dealer's license under the motor vehicle dealer licensing law and to register with the Registrar under the special vehicles law. Persons who sell only snowmobiles are required only to register with the Registrar under the special vehicles law. The bill repeals outright the special vehicles dealer registration provisions. The result is that persons who sell off-highway motorcycles and all-purpose vehicles are only required to obtain a dealer's license under the motor vehicle dealer's licensing law, while persons who sell only snowmobiles are no longer required to register with any state official.

Finally, the bill specifically provides that a snowmobile is not a motor vehicle for purposes of the motor vehicle dealer licensing law.

Commercial driver's license exemption

(R.C. 4506.03)

Current law establishes a general prohibition against driving a commercial motor vehicle without holding a commercial driver's license (CDL). The prohibition does not apply to the operation of certain commercial vehicles that otherwise would require the operator to hold a CDL, including farm trucks, fire equipment, emergency medical service vehicles used to transport ill or injured persons, and vehicles operated for military purposes. Applicable federal law authorizes each of these exemptions.

The bill adds a police SWAT team vehicle to the list of commercial vehicles that may be operated by a person who does not hold a CDL, without being in violation of the CDL law. Federal law authorizes this exemption in 49 C.F.R. 383.3.

Display of certain special license plates on recreational vehicles

(R.C. 4503.471, 4503.48, 4503.50, 4503.53, 4503.571, 4503.59, 4503.73, 4503.85, and 4503.91)

Current law permits the owners of motor homes, among other specified vehicles, to obtain and display the following special license plates on their motor homes: International Association of Firefighters, Ohio National Guard, United States Armed Forces Reserves, Future Farmers of America, United States Armed Forces, Purple Heart, Pearl Harbor, Leader in Flight, Fish Lake Erie, and Choose Life. The bill replaces the term "motor home" with "recreational vehicle," which is a defined term that includes motor homes, travel trailers, truck campers, fifth wheel trailers, and park trailers, thus permitting the owners of all these types of recreational vehicles to obtain and display these special license plates.

PUBLIC UTILITIES COMMISSION OF OHIO

- Changes the minimum annual assessment against a railroad and a public utility for maintaining the Public Utilities Commission from $50 to $100.
- Beginning in 2006, revises the schedule by which the Commission collects the assessments from utilities.

- Eliminates the need to transfer funds from the General Revenue Fund to the Public Utilities Fund so the Commission can operate during the beginning of each fiscal year.

- Increases the maximum amount the Commission generally may assess against a public utility or a railroad for each violation of statutes or orders from $1,000 to $10,000.

- Specifies that the forfeitures collected from a public utility or a railroad be credited to the General Revenue Fund.

- Increases the forfeiture amount the Commission can assess for gas pipeline safety violations from $10,000 for each day of each violation to $100,000.

- Caps for each of four state agencies with nuclear safety functions the maximum amount that may be assessed per fiscal year for the agency against nuclear utilities by the Utility Radiological Safety Board, which cap is applicable in the event the utilities and the agency cannot agree on a negotiated grant amount to fund its nuclear safety activities and funding is then to be otherwise provided through an assessment.

Assessments collected from railroads and public utilities for maintaining the Public Utilities Commission

(R.C. 4905.10)

For the purpose of maintaining the Public Utilities Commission (PUCO), each railroad and public utility pays a yearly assessment. The amount is calculated by first computing an assessment in proportion to the intrastate gross earnings or receipts of the railroad or utility for the preceding calendar year. The PUCO may include in the initial computation, any amount underreported by a railroad or utility from a prior year. Excluded from the computation are earnings or receipts from sales to other public utilities. Under the bill, the PUCO may also exclude from the computation any overreported amount from a prior year.

Under current law, a final computation of the assessment imposes a $50 assessment on each railroad and utility whose assessment under the initial computation equaled $50 or less. The bill changes the minimum yearly assessment against each railroad and utility from $50 to $100. The railroad and

utility payments are deposited in the state treasury to the credit of the Public Utilities Fund.

Currently, the PUCO must notify each railroad and utility of the sum assessed against it by October 1 of each year, after which payment is to be made to the PUCO. The bill changes this schedule, to require that by May 15 of each year beginning in the 2006 calendar year, the PUCO must notify each railroad and utility that had an assessment against it for the current fiscal year of more than $1,000, that the railroad or utility must pay 50% of that amount to the PUCO by June 20. This payment is an initial payment for the next fiscal year. The bill requires the PUCO to make a final determination of the assessment against each railroad and utility by October 1 of each year, deducting any initial payment received, and to notify the railroad and utility of that amount. Each railroad or utility must pay the PUCO the remaining assessment amount by November 1 of that year.

Under current law, at the beginning of each fiscal year, the Director of Budget and Management transfers an amount from the General Revenue Fund (GRF) to the Public Utilities Fund so the PUCO can maintain operations during the first four months of the fiscal year. The amount transferred by the Director must be transferred back into the GRF from the Public Utilities Fund by December 31. Under the bill, beginning in calendar year 2006, these obligations no longer apply because under the bill's new assessment schedule the Public Utilities Fund will receive sufficient revenue from the initial assessment payment to operate at the beginning of each fiscal year.

Forfeitures assessed by the Commission

General forfeitures against a public utility or railroad

(R.C. 4905.54)

The Public Utilities Commission (PUCO) may assess forfeitures against a public utility or a railroad that violates a statute or fails to comply with a Commission order, direction, or requirement. Generally under current law, the maximum forfeiture amount the PUCO can assess is $1,000 for each violation or failure to comply. Each day's continuance of the violation or failure is a separate offense. The bill increases the maximum forfeiture amount for each violation or failure to comply to $10,000, and specifies that the collected forfeitures be credited to the General Revenue Fund.[227]

[227] *A maximum forfeiture of $10,000 for each day of each violation can already be assessed for violations or failures to comply under R.C. 4905.83 dealing with hazardous*

Forfeitures for gas pipe-line safety violations

(R.C. 4905.95)

If the PUCO finds that a gas pipe-line operator violated or failed to comply with the gas pipe-line safety code, the PUCO may assess forfeitures against the operator. The bill increases the forfeiture amount from a maximum of $10,000 for each day of each violation to a maximum of $100,000. Under continuing law, the aggregate cap on the amount of such forfeitures that may be assessed against an operator for a related series of violations or noncompliances is $500,000. These forfeitures are also credited to the General Revenue Fund.

Utility Radiological Safety Board Assessments

(Section 306.03)

Under continuing law, the Utility Radiological Safety Board's (URSB) authority to levy assessments against nuclear utilities is limited in part by assessment caps specified in main operating appropriations acts. The main funding source for the nuclear safety functions of state agencies that are URSB members are direct grants negotiated between each member agency and Ohio's nuclear electric utilities but, if a member agency disagrees with a grant amount, it can obtain funding by requesting the URSB to levy assessments against the utilities in amounts generally proportional to their intrastate gross receipts. If a member agency seeks an assessment that would exceed 75% of the applicable budgetary cap, continuing law provides that the member agency may request Controlling Board approval of the assessment. The Controlling Board cannot approve an assessment that exceeds the budgetary maximum or that will be used for unauthorized purposes. The bill specifies for four member agencies maximums that are constant in amount for FY 2006 and 2007, in the fiscal year amounts of $73,059 for the Department of Agriculture, $850,000 for the Department of Health, $286,114 for the Environmental Protection Agency, and $1,260,000 for the Emergency Management Agency.

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materials, R.C. 4905.95 dealing with operators of gas pipe-lines (the bill increases maximum gas pipe-line forfeiture to $100,000), and R.C. 4919.99, 4921.99, and 4923.99 dealing with a roadside inspection for an interstate operator, a motor transportation company, and a private motor carrier, respectively.

OHIO BOARD OF REGENTS

- Establishes a tuition cap of 6%, or $500 per full-time undergraduate student, on annual increases of in-state undergraduate instructional and general fees at state institutions of higher education.

- Phases out the Ohio Instructional Grant (OIG) Program by limiting participation to students who enroll in an undergraduate program before the 2006-2007 academic year.

- Creates the Ohio College Opportunity Grant Program, a need-based financial aid program for students who first enroll in an undergraduate program in or after the 2006-2007 academic year.

- Requires the Board of Regents, in its rules for the Ohio College Opportunity Grant Program, to give preferential or priority funding to low-income students who met academic performance standards in elementary and secondary schools.

- Specifies that, in addition to refunds of OIG payments as under current law, refunds of payments made under the new Ohio College Opportunity Grant Program be paid into the Instructional Grant Reconciliation Fund, and changes the name of the fund to the State Need-Based Financial Aid Reconciliation Fund.

- Requires the Board of Regents to conduct audits to determine the validity of information provided by students and parents regarding eligibility for financial aid and requires institutions of higher education to adjust students' financial aid award where the Board determines appropriate.

- Requires the Board of Regents to conduct audits to ensure that institutions of higher education are complying with the Board's financial aid rules, and specifies that the institutions are fully liable to reimburse the Board for the unauthorized use of financial aid funds.

- Requires the Board of Regents to adopt a rule establishing fees to fund the cost of (1) reviewing an application for a certificate of authorization to award degrees at a nonpublic institution and (2) reviews determined necessary upon examining a nonpublic institution's annual report.

- Expands the scope of the current articulation and transfer system to include career-technical institutions by requiring the Board of Regents to develop criteria, policies, and procedures by April 15, 2007, to ensure that students can transfer technical courses to state institutions of higher education.

- Sets a December 30, 2005, deadline for the State Architect to establish the Local Administration Competency Certification Program (enacted by Am. Sub. H.B. 16 of the 126th General Assembly to certify state universities and state community colleges to administer their own capital facilities projects).

- Specifies that an institution's local administration competency certification remains valid unless revoked by the State Architect for failure (1) to employ a sufficient number of personnel who have successfully completed the certification program or (2) to conduct biennial audits of self-administered capital facilities projects.

- Requires state colleges and universities to award printing contracts under provisions of the "Buy Ohio" Law that governs the award of contracts for goods and services by the Department of Administrative Services and other state agencies.

- Creates in the state treasury the National Guard Scholarship Reserve Fund for purposes of paying scholarship obligations in excess of the GRF appropriations made for that purpose, and authorizes the Director of Budget and Management to transfer from the GRF to the Reserve Fund an amount not exceeding the prior year's unencumbered balance of GRF appropriations made for purposes of the Ohio National Guard Scholarship Program.

- Requires the Chancellor of the Board of Regents to allocate up to $70,000 for scholarships per year for students enrolled in the Columbus Program in Intergovernmental Issues at Kent State University, if there are sufficient funds available from General Revenue Fund appropriations made to the Board.

- Regulates the distribution of Nurse Education Assistance Program loans from July 1, 2005 to January 1, 2012.

- Allows a portion of a Nurse Education Assistance Program loan to be forgiven when a nurse, after graduation, obtains employment as a faculty member for a nursing program.

- Allows the treasurer of Shawnee State University to be insured, rather than bonded, for the amount of money in the treasurer's sole control, minus a reasonable deductible, and removes the requirement for Attorney General approval in cases where the treasurer is bonded.

- Replaces two Montgomery County resident members of the Sinclair Community College Board of Trustees with two residents of Warren County, but specifies that Warren County is not part of the Montgomery County community college district and prohibits the participation of the Warren County members in certain decisions of the board affecting Montgomery County tax rates and tax revenue.

- Applies the current enrollment caps to students enrolled on a "full-time" basis (rather than a "full-time equivalent" basis as in current law) at the following universities: (1) Bowling Green, (2) Kent State, (3) Miami, (4) Ohio, and (5) Ohio State.

- Adds six additional trustees to the Ohio State University Board of Trustees, with the terms of three members beginning in 2005, at a date selected by the Governor, and ending on May 13, 2009, May 13, 2010, and May 13, 2011, and the terms of the other three new members beginning on May 14, 2006 and ending on May 13, 2012, May 13, 2013, and May 13, 2014.

Cap on undergraduate tuition increases at state institutions of higher education

(Section 209.63.60)

The bill imposes a limit on the amount of in-state, undergraduate instructional and general fees the board of trustees of a state university, community college, state community college, technical college, and university branch (collectively, "state institutions") may charge. For the 2005-2006 and 2006-2007 academic years, the boards of trustees of these state institutions may only increase undergraduate instructional and general fees for Ohio residents by the lesser of 6%, or $500 per full-time student.

As in previous biennia when the General Assembly has imposed tuition caps, the bill authorizes an institution to increase tuition above the stated cap to comply with institutional covenants related to obligations, unfunded mandates, or legally binding obligations or commitments made before the bill's effective date, with respect to which the institution identified the fee increase as the source of the funds. The Board of Regents must report these additional increases to the Controlling Board. In addition, the Board of Regents, with the Controlling Board's approval, may modify the caps "to respond to exceptional circumstances."

Phasing out of the Ohio Instructional Grant Program

(R.C. 3333.12)

The Board of Regents administers the Ohio Instructional Grant Program, which pays grants to full-time, Ohio resident students who attend a public, private nonprofit, or career institution of higher education in Ohio and are enrolled in a program leading to an associate or bachelor's degree. The Board establishes all rules concerning applications for the grants.

Grant amounts vary based on whether an applicant is financially dependent or independent; the combined family income (if dependent) or the student and spouse income (if independent); the number of dependents; and whether the applicant attends a private nonprofit, public, or career institution. The amount of the grant cannot exceed the total instructional and general fees charged by the student's school.

The bill phases out the Program by limiting participation to students who enroll in an undergraduate program before the 2006-2007 academic year. The grant amounts are unchanged for the biennium, remaining at the levels set for fiscal year 2005.

Creation of the Ohio College Opportunity Grant Program

(substantive provisions in R.C. 3333.122 and 3333.123; conforming changes in R.C. 3315.37, 3332.092, 3333.04, 3333.044, 3333.27, 3333.28, 3333.38, 3345.32, and 5107.58)

The bill creates the Ohio College Opportunity Grant Program as a substitute for the Ohio Instructional Grant Program for students who are residents of Ohio and first enroll in an undergraduate program in or after the 2006-2007 academic year.[228] The grant amount awarded to the student is based on the United

[228] *Students who participated in either the Early College High School Program or the Post-Secondary Enrollment Options Program before the 2006-2007 academic year, are not excluded from eligibility for a grant. See R.C. 3333.122(A)(2).*

States Department of Education's method of determining financial need. This is done by determining the student's "Expected Family Contribution" (EFC).

Eligibility

To receive a grant the student must be enrolled in one of the following:

(1) An accredited institution of higher education in Ohio that meets the requirements of Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance;

(2) A nonprofit institution that has a certificate of authorization from the Board of Regents;

(3) A private institution that has a certificate of registration from the State Board of Career Colleges and Schools and program authorization from the Board of Regents to award an associate or bachelor's degree;

(4) A for-profit institution that is exempt from regulation by the Board of Career Colleges and Schools, but for which the Board of Regents has issued a certificate of authorization, and is accredited by the appropriate accrediting association;[229]

(5) A technical education program sponsored by a private institution in Ohio that is at least two years in duration, and that meets the requirements of Title VI of the Civil Rights Act of 1964.

The Board is directed to prescribe the manner of applications for the grants. The applications can be made in conjunction with the United States government's or the institution of higher education's student assistance programs. The grants are to be paid through the institution in which the student is enrolled. The institution must certify the student's eligibility for the grant.

A grant is available to a student as long as the student is making adequate progress towards a nursing diploma or an associate or bachelor's degree, but no student may receive a grant for more than the equivalent of five academic years. If the student is taking fewer than the number of hours needed to be considered full-time, a grant to that student is based on the number of credit hours the student is enrolled. However, no student may receive more than one grant on the basis of less than full-time enrollment. The bill requires the Board to define "full-time

[229] *Currently, this provision applies to only DeVry University and the University of Phoenix.*

student," "three-quarters-time student," "half-time student," and "one-quarter-time student."

Priority for low-income students based on elementary and secondary achievement

The bill requires the Board of Regents, in its rules for the Ohio College Opportunity Grant Program, to give preferential or priority funding to low-income students who, in their elementary and secondary school work, participate in or complete rigorous academic coursework, attain passing scores on the state achievement tests, or meet other high academic performance standards determined by the Board to reduce the need for remediation and ensure academic success at the postsecondary education level. The rules must specify procedures to certify student achievement as well as the timeline for the Board's implementation of these preferential provisions.

Amount of grant awards per academic year

Separate tables set forth the grant amounts, one for each category of student (full-time, three-quarters-time, half-time, or one-quarter-time, based on the number of credit hours). Each table varies the grant amounts based on the ranges of expected family contribution and the type of institution in which the student is enrolled (public, private, or career). The grant is for one academic year, which represents two semesters or three quarters. If a full-time student is enrolled for an additional semester or quarter in an academic year, the student may receive another grant, equal to a portion of the maximum prescribed amount, for that additional term.

The maximum expected family contribution that a student could have and still be eligible for a grant is $2,190. A full-time student with that expected family contribution score would then be eligible for a $300 grant if attending a public institution, a $480 grant if attending a career college, or a $600 grant if attending a private institution. If a full-time student's expected family contribution is $0, the student would be eligible for a $2,496 grant if attending a public institution, a $3,996 grant if attending a career college, or a $4,992 grant if attending a private institution.

A three-quarters-time student with an expected family contribution of $2,190 would be eligible for a $228 grant if attending a public institution, a $360 grant if attending a career college, or a $450 grant if attending a private institution. A three-quarters-time student with an expected family contribution of $0 would be eligible for a $1,872 grant if attending a public institution, a $3,000 grant if attending a career college, or a $3,744 grant if attending a private institution.

A half-time student with an expected family contribution of $2,190 would be eligible for a $150 grant if attending a public institution, a $240 grant if attending a career college, or a $300 grant if attending a private institution. A half-time student with an expected family contribution of $0 would be eligible for a $1,248 grant if attending a public institution, a $1,998 grant if attending a career college, or a $2,496 grant if attending a private institution.

A one-quarter-time student with an expected family contribution of $2,190 would be eligible for a $78 grant if attending a public institution, a $120 grant if attending a career college, or a $150 grant if attending a private institution. A one-quarter-time student with an expected family contribution of $0 would be eligible for a $624 grant if attending a public institution, a $1,002 grant if attending a career college, or a $1,248 grant if attending a private institution.

Ineligibility for a grant

As with the current Ohio Instructional Grant program, there are three situations in which a student who otherwise would be eligible to receive a grant would be determined ineligible. First, no grant may be awarded to a person serving a term of imprisonment. Second, a student studying theology, religion, or another field in preparation for a religious profession is ineligible if the program does not lead to an accredited bachelor of arts, bachelor of science, associate of arts, or associate of science degree.

Third, a student is ineligible to receive a grant if the student is attending an institution with a cohort default rate, as determined by the U.S. Secretary of Education, equal to or greater than 30% for each of the preceding two fiscal years. The "cohort default rate" means the number of current and former students of an institution who default on federally guaranteed student loans.[230] However, a student would still be eligible if, upon recalculation, the cohort default is lower than 30%, if the Secretary allows the institution to continue to participate in federal financial aid programs, or if the student has previously received an Ohio College Opportunity Grant and meets all other eligibility requirements.

Institutions must refund grants to the state if student no longer eligible

The bill requires institutions to refund money due to the state if the institution receives grants for students who are no longer eligible for all or any part of the grant. The institution must refund the money due within 30 days after the beginning of the quarter or term immediately following the quarter or term in which the student was no longer eligible to receive all or part of the grant. If the

[230] *See 20 U.S.C. 1085.*

institution fails to refund the money in the allowed time, there is a 1% per month interest charge.

State Need-Based Financial Aid Reconciliation Fund

(R.C. 3333.121)

The bill renames the Instructional Grant Reconciliation Fund as the State Need-Based Financial Aid Reconciliation Fund. This fund is to receive refunds of Ohio Instructional Grant payments (as under current law) and refunds of Ohio College Opportunity Grant payments, both made by institutions when they receive grant moneys under those programs for students who are not eligible to receive them. Similar to current law, money in the fund is to be used by the Board of Regents to pay institutions of higher education any outstanding obligations owed from the prior year for the grant programs. Any amount in the fund that exceeds the amount necessary to reconcile prior year payments must be transferred to the General Revenue Fund.

Financial aid audits

(R.C. 3333.047)

The bill directs the Board of Regents to conduct two types of audits for state financial aid programs. First, the Board is required to conduct audits to determine the validity of information regarding eligibility for financial aid that is provided by students and parents. Each institution is required to adjust a student's financial aid if the Board determines such action to be appropriate due to the reporting of inaccurate eligibility data. Second, the Board is required to conduct audits to ensure that the institutions of higher education are complying with the Board's rules governing state student financial aid programs. If an audit finds that an institution has failed to comply with rules, the institution is "fully liable" to reimburse the Board for the unauthorized use of student financial aid funds.

Fees for certificates of authorization and annual reports

(R.C. 1713.03)

Current law requires that, before a private institution of higher education or a career college may offer a degree, it must receive a certificate of authorization from the Board of Regents. The institution must apply to the Board for the certificate, and must file an annual report with the Board.

The bill requires the Board of Regents to establish fees, which each private institution must pay, for reviewing applications for certificates of authorization

and for further reviews the Board determines are necessary after examining the institution's annual reports.

Transfer of career-technical education coursework to state institutions of higher education

(R.C. 3333.162)

The bill expands the scope of the current articulation and transfer system to include career-technical institutions by requiring the Board of Regents to develop criteria, policies, and procedures by April 15, 2007, to enable students to transfer "agreed upon" technical courses completed through an adult career-technical education institution, a public secondary career-technical institution, or a state institution of higher education to a state institution of higher education "without unnecessary duplication or institutional barriers." The Board is directed to develop these criteria, policies, and procedures in consultation with the Department of Education, public adult and secondary career-technical education institutions, and state institutions of higher education. The criteria, policies, and procedures must build upon the existing articulation agreement and transfer initiative course equivalency system, where applicable. The Board must report its progress on this issue to the General Assembly by April 15, 2006.

Background

The Board of Regents has developed an Articulation and Transfer Policy, which is intended to ensure that credits will transfer between state institutions of higher education.[231] Under the policy, the transfer of credits and the application of those credits to the transferring student's program of study is dependent on whether the transferring student has completed an associate degree, the student's grade point average, and what courses the student has completed. The policy also requires state institutions to develop a "transfer module," which is a set of general education curriculum courses, such as English composition, mathematics, social and behavioral sciences, arts and humanities, and natural and physical sciences, that represent a common body of knowledge required at all state institutions. A student who completes transfer module courses at one institution can transfer those courses to another state institution and have those courses fulfill the corresponding general education courses at the receiving institution.

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[231] *The policy is available through the Ohio Board of Regents' website*: *http://www.regents.state.oh.us/transfer/policy.html*. *The General Assembly required the development of the policy in Am. Sub. S.B. 268 and Am. Sub. H.B. 111 of the 118th General Assembly.*

In addition, the Revised Code directs the Board to implement several policies designed to further facilitate the transfer of students and credits between state institutions of higher education.[232] These include:

(1) The development of policies and procedures that state institutions must comply with to ensure that students can transfer between state institutions without unnecessary duplication of coursework or institutional barriers;

(2) The development of a "universal course equivalency classification system";

(3) The development of a transfer system whereby a student who completes an associate degree program that includes approved transfer module courses will be admitted to another state institution's baccalaureate program, will have priority over out-of-state students with associate degrees and transfer students without such degrees in regards to admittance to the program, and will compete on the same basis as students native to that institution for admission to specific programs;

(4) A study of the feasibility of developing a transfer marketing agenda to both inform Ohioans of the availability of transfer options and to encourage adults to return to higher education;

(5) A study of the feasibility of articulation and transfer policies for students with associate degrees from career schools and colleges that have certificates of registration from the State Board of Career Colleges and Schools who transfer to state institutions of higher education; and

(6) A requirement of all state colleges and universities to fully implement the Course Applicability System, which is an internet-accessible database that provides information on course equivalency between participating institutions,[233] in advising transfer students.

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[232] *R.C. 3333.16, not in the bill.*

[233] *Information about the Course Applicability System is available at http://www.regents.state.oh.us/transfer.*

Local administration competency certification program

(R.C. 123.17)

Background

Am. Sub. H.B. 16 of the 126th General Assembly, the capital appropriations act for the 2005-2006 biennium, requires the State Architect to create a local administration competency certification program to certify state universities (including the Medical University of Ohio at Toledo and the Northeastern Ohio Universities College of Medicine) and state community colleges to administer capital facilities projects without oversight from the Department of Administrative Services (DAS).[234] To be certified under the program, an institution must select employees responsible for administering capital facilities projects to participate in the program. The program must provide instruction about the Public Improvements Law and DAS rules and policies regarding capital projects. Specifically, the program must cover (1) the planning, design, and construction process, (2) contract requirements, (3) construction management, and (4) project management.

The State Architect must award local administration competency certification to a state university or state community college that meets the following criteria:

(1) The institution applies for certification in the manner prescribed by the State Architect;

(2) The State Architect determines that a sufficient number of the institution's employees, representing a sufficient number of employee classifications, has completed the program to ensure that the institution's capital projects will be conducted successfully and in accordance with law;

(3) The institution's board of trustees provides written assurance that the institution will enroll additional employees in the certification program as needed to compensate for employee turnover;

(4) The State Architect determines that the employees who have completed the program demonstrate satisfactory knowledge of and competency in the requirements for administering capital projects;

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[234] *Am. Sub. H.B. 16 of the 126th General Assembly was signed by the Governor on February 3, 2005.*

(5) The board of trustees provides written assurance that the institution will conduct biennial audits of its administration of capital projects;

(6) The board of trustees agrees in writing to hold the state and DAS harmless for any claim of injury, loss, or damage resulting from the institution's administration of a capital project; and

(7) The institution pays a program fee.

The bill

The bill makes four changes to the local administration competency certification program. First, it directs the State Architect to establish the program by December 30, 2005. Second, it specifies that the program fee established by the State Architect is subject to approval by the Director of Budget and Management. The fee amount must cover the costs of implementing the program, including the costs for instructional materials and training sessions. Third, it specifies that the State Architect must determine that an institution's employees have "successfully" completed the certification program prior to awarding certification.

Finally, the bill requires the State Architect to revoke an institution's certification to administer its own capital facilities projects upon notification by the Board of Regents, which must determine whether the institution either (1) has not maintained a sufficient number of employees responsible for the administration of capital projects who have successfully completed the certification program and demonstrated satisfactory knowledge of and competency in the requirements for administering those projects or (2) is not conducting biennial audits of its capital projects. An institution's certification remains valid unless revoked for one of these reasons. When certification is revoked, the State Architect must provide written notification of that fact to the institution's board of trustees.

Award of state university printing contracts

(R.C. 3345.10)

Existing law

Existing law requires state universities, municipal universities, state medical colleges, community colleges, technical colleges, and state community colleges (changed by the bill to the currently defined term of, and hereafter referred to as, "state institutions of higher education") to establish competitive bidding procedures for the purchase of *printed material* and to award all contracts for printed material in accordance with those procedures. Those contracts

generally must be let to *vendors who have manufacturing facilities within Ohio*. If, however, the required printed materials are not available from such a vendor, an institution may purchase the materials from an out-of-state vendor. Vendors with manufacturing facilities within Ohio that would "execute the printing covered by a proposal" cannot be prohibited from submitting a proposal for consideration, and any such proposal that is properly submitted must be considered by a state institution of higher education.

Changes proposed by the bill

The bill continues to require state institutions of higher education (defined under the bill to mean each of the four-year state universities, the Northeastern Ohio Universities College of Medicine, the Medical University of Ohio at Toledo, and each community college, state community college, university branch, or technical college) to establish competitive bidding procedures for the purchase of printed material and to award all contracts for printed material in accordance with those procedures. But, it eliminates the remainder of the current law described above and instead mandates that the procedures an institution establishes require the institution to evaluate all bids received for contracts for the purchase of printed material in accordance with the *relevant criteria and procedures established in the "Buy Ohio" Law* that govern purchases by the Department of Administrative Services and other state agencies, when determining (a) whether bidders will produce the printed material at manufacturing facilities within Ohio or (b) whether out-of-state bidders *are located in states bordering Ohio or have a significant Ohio presence and, thus, are also qualified to bid*. One of these criterion is that a non-Ohio business cannot bid on a *contract for state printing* if the business is located in a state that excludes Ohio businesses from bidding on state printing contracts in that state. (See R.C. 125.09(C)--not in the bill.)

The institution must select, in accordance with the procedures it establishes, a bid for printed materials from among bidders that fulfill the relevant Buy Ohio Law criteria where sufficient competition can be generated within Ohio to ensure that compliance with this requirement will not result in paying an excessive price or acquiring a disproportionately inferior product. If there are two or more bids from among those bidders, the bill declares that there is sufficient competition to prevent paying an excessive price or acquiring a disproportionately inferior product.

National Guard Scholarship Reserve Fund

(R.C. 5919.341)

Under current law, the Ohio National Guard Scholarship Program provides scholarships to institutions of higher education in Ohio for a specified number of

eligible National Guard participants (R.C. 5919.34, not in the bill). The bill creates in the state treasury the National Guard Scholarship Reserve Fund for purposes of paying scholarship obligations in excess of the General Revenue Fund (GRF) appropriations made for that purpose.

The Ohio Board of Regents is required by the bill to certify to the Director of Budget and Management, not later than July 1 of each fiscal year, the unencumbered balance of the GRF appropriations made in the immediately preceding fiscal year for purposes of the National Guard Scholarship Program. Upon receipt of the certification, the Director is permitted to transfer an amount not exceeding the certified amount from the GRF to the National Guard Scholarship Reserve Fund. Moneys in the Reserve Fund are to be used to pay scholarship obligations in excess of the GRF appropriations made for that purpose. At the request of the Adjutant General, the Board of Regents is to seek Controlling Board approval to establish appropriations as necessary.

The bill authorizes the Director to transfer any unencumbered balance from the Reserve Fund to the GRF.

Kent State University's Columbus program in intergovernmental issues

(R.C. 3333.36)

The Columbus Program in Intergovernmental Issues is an internship program offered by Kent State University that awards scholarships of up to $2,000 per student. Under continuing law, the Chancellor of the Board of Regents may allocate to the program up to $70,000 in each fiscal year of funds appropriated to the Board.

The bill requires, rather than permits, the Chancellor to allocate up to $70,000, provided there are sufficient funds available from General Revenue Fund appropriations made to the Board that are unencumbered and unexpended. The bill also specifies that the Chancellor may use any General Revenue Funds appropriated to the Board that the Chancellor determines are available to fund scholarships for students in the program.

Insurance for treasurer of Shawnee State University

(R.C. 3362.02)

Current law requires the treasurer of Shawnee State University to post bond for an amount at least equal to the estimated amount of money which may come into the treasurer's control at any time. The bond must be approved by the Attorney General. The bill changes the minimum amount of the bond to the amount of money coming under the treasurer's *sole* control and eliminates the

necessity for the Attorney General to approve the bond. In addition, the bill provides the alternative for the treasurer to be *insured*, rather than bonded. The insurance would have to be for the same amount as required for the bond under current law, "less any reasonable deductible."

Montgomery County community college district

(R.C. 3354.25; Section 490.04)

Current (uncodified) law created a new community college district within Warren County and required the Board of Regents to issue a charter for a new community college to be operated jointly with the Warren County Career Center. A board of trustees, appointed by the Governor and the Warren County Board of County Commissioners was authorized only to carry out organizational activities and was not permitted to offer courses prior to July 1, 2005.

The bill repeals this section of uncodified law and instead changes the membership of the board of trustees of the Montgomery County community college district to include two residents of Warren County. The board of trustees currently consists of nine members (six appointed by the Montgomery County board of county commissioners and three appointed by the Governor). The bill permits the board of county commissioners of Warren County to appoint both of the new replacement members. One new appointee would replace the current gubernatorial appointee whose term next expires and one would replace the Montgomery County board of county commissioners appointee whose term next expires.

The bill specifically states that Warren County is not a part of the Montgomery County community college district, but exempts the newly constituted board of trustees from the general law requiring members of a community college district board of trustees to be residents of the community college district.

While the two Warren County trustees generally have the same voting rights as the other trustees, the bill restricts their participation in certain decisions by prohibiting them from voting on any of the following:

(1) Tax levies for Montgomery County and expenditure of revenue from those levies;

(2) Tuition for Montgomery County residents;

(3) Community college facilities in Montgomery County; and

(4) Community college programs offered in Montgomery County.

The bill specifies that four Montgomery County board members (instead of five) constitute a quorum when any of these matters are before the Board and that an affirmative vote of four Montgomery County trustees is necessary for approval of any of these matters. The bill states that if a Warren County member (presumably by mistake) does vote on any of these matters, the vote is not invalidated.

Because Warren County is not part of the district, the district cannot levy a tax in Warren County. Money from any tax levied in Montgomery County may be used solely to benefit Montgomery County residents attending Sinclair Community College (the community college operated by the district). The bill permits the district to "provide services in Warren County," but tuition charged to Warren County students must be at the same rate as for other Ohio residents who do not live in Montgomery County. (Current law specifically requires a higher tuition rate for non-residents of the community college district.)[235]

University enrollment caps

(R.C. 3345.19)

Under current law, the boards of trustees of (1) Bowling Green State University, (2) Kent State University, (3) Miami University, (4) Ohio University, and (5) the Ohio State University must observe enrollment caps pertaining to quarterly enrollment on a full-time equivalent basis, as defined by the Ohio Board of Regents. The caps apply only to the central campuses of each university.

The bill applies the current enrollment caps to students enrolled on a "full-time" basis, rather than a "full-time equivalent" basis as in current law.

Nurse Education Assistance Program loans

(R.C. 3333.28)

The Ohio Board of Regents operates an ongoing program, the Nurse Education Assistance Program, the purpose of which is to make loans to students enrolled in nurse education programs. Funds from the state treasury's Nurse Education Assistance Fund are used for the student loans and the program's administrative costs. The bill regulates the distribution of money from the Nurse Education Assistance Fund for the period from July 1, 2005 to January 1, 2012.

The bill provides that 50% of available funds are to be awarded as loans, each for a minimum of $5,000 per year, to registered nurses enrolled in

[235] *R.C. 3354.09(G), not in the bill.*

postlicensure nurse education assistance programs approved by the Board of Regents or that are offered by an institution certified by the Board. In order to be eligible for the loan, the applicant must provide the Board with a letter of intent to practice in Ohio as a faculty member for a prelicensure or postlicensure nursing program upon the completion of their academic program. If the borrower secures employment as a faculty member for an approved nursing education program within six months following graduation, the bill authorizes the Board to forgive the principal and interest of the student's loan at a rate of 25% per year, for a maximum of 4 years, for each year in which the borrower is so employed. These loans are awarded based on a student's expected family contribution, with preference given to those applicants with the lowest expected family contribution. However, the bill permits the Board to consider other factors that it believes to be relevant in ranking loan applications.

The bill provides that 25% of the available funds in the Nurse Education Assistance Fund are to be awarded to students enrolled in prelicensure nurse education programs for registered nurses and 25% of available funds are to be awarded to students enrolled in prelicensure professional nurse education programs for licensed practical nurses.

The bill directs the Board to determine the manner in which funds from the Nurse Education Assistance Fund are distributed after January 1, 2012.

The Ohio State University Board of Trustees membership

(R.C. 3335.02)

Under current law, the Ohio State University Board of Trustees is comprised of 11 members, two of whom are student members. The non-student members are appointed to nine-year terms and the student members are appointed to two-year terms.

The bill increases the number of trustees to 14 in 2005 and 17 in 2006. The initial terms of office for the three additional trustees appointed in 2005 begin on a date in 2005 that is selected by the Governor. One of these terms expires on May 13, 2009; one expires on May 13, 2010; and one expires on May 13, 2011, as designated by the Governor upon appointment. The initial terms of office for the three additional trustees appointed in 2006 begin on May 14, 2006. One of these terms expires on May 13, 2012; one term expires on May 13, 2013; and one term expires on May 13, 2014, as designated by the Governor upon appointment. After these initial terms, the terms of office are for nine years. The terms of student members are unaffected by the bill.

DEPARTMENT OF REHABILITATION AND CORRECTION

- Requires that necessary medical care for a person confined in a county jail or state correctional institution or in the custody of a law enforcement officer prior to confinement that cannot be provided by the jail's or institution's regular physician be provided by a medical provider at the Medicaid reimbursement rate.

- Creates the temporary 17-member Correctional Faith-Based Initiatives Task Force to study faith-based solutions to problems in the correctional system and to report to the Governor, Speaker of the House, and President of the Senate.

- Requires a sexually violent predator who has been released from prison to be supervised by the Adult Parole Authority with an active global positioning system device for the offender's entire life, unless the court removes the sexually violent predator classification from the offender.

- Specifies that the cost of administering the supervision of a sexually violent predator with an active global positioning system is funded from the existing Reparations Fund through the Sex Offender Supervision Fund, created by the bill.

Payment for necessary medical care of persons confined in a county jail or a state correctional institution at the Medicaid reimbursement rate

(R.C. 341.192)

If necessary medical care for a person confined in a county jail or state correctional institution or who is in the custody of a law enforcement officer prior to confinement in the county jail or state correctional institution cannot be provided by the regular physician of the jail or institution, the bill requires that the medical care be provided by a medical provider and requires the county or the Department of Rehabilitation and Correction to pay a medical provider for necessary care an amount not exceeding the authorized Medicaid reimbursement rate for the same service. The bill defines "necessary care" as medical care of a nonelective nature that cannot be postponed until after the period of confinement of a person who is confined in a county jail or state correctional institution or in the custody of a law enforcement officer without endangering the life or health of the person. It also defines "medical provider" as a physician, hospital, laboratory,

pharmacy, or other health care provider that is not employed by or under contract to a county or the Department of Rehabilitation and Correction to provide medical services to persons confined in the county jail or state correctional institution. It defines "medical assistance program" as the program established by the Department of Job and Family Services to provide medical assistance under Medicaid.

Correctional Faith-Based Initiatives Task Force

(Section 503.09)

The bill creates the temporary 17-member Correctional Faith-Based Initiatives Task Force consisting of two members of the House of Representatives, one appointed by the Speaker and one by the House Minority Leader; two members of the Senate, one appointed by the President and one by the Senate Minority Leader; two members appointed by the Governor; the Directors of Rehabilitation and Correction, Job and Family Services, Youth Services, Alcohol and Drug Addiction, and Mental Health or each director's designee; three members appointed by the Director of Rehabilitation and Correction who have experience or expertise in correction faith-based programs; one member appointed by the Director of Youth Services who has expertise or experience in the juvenile court system; the Executive Director of the Division of Criminal Justice Services or the Executive Director's designee; and one member appointed by the executive assistant in charge of the Governor's Office of Faith-Based and Community Initiatives. The task force is co-chaired by the Director of Rehabilitation and Correction or the director's designee and the Speaker's appointee and will meet at least once a month. The task force will study seamless faith-based solutions to problems in the correctional system, examine existing faith-based programs in persons in Ohio and other states and consider the adoption of other states' programs in Ohio, and consider the development of model faith-based penal institutions or faith-based units within penal institutions and faith-based programs to reduce recidivism, improve prison management, and deal with juveniles who have been held over to or are in the adult penal system or who have parents who are incarcerated. Within one year of its creation, the task force will submit a written report and recommendations to the Governor, Speaker of the House, and President of the Senate, whereupon it will cease to exist.

GPS monitoring of sexually violent predators

(R.C. 2743.191 and 2971.05)

The Sexually Violent Predator Law applies to a person who on or after January 1, 1997, is convicted of or pleads guilty to a sexually violent offense and

is found likely to engage in the future in one or more sexually violent offenses (R.C. 2971.01(H), *not in the bill*).[236]

Generally, a sexually violent predator who is sentenced to a prison term that is not life imprisonment without parole must serve the entire prison term in a state correctional institution and is not eligible for judicial release. However, if the court has control over the prison sentence and finds by clear and convincing evidence that the offender does not represent a substantial risk of physical harm to others, the court may issue an order modifying the prison term so that the offender need not serve the entire term in a state correctional institution but rather may serve the term in a manner that the court considers appropriate. Also, if the court finds by clear and convincing evidence that the offender is unlikely to commit a sexually violent offense in the future, the court may terminate the offender's prison term, subject to completion of a five-year period of conditional release. (R.C. 2971.05.)

The bill requires the Adult Parole Authority to supervise an offender whose prison term is modified or terminated, as discussed in the previous paragraph, with a global positioning system device during any time period in which the offender is not incarcerated in a state correctional institution. An offender is subject to supervision with a global positioning system device for life, unless a court removes the offender's classification as a sexually violent predator. The bill specifies that the cost of administering the supervision of a sexually violent predator with an active global positioning system is funded from the Reparations Fund, created pursuant to R.C. 2743.191, through the Sex Offender Supervision Fund, created by the bill.

RETIREMENT SYSTEMS

- Eliminates a requirement that an annual payment of $1.2 million be made by the state to the Ohio Police and Fire Pension Fund.

[236] *A "sexually violent offense" means a violent sex offense (a violation of R.C. 2907.02, 2907.03, former R.C. 2907.12, or R.C. 2907.05(A)(4)) or a designated homicide, assault, or kidnapping offense (a violation of R.C. 2903.01, 2903.02, 2903.11, 2905.01, or 2903.04(A) or an attempt to commit or complicity in committing one of these offenses) that the offender commits with sexual motivation. "Sexual motivation" means a purpose to gratify the sexual needs or desires of the offender. (R.C. 2971.01(B), (G), (J), and (L),* not in the bill.*)*

Elimination of appropriation to Ohio Police and Fire Pension Fund

(R.C. 742.36 (repealed) and 742.59)

Current law requires the state to make an annual payment of $1.2 million to the Ohio Police and Fire Pension Fund (OP&F). This payment, known as the "state contribution," is deposited in the Police Officers' Employers Contribution Fund and the Firefighters' Employers Contribution Fund, into which employer contributions and interest earned on the contributions are deposited. According to the Ohio Retirement Study Council, the state contribution was made by the state annually to the local police and firemen pension funds in existence prior to their consolidation into OP&F in 1967. The state contribution continued to be paid to OP&F and has remained unchanged since the consolidation in 1967.[237] The bill eliminates the state contribution.

STATE BOARD OF SANITARIAN REGISTRATION

- Requires the State Board of Sanitarian Registration to "provide" to registered sanitarians, rather than to mail, a list and applicable updates of a list of approved continuing education courses.

- Increases fees the Board charges for applications, renewals, and late fees for registration of sanitarians and sanitarians-in-training.

Notification of sanitarian continuing education courses

(R.C. 4736.11; Section 612.09)

Current law requires that at least once annually the State Board of Sanitarian Registration mail each registered sanitarian a list of approved continuing education courses and upon an individual's request, mail updates of the list to the requestor. The bill instead requires the Board to "provide" a list annually, therefore allowing the Board to use electronic means of communication. The bill also requires the Board to supply a list of "applicable" courses approved by the Board upon request.

Under the bill, these changes to the Board's notification for continuing education take effect October 1, 2005.

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[237] *Ohio Retirement Study Council. "Ohio Retirement Systems General Revenue Fund--Subsidies," p. 2 www.orsc.org, visited 02-07-05.*

Sanitarian fees

(R.C. 4736.12)

The bill increases the fees the State Board of Sanitarian Registration must charge as follows:

(1) For application as a sanitarian-in-training, from $75 to $80;

(2) For registration as a sanitarian by a sanitarian-in-training, from $75 to $80;

(3) For registration as a sanitarian by any other person, from $150 to $160;

(4) For renewal fees for registered sanitarians and sanitarians-in-training, from $69 to $74;

(5) For late applications for renewal, from $25 to $27.

OHIO STATE SCHOOL FOR THE BLIND/ SCHOOL FOR THE DEAF

- Allows the State School for the Blind and the State School for the Deaf to administer moneys donated or granted by federal or third parties for use in the education of students who are blind and visually-impaired or deaf and hearing-impaired.

- Creates a Student Account Fund for both the State School for the Blind and the State School for the Deaf as custodial funds for students' personal accounts.

- Creates the Educational Program Expenses Fund for the State School for the Deaf to collect moneys raised, given, or otherwise designated for its use to be disbursed in school and student activities.

- Creates the Student Activity and Work-Study Fund for the State School for the Blind to receive donations and other moneys for use in school operating expenses, student activities, and scholarships.

Administration of donations and federal funds

(R.C. 3325.10 and 3325.15)

Under existing law, the State School for the Deaf and the State School for the Blind are under the control and supervision of the State Board of Education and, therefore, apparently do not have legal authority to autonomously receive money from outside parties or the federal government (R.C. 3325.01, not in the bill). The bill authorizes the School for the Blind and the School for the Deaf to receive and administer any gifts, donations, or bequests relating to the education of blind and visually-impaired students or deaf and hearing-impaired students, respectively.

The bill also authorizes the School for the Blind and the School for the Deaf to receive and administer any federal funds as they relate to the education of blind or visually-impaired students or deaf and hearing-impaired students, respectively. Generally, federal funds for schools are passed through the Department of Education. However, this provision appears to allow for direct application for and administration of federal funds by the two schools.[238]

Custodial funds for students

(R.C. 3325.12 and 3325.17)

The bill establishes a custodial fund (in the custody of the Treasurer of State, but not part of the state treasury) that must consist of any money received from parents or guardians of students at the School for the Blind that is designated for the students to use in activities of their choice. Likewise, a similar fund is established for the students at the School for the Deaf. The bill directs the Treasurer of State to disburse money from the funds for the students on order of the superintendents of the schools or their designees.

The Treasurer of State may invest any portion of the funds not needed for immediate use, subject to the laws governing investment of state funds. Any investment earnings must be credited back to the funds and allocated among the student accounts in proportion to the amount invested from each student's account.

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[238] *According to the Office of Budget and Management, the School for the Deaf currently accepts two major federal grants. The first is the Virtual Reality Education for Assisted Learning grant, which uses innovative technology to help the disabled, including allowing students at the School for the Deaf to interact with students at other schools with similar technology. The grant has a $1 million appropriation for fiscal years 2006 and 2007 each. The second grant, $250,000 per year, funds the preschool for both hearing and hearing-impaired children that is operated by the School for the Deaf.*

State School for the Deaf Educational Program Expenses Fund

(R.C. 3325.16)

The bill creates within the state treasury the Educational Program Expenses Fund for the State School for the Deaf to hold moneys received by the School from donations, bequests, student fundraising activities, fees charged for camps and workshops, gate receipts from athletic contests, and the Student Work Experience Program operated by the School.[239] Any other money designated for deposit in the fund by the Superintendent of the School for the Deaf must also be credited to the fund. Under existing law, the State School for the Deaf is under the control and supervision of the State Board of Education (R.C. 3325.01, not in the bill). Notwithstanding that statute, the bill specifies that the State Board's approval is not required to designate money for deposit into the fund.

The State School for the Deaf must use money in the fund for educational programs, after-school activities, and expenses associated with student activities and clubs.

State School for the Blind Student Activity and Work-Study Fund

(R.C. 3325.11)

The bill creates within the state treasury the Student Activity and Work-Study Fund for the State School for the Blind to hold moneys received by the School from donations, bequests, and the school vocational program.[240] Any other money designated for deposit in the fund by the Superintendent of the School for the Blind must also be credited to the fund. Under existing law, the State School for the Blind is under the control and supervision of the State Board of Education (R.C. 3325.01, not in the bill). Notwithstanding that statute, the bill specifies that the State Board's approval is not required to designate money for deposit into the fund.

The State School for the Blind must use money in the fund for school operating expenses, including personal services (salaries), maintenance, and

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[239] *According to the Office of Budget and Management, the Student Work Experience Program is a catering business run by the students that generates approximately $2,500 per year. Donations generally amount to between $4,000 and $5,000 per year.*

[240] *According to the Office of Budget and Management, the vocational program generated approximately $5,300 for fiscal year 2005. Donation totals generally lie between $4,500 and $8,000 for any given year.*

equipment related to student support, activities, and vocational programs, and for providing scholarships to students for further training upon graduation.

SCHOOL FACILITIES COMMISSION

- Transfers responsibility for a program that provides school districts with interest-free loans for vocational classroom facilities from the State Board of Education to the Ohio School Facilities Commission.

- Excludes school districts that have received state facilities assistance, or are expected to receive such assistance within three fiscal years, from eligibility for the loan program, unless the loan is for equipment not covered by the Commission's programs.

- Renames the Vocational School Building Assistance Fund the Career-Technical School Building Assistance Fund.

- Authorizes the Director of Budget and Management to transfer investment earnings of the Education Facilities Trust Fund to the Ohio School Facilities Commission Fund to pay operating expenses of the Commission.

- Provides supplemental payments to relatively low-wealth school districts participating in the Classroom Facilities Assistance Program in order to equalize the amount they raise from their maintenance levies with the statewide average.

- Requires excess balances in the School District Property Tax Replacement Fund to be devoted to making those payments.

- Requires that, when a facility funded by the Ohio School Facilities Commission is proposed to be located on or within one mile of a state route or U.S. highway, the Commission must submit the project plans to the Director of Transportation for review and consider the Director's findings prior to approving the plans.

Background

The Ohio School Facilities Commission administers several programs that provide state assistance to school districts and community schools in the acquisition of classroom facilities. The main program, the Classroom Facilities Assistance Program (CFAP), is designed to provide each city, exempted village, and local school district with partial funding to address all of the district's classroom facilities needs. It is a graduated, cost-sharing program where a district's portion of the total cost of the project and priority for funding are based on the district's relative wealth. 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. Joint vocational school districts are served by the Vocational School Facilities Assistance Program, which is similar to CFAP.

Other programs have been established to address the particular needs of certain types of districts. The Exceptional Needs School Facilities Assistance Program provides low-wealth districts and "large land area" districts with funding in advance of their district-wide CFAP projects to construct single buildings in order to address acute health and safety issues. The Expedited Local Partnership Program permits most school districts that have not been served under CFAP to enter into agreements permitting them to apply the advance expenditure of *district* money on approved parts of their district-wide needs toward their shares of their CFAP projects when they become eligible for that program. The Accelerated Urban School Building Assistance Program allows Big-Eight school districts that are not yet eligible for assistance under CFAP to receive that assistance earlier than otherwise permitted.[241]

Career-technical school building assistance loan program

(R.C. 3318.47, 3318.48, and 3318.49; Section 315.06)

Current law authorizes the State Board of Education to make interest-free loans to school districts to help finance the construction, renovation, or purchase of vocational classroom facilities or the purchase of vocational education equipment. These loans are paid from the Vocational School Building Assistance Fund. Districts must meet eligibility criteria, including demonstrated financial need and the ability to repay the loan within 15 years (or five years for loans for equipment purchases). Upon approval of a district for a loan, the State Board and the district must enter into an agreement specifying the terms of the loan. If the district fails to repay the loan, the State Board may deduct the amount of the overdue payments from the district's state aid.

[241] *See R.C. Chapter 3318.*

The bill transfers responsibility for the loan program from the State Board to the Ohio School Facilities Commission. It also places two new restrictions on eligibility for the loans. First, it generally limits eligibility for a loan to school districts that, on the date of application, have not previously received state assistance under one of the Commission's programs and are not reasonably expected to receive such assistance within three fiscal years. The only exception is for districts applying for a loan solely to purchase vocational education equipment that is not an approved project cost under the Commission's programs. Second, a district must agree to comply with all applicable design specifications and policies of the Commission in the construction, renovation, or purchase of facilities or equipment paid for with the loan, unless the Commission waives this requirement. If a school district participating in the Expedited Local Partnership Program receives a loan, it cannot apply that loan toward the local resources the district spends prior to receiving assistance under CFAP.

The bill requires the Commission to operate the loan program in the same manner as under current law. Upon the request of the Executive Director of the Commission, the State Board must withhold state funds from a school district that misses a loan payment. The State Board must transfer the amount of the missed payment to the Commission within ten days after the request. The bill also changes the name of the fund from which the loans are paid to the Career-Technical School Building Assistance Fund.

To facilitate the transfer of the loan program to the School Facilities Commission, the Commission must develop and approve a transition plan in consultation with the Department of Education. All materials, assets, liabilities, and records of the Department necessary to implement the loan program must be turned over to the Commission along with all current and pending loans and appropriations, encumbrances, and funds associated with the program. These transfers must occur within 120 days after the bill's effective date. The Department of Education must continue to administer the loan program until the earlier of 120 days after the bill's effective date or the date on which the Commission approves the transition plan. Finally, the Department must provide the Commission with any administrative assistance it requires during the transition period.

Investment earnings of Education Facilities Trust Fund

(R.C. 3318.33)

The bill authorizes the Director of Budget and Management to transfer investment earnings of the Education Facilities Trust Fund to the Ohio School Facilities Commission Fund. (The Education Facilities Trust Fund receives the portion of the tobacco master settlement agreement that is to be used to pay the

state's share of the construction, renovation, or repair of elementary and secondary schools.[242])

Background

Under continuing law, the operational expenses of the Ohio School Facilities Commission are paid from the Ohio School Facilities Commission Fund. Moneys in the fund may be used for (1) personnel and administrative expenses, (2) evaluations of classroom facilities, (3) preparation of building design specifications, (4) project management services, and (5) other purposes necessary for the Commission to carry out its duties. Continuing law already authorizes the Director of Budget and Management to transfer investment earnings of the Public School Building Fund, which is used to implement classroom facilities projects, and the School Building Program Assistance Fund, which covers the state share of facilities projects, to the Ohio School Facilities Commission Fund.

Equalization of maintenance levies

(R.C. 3318.18, 5727.84, and 5727.85)

The bill provides a supplemental payment to relatively low-wealth city, local, and exempted village school districts participating in the Classroom Facilities Assistance Program in order to equalize the amount they raise from the requisite half-mill maintenance levy.

Under continuing law, school districts receiving state school building assistance are required, as a condition of receiving the assistance, to raise money locally to pay for the cost of maintaining the facilities constructed with state assistance. Generally, the money must be raised by levying a one-half-mill property tax (equal to 0.05%, or $1 for every $2,000 in taxable value) for at least 23 years, but school districts levying a permanent improvement tax, certain other forms of school district property tax, or a school district income tax may apply the proceeds of that tax toward the maintenance levy requirement (so long as the purpose of the applied levy is not inconsistent with paying maintenance expenses). The maintenance levy requirement is in addition to, and separate from, each school district's local contribution to the construction costs of the building project.

The bill provides a supplemental payment to school districts that raise less local revenue per pupil than the average school district in the state, beginning July 2006. The effect of the payment is to allow each school district ranking below the statewide average in terms of property valuation per pupil to have as much maintenance money for its SFC-assisted project as the average school district in

[242] *See R.C. 183.02(F) and 183.26, not in the bill.*

the state. Specifically, the supplemental payment equals the district's enrollment (formula ADM) times one-half mill multiplied by the difference between (1) the average per-pupil valuation throughout the state and (2) the district's per-pupil valuation.

The equalization payment also is available for school districts that have entered into a project agreement with the SFC before July 2006 if their per-pupil valuation is below the state average. In such cases, the computation of the district's valuation pupil is made on the basis of the district's valuation per pupil and the statewide average as of September 1, 2006.

The comparison of a school district's valuation per pupil with the statewide average is determined at a single point in time, when the district comes up to the top of the ranking and enters into its project agreement with the School Facilities Commission. From that time forward until the 23-year maintenance levy requirement expires, no update of a district's relative valuation per pupil is made, so the amount of the supplemental payment does not change even if the district's relative valuation per pupil increases or decreases, either because of subsequent changes in enrollment or property wealth.

The Department of Education must compute the statewide average valuation per pupil and each school district's valuation per pupil by July 1, 2006, and provide them to the School Facilities Commission. Then, by July 1 of each year beginning in 2007, the Department must compute the statewide average valuation per pupil and the valuation per pupil of each school district that has not entered into a project agreement and provide the resulting figures to the School Facilities Commission. The Commission must use those computations to determine eligibility for the equalization payments and the amount of those payments. Computations do not have to be made for school districts that opt to delay levying the maintenance tax under an Expedited Local Partnership Program agreement until the district comes up to the top of the assistance rankings and thereby becomes eligible to receive building assistance.

Equalization payments are to be made in the fourth quarter of each fiscal year until a district's maintenance levy requirement expires. Districts must credit the payments to their Classroom Facilities Maintenance Fund and use the money only to pay for maintaining SFC-assisted facilities.

A special state fund is created from which equalization payments are to be made. The fund, to be named the "Half-mill Equalization Fund," is to receive transfers from the School District Property Tax Replacement Fund whenever the balance in the equalization fund is insufficient to make all the equalization payments or whenever there is a surplus in the replacement fund after all property tax replacement payments have been made. Under current law, surpluses in the

replacement fund are to be distributed on a per-pupil basis among all school districts, including joint vocational school districts, and spent for capital improvements. If there is a surplus balance in the equalization fund after all equalization payments have been made, the School Facilities Commission may request that the Controlling Board transfer a "reasonable amount" of the surplus to the Public School Building Fund for implementation of classroom facilities projects. Interest accruing to balances in the equalization fund is to remain to the credit of the fund.

Project plan submission to ODOT

(R.C. 3318.091)

The bill requires that when project plans submitted to the Ohio School Facilities Commission for its approval propose to locate a school facility on, or within one mile of, a state route or a United States highway, the Commission must submit the plans to the Director of Transportation. The Director must review the plans to determine (1) the feasibility of the proposed ingress and egress to the facility, (2) the traffic circulation pattern on roadways around the facility, and (3) any improvements that would be necessary to conform the roadways to standards adopted by the Department of Transportation or state or federal law. The Director must provide a written summary of the findings to the Commission, which must consider the findings in deciding whether to approve the plans.

SECRETARY OF STATE

- Requires notary publics to provide the Secretary of State with notice of (1) any changes to a notary's name or address and (2) the effective date of a notary's resignation of commission.
- Makes a conforming change in the law that moved responsibility for the appointment and commission of railroad company and hospital police officers from the Governor to the Secretary of State.

Notary public name or address change and resignation

(R.C. 147.05, 147.10, 147.11, 147.12, and 147.371)

Existing law provides for the registration of notary publics with the Ohio Secretary of State, fees for obtaining a commission or a duplicate commission in

the event of loss, a prohibition against acting after a commission has expired and a penalty, and a statement about the effect of an official act done after a commission has expired. The bill requires that a properly commissioned notary public notify the Secretary of State and the appropriate clerk of courts within 30 days after legally changing the notary's name or address on a form prescribed by the Secretary of State. The Secretary of State then must issue a duplicate commission as a notary public after receipt of the properly completed, prescribed name change form and a fee of $2.

Under the bill, a notary, other than an attorney, who resigns a notary public commission must deliver to the Secretary of State, on a form prescribed by the Secretary of State, a written notice indicating the effective date of resignation. The bill prohibits a notary public from performing notary acts knowing that the notary has resigned a commission, and specifies a penalty fine of up to $500 for a violation. However, the bill also specifies that any official act done by a notary public after the notary resigns is valid as if done during the notary public's term of office.

Commissions for special police officers

(R.C. 4973.171)

Under continuing law, as amended by Am. Sub. H.B. 95 of the 125th General Assembly, the Secretary of State is authorized to appoint and commission police officers for banks and building and loan associations, railroad companies, certain companies under contract with the United States Atomic Energy Commission, and hospitals. Prior to Am. Sub. H.B. 95, the Governor was responsible for these appointments. (R.C. 4973.17, *not in the bill*.)

Current law prohibits a person from being appointed or commissioned as a railroad or hospital police officer if the person has been convicted of or pleaded guilty to a felony after January 1, 1997. However, this current provision states that the Governor (instead of the Secretary of State) is the officer responsible for ensuring that a felon is not appointed or commissioned as a railroad or hospital police officer. The bill conforms the provision to the previous statutory change that moved responsibility for the appointment and commission of railroad company and hospital police officers from the Governor to the Secretary of State, so that the Secretary of State is responsible for ensuring that a felon is not appointed or commissioned as a railroad or hospital police officer.

BOARD OF SPEECH-LANGUAGE PATHOLOGY AND AUDIOLOGY

- Requires an individual who applies for an audiologist license on or after January 1, 2006, to have a doctor of audiology degree or the equivalent as determined by the Board of Speech-Language Pathology and Audiology.

- Permits an audiologist initially licensed or certified in another state before January 1, 2008, to obtain an audiologist license in this state even though the audiologist has a master's degree in audiology rather than a doctor of audiology degree.

- Eliminates a provision of current law regarding the renewal of a speech-language pathologist or audiologist license via exemption.

Licensure of audiologists

(R.C. 4753.03, 4753.06, 4753.071, 4753.08, and 4753.09)

The bill makes several changes to the licensure law for audiologists. First, starting January 1, 2006, the bill requires individuals seeking licensure as an audiologist to have obtained a doctor of audiology degree instead of a master's degree in audiology. Second, the bill permits an audiologist initially licensed or certified in another state prior to January 1, 2008, to obtain an audiologist license in this state even if the individual has only a master's degree in audiology. Finally, the bill eliminates a provision of current law regarding the renewal of a speech-language pathologist or audiologist license via exemption.

Licensure requirements

Under current law, an individual is eligible for a license to practice audiology if the individual holds, at a minimum, a master's degree in audiology. As of January 1, 2006, the bill would require an individual seeking licensure as an audiologist to obtain a doctor of audiology degree before the licensure could be issued.[243]

[243] *The doctor of audiology degree must be from an audiology program accredited by an organization recognized by the U.S. Department of Education and operated by a college*

The bill also requires any individual who has a master's degree in audiology but not a doctor of audiology degree who applies for licensure as an audiologist before January 1, 2006 to prove that the individual meets certain levels of professional experience determined by rule. In order for the applicant to begin to obtain professional experience, the applicant must first obtain sufficient supervised clinical experience as determined by the Board OF speech-Language Pathology and Audiology and pass the licensure examination administered by the Board.[244]

Licensure for individuals previously licensed in another state

Under law retained by the bill, the Board is required to waive the examination, educational, and professional experience requirements for any applicant for an audiology license who presents proof of current certification or licensure in good standing in a state that has standards at least equal to the standards for licensure in effect in Ohio. This procedure is referred to as licensure by exemption. Under the bill, to obtain an Ohio license, an applicant from another state must present proof of both of the following:

(1) The applicant is currently certified or licensed in a state that has standards at least equal to the standards for licensure as an audiologist in Ohio that were in effect on December 31, 2005 and that certification or license is in good standing;

(2) The applicant obtained that certification or licensure not later than December 31, 2007.

Removal of license renewal provision

The bill removes a provision of current law setting the requirements for license renewal for individuals initially licensed by exemption. Under current law, a license may not be renewed six years after the initial date of licensure for a person who obtained the license by exemption unless that person presents proof of the following:

(1) Completion of a bachelor's degree with a major in audiology or speech-pathology with at least 18 hours of courses related to the major;

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or university accredited by a regional or national accrediting organization recognized by the Board of Speech-Language Pathology and Audiology.

[244] The clinical experience has to have been obtained in an accredited college or university, a cooperating program of a college or university, or another program approved by the board.

(2) Completion of at least 150 hours of appropriately supervised clinical experience in audiology or speech-pathology.

DEPARTMENT OF TAXATION

I. Commercial Activity Tax

- Imposes a new business privilege tax on the basis of the annual gross receipts of all forms of business organization having taxable gross receipts in excess of $200,000, other than financial institutions, dealers in intangibles, insurance companies, affiliates of the foregoing, public utilities, and nonprofit organizations with no unrelated business taxable income.

- When fully phased in, the annual tax equals $175 on taxable gross receipts up to $1 million, plus 0.26% of taxable gross receipts in excess of $1 million, with the percentage subject to downward adjustment if revenue exceeds the target revenue.

- Devotes revenue to the state General Revenue Fund and, for the first 13 years, to reimburse school districts and other local taxing units for the exemption and phase-out of taxes on all business tangible personal property.

II. Corporation Franchise Tax

- Phases out the corporation franchise tax over five years for all corporations other than financial institutions and their majority-owned nonfinancial affiliates.

- Authorizes corporations that become subject to the commercial activity tax to offset some of the financial losses resulting from the loss of future net operating loss deductions in the computation of the franchise tax.

- Clarifies the corporation franchise tax treatment of LLCs and other associations treated as corporations under federal tax law.

- Provides for a final series of payments to the Recycling and Litter Prevention Fund during FY 2006 equal to $1.5 million from the General Revenue Fund, and specifies that future litter taxes paid by corporations

be used to fund recycling and litter prevention but not through the Recycling and Litter Prevention Fund.

- Limits the availability of the corporation franchise and personal income tax credits for purchases and installations of new manufacturing machinery and equipment to machinery and equipment purchased no later than June 30, 2005, and installed no later than June 30, 2006.

- Converts the existing tax credit program for purchases and installations of new manufacturing machinery and equipment into a grant program administered by the Department of Development.

- Permits telephone companies to claim the full amount of the tax credit for providing telephone service programs to aid the communicatively impaired during transition to the corporation franchise tax in tax year 2005.

III. Personal Income Tax

- Reduces personal income tax dollar amounts and rates by 21% over five years, beginning in 2005.

- Delays yearly inflationary adjustments to the income tax bracket dollar amounts until 2010.

- Eliminates the existing personal income tax deduction for tuition and fees paid to postsecondary educational institutions located in Ohio.

- Creates a nonrefundable personal income tax credit for taxpayers having adjusted gross incomes (less exemptions) of $10,000 or less.

- Makes taxation of trust income, which is currently scheduled to end with taxable years of a trust beginning in 2004, permanent.

- Modifies the definition of a "qualifying investment pass-through entity" as used in determining the taxable income of certain trusts.

- Specifies that the existing income tax credit for Ohio residents who incur out-of-state income tax liabilities is not available to taxpayers who deduct, or are required to deduct, their out-of-state income tax liabilities in computing their income tax bases.

- Specifies that C corporation shareholders are not indirect owners of the corporation's assets for the purpose of computing tax items, including tax items that could increase a nonresident shareholder's nonresident income tax credit by attempting to apply the corporation's apportionment factors to the shareholder's dividends.

- Specifies that the three-year apportionment requirement for nonresidents selling their interests in a pass-through entity applies only to closely held entities and applies even if the entity converts from being a pass-through entity to another organizational form within that three-year period.

IV. Property Taxes and Transfer Fees

- Eliminates the 10% rollback for real property that is not classified by the county auditor as "qualifying property," which is lands and improvements thereon that are used for residential or agricultural purposes.

- Provides that the county auditor must deposit one-half of the transfer fee in the state treasury to the credit of the General Revenue Fund.

- Exempts manufacturing equipment never before subject to taxation (other than as inventory) from taxation.

- Accelerates the current phase-down of the taxation of business inventory, compressing it into a four-year phase-out beginning in 2006.

- Phases out the taxation of all other business tangible personal property ("machinery and equipment" and "furniture and fixtures") over four years beginning in 2006.

- Reimburses school districts and other local taxing units for some of the revenue reductions caused by the bill's exemption and phase-out of business personal property taxation and for the accelerated phase-out of inventory taxation.

- Reimburses county auditors and county treasurers for the reduction in fees derived from property tax collections caused by the phase-out of tangible personal property taxes.

- Reduces the assessment rate on tangible personal property of electric companies, but taxes their patterns, jigs, dies, and drawings.

- Creates the Joint Legislative Tax Reform Impact Study Committee to study the effect on school districts and other local taxing units of the property tax phase-out and the commercial activity tax's capacity to replace lost revenues.

- Reduces the assessment rate on tangible personal property of electric companies.

- Specifies that when the Tax Commissioner certifies to the Department of Education information pertaining to public utility property taxes so that the Department can calculate state school aid to school districts, the Commissioner is to certify only those amounts pertaining to taxes that a public utility actually paid and did not withhold in connection with a petition for reassessment.

- Requires public utilities to make a binding election as to whether or not to pay contested property taxes at the time they file a petition for reassessment.

- Requires businesses that supply electricity to others as an incidental line of business to report the portion of their electricity supplying-related property in the same manner as public utility electric companies, and to continue paying taxes on that portion of the property even if it otherwise would be subject to the phase-out of taxes on machinery and equipment.

- Creates the Telecommunication Personal Property Tax Study Committee to review the equity of the various personal property tax rates applicable to different entities providing telecommunication services in the state and requires the committee to report to the General Assembly no later than December 31, 2005.

- Requires persons leasing tangible personal property to a public utility to report and pay the tax on the property even if the lease is not part of a sale and leaseback arrangement.

- Provides that a public utility property lessor must report and pay the public utility property tax on property leased to certain public utilities and interexchange telecommunications companies.

- Exempts property used to recover oil and gas from tangible personal property taxation, under certain circumstances.

- Accelerates the phase-out of state reimbursement for the $10,000 business tangible personal property tax exemption, ending in fiscal year 2009, rather than fiscal year 2012.

- Specifies how new or destroyed property is to be accounted for in the equalization of real property assessments.

- Establishes a procedure to determine how property tax replacement payments are to be made to school districts or joint vocational school districts that merge with or transfer territory to other districts.

- Changes the computation used to determine the amount of money deposited each year in the Property Tax Administration Fund.

- Allows the state, when it acquires property, to pay estimated taxes on the property at the time of acquisition rather than subsequent to the acquisition as in current law.

- Reduces the rate at which interest accrues on personal property tax underpayments and overpayments.

V. Sales and Use Taxes

- Establishes a permanent sales and use tax rate of 5½%, effective July 1, 2005.

- Maintains the 0.9% discount rate for vendors and sellers.

- Revises the sales and use tax law to conform to the Streamlined Sales and Use Tax Agreement by modifying the sourcing requirements for multiple points of use sales, sales of direct mail, and leases or rental of property requiring periodic payments.

- Revises the exemption certificate law to conform to the Agreement and modifies the statute of limitations for assessing sales or use taxes when an exemption certificate is provided.

- Changes the medical definitions to clarify exemptions in existing law.

- Adopts the Agreement's definition of "price" and its tax treatment of the price of bundled transactions.

- Revises existing definitions of various telecommunications services so that they conform to those in the Agreement.

- Establishes a time period for adopting resolutions calling for county permissive sales tax levies.

- Creates a mechanism for returning vendor license fees to counties when the fees are paid to the Tax Commissioner as part of the statewide registration system.

- Establishes procedures to govern the transmission to the Treasurer of State of sales and use taxes collected by common pleas court clerks with applications for certificates of title for motor vehicles, watercraft, and outboard motors.

- Makes sales of investment metal bullion and investment coins subject to sales and use taxes.

VI. Kilowatt-hour and Natural Gas Consumption Taxes

- Increases the kilowatt-hour tax by approximately 30% for all electric distribution companies, except self-assessors.

- Increases from 4% to 5% the percentage rate paid on the total price of all electricity distributed to a commercial or industrial self-assessor.

- Places a limitation on the amount of additional revenue from the increase in the kWh tax on the price component of the tax.

- Places an annual revenue cap on the kWh tax by rebating excess revenue to self assessors through a kWh tax credit.

- Provides that municipal electric utilities may not retain for their general funds any part of the tax rate increase.

- Revises the percentages of kilowatt-hour tax revenues credited to the General Revenue Fund (GRF), Local Government Fund, Local Government Revenue Assistance Fund, School District Property Tax Replacement Fund, and Local Government Property Tax Replacement Fund.

- Eliminates the threshold amounts that trigger the transfer of kilowatt-hour and natural gas consumption tax revenues from the GRF to other funds.

VII. Cigarette Taxes

- Increases the existing cigarette excise tax from 27.5 mills (2.75¢) per cigarette to 62.5 mills (6.25¢) per cigarette, effective July 1, 2005.

- Expresses existing prohibitions against possessing or trading unstamped cigarettes in terms of the quantity of cigarettes instead of their wholesale value.

- Specifies who may affix tax stamps and establishes rules governing the shipping of unstamped cigarettes through Ohio.

- Requires cigarette manufacturers and importers to maintain records regarding cigarette sales and purchases, and establishes record keeping requirements that pertain to manufacturers, importers, wholesalers, and dealers.

- Allows for public disclosure of certain records pertaining to cigarette sales and purchases.

- Requires every manufacturer and importer shipping cigarettes into or within Ohio to file a monthly report with the Tax Commissioner.

- Authorizes the Tax Commissioner to destroy cigarettes held for sale or distribution in violation of Ohio's cigarette laws.

- Authorizes the Tax Commissioner to inspect facilities and records belonging to cigarette manufacturers, importers, wholesalers, and retailers, and requires that any inspection not conducted during normal business hours be conducted pursuant to a search warrant.

- Requires that cigarette manufacturers and importers obtain a license from the Tax Commissioner before trafficking in cigarettes in Ohio.

- Specifies additional information to be included in applications for licenses to traffic in cigarettes in Ohio.

- Specifies from whom, and to whom, manufacturers, importers, wholesalers, and retailers may buy and sell cigarettes.

- Makes it an offense punishable by a fine up to $1,000 to transport or cause to be shipped cigarettes to a person other than an "authorized recipient of tobacco products."

- Makes it an offense punishable by a fine of up to $1,000 to ship cigarettes into Ohio in containers or wrappings that are not plainly marked as containing cigarettes.

- Specifies that if a person cannot reasonably obtain cigarettes at a retail location in Ohio, the person may apply to the Tax Commissioner for a "consent for a consumer shipment."

- Revises the untaxed cigarettes that a person may transport within Ohio without the prior consent of the Tax Commissioner, from $60 of value (wholesale) of untaxed cigarettes to 1,200 untaxed cigarettes.

VIII. Other Taxation Provisions

- Modifies distributions to local governments from the Local Government Fund, the Local Government Revenue Assistance Fund, and the Library and Local Government Support Fund, with the result that some distributions are frozen at 2005 levels and others are reduced.

- Specifies that the capital investment projects for which a job retention credit may be granted includes project costs paid after December 31, 2006.

- Permits the Tax Credit Authority to continue entering into agreements for job retention tax credits after June 30, 2007, which, under current law, is the date on which the authority to enter into such agreements is scheduled to expire.

- Extends the job creation tax credit to domestic and foreign insurance companies.

- Constructively eliminates the additional estate "sponge" tax and generation-skipping tax provisions by revising references to the Internal Revenue Code in those provisions, so that they generally incorporate any

federal estate tax changes that have been made since the last time those provisions were amended.

- Repeals the estate tax deduction for family-owned businesses.

- Adopts a general definition of the Internal Revenue Code for purposes of the state estate tax law.

- Authorizes county auditors to use moneys in real estate assessment funds for estate tax enforcement.

- Authorizes the Tax Commissioner to appoint agents to administer real property and manufactured and mobile home taxes and specifies that these agents may be compensated from moneys in county real estate assessment funds.

- Phases-out the grain handling tax by taxable year 2007.

- Extends the existing tax credit for loans made to the program fund administered by the Venture Capital Authority to qualifying dealers in intangibles and public utilities, and clarifies the amount of refundable and nonrefundable venture capital tax credits that may be claimed by taxpayers for each tax reporting period.

- Revises motor fuel use tax permit and filing requirements.

- Clarifies the treatment of expenses and losses of a pass-through entity subject to the pass-through entity withholding tax.

- Narrows the definition of who is considered a dealer in intangibles for the purpose of the tax imposed on dealers in intangibles.

- Authorizes the Tax Commissioner to require a social security number, employer identification number, or other identifying information from persons filing documents with the Department of Taxation.

- Permits boards of county commissioners to levy additional lodging taxes and pledge them to convention and visitors' bureaus for the construction of convention centers, and authorizes boards to also pledge such tax revenues to community improvement corporations for that purpose.

- Requires that the Tax Commissioner administer a temporary tax amnesty program from November 1, 2005, to December 15, 2005, under which taxpayers who voluntarily pay outstanding state taxes, tangible personal property taxes, county and transit authority sales taxes, and school district income taxes are not required to pay penalties associated with those outstanding taxes, are excused from having to pay one-half of the interest accruing on the taxes, and are immune from criminal and civil action in connection with the taxes.

- Changes certain criminal penalties under the tax code to conform them more closely to penalties prescribed in the criminal code.

- Provides procedures whereby dealers in intangibles may petition for, and receive, review of penalties imposed upon them in connection with their reporting and payment of the dealers in intangibles tax.

- Requires the Tax Commissioner to adopt a rule clarifying the definition of "dealer in intangibles" for purposes of the dealer in intangibles tax.

- Requires the Tax Commissioner to prepare quarterly reports summarizing tax revenue associated with the travel and tourism industry.

- Permits a school district or educational service center that failed to file or failed to file in a timely manner a refund application for the portion of the motor vehicle fuel tax that became effective on July 1, 2003, that the school district or educational service center paid through the purchase of motor fuel on or after that date to file a refund application with the Tax Commissioner during the 60 days following the bill's effective date.

I. Commercial Activity Tax

New business privilege tax

(R.C. 140.08, 5703.052, 5703.053, 5703.70, 5739.01(H); Chapter 5751.; Section 557.09)

The bill imposes a new tax on businesses and other entities that generate business income, beginning July 1, 2005. The tax, referred to as the "commercial activity tax," is an excise tax like the existing corporation franchise tax, but is imposed on the basis of gross receipts instead of net worth or net income. The tax

is imposed for the privilege of engaging in an activity (including illegal activity) conducted for or resulting in gain, profit, or income. The bill states that the tax is not a transactional tax (such as a sales tax) and is not subject to the federal law limiting the power of states to tax nonresident entities engaged in interstate commerce. That federal law (Public Law No. 86-272) prohibits states from imposing net income (or net income-measured) taxes on nonresident entities whose only activities in a state are soliciting orders for sales of tangible personal property that are accepted outside the state and shipped from a point outside the state.

The tax is expressly made part of the "price" for purposes of the sales and use taxes, with the effect being that, if a taxpayer under the new tax makes sales subject to the sales and use tax, the price on which the sales or use tax is based is computed without any deduction for the commercial activity tax paid by the taxpayer-seller even if the tax is billed or invoiced or separately stated.

The bill specifies that only the person receiving gross receipts is subject to the commercial activity tax and the tax may not be billed, invoiced, or otherwise directly imposed upon another person, including a purchaser. However, the bill explicitly permits a person subject to the tax to recover the tax by including it in the price of a good or service.

The first tax return and tax payment are due February 10, 2006, based on gross receipts for the six-month period running from July 1 through December 31, 2005.

Persons subject to tax

(R.C. 5751.01(A) and (D))

The tax applies to any legal person with more than $200,000 in annual taxable gross receipts in Ohio regardless of the person's legal or organizational form (e.g., corporation, partnership, limited liability company, S corporation, sole proprietor, business trust, estate, etc.), but does not apply to "excluded persons" or to the state, its agencies, its instrumentalities, and its political subdivisions. Nonprofit organizations are subject to the tax, but only if they generate unrelated business income that is taxable for federal income tax purposes. If a nonprofit organization, including an organization operating a hospital, does generate federally taxable unrelated business income, the organization is taxed on the basis of the taxable gross receipts underlying that income.[245]

[245] *Under federal income tax law, nonprofit organizations are taxed on income unrelated to their principal business, such as net income from a gift shop operated by a hospital.*

Persons not subject to the tax

(R.C. 5751.01(E))

To be an "excluded person," and therefore exempted altogether from the commercial activity tax, a legal person must either have annual taxable gross receipts under $200,000, or be a member of one of the following classes of legal persons:

- Banks and other financial institutions
- Bank holding companies
- Financial holding companies
- Savings and loan holding companies
- Financial services companies subject to state or federal supervision
- An affiliate of any of the foregoing if the affiliate is majority-owned or controlled by the foregoing (directly, or indirectly through other persons), provided the affiliate is engaged in a business considered by the Federal Reserve Board to be financial in nature or incidental thereto[246]
- Insurance companies subject to and paying the insurance company tax
- Affiliates of such insurance companies if the affiliate is majority-owned or controlled by the insurance company (directly, or indirectly through other persons), so long as the insurance company is authorized to do business in Ohio

[246] *This includes lending, exchanging, transferring, investing for others, or safeguarding money or securities; insurance; providing financial, investment, or economic advisory services; issuing or selling instruments representing interests in pools of assets permissible for a bank to hold directly; underwriting, dealing in, or making a market in securities; and holding an interest in a nonfinancial company through a securities affiliate or insurance company as part of an underwriting, merchant banking, or investment banking activity for the purpose of gaining from appreciation in the nonfinancial company's value, and whereby the financial holding company does not routinely manage or operate the nonfinancial company other than to obtain a return on the investment. However, if a nonfinancial company is held as part of a merchant banking activity, the nonfinancial company is not an excluded person.*

- Any person having the sole purpose of facilitating or servicing a securitization[247] or similar transaction for or by any of the foregoing (including the affiliates)

- Public utilities subject to and paying the public utility excise tax (but see below for combined companies)

- Dealers in intangibles subject to and paying the dealers in intangibles tax

In the first six months the tax is in effect, the $200,000 exclusion applies to a person's taxable gross receipts during all of 2005.

Except for public utilities, dealers in intangibles, insurance companies, and persons with $200,000 or less in taxable gross receipts, all excluded persons that are C corporations remain subject to the corporation franchise tax levied under R.C. Chapter 5733. on the basis of net income or net worth.

Receipts of combined companies (i.e., companies that are both electric companies and either natural gas or heating companies) are excluded from the commercial activity tax with regard to the company's taxable gross receipts that are directly attributed to an activity that is subject to the public utility excise tax (i.e., nonelectric activities).

Computation of tax

(R.C. 5751.01, 5751.03, 5751.031, 5751.032, 5751.033, and 5751.034; Sections 557.09 and 557.13)

Initial rate. The tax is levied in two parts: on the first $1 million in annual taxable gross receipts, the tax is $175; on taxable gross receipts in excess of $1 million per year, the tax is 0.26% (2.6 mills per dollar) of those taxable gross receipts, at least for the first two and one-half years the tax is imposed. After the first two and one-half years, the 0.26% rate will be reduced if the tax generates revenue in excess of current projections (see "***Rate reduction***," below).

[247] *"Securitization" is defined as the transfer of assets to another person that issues securities backed by the right to receive payment from the asset--e.g., selling loans to a person that packages loans into securities offered in a secondary market.*

Revenue limitation and future rate adjustments

(R.C. 5751.032)

The bill imposes a permanent revenue limitation on the commercial activity tax by establishing periodic revenue targets and crediting revenue in excess of the target toward the following year's revenue target. The tax rate for the following year is reduced by the same percentage that the excess revenue is of the following year's revenue target.

Once the tax is fully phased in, beginning with fiscal year 2011, the revenue limitation is established at $1.594 billion per fiscal year. In the first five years of the tax, a revenue limitation is established for three time periods. The periodic revenue limitations are as follows:

Period	Revenue limit
July 2005 through February 2007	$677 million
March 2008 through February 2009	$1.107 billion
July 2009 through June 2010	$1.548 billion
Fiscal years after fiscal year 2010	$1.594 billion

The revenue limitation is implemented by requiring the Tax Commissioner to determine the amount of revenue collected during each period and the amount by which the revenue was reduced because of the tax rate reduction over that period. (This second amount does not apply to the first period because there is no rate reduction during that period.) The Tax Commissioner also must compute any adjustment in the tax rate that would have been required to generate the actual revenue plus the amount by which revenue was reduced because of the tax rate reduction. The Tax Commissioner must report these amounts to the General Assembly, and also must certify to the Director of Budget and Management any revenue collected during that period in excess of the target revenue. The Director then must transfer that amount from the General Revenue Fund to a newly created Commercial Activity Tax Reduction Fund.

Balances credited to the Commercial Activity Tax Reduction Fund for a period, including any investment earnings, are in effect applied toward the revenue target for the following period, and the tax rate is reduced by percentage that the balance in the fund is of the following period's revenue target. For example, if the balance in the fund after the end of fiscal year 2011 is $47,820,000 (3% of the fiscal year 2012 target of $1.594 billion), the tax rate for calendar year 2012 is reduced by 3% of 0.26%, resulting in a tax rate of 0.02522% for calendar year

2012. The percentage is to be computed by the Director of Budget and Management. During the calendar year in which the tax rate is reduced, quarterly transfers are made from the Commercial Activity Tax Reduction Fund to the General Revenue Fund to compensate the General Revenue Fund for the effects of the tax rate reduction.

The bill states the General Assembly's intent to conduct regular reviews of the bill's revenue limitations to lower them or to reduce the tax rate or both. A review would be conducted every two years in conjunction with the biennial budget deliberations, and any lowering of the revenue limit or tax rate (below those already provided in the bill) would be made on the basis of the tax's yield, the condition of the state economy, and any savings from Medicaid reform or other policy initiatives.

Phase-in of tax. In recognition of the new tax being imposed at the same time as the bill phases out the corporation franchise tax (as explained elsewhere in this analysis), the bill phases in the tax for all taxpayers other than those having annual taxable gross receipts of less than $1 million (and thus owing only $100).

The tax becomes effective July 1, 2005. In the first six months of the tax, the tax equals $88 on the first $500,000 in taxable gross receipts during that period, plus 0.06% on taxable gross receipts in excess of $500,000 during that period. (This rate results from multiplying the permanent 0.26% rate by 23%, which is the initial phase-in percentage--see immediately below--then rounding to the nearest hundredth per cent.) The return for that semiannual period must be filed not later than February 10, 2006.

In the first quarter of 2006, only 23% of the tax as normally computed is payable; for the four quarters running from April 2006 to April 2007, 40% of the normal tax is due; for the four quarters running from April 2007 to April 2008, 60% of the normal tax is due; for the four quarters running from April 2008 to April 2009, 80% of the normal tax is due; from April 2009 on, the tax is payable on the basis of the permanent computation of 0.26% (or the adjusted rate, as explained above).

"Taxable gross receipts"

(R.C. 5751.01, 5751.011(C)(2), and 5751.032)

The tax applies to taxable gross receipts, which is the portion of a taxpayer's total gross receipts sitused to Ohio under the bill's situsing provisions. Total gross receipts is defined broadly to include the total amount realized by a person, without deduction for the cost of goods sold or other expenses, in transactions that contribute to the production of that person's gross income. It

includes the fair market value of any property and any services received and any debt transferred or forgiven as consideration, and the total amount realized with regard to unrelated business taxable income of a tax-exempt organization. The bill specifies certain examples of gross receipts, including:

- Amounts realized from the sale, exchange, or other disposition of property
- Amounts realized from performing services
- Amounts realized from rentals, leases, or other use or possession of the taxpayer's property or capital

Taxpayers that are members of a commonly owned or controlled group of businesses must include their taxable gross receipts from sales or other transactions with other members of the group unless they elect to be treated on a consolidated basis (as explained below).

Gross receipts are to be calculated using the same accounting method a taxpayer uses for federal income tax purposes. If a cash discount is allowed and is actually taken in a transaction, the discount is deductible from gross receipts. Likewise, the value of returns and similar allowances is deductible. And if a taxpayer is owed an uncollectible payment from a transaction that was previously included in taxable gross receipts the taxpayer previously paid tax on, the uncollectible amount is deductible as a bad debt. (The bill sets forth specific rules for what constitutes such a bad debt in R.C. 5751.01(F)(3)(c).)

Excluded amounts. The bill specifically excludes the following amounts from the calculation of gross receipts:

- Interest income not generated in the taxpayer's ordinary course of business, except interest on credit sales
- Dividend income, distributions received from corporations, and distribution or proportionate shares from a pass-through entity, unless those items are generated in the taxpayer's ordinary course of business
- Receipts from assets for which capital gain treatment is given under federal law, but without regard to the holding period, unless generated in the taxpayer's ordinary course of business

- Proceeds attributable to the repayment, maturity, or redemption of the principal of a loan, bond, mutual fund, certificate of deposit, or marketable instrument

- The principal amount received under a repurchase agreement or on account of any transaction properly characterized as a loan to the taxpayer

- Contributions received by a trust, plan, or other arrangement, any of which is described in section 501(a) of the Internal Revenue Code, or to any of the various pension and deferred compensation plans given favorable federal tax treatment

- Compensation received by an employee, former employee, or the employee's legal successor for services rendered to or for an employer, including fringe benefits and expense reimbursements

- Proceeds from the issuance of the taxpayer's own stock, options, warrants, puts, or calls, or from the sale of the person's treasury stock

- Proceeds on the account of payments from life insurance policies

- Gifts or charitable contributions, membership dues, and payments received for educational courses, meetings, meals, or similar payments to a trade, professional, or other similar association; fundraising receipts if excess receipts are donated or used exclusively for charitable purposes; and proceeds received by a nonprofit organization except those proceeds realized with regard to its unrelated business taxable income

- Damages in excess of amounts that, if received without litigation, would be gross receipts

- Property, money, and other amounts received or acquired by an "agent" on behalf of another in excess of the agent's commission, fee, or other remuneration; the bill defines an "agent" as a person authorized by another person to act on its behalf to undertake a transaction for the other, including, without limitation, a person who receives a fee to sell financial instruments, retaining only a commission from a transaction with the other proceeds from the transaction being remitted to another person, acts as an agent of the Division of Liquor Control, or issues hunting, fishing, and other

ODNR-issued licenses and permits, or is a licensed lottery sales agent

- Receipts realized by a person engaged in selling securities in excess of the gain on the sale of those securities

- Tax refunds and other tax benefit recoveries

- Pension reversions

- Contributions to capital

- Sales and use taxes collected by a vendor (including out of state vendors)

- Federal and state excise taxes on cigarettes and other tobacco products paid by any person (exclusion applies only to the various classes of dealers, distributors, manufacturers, or sellers of cigarettes or tobacco products)

- Federal and state excise taxes on liquor and other alcoholic beverages paid by any person (exclusion applies only to agency stores and the various classes of permit holders; exclusion for agency stores does not apply to agency compensation)

- Federal and state excise taxes on gasoline, diesel, or other motor vehicle fuel (exclusion applies only to the various classes of motor fuel dealers)

- Receipts received by a new or used motor vehicle dealer from sales or other transfers to another motor vehicle dealer for the purpose of resale by the purchasing dealer, but only if sales or other transfers are based on the transferee's need to meet a specific customer's preference for a motor vehicle

- Receipts received relating to the sale or transmission of electricity through the use of an intermediary regional transmission organization approved by the Federal Energy Regulatory Commission, even if those receipts are from and to the same member of a group that has elected to be a consolidated elected taxpayer (see "***Taxable gross receipts***," above)

- Receipts for loan or credit account management services provided to a financial institution, if the institution and the recipient of the receipts are at least 50% owned or controlled by common owners

- Receipts from selling accounts receivable to the extent the receivable was included in the seller's taxable gross receipts

- Receipts from administering anti-neoplastic drugs and other cancer chemotherapy, biologicals, therapeutic agents, and supportive drugs in a physician's office to patients with cancer

- From commissions of horse racing permit holders, any amounts that must be paid to or collected by the Tax Commissioner as a tax under the horse racing law and amounts specified under that law that are required to be used as purse money

- Property, money, and other amounts received by a professional employer organization from a client employer, in excess of the administrative fee charged by the professional employer organization to the client employer

- Amounts received from the sale of tangible personal property that is delivered or shipped from a "qualified foreign trade zone area" that includes a "qualified intermodal facility." A "qualified foreign trade zone area" is a warehouse or other place of delivery or shipment that is located within one mile of the nearest boundary of an international airport and that also is located, in whole or in part, within a foreign trade zone. A "qualified intermodal facility" is a transshipment station capable of receiving and shipping freight through rail transportation, highway transportation, and air transportation.

- Funds received by a mortgage broker under a "table-funded" or "warehouse-lending" mortgage loan. (Table-funded mortgage loans are those in which a mortgage broker is initially the payee under the loan, but the loan is assigned to a lender upon closing of the loan. Warehouse-lending mortgage loans are those in which the mortgage broker, using funds advanced by a lender, funds a mortgage loan under which the broker is initially the payee, but the broker transfers the loan to the lender or a secondary market investor before the first scheduled loan payment.)

Also excluded from the calculation of gross receipts are any receipts the taxation of which is prohibited by the Ohio Constitution, the United States Constitution, or federal law.

A real estate broker's fees are included in taxable gross receipts only to the extent a taxpayer is acting as a real estate broker and the fees are retained by the broker and not paid to another broker or an associated salesperson.

Situsing receipts to Ohio. Only gross receipts situsing to Ohio are taxable. The bill prescribes specific situsing rules for various kinds of gross receipts. The following kinds of receipts are situsing to Ohio as follows:

- Gross rents and royalties from real property located in Ohio
- Gross rents and royalties from tangible personal property to the extent it is located or used in Ohio
- Gross receipts from the sale of real property located in Ohio
- Gross receipts from the sale of tangible personal property if the property is received in Ohio by the purchaser; if the tangible personal property is delivered by common carrier of by other means of transportation, the place where the property is ultimately received after all transportation has been completed will be considered the place where the purchaser receives the property, even when the purchaser accepts property in Ohio and then transports the property "directly or by other means" to a location outside Ohio; tangible personal property that is delivered into a foreign trade zone located in Ohio to a person in that zone, solely for purposes of further delivery out of state and without regard to the passage of title and to repackaging for further shipping purposes, is situsing to the location at which the person or person's affiliated customer completes delivery of the property to a location outside Ohio (in uncodified law, Section 557.13(C))
- Gross receipts from the sale, exchange, disposition, or other grant of the right to use trademarks, trade names, patents, copyrights, and similar intellectual property to the extent the receipts are based on the amount of use of the property in this state; if receipts are based on the right to use property and the payor has the right to use the property in Ohio, receipts are situsing to Ohio to the extent they are based on the right to use the property in Ohio
- Gross receipts from the sale of transportation services by a common or contract carrier are situsing to Ohio in proportion to the mileage traveled by the carrier during the tax period on roadways, waterways, airways, and railways in Ohio to the mileage traveled by the carrier during the tax period on roadways, waterways, airways,

and railways everywhere; with the Tax Commissioner's prior written approval, a common or contract carrier may use an alternative situsing procedure for transportation services

- Gross receipts from dividends, interest, mortgage loan interest and fees, the sale of loans, credit card interest and fees, the sale of credit card receivables, credit card issuer's reimbursement fees, merchant discount receipts, mortgage loan servicing fees, and investment asset income (to the extent those receipts are taxable under the CAT) are sitused to Ohio to the extent they would be included in the numerator of a financial institution's apportionment fractions under the franchise tax if the CAT taxpayer were a financial institution subject to the franchise tax

- Gross receipts from the sale of services not otherwise sitused, and all other gross receipts not otherwise sitused as provided above, are sitused to Ohio in the proportion to the purchaser's benefit in Ohio as compared to the purchaser's benefit everywhere; where the benefit ultimately is received is "paramount" in determining this proportion

- Gross receipts from the sale of electricity and electric transmission and distribution services are sitused in the same manner as under the corporation franchise tax (see R.C. 5733.059)

If the foregoing situsing rules do not fairly represent a taxpayer's gross receipts in Ohio, alternative rules may be applied with the Tax Commissioner's approval. The Tax Commissioner also may prescribe rules providing alternative situsing rules for all taxpayers or for a subset of taxpayers in a particular trade or business.

Uncodified law in the bill (Section 557.13) provides that it is the intent of the General Assembly that the situsing provision be applied in a manner that is consistent with and identical to the situsing provisions that apply to the corporation franchise tax, and must be interpreted and applied by the Tax Commissioner in a manner that is consistent with the body of case law addressing the situsing of sales for purposes of the sales factor as determined under the corporation franchise tax law, and in a manner that is consistent with the Tax Commissioner's prior treatment of the sales factor situsing law for taxpayers under the corporation franchise tax law.

Property brought into Ohio within one year after receipt

(R.C. 5751.031)

The bill requires that a person include as taxable gross receipts the value of property the person transfers into Ohio for the person's own use within one year after the person receives the property outside Ohio, unless the Tax Commissioner determines that the transfer was not carried out for purposes of avoiding the commercial activity tax. Likewise, in the case of a consolidated or combined taxpayer (see "***Consolidation of related taxpayers***" and "***Combined taxpayer group***," below), the taxpayer must include as taxable gross receipts sitused to Ohio the value of property that any of the taxpayer's members transferred into Ohio for use by the taxpayer's members within one year after the taxpayer received the property outside Ohio, unless the Commissioner determines that the transfer was not done for purposes of avoiding the commercial activity tax.

Use of revenue

(R.C. 5751.20 to 5751.22)

Revenue from the new commercial activity tax will be for the General Revenue Fund (GRF) and to reimburse school districts and other local taxing units for the phase-out of taxes from business machinery and equipment and for the acceleration in the phase-out of taxes from business inventories. Initially, revenue from the new tax is to be credited to the newly created Commercial Activities Tax Receipts Fund, and thence divided between the GRF and the newly created School District Tangible Property Tax Replacement Fund (SDRF) and Local Government Tangible Property Tax Replacement Fund (LGRF) in specified proportions until the end of fiscal year 2018, as follows:

Division of CAT revenue			
Fiscal Year	**GRF**	**SDRF**	**LGRF**
2006	67.7%	22.6%	9.7%
2007	0%	70.0%	30.0%
2008	0%	70.0%	30.0%
2009	0%	70.0%	30.0%
2010	0%	70.0%	30.0%
2011	3.6%	67.5%	28.9%
2012	9.5%	67.5%	23.0%
2013	14.4%	67.5%	18.1%

Division of CAT revenue			
Fiscal Year	**GRF**	**SDRF**	**LGRF**
2014	17.7%	67.5%	14.8%
2015	20.6%	67.5%	11.9%
2016	24.0%	67.5%	8.5%
2017	27.4%	67.5%	5.1%
2018	30.8%	67.5%	1.7%
2019 and on	100%	0%	0%

The revenue credited to the School District Tangible Property Tax Replacement Fund and Local Government Tangible Property Tax Replacement Fund is to be used, in addition to GRF money, to provide the reimbursement to school districts and other local taxing units for the phase-out of taxes on business personal property, as explained under the heading "***Phase-out of tax on business personal property***."

Tax credits

(R.C. 122.17, 122.171, 5751.50 to 5751.52, and 5751.98)

The bill permits four of the credits that currently apply to the corporation franchise tax and personal income tax to be applied against the new commercial activity tax:

- The refundable jobs creation credit (currently R.C. 122.17)
- The nonrefundable jobs retention credit (R.C. 122.171)
- The nonrefundable credit for qualified research expenses (R.C. 5733.351)
- The nonrefundable credit for research and development loan payments (R.C. 5733.352)

The credits would apply against the new commercial activity tax for tax reporting periods beginning on or after July 1, 2008. The credits can no longer be claimed against the corporation franchise tax and personal income after that point; however, to the extent the credits have not been fully utilized with respect to those taxes, the credits can be carried forward and used against the commercial activity tax.

If a corporation or other person claims such a credit against the franchise or income tax, the person may not claim the same credit amount against the new tax.

Generally, the same terms and conditions that govern the credits under the corporation franchise tax and personal income tax law also govern the credits under the new tax law. One difference, however, is that some taxpayers will pay the new tax on a quarterly basis, and they may apply the credits against quarterly tax payments. However, any applicable limit on carryforward periods or on credit maximums are still on an annual basis, meaning they are not affected by the quarterly payment requirement of some taxpayers.

With respect to the job creation and job retention tax credits, the bill specifies that unused portions of those credits automatically convert to commercial activity tax credits in 2008 without any action having to be taken by the Tax Credit Authority, which, under continuing law, administers those credits. A converted job creation or retention credit applies to those calendar years in which end the remaining taxable years for which the credit was originally approved.

Registration and fee

(R.C. 5751.04)

Every legal person subject to the new tax must register with the Tax Commissioner by November 15, 2005, or within 30 days after first becoming subject to the tax. The registration must be made on a form provided by the Commissioner that must include various items of information about the taxpayer (enumerated in R.C. 5751.04(A)).

A one-time $15 registration fee is payable if the person registers electronically; if registration is not done electronically, the fee is $20. The fee is credited toward the first tax payment due. If a person registers after the due date, an additional fee may be charged of up to $100 per month, up to $1,000, which the Tax Commissioner may abate; the additional fee is not credited against the tax due. Persons that would otherwise be subject to the tax but that begin business after November 30 in any year are exempt from the fee, as are persons that do not surpass the $200,000 taxable gross receipts threshold as of December 1.

Registration fee collections are credited to a fund to defray the Commissioner's costs of administering the tax, including promoting awareness of the tax during its initial implementation.

If a taxpayer's registration is revoked, the taxpayer is barred from engaging in business in Ohio thereafter, and may not re-register without paying outstanding taxes, penalties, and interest. Nor may any other person holding at least a 10%

interest in that taxpayer's business re-register or register anew unless those amounts are paid.

Any person required to have an active registration but that does not is prohibited from generating taxable gross receipts in Ohio; a violation may be prosecuted as a first degree misdemeanor for a first offense, or a fourth degree felony for subsequent offenses. Any person that fails to comply with the bill's registration, tax payment, fee payment, or tax filing requirements is prohibited from conducting business in Ohio. Violation of any provisions of the new chapter, other than the prohibition against generating taxable gross receipts without a registration, carries a fine of up to $500 or imprisonment of up to 30 days, or both.

The Tax Commissioner is required to make an electronic list available to the public identifying registered taxpayers, as well as of persons whose registration has been revoked or cancelled within the preceding four years.

Consolidation of related taxpayers

(R.C. 5751.01(B) and 5751.011)

The bill permits a group of commonly owned or controlled persons (including the common owner) to elect to file and pay the tax on a consolidated basis in exchange for excluding otherwise taxable gross receipts from transactions with other members of the group. For purposes of the election, common ownership or control means at least an 80% ownership interest, or a more-than-50% ownership interest, as chosen by the group, but each group may apply only on the percentage-ownership tests. Also, foreign corporations may be included if they satisfy the group's chosen ownership test, but the group must include either all such foreign corporations or none.

Excluded persons not subject to the tax may be included in the group, but there is no tax payable on behalf of the excluded members; their inclusion is for the purpose of exempting receipts that taxable persons in the group receive from their dealings with excluded persons under common ownership or control. However, a dealer in intangibles that is under common ownership and control with a financial institution or insurance company (i.e., a "qualifying dealer") may not be included in a consolidated group.

Gross receipts related to the sale or transmission of electricity through the use of an intermediary regional transmission organization approved by the Federal Energy Regulatory Commission must be excluded from taxable gross receipts even if the receipts are from and to the same member of the group.

Each member of the group remains jointly and severally liable for the tax and associated penalties and interest, and each member is subject to assessment.

Once made, the consolidation election means the group must file as a single taxpayer for eight consecutive calendar quarters so long as at least two members satisfy the ownership and control criteria. The election rolls over to the following eight quarters unless the group cancels it before the expiration of the election. If a person is no longer under common ownership or control with the group, it must report and pay the tax as a separate taxpayer, as part of a combined taxpayer group (see below), or as a member of a different consolidated group that is eligible to file and pay tax on a consolidated basis. If a person is added to the group after the election, it must be added to the consolidated group for the purpose of paying and reporting the tax on a consolidated basis, and the group must notify the Tax Commissioner of the addition with the next return filed. The exemption for taxpayers having taxable gross receipts of $200,000 or less does not apply to consolidated taxpayers.

If a consolidation election is in effect for a group, the group must report and pay the tax on the basis of every member's taxable gross receipts, including members that do not have substantial nexus with Ohio. For this purpose, substantial nexus means a person satisfies at least one of the following criteria:

- It owns or uses a part or all of its capital in Ohio
- It holds a certificate of compliance authorizing it to do business in Ohio
- It owns or leases property in Ohio
- It has one or more individuals performing services in Ohio
- It has "bright-line presence" in Ohio (explained below)
- It otherwise has nexus with Ohio to the extent that the state may require the person to remit the tax under the United States Constitution.

The bill defines "bright-line presence" as any one of the following conditions:

- Having, at any time during the calendar year, property in Ohio with an aggregate value of at least $50,000 (where value equals original cost or, in the case of rented property, eight times the net annual rental charge)

- Having, during the calendar year, payroll in Ohio of at least $50,000 (including any amount subject to Ohio income tax withholding, any other compensation paid to an individual under the supervision or control of the person for work done in Ohio, and any amount the person pays for services performed in Ohio)

- Having, during the calendar year, taxable gross receipts in Ohio of at least $500,000

- Having in Ohio, at any time during the calendar year, at least 25% of the person's total property, total payroll, or total sales

- Being domiciled in Ohio either as an individual or for corporate, commercial, or other business purposes.

The Tax Commissioner may require one of the members of a consolidated group to undertake the registration and tax payment requirements on behalf of the group. The registration fee is $20 for each member of the group, up to a maximum per-group fee of $200. The consolidation election must be made on a form prescribed by the Tax Commissioner, and must be accepted by the Commissioner if the group satisfies the criteria for making such an election.

Combined taxpayer group

(R.C. 5751.012)

Any group of persons subject to the new tax and also being under common ownership or control, but not electing to be treated as a consolidated taxpayer group, will be treated as a "combined taxpayer" group. Like a consolidated taxpayer group, a combined taxpayer group must report and pay the tax as a single taxpayer, and each member of the group is jointly and severally liable for the group's tax and any associated penalty and interest and is individually subject to assessment. A combined group must register as a group and is subject to the same $20 per member registration fee as a consolidated group, up to a maximum of $200. And the exemption for taxpayers having taxable gross receipts of $200,000 or less does not apply to combined taxpayers. However, unlike members of a group making the consolidation election, members of a combined taxpayer group may not exclude receipts arising from transactions between the members.

Tax periods

(R.C. 5751.04)

The commercial activity tax is computed on the basis of "tax periods," which are either calendar quarters or calendar years for each taxpayer depending

on the taxpayer's level of taxable gross receipts. Taxpayers generating annual taxable gross receipts of $1 million or more are required to pay the tax on a quarterly basis. Such taxpayers are referred to as "calendar quarter taxpayers." They must report and pay the tax within 40 days after the end of each quarterly period, which follows the calendar quarters: January through March, April through June, July through September, and October through December. The Tax Commissioner is authorized to approve alternative filing and payment schedules for a taxpayer if the taxpayer shows the need for an alternative. The Tax Commissioner also can adopt alternative filing and payment rules for groups of taxpayers without the taxpayers seeking approval.

Taxpayers having estimated annual taxable gross receipts of less than $1 million may report and pay the tax on a calendar year basis, but only if the taxpayers make an election to do so. Such taxpayers are referred to as "calendar year taxpayers." The tax report and payment is due within 40 days after the end of the calendar year. Once a calendar year taxpayer's annual taxable gross receipts reach $1 million, the taxpayer must begin to report and pay on a quarterly basis in the following year, and must continue to do so until the taxpayer again qualifies for annual reporting and payment and receives written approval to do so from the Tax Commissioner.

General administration

(R.C. 5751.04, 5751.06, 5751.07, 5751.08, 5751.081, 5751.09, 5751.10, 5751.11, 5751.12, and 5751.99)

Payments. Tax payments must be made either quarterly or annually, depending on the taxpayer's status as a quarterly taxpayer or annual taxpayer. Calendar quarter taxpayers must make payments electronically and, if the Tax Commissioner requires, file returns electronically. Such taxpayers may be excused from the electronic filing and payment requirement by applying to the Tax Commissioner, who may excuse taxpayers for good cause.

Penalties and interest. Penalties are imposed for not filing and paying the tax or for not filing and paying on time. The penalty for late filing and payment is up to $50 or 10% of the amount due, whichever is greater. In the case of underpaid tax, the penalty is up to 15% of the underpayment, including in those cases where payment is made after the taxpayer is notified of the deficiency by the Tax Commissioner. Penalties also may be imposed if taxpayers required to file and pay electronically fail to do so. The penalty is up to 5% of the payment due for the first two occasions, and 10% for subsequent occasions.

A penalty also may be imposed if a taxpayer fails to switch from being a calendar year taxpayer to a calendar quarter taxpayer once the taxpayer's annual

taxable gross receipts exceeds $2 million (giving such taxpayers a $1 million margin of error). The penalty may be up to 10% of the amount of taxable gross receipts over $2 million.

A penalty is imposed on persons who have been notified of the registration requirement but that fail to register within 60 days. The penalty is up to 35% of the tax found to be due.

Interest accrues against unpaid amounts at the normal statutory rate of 3 percentage points above the current yield on marketable United States government securities having a remaining maturity of three years or less. The interest accrues from the due date to the time the tax is paid or an assessment is issued, whichever occurs first.

The Tax Commissioner is authorized to waive penalties, but not interest, and is authorized to adopt rules governing waiver of penalties.

Refunds. Refunds are available for overpaid, illegal, or erroneously paid taxes. Refunds must be applied for within the four-year statute of limitations on the issuance of assessments. Interest accrues on refund amounts at the same rate as it accrues on underpayments. Refunds also may be issued to a taxpayer that, "because of the operation of that taxpayer's business operations," is not able to exclude the full $1 million excludable annually from the 0.26% tax on receipts above $1 million. A refund may not be issued to any registered taxpayer for the $175 tax on the first $1 million in annual receipts unless the taxpayer cancels the registration before February 10 of the current year.

As with other taxes, refunds must be offset for various debts to the state, including unpaid workers compensation premiums, unemployment compensation contributions, unpaid motor vehicle fees, and incorrect medical assistance payments. The debt must be "final," meaning that any time for appealing the debt has expired without an appeal being made.

Anyone who files a fraudulent refund claim is subject to a fine of up to $1,000 or imprisonment for up to 60 days or both.

Assessments. As with other taxes, the Tax Commissioner may issue assessments for unpaid or unreported commercial activity taxes. The assessment provisions are substantially the same as for other state taxes, except the statute of limitations for issuing an assessment is four years unless fraud or failure to file is involved, in which case there is no time limit. (For comparison, the limit under the corporation franchise tax is three years except for fraud or failure to file, and the limit for personal income taxes is four years except for fraud or failure to file.) Also, since the commercial activity tax is based on gross receipts, the Tax

Commissioner may use sampling in conducting an audit of a taxpayer if the Tax Commissioner has information indicating a tax underpayment. The sampling must be conducted for a representative period of time; the Commissioner must make a good faith effort to agree with the taxpayer on selecting the representative sample, and the sampling method must be one that has been prescribed by administrative rule.

Winding-up obligations. Taxpayers quitting business or transferring their business to another person must pay the commercial activity tax and file a return within 15 days afterwards. The purchaser or other successor, if there is such a person, must withhold enough money from the purchase money to cover the tax obligation until the former owner produces a receipt showing payment of the tax due or a certificate showing no tax is due. The purchaser is liable for any unpaid tax due.

Recordkeeping. The bill authorizes the Tax Commissioner to prescribe recordkeeping requirements applicable under the commercial activity tax. The bill also requires the Tax Commissioner to make an electronic list available to the public identifying registered taxpayers, as well as persons whose registration has been revoked or cancelled within the preceding four years. Information is confidential taxpayer information, except for the listing of registered taxpayers.

Violations. If any person fails to pay the tax, file required returns, or pay any penalty due, the Tax Commissioner must provide the person with notice of the Commissioner's intent to revoke the person's registration under the commercial activity tax (see "***Registration and fee***," above). The revocation is stayed if the person files a written objection to the revocation within 30 days after receiving notice from the Commissioner. The Commissioner's final determination revoking a registration may be appealed to the Board of Tax Appeals. The revocation becomes effective after all time limits for appeal have expired. At that point, the Commissioner must certify the revocation to the Secretary of State, who is required to do one of the following:

(1) If the person is a corporation, cancel the person's articles of incorporation;

(2) If the person is a foreign corporation, cancel by proper entry the certificate of authority of the person to conduct business in Ohio;

(3) If the person is a domestic limited liability partnership, cancel the registration of the person by making a notation to that effect on the records of the person in the possession of the Secretary of State.

Once the Secretary of State makes a cancellation, all of the powers, privileges, and franchises conferred upon the person cease. The bill prohibits a person from attempting to exercise any of these powers, privileges, and franchises after their cancellation.

The Secretary of State must immediately notify the person who is subject to a cancellation of the action taken by the Secretary of State and must forward a certification of the action taken to the county recorder of the county in which the person's principal place of business is located. The county recorder is required to record the certification and is not permitted to charge a fee for the recordation.

A person whose registration under the commercial activity tax has been revoked is prohibited from attempting to reregister until all applicable taxes, penalties, and interest have been paid. In addition, no person having a 10% or greater direct or constructive ownership interest in such a person may reregister as an owner of a trade or business subject to the commercial activity tax unless and until all applicable taxes, penalties, and interest have been paid.

If a person pays all outstanding taxes, penalties, and interest, the person is entitled to regain the rights, privileges, and franchises cancelled by the Secretary of State. To regain those rights, privileges, and franchises, the person must file with the Secretary of State a certificate from the Commissioner stating that the person has complied with all of the requirements of the commercial activity tax and has paid all outstanding taxes, penalties, and interest. The person must also pay any fees required by the Secretary of State.

Criminal penalties

Criminal penalties are imposed for filing a fraudulent refund claim (as described above under "***Refunds***"), and for any other violation, which is punishable by a fine of up to $500 and imprisonment for up to 30 days.

Challenging legality of tax's application

(R.C. 5751.31)

The bill provides for taxpayer appeals directly to the Ohio Supreme Court when the Tax Commissioner issues a final determination in response to a taxpayer's challenge of an assessment and the primary issue raised by the taxpayer is one arising under provisions in the Ohio Constitution governing the General Assembly's power to tax incomes and to levy excise and franchise taxes;[248] the manner in which the General Assembly may use moneys derived from motor

[248] *Section 3, Article XII Ohio Constitution.*

vehicle license and fuel taxes;[249] or the General Assembly's power to tax food for human consumption.[250] The appeal must be made within 30 days after issuance of the final determination.

If the bill's "bright-line presence" provision as a standard conferring Ohio nexus status on a person is ruled unconstitutional under the Ohio Constitution or United States Constitution, the bill authorizes the Tax Commissioner to require taxpayers having taxable gross receipts in Ohio to provide a report detailing purchases they make from persons that are not registered to collect the commercial activity tax, provided that taxpayers located in Ohio cannot be required to report purchases from a seller that total less than $2 million in a calendar year. The bill requires that the Tax Commissioner adopt rules to enforce the reporting requirement.

II. Corporation Franchise Tax

Phase-out of corporation franchise tax

(R.C. 5733.01(G))

The bill phases out the corporation franchise tax over five years, beginning with tax year 2006, for all corporations other than banks and other financial institutions, and certain kinds of affiliates of financial institutions, insurance companies, and other corporations that are not subject to the commercial activity tax because they are "excluded persons" (these persons are described under the commercial activity tax heading). Excluded persons that are corporations (or associations treated as corporations) will continue to be subject to the franchise tax.

The phase-out begins with tax year 2006, and the tax is eliminated for corporations other than financial institutions and certain other "excluded persons" beginning in 2010. The phase-out is made in even increments over the intervening five years. In 2006, corporations will owe the greater of the minimum tax (which is $50 or $1,000, depending on a corporation's employment level and gross receipts)[251] or 4/5 of the difference between the tax they would otherwise owe under current law and their nonrefundable credits. If a credit carryforward is allowed for a nonrefundable credit that exceeds annual tax liability, the excess is

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[249] *Section 5a, Article XII, Ohio Constitution.*

[250] *Section 13, Article XII, Ohio Constitution.*

[251] *The $1,000 minimum tax applies to any corporation having at least 300 employees or worldwide gross receipts of $5 million or more.*

computed before the 4/5 phase-out fraction is applied. If a corporation has refundable credits for the year, or is entitled to the credit for taxes paid on its behalf by a partnership of which it is a partner, the refundable or partnership credit is not included in the calculation.[252] Likewise, in 2007, corporations owe the greater of the minimum tax or 3/5 of the difference between the tax they otherwise would owe and the nonrefundable credits and credit carryforwards from a prior year. Refundable credits and the partnership credit are not included in that amount. The fractions decline in 2008 to 2/5 and in 2009 to 1/5, and any refundable credits and the partnership credit are treated in the same fashion in each of those years.

The bill adjusts the computation of the withholding tax imposed on pass-through entities with certain corporate owners to reflect the phase-out of the corporation franchise tax. The withholding tax is computed on the basis of the total of the franchise tax liabilities of corporate owners not having a taxable presence in Ohio (other than their ownership of the entity). The computation of the withholding tax reflects the phase-out of the corporation franchise tax, but only for those corporate owners that qualify for the phase-out. If a corporate owner of the entity remains subject to the franchise tax, its share of the withholding tax computation remains as under current law, without applying the phase-out fractions.

The corporation franchise tax has been in place in one form or other since 1902. Originally a tax on net worth, in 1971 it was converted to a tax computed on the basis of net worth or net income, with taxpayers owing tax on whichever computation yields the higher tax. Currently, the rate of tax on general business corporations is 0.4% of net worth or 8.5% of net income (5.1% on the first $50,000).

Credit for unused net operating loss deductions, other deferred tax assets

(R.C. 5751.53 and 5751.98; Section 612.21)

The bill permits corporations becoming subject to the commercial activity tax to claim a tax credit offsetting some of the financial statement effects of losing the ability to deduct net operating losses (NOLs) and some other deferred tax

[252] *The partnership credit, known as the "qualifying pass-through entity tax credit," is a credit for taxes paid by a partnership or other pass-through entity on behalf of a corporation that is a partner or owner of a pass-through entity doing business in Ohio, but which itself does not have any taxable business presence in the state. A withholding tax is imposed on the partnership or entity to ensure that the corporation satisfies its franchise tax obligation. The corporation then is credited with the tax paid on its behalf by the entity against the corporation's individual franchise tax obligation.*

items in computing their corporation franchise tax, which is being phased out for most corporations. Under current law, corporations may deduct NOLs in computing their net incomes and may carry forward any excess NOL that is not applied to the current year's net income computation. NOLs may be carried forward for up to 20 years.[253]

Under accounting standards that govern accounting for income taxes, a taxpayer's ability to carry forward currently unused NOLs, credits, and other tax items that may reduce future tax liabilities create what are known as deductible temporary differences. The differences arise from differences in tax accounting versus financial accounting for events--such as an operating loss--that affect financial statements in a different time period from when they affect the tax accounts. To the extent these differences under the current tax laws are more likely than not to result in a future reduction in tax liability (e.g., a future deduction of a currently unused NOL), they represent a deferred tax asset on the current balance sheet.[254] But if some event occurs that causes the asset to lose value before its value is fully realized--for example, because of a reduction in future tax rates or the disallowance of the deduction because of legislative changes--the loss of value must be recorded on current financial statements when the event occurs, which results in a current net accounting loss.

The bill addresses the current financial effects of such losses by permitting some corporations to claim a credit against the commercial activity tax. In effect, the credit represents a new deferred tax asset to offset some of the financial loss resulting from the devaluation of the existing deferred tax asset. The credit is available only for corporations that have a qualifying NOL carryforward, after adjusting for other net temporary differences (see below), that exceeds $50 million. (In effect, the bill's credit offsets only losses from the disallowance of NOL carryforwards to the extent those losses exceed $50 million.) If a corporation filed a combined franchise tax report with related corporations for tax year 2005, the $50 million threshold is divisible among the corporations filing the combined report. The NOL carryforward amount after deducting the $50 million amount is termed the "disallowed Ohio net operating loss carryforward."

NOL carryforwards qualify for the credit computation only if they are otherwise deductible in the upcoming franchise tax year 2006 and to the extent

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[253] *However, the carryforward period is 15 years if the NOL is incurred before August 6, 1997.*

[254] *Conversely, temporary differences likely to be realized as a future tax liability--known as taxable temporary differences--represent deferred tax liabilities.*

they do not exceed the carryforward available from franchise tax year 2005.[255] The amount of such NOL carryforwards for which the credit may be claimed is the lesser of the following amounts minus $50 million: (1) the NOL carryforward amount (reflecting apportionment to Ohio), or (2) the NOL carryforward amount the corporation used to compute the corporation's deferred tax asset on its books on the last day of the corporation's taxable year that ended in 2004. This second amount is to be determined net of the valuation allowance account related to the NOL carryforward (which reflects the diminution in the value of the asset on the basis of the corporation's assessment of the likelihood of not realizing the asset).

Other tax items representing deductible temporary differences or taxable temporary differences must be included in the credit computation if they are shown on the corporation's books on the last day of the corporation's taxable year that ended in 2004.[256] The bill excludes any temporary differences that arise from unused credit carryforwards. The net amount of the deductible and taxable temporary differences (which may be a negative number) must be apportioned under the franchise tax three-factor apportionment formula. The net apportioned amount of these items may not exceed 25% of the NOL carryforward amount that qualifies for the bill's credit computation.

The credit amount is computed on the basis of the net amount of the disallowed Ohio NOL carryforward and the other deferred tax assets or liabilities. (This net amount is termed the "amortizable amount.") If the net sum of the other deferred amounts is not less than zero, the amortizable amount equals 8% of the sum of the disallowed Ohio NOL carryforward and the other items. If the net sum of the other deferred items is less than zero, but when expressed as a positive number is less than the disallowed Ohio NOL carryforward, the amortizable amount equals 8% of the difference. If the net sum of the other items is less than zero but when expressed as a positive number exceeds the disallowed Ohio NOL carryforward, the amortizable amount equals zero and there is no credit.

The credit for the amortizable amount is available beginning in 2010, but it is not available all at once. Instead, it is gradually phased in over 10 years, with the credit available for 10% of the amortizable amount available in 2010 and ten additional percent available each year until 2019, when the credit becomes available for 100% of the amortizable amount (less previously claimed credit

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[255] *As reflected in the 2005 franchise tax report or an amended 2005 report filed before July 1, 2006.*

[256] *All temporary differences must be computed net of any related valuation allowance account--i.e., net of any adjustments to their values to account for the likelihood the associated deferred tax asset or liability will not be realized.*

amounts) through 2029. In any year through 2029, the credit may not exceed one-half of a corporation's commercial activity tax liability after deducting any other credits allowed against the commercial activity tax. If the total of the credits taken between 2010 and 2029 is less than the amortizable amount for which the credit could be claimed, a refundable credit is allowed in 2030 for the remaining effects of the unclaimed credit, but the credit may be claimed in 2030 only if the person claiming the credit is a commercial activity tax taxpayer in that year.

If a corporation entitled to the credit is a member of a consolidated taxpayer group or combined taxpayer group (both of which file and pay the commercial activity tax as a single taxpayer), the group is entitled to the credit. If a nonrecognition transaction occurs with respect to a corporation entitled to the credit, the amortizable amount, and all amounts contributing to the computation of that amount, must be computed in a manner consistent with the federal computation of net operating losses under such circumstances.

The credit may not be transferred or used as collateral or otherwise assigned to another person. The credit is not subject to attachment, execution, levy, lien, or other judicial proceeding.

If the Tax Commissioner finds that a corporation claims the credit on the basis of an amount that results from a sham transaction, twice the amount in question is to be deducted from the amortizable amount.

All corporations intending to claim the credit must file a report with the Tax Commissioner by June 30, 2006, showing the amortizable amount on the basis of which the corporation (or its consolidated or combined group) intends to claim the credit, and any other information the Tax Commissioner requires. The credit is denied if a corporation fails to provide the report.

Some noncorporations treated as corporations

(R.C. 5733.01(E))

The bill clarifies that any entity that is taxed as a corporation under federal income tax law (such as some limited liability companies) also is to be treated as a corporation under Ohio's corporation franchise tax law. Although this principle is stated in current law, the bill makes it clear that any equity stake in such an entity (such as a membership interest in such an LLC) is to be treated in the same manner as owning capital stock of a corporation for the purposes of the aspects of the franchise tax law referring to capital stock of corporations.

Recycling and Litter Prevention Fund

(R.C. 5733.065 and 5733.066; Section 557.10)

Continuing law levies a tax on corporations for the privilege of manufacturing or selling "litter stream products" in this state. "Litter stream products" include such things as glass, metal, plastic, and container crowns. Under current law, these taxes are credited to the Recycling and Litter Prevention Fund and are used to fund recycling and litter prevention.

The bill provides for a final series of payments to the Recycling and Litter Prevention Fund during FY 2006 equal to $1.5 million from the General Revenue Fund. The bill specifies, further, that future litter taxes paid by corporations be used to fund recycling and litter prevention but not through the Recycling and Litter Prevention Fund.

Purchase and installation of new manufacturing machinery and equipment

Tax credits not available for purchases made after June 30, 2005

(R.C. 5733.33 and 5747.31 (not in the bill))

Current law authorizes a tax credit against the corporation franchise and personal income taxes for new manufacturing machinery and equipment purchased and used in Ohio by corporations and other business organizations. The credit currently applies to purchases made on or before December 31, 2015. To qualify for the credit, a taxpayer must install the machinery and equipment in Ohio no later than December 31, 2016. The credit equals a percentage of a taxpayer's incremental increase in machinery and equipment investment in a county over its existing stock of machinery and equipment during a baseline period. The percentage is 7.5%, except when the machinery or equipment is purchased for use in certain economically depressed areas, in which case the percentage is 13.5%. The credit is claimed over a seven-year period. The credit is nonrefundable, but may be carried forward for three tax years, in the case of the corporation franchise tax, or three taxable years, in the case of the personal income tax. A taxpayer who purchases new manufacturing machinery and equipment and who intends to claim the credit must file a notice of intent to claim the credit with the Department of Development.

The bill limits the availability of the credits to machinery and equipment purchased no later than June 30, 2005, and installed no later than June 30, 2006.

The bill requires that a taxpayer's notice of intent to claim the credit must be filed with the Department of Development on or before September 30, 2005. If

the taxpayer does not file the notice on or before that date, the taxpayer is precluded from claiming the credit.

The bill provides, further, that no credit or credit carry-forward may be claimed with respect to any taxable year ending after June 30, 2005. However, any unclaimed credit or credit carry-forward remaining after June 30, 2005, may be converted to a grant under the grant program described below (see "***Tax credits converted to grants administered by the Department of Development***," below).[257]

Tax credits converted to grants administered by Department of Development

(R.C. 122.172, 122.173, and 5733.33)

The bill converts the existing tax credits for purchases and installations of new manufacturing machinery and equipment into grants administered by the Department of Development that can be claimed against corporation franchise and personal income tax liabilities. The grants first apply to taxable years beginning on or after July 1, 2005. Generally, the same eligibility requirements and the same terms and conditions that govern the existing credits also govern the new grants. One difference is the order in which the grant is applied against a tax liability. Taxpayers must apply manufacturing and machinery grants against tax liabilities after allowing for all nonrefundable credits but prior to allowing for refundable credits against those tax liabilities.

The bill charges the Director of Development with responsibility for administering the grant program. A taxpayer who is eligible for a grant may apply for a grant on a request form developed by the Director in consultation with the Tax Commissioner. The taxpayer must file the request form with the tax return filed for the taxable year in which the grant is claimed. A taxpayer must supply all of the information requested on the grant request form. A grant request form is subject to audit by the Director and the Tax Commissioner.

A grant may not be claimed with respect to any taxable year for which a taxpayer was allowed a manufacturing machinery and equipment tax credit.

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[257] *In Cuno v. DaimlerChrysler, No. 01-3960, 2004 FED App. 0293P (6th Cir. Sept. 2, 2004), the Sixth Circuit Court of Appeals held that the corporation franchise tax credit for purchases and installations of new manufacturing machinery and equipment violates the Federal Constitution's Commerce Clause, U.S. Const. Art. I, §8, cl. 3, which grants Congress the authority to "regulate Commerce with foreign nations, and among the several States." The court held that the credit discriminates against interstate commerce by coercing businesses already subject to Ohio's corporation franchise tax to expand locally rather than out-of-state.*

However, the bill provides that if a taxpayer is required to repay any manufacturing and machinery tax credit for a taxable year ending before July 1, 2005, for any reason not specified in the corporation franchise and income tax provisions of the Ohio Revised Code, a grant is to be made available to the taxpayer for that taxable year. In addition, any unused tax credit or tax credit-carry forward existing on July 1, 2005, may be converted into a grant.

Telephone company tax credit for providing telephone service programs to aid the communicatively impaired

(R.C. 5733.56, not in bill; Section 557.04)

Under continuing law, beginning in tax year 2005, telephone companies are no longer subject to the public utility excise tax on gross receipts and become subject to the corporation franchise tax. For that tax year (to solve timing issues in moving from one tax to another), telephone companies are required to compute taxes owed and net operating loss carry forward, by multiplying the tax owed, net of nonrefundable credits, or the loss for the taxable year, by 50%.

The bill provides that in tax year 2005, telephone companies may claim the full amount of the nonrefundable tax credit for providing telephone service programs to aid the communicatively impaired in accessing a telephone network.

III. Personal Income Tax

Tax rates reduced uniformly by 21%

(R.C. 5747.02(A))

Current law establishes nine income tax brackets, each with a corresponding tax dollar amount and tax rate. The current income brackets and applicable tax dollar amounts and tax rates for each bracket is as follows:

Taxable income	Tax
$5,000 or less	.743%
More than $5,000 but not more than $10,000	$37.15 plus 1.486% of the amount in excess of $5,000
More than $10,000 but not more than $15,000	$111.45 plus 2.972% of the amount in excess of $10,000
More than $15,000 but not more than $20,000	$260.05 plus 3.715% of the amount in excess of $15,000

Taxable income	Tax
More than $20,000 but not more than $40,000	$445.80 plus 4.457% of the amount in excess of $20,000
More than $40,000 but not more than $80,000	$1,337.20 plus 5.201% of the amount in excess of $40,000
More than $80,000 but not more than $100,000	$3,417.60 plus 5.943% of the amount in excess of $80,000
More than $100,000 but not more than $200,000	$4,606.20 plus 6.9% of the amount in excess of $100,000

The bill reduces the rates and amounts within each bracket by a total of 21% over five years, beginning with taxable years beginning in 2005, in nearly even per-year increments. The resulting tax brackets for 2009 and thereafter are as follows:

Taxable income	Tax
$5,000 or less	.587%
More than $5,000 but not more than $10,000	$29.35 plus 1.174% of the amount in excess of $5,000
More than $10,000 but not more than $15,000	$88.05 plus 2.348% of the amount in excess of $10,000
More than $15,000 but not more than $20,000	$205.45 plus 2.935% of the amount in excess of $15,000
More than $20,000 but not more than $40,000	$352.20 plus 3.521% of the amount in excess of $20,000
More than $40,000 but not more than $80,000	$1,056.40 plus 4.109% of the amount in excess of $40,000
More than $80,000 but not more than $100,000	$2,700.00 plus 4.695% of the amount in excess of $80,000
More than $100,000 but not more than $200,000	$3,639.00 plus 5.451% of the amount in excess of $100,000
More than $200,000	$9,090.00 plus 5.925% of the amount in excess of $200,000

For each taxable year beginning after 2009, the income tax dollar amounts and rates are the same as for taxable years beginning in 2009.

Inflation adjustments delayed

(R.C. 5747.02(A))

Under existing law, beginning in July of 2005, the Tax Commissioner is to make yearly adjustments to each of the existing tax bracket income amounts to account for general price inflation. The bill postpones commencement of these yearly adjustments until 2010.

Deduction for qualified tuition and fees eliminated

(R.C. 5747.01(A)(18))

Existing law permits taxpayers to take a deduction for certain tuition costs and fees paid by them on their own behalf or on behalf of a spouse or dependent during the taxable year. The deduction is available for tuition and fees paid to a state university or other postsecondary institution located in Ohio. For taxpayers enrolled in a full-time course of study, the deduction is available for tuition and fees paid in each of the first two years of postsecondary education. For taxpayers enrolled part-time, the deduction is available for tuition and fees paid for the academic equivalent of the first two years of postsecondary education during a maximum of five taxable years. The total amount of tuition and fees that may be deducted by a taxpayer for all taxable years is $5,000. The deduction is not available to individuals filing a joint return showing a combined federal adjusted gross income[258] greater than $100,000 and is not available to single filers having federal adjusted gross income in excess of $50,000.

The bill eliminates the deduction for tuition and fees. The bill provides that the deduction is not available for any taxable year beginning after December 31, 2005.

[258] *A taxpayer's Ohio adjusted gross income, which is the income tax base from which Ohio income tax liability is calculated, is calculated on the basis of the taxpayer's federal adjusted gross income (R.C. 5747.01(A)).*

Credit for low-income taxpayers created

(R.C. 5747.056, 5747.08, and 5747.98)

The bill creates a nonrefundable[259] credit for individuals whose Ohio adjusted gross income (less exemptions) does not exceed $10,000. The amount of the credit varies depending upon the taxable year for which it is claimed. For taxable years beginning in 2005, the credit equals $107. For taxable years beginning in 2006, the credit equals $102. For taxable years beginning in 2007, the credit equals $98. For taxable years beginning in 2008, the credit equals $93. For taxable years beginning in 2009 or thereafter, the credit equals $88.

Taxation of trust income made permanent

(R.C. 5747.01 and 5747.02(B))

Under existing law, the income tax applies to trusts for only three taxable years; namely, the taxable years of a trust beginning in 2002, 2003, and 2004. Thus, under existing law, the last year in which trusts are subject to the personal income tax is the taxable year of a trust beginning in 2004. The bill makes application of the personal income tax to trusts permanent, beginning with taxable years beginning in 2005.

Trust residency rules

(R.C. 5747.01(I)(3)(a)(iii) and (I)(3)(d)(iii))

The residency of a trust determines the extent to which the trust's nonbusiness income is taxable by Ohio. If a trust is not a resident trust, it is entitled to a credit for taxes paid to another state on the nonbusiness income.

Under continuing law, a trust is considered a resident trust to the extent it consists of assets transferred under any of the following three conditions:

(1) With respect to certain testamentary and irrevocable inter vivos trusts, the assets were transferred by a person, a court, or a governmental entity or instrumentality on account of the decedent-transferor's death;

(2) The assets were transferred by a person domiciled in Ohio (for Ohio income tax purposes) at the time of transfer, provided at least one of the trust's

[259] *A "nonrefundable" credit is a credit that can be claimed by a taxpayer only to the extent the amount of the credit does not exceed the taxpayer's tax liability. If a nonrefundable credit exceeds a taxpayer's tax liability, the taxpayer is not entitled to a refund of the excess.*

beneficiaries is domiciled in Ohio (for Ohio income tax purposes) during some portion of the trust's current taxable year;

(3) The assets were transferred by a person domiciled in Ohio (for Ohio income tax purposes) when the trust became irrevocable, but only if at least one of the trust's beneficiaries was an Ohio resident (for Ohio income tax purposes) during some portion of the trust's taxable year.

The bill specifies that with respect to (3) above, a trust is considered a resident trust even when the trust became irrevocable upon the death of a person domiciled in Ohio (for Ohio income tax purposes).

Under continuing law, the extent to which a trust consists of assets transferred to it from any of the sources enumerated in (1), (2), and (3) above is ascertained by multiplying the fair market value of the trust's assets by a "qualifying ratio"[260] that is based, generally, on the relationship of the fair market value of the transferred assets at the time of transfer to the fair market value of all of the trust's assets at that time. The bill provides that the domicile of a trust's beneficiaries is not to be taken into account in this computation insofar as the sources are as described in (2) or (3) above.

"Qualifying investment pass-through entity"

(R.C. 5747.012)

Trusts are taxed on the basis of "modified taxable income," which is derived from a trust's federal taxable income. To compute modified taxable income, federal taxable income is adjusted by various additions and deductions prescribed by law, and divided into three components: modified business income, modified nonbusiness income, and the qualifying trust amount. The qualifying trust amount is comprised of capital gains and losses from holding debt or equity of a business, government, or other issuer. Modified business income is the business income of a trust minus any business income included in the qualifying trust amount; modified nonbusiness income is any income other than business income and income included in the qualifying trust amount. The division of

[260] *The first time the trust receives assets, the numerator of the qualifying ratio is the fair market value of those assets at that time and the denominator is the fair market value of all of the trust's assets at that time. Each subsequent time the trust receives assets the numerator of the qualifying ratio is the sum of (1) the fair market value of the trust's assets immediately prior to the subsequent transfer multiplied by the last qualifying ratio computed, and (2) the fair market value of the subsequently transferred assets at the time transferred. The denominator is the fair market value of all of the trust's assets immediately after the subsequent transfer.*

income into three components is for the purpose of apportioning and allocating the portion of a trust's income that is taxable by Ohio; each component is apportioned or allocated by a different method.

Modified business income is apportioned by the same method used to apportion a corporation's ordinary income under the corporation franchise tax law: that is, in proportion to the value of property, payroll, and sales in Ohio relative to all property, payroll, and sales. Modified nonbusiness income is allocated to Ohio to the extent that the trust's nonbusiness income is produced by trust assets that compose the Ohio resident part of the trust. A trust's qualifying trust amount is apportioned to Ohio on the basis of where the underlying physical assets producing the gain or loss are located.

Under continuing law, certain kinds of investment income of certain kinds of resident trusts are apportioned in the same manner as modified business income (i.e., under the relative property, payroll, and sales formula). Investment income of other trusts is allocated as modified nonbusiness income. To be apportioned as modified business income, the investment income must satisfy certain conditions, one of which is that the income must be attributable to the trust's ownership of a "qualifying investment pass-through entity." A qualifying investment pass-through entity is a partnership or other pass-through entity[261] that satisfies the following three criteria:

(1) It derives at least 40% of its income from loanmaking, investment management, other financial business activities, managing intangible assets, or from ownership of any other partnership or pass-through entity;

(2) It has at least 40% of its asset value composed of intangible assets; and

(3) It was formed before June 5, 2002.

The bill modifies the third criteria above by specifying that the entity must have been formed "as an entity" prior to June 5, 2002, which suggests that, under the bill, an entity would not have to have existed as a pass-through entity on June 5, 2002, to qualify as a qualifying investment pass-through entity, as long as it was an organized entity on that date and is presently a pass-through entity. The bill provides, further, that a partnership or pass-through entity is a "qualifying investment pass-through entity" only if it exists as a pass-through entity for all of the taxable year of the trust.

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[261] *A pass-through entity is a partnership, limited liability company, S corporation, or other entity that generally is not taxed as an entity; instead, the constituent owners are taxed on their distributive shares of income from the entity.*

Credit for a resident's out-of-state income tax liability disallowed if the out-of-state income tax liability is deducted in computing the resident's tax base

(R.C. 5747.01 and 5747.05)

Continuing law allows a credit against the personal income tax for income taxes paid by an Ohio resident to another state or the District of Columbia. The credit is equal to the lesser of the following:

(1) The amount of income tax otherwise due to Ohio on the portion of Ohio adjusted gross income (which is the tax base from which Ohio income tax liability is calculated) that is subject to taxation by another state or the District of Columbia; or

(2) The amount of income tax liability to another state or the District of Columbia on the portion of Ohio adjusted gross income that is subject to taxation by another state or the District of Columbia.

The tax base from which Ohio income tax liability is calculated, Ohio adjusted gross income, is defined under continuing law as a taxpayer's federal adjusted gross income, adjusted as prescribed under continuing Ohio law. Thus, a taxpayer's Ohio income tax base is derived from the taxpayer's federal adjusted gross income.

The bill provides that the credit for income taxes paid by Ohio residents to other states or the District of Columbia is not available to any taxpayer who has directly or indirectly deducted, or was required to directly or indirectly deduct, the amount of income taxes owed to another state or the District of Columbia in computing federal adjusted gross income. Thus, the bill precludes a resident taxpayer from claiming the credit when the taxpayer deducted, or should have deducted, the out-of-state income taxes in computing the taxpayer's federal income tax base. Because Ohio's income tax base is derived from the federal income tax base, the effect of the bill is to preclude a resident taxpayer from taking, for state income tax purposes, a deduction for out-of-state income taxes and also claiming a credit with respect to those taxes.

Meaning of "indirect" ownership

(R.C. 5747.01(EE); Section 612.21)

The bill specifies the meaning and scope of the term "indirectly" insofar as the term is used in the income tax law in connection with an individual's, estate's, trust's, pass-through entity's, or other legal person's ownership of a corporation. Generally, the bill provides that the shareholder of a "C" corporation (or of any association treated as a C corporation for federal income tax purposes) does not,

by virtue of being a shareholder, indirectly own the assets of the corporation. The provision appears to have the effect of clarifying that nonresident shareholders may not claim the nonresident credit on the basis of the portion of dividends received from a corporation with Ohio income equal to the portion of the corporation's business income apportioned outside Ohio.

Treatment of income from nonresident's sale of a pass-through entity

(R.C. 5747.212; Section 612.21)

The bill modifies the income tax treatment of income arising from a nonresident's sale of his or her interest in a pass-through entity by specifying that current law's treatment applies only to closely held entities and applies even if the sale involves an interest in an entity that was formerly a pass-through entity but has been converted to some other organizational form within three years before the sale (e.g., an S corporation that is converted to a C corporation by dis-electing S corporation status).

Under current law, a nonresident who owns 20% or more of a pass-through entity in any of the three preceding years and who sells (or otherwise disposes of) some or all of that interest must apportion the income from the sale using the average of the entity's income apportionment factors over the most recent three years. The computation is required for the purpose of computing the nonresident credit, which depends on the apportionment of a nonresident's share of an entity's business income. The computation is directed at nonresidents who increase their nonresident credit--thus reducing their Ohio tax--by applying only the entity's most recent year's apportionment factors.

The bill applies the three-year apportionment requirement to nonresidents owning 20% or more of an entity that is closely held in the sense that, for at least one day in the three-year period ending on the last day of the nonresident's taxable year in which the sale occurs, only five or fewer persons own the entity and only one person owns at least 50% of the entity. (The bill also specifies that the ownership interests must be equity interests with voting rights, and includes both direct and indirect ownership.)

The three-year apportionment requirement applies even if the entity in which the nonresident sells his or her interest converts from being a pass-through entity into another organizational form but was a pass-through entity on at least one day during that three-year period. The bill's changes appear to prevent a nonresident from avoiding the three-year apportionment requirement--and therefore possibly increasing their nonresident credit and reducing their Ohio tax liability--by the entity changing its organizational form from a pass-through entity

to another form, such as a C corporation, before the nonresident sells their interest in the entity.

IV. Property Taxes and Transfer Fees

Elimination of the 10% rollback in real property taxes for certain real property

(R.C. 319.302 and 323.152; Section 557.15)

Under current law, all real property, and manufactured and mobile homes that are treated as real property for purposes of property taxation, receive a reduction of 10% of the property tax bill (known as the "rollback"). Under the bill, beginning in tax year 2005, the rollback would apply only to property not intended primarily for use in a "business activity." Property intended primarily for use in a business activity will no longer receive the rollback. The bill specifies that the following activities are not "business activities," thereby making property used for the following activities eligible for the rollback: farming, leasing property for farming, leasing property improved with single-family, two-family, or three-family dwellings, or holding vacant land that the county auditor determines will be used for farming or to develop single-family, two-family, or three-family dwellings. The bill authorizes the Tax Commissioner to adopt rules for the administration of the rollback.

Under the bill, the county auditor must review each parcel of real property each year to determine if it qualifies for the rollback as of January 1 of the current tax year.

Continuing law provides for the reduction of real property taxes on homesteads and manufactured home taxes on manufactured or mobile homes, in an amount equal to ¼ of the amount by which taxes are reduced under the 10% rollback (which equals 2½%). The bill replaces this equation with language that simply states that to provide a partial exemption, real property taxes on homesteads and manufactured home taxes on manufactured or mobile homes is 2½% of the amount of taxes to be levied on the homestead or home.

Phase-out of tax on business personal property

(R.C. 5711.16, 5711.21, 5711.22, 5727.02, 5727.031, and 5727.06)

The bill phases out the taxation of all tangible personal property used in business over four years, beginning in 2006 and ending in 2009, when all such property becomes exempted from taxation. Under current law, such property is subject to taxation by local taxing jurisdictions. All property other than inventory currently is taxable on 25% of its value. Inventory currently is taxed on 23% of its value, and is currently scheduled to be taxed on decreasing percentages of its

value, reduced by two percentage points per year from 2007 through 2017, when it becomes exempted. New machinery and equipment used in manufacturing is exempted immediately, as explained below. Tangible personal property owned or used by public utilities is not affected by the phase-out and eventual tax exemption.

Exemption of new business machinery and equipment

The bill exempts from property taxation all machinery and equipment used in business that is installed (or otherwise first used in business in Ohio) after the end of 2004. The exemption applies to all such property if it was not used in business before 2005 by the property's owner or by a related member or predecessor of the owner, unless the property was the inventory of the owner, related member, or predecessor (in which case the property is subject to the phase-out described below).

The bill defines manufacturing equipment so that it can be distinguished from other tangible personal property. Manufacturing equipment includes machinery and equipment and tools and implements, including any associated patterns, jigs, dies, drawings, and business fixtures, used at a manufacturing facility by a manufacturer, including any such property leased to the manufacturer. Manufacturing equipment does not include property used for general office purposes. A manufacturing facility is defined as a facility used for manufacturing, mining, refining, rectifying, or combining different materials with a view of making a gain or profit, including a portion of a facility used to store or transport raw materials, work-in-process, or finished goods inventory, for the purpose of packaging, research, or testing for quality control, so long as manufacturing, mining, refining, rectifying, or combining is also performed at the facility. A manufacturing facility does not include any portion of a facility used primarily for making retail sales.

Phase-out of tax on all other business tangible personal property

All business tangible personal property other than the new manufacturing equipment that is exempted immediately is to be taxed on decreasing percentages of its value for five years beginning with tax year 2006 until it is no longer subject to taxation in 2009 and thereafter. The phase-out applies to three classes of property: manufacturing equipment, furniture and fixtures, and inventory. Since inventory taxation currently is scheduled to be phased out, albeit according to a much slower schedule, the bill's phase-out represents an acceleration in the phase-out for inventory taxation.

The assessment percentages applicable to the three classes of property decline as shown in the following table:

Year	Percentage
2005	25% (inventory 23%)
2006	18.75%
2007	12.5%
2008	6.25%
2009	0%

Reimbursement of local taxing units

(R.C. 5751.21 to 5751.22)

The bill provides reimbursement to school districts and other local taxing units for some of the net revenue reduction that would result from the bill's exemption and phase-out of machinery and equipment and furniture and fixtures, and the accelerated inventory phase-out. Reimbursement is to be paid to school districts and joint vocational school districts from the newly created School District Tangible Property Tax Replacement Fund, and to other local taxing units through the newly created Local Government Tangible Property Tax Replacement Fund. These funds are to be funded by a portion of the Commercial Activity Tax proposed by the bill. The bill prescribes specific computations and procedures for the Tax Commissioner and the Department of Education to implement the reimbursement.

School districts. Generally, the reimbursement for school districts (including joint vocational school districts) is based on the net revenue effect of the bill's property tax exemption and phase-outs after offsetting the increased state funding school districts receive when their taxable property values decline, and disregarding the effects of the currently scheduled phase-down of inventory taxes. The revenue effect of the previously enacted inventory tax phase-out is essentially subtracted from the revenue effect of the bill's exemptions and phase-outs, meaning the bill does not reimburse districts for revenue losses resulting from the previously enacted phase-down. (Nor does current law provide direct reimbursement for the previously enacted phase-down.) For the same reason, the state education aid offset incorporated in the bill's reimbursement formula does not offset state aid increases to the extent those increases result from the previously enacted inventory tax phase-down. In other words, the bill's reimbursement provision reimburses only for net revenue losses resulting from the bill's tax changes, disregarding previously enacted changes.

The reimbursable net revenue losses generally are computed on the basis of 2004 taxable values and school district levies in effect in 2004 or in 2005 (so long as the levy was approved by voters before September 1, 2005). In the case of levies raising a fixed sum of money, such as bond levies and emergency levies, reimbursable losses are computed for as long as the district continues to impose the levy after 2005 and through 2018, including, in the case of emergency levies only, any renewals for the same amount as the original emergency levy minus the 2006 reimbursement amount. If a voted debt levy continues beyond 2018, it continues to be reimbursed until it expires. Voted debt levies also are reimbursed fully and do not become subject to the phase-down reimbursement percentages after 2010 (except for their contribution to the ½-mill increase in all overlapping fixed-sum levies, which is not reimbursed).

The total reimbursement for all fixed-sum levies imposed over the same territory is to within ½-mill worth of the reimbursable loss. The unreimbursed 1/2-mill is divided among the overlapping school districts and local taxing units in proportion to the relative rates of their reimbursable fixed-sum levies. For example, if a school district's fixed-sum levies constitute 60% of all reimbursable fixed-sum levies over a territory, 60% of the unreimbursed ½-mill (0.30 mills) is not reimbursed to the school district. Instead, the rate of the district's fixed-sum levies will increase by a total of 0.30 mills, and the total of the other overlapping taxing units' levies will increase by the remaining 0.20 mills.

Reimbursement for fixed-rate levies is to be paid in full through 2010, and then in declining amounts through the end of fiscal year 2018, but fixed-rate levies expiring after fiscal year 2010 are not to be reimbursed for any year after their expiration. The rate of decline in the reimbursement between fiscal years 2011 and 2017 is 2/15 per year of the computed fixed-rate loss. In fiscal year 2017, the last 1/15 is paid, and no reimbursement is paid thereafter. Fixed-sum levies and unvoted millage for debt are fully reimbursed through the end of fiscal year 2017, but, in the case of unvoted debt levies, the reimbursement is payable only so long as the millage continues to be levied for debt purposes. If the purpose is changed to some other purpose, the reimbursement is computed according to the phase-out reimbursement percentages applicable to fixed-rate levies. Reimbursement payments are to be made quarterly in February, May, August, and November, beginning May 2006 and ending in May 2018.

Other taxing units. Reimbursement to local taxing units other than school districts and joint vocational school districts is similar in concept to the school district reimbursement except there is no offset for increases in state aid. Accordingly, local taxing units are reimbursed for the net revenue losses caused by the bill's exemption of newly installed manufacturing equipment, the phase-out of taxes on existing machinery and equipment and furniture and fixtures, and the

incremental revenue loss from the accelerated phase-out of taxes on inventory. Revenue losses from the previously enacted phase-down of inventory taxes are not reimbursed. Levies qualify for reimbursement under the same terms as for school district levies, except local taxing units do not impose emergency levies of the sort that school districts may impose. Reimbursement for fixed-rate levies is to be paid in full through 2010 and in declining amounts from 2011 through the end of calendar year 2017. The rate of decline in the reimbursement between 2011 and 2017 is 2/15 per year of the computed fixed-rate loss. In 2017, the last 1/15 is paid, and no reimbursement is paid thereafter. Fixed-sum levies and unvoted millage for debt are to be fully reimbursed through 2017, but, in the case of unvoted debt levies, the reimbursement is payable only so long as the millage continues to be levied for debt purposes. If the purpose is changed to some other purpose, the reimbursement is computed according to the phase-out reimbursement percentages applicable to fixed-rate levies. Reimbursement payments are to be made in each May, August, and October, beginning in May 2006 and ending in October 2017.

Reimbursement for county administrative fee losses

(R.C. 5721.23)

The bill devotes a portion of the reimbursement payable to school districts and taxing units to compensate county auditors and treasurers for the loss of administrative fees payable on the basis of property tax collections. Under current law, county auditors and treasurers are entitled to a percentage of the property taxes collected to help cover the cost of administering and collecting property taxes, including the percentage credited to the real estate assessment fund to defray the cost of assessing real property. Under the bill, a percentage of the reimbursable revenue loss is used to reimburse the county auditors, county treasurers, and real estate assessment funds for the loss of these fees. The percentage is 1.1159% if the county's 2004 tax collections from all tax duplicates (other than the estate tax list) were $150 million or less, and 0.9659% if the county's 2004 collections were more than $150 million. The fee reimbursement compensation is phased out according to the reimbursement phase-out schedule for local taxing units.

Clarification of definition of "manufacturing equipment"

The bill provides that nothing in the definition of "manufacturing equipment," which includes patterns, jigs, dies, and drawings, is to be construed as changing the general definition of "personal property," which excludes from taxation patterns, jigs, dies, or drawings that are held for use and not for sale in the ordinary course of business.

Joint Legislative Tax Reform Impact Study Committee

(Section 557.13.09)

The bill creates the Joint Legislative Tax Reform Impact Study Committee to study the effects on school districts and other local taxing units of the bill's phase-out of the tangible personal property tax. The Committee also is required to estimate the capacity of the commercial activity tax to replace lost tangible personal property tax revenues and to fund the General Revenue Fund, among other estimates it must make and other reviews it must undertake.

The Committee has ten members from the General Assembly: five from the House of Representatives and five from the Senate. The Committee must issue a report by January 31, 2006, at which time it will cease to exist.

Reduction in assessment rate on public utility property

(R.C. 5727.01 and 5727.111)

Currently, most electric companies' transmission and distribution equipment is taxed on 88% of its value and their other property is taxed on 25% of value. The bill reduces the 88% assessment rate for transmission and distribution equipment to 85% and reduces the 25% assessment rate for all other property to 24%. The reductions take effect beginning in tax year 2006. But the bill imposes the tangible personal property tax on the patterns, jigs, dies, and drawings of an electric company or a combined company for use in the activity of an electric company.

The bill does not change the current assessment rates on the property of rural electric companies, which are cooperatives and other organizations providing electricity to their members, primarily in rural communities.

Public utility property taxes and school aid computations

(R.C. 3317.021 and 5727.47)

Under continuing law, public utilities pay property taxes on real and tangible personal property located in the state. A public utility is required to pay tax only on that portion of the taxable value of its property that the public utility does not dispute in a petition for reassessment.

Continuing law requires that the Tax Commissioner make annual certifications to the Department of Education specifying the taxable value of public utility property subject to taxation by each school district along with the amount of taxes charged and payable to each district from such property. The

Department of Education uses this information in calculating state school aid for each district (see "***Background to school funding formula changes***," above).

Continuing law specifies, further, that if a public utility has filed a petition for reassessment, the taxable value of the public utility's property included in the Commissioner's certification is to include only the amount of taxable value on the basis of which the public utility paid tax. The bill specifies that the Commissioner's certification of the amount of taxes charged and payable to a district from such property shall likewise include only the amount of taxes that the public utility actually paid.

The bill also requires that public utilities make a binding election at the time of filing a petition for reassessment either to pay the full amount of the taxes based on the taxable value shown on the preliminary assessment or amended preliminary assessment or to pay an amount of taxes based on the reduced value sought by the public utility.

Tax treatment of nonutility electricity providers

(R.C. 5711.21, 5711.22, 5727.02, and 5727.031)

Currently, when a business other than an electric company generates or distributes electricity for its own use, as in large manufacturing operations, and provides electricity to others (for example, when excess capacity is available), the property used to generate or distribute the electricity is treated, in effect, as partly business property and partly public utility property. This treatment recognizes that the method of deriving the value of public utility property and business property differs, as do the respective assessment rates. Under current law, the value of the property is divided into two parts each year on the basis of the relative percentage of the electricity used by the generator and by anyone else in the previous year. The part attributed to the generator is valued and assessed like business property (at 25%), and the part attributed to generation for others is treated as electric company property; i.e., the transmission and distribution component of that part is valued and assessed like that of electric companies (at 88%), and the generation component is valued and assessed like that of electric companies (at 25%).

Under the bill, businesses that generate electricity and supply some of it to others, but whose primary business is not supplying electricity, will continue to be taxed on their electricity-related property in the same manner as under current law. However, because much of the part of that property attributed to the business's own electricity use will no longer be taxable after 2008 (because of the bill's phase-out of tax on business machinery and equipment), the business will be required to report its electricity-related property as an electric company does beginning with 2009. Its report will have to contain only the part of the value of

the property attributed to supplying electricity to others (determined on the basis of the relative percentage of electricity supplied to others, as in current law). The reportable property will continue to be determined and assessed as under current law--i.e., in the same manner as for the equivalent electric company property--but at the bill's new assessment rates: 85% for transmission and distribution property, and 25% for all other property.

Leased property

(R.C. 5711.21(C), 5711.22(C), 5727.01(M), 5727.01, 5727.06, 5727.08, 5727.11, and 5727.23)

Currently, property owned by someone other than a public utility or interexchange telecommunications company but leased by that person to a public utility or interexchange telecommunications company under a sale and leaseback arrangement is valued and assessed as if it were owned by the public utility or interexchange telecommunications company.

The bill maintains the current treatment for property leased under a sale and leaseback arrangement, but applies the same treatment to tangible personal property leased to a public utility or interexchange company other than through a sale and leaseback transaction, beginning in 2009. (This provision does not apply to property leased to a railroad company or water transportation company.) The property is to be reported and the tax paid by the lessor of the property (termed the "public utility property lessor") using the assessment rate that would apply to the lessee if the lessee owned the property.

The bill provides that personal property owned by a public utility property lessor that is leased, in other than a sale and leaseback transaction, to a public utility or an interexchange telecommunications company must be reported by the lessor and the lessor must pay the public utility property tax. A "public utility property lessor" is any person, other than a public utility or an interexchange telecommunications company, that leases personal property, other than in a sale and leaseback transaction, to a utility, other than a railroad or water transportation company, or to an interexchange telecommunications company if the property would be taxable property if it was owned by the utility or company. A public utility property lessor that leases property to a utility or company is not a public utility or interexchange telecommunications company, but must report its property and be assessed in the same manner as the utility or company to which it leases the property.

The bill commences that reporting and payment requirement in tax year 2009, to coincide with the phase-out of the general personal property tax. The bill provides that a public utility property lessor is subject to the public utility personal

property tax law only for the purposes of reporting and paying the tax on taxable property it leases to a public utility or interexchange telecommunications company.

Taxation of oil and gas recovery equipment

(R.C. 5709.112 and 5715.01; Section 557.13.03)

The bill provides that for tax year 2006 and thereafter, all tangible personal property used to recover oil and gas is exempt from tangible personal property tax treatment, when it is installed and located on the premises or the leased premises of the owner. The exemption does not apply if the property is not installed on the premises or leased premises of the owner, or if it is used for the transmission, transportation, or distribution of oil or gas. The exemption also does not apply to public utilities that file reports for their property under the public utility property tax law and have their property assessed by the Tax Commissioner.

The bill also provides that when determining the true value of minerals or rights to minerals for the purpose of real property taxation, the Tax Commissioner cannot include in that value the value of tangible personal property used in the recovery of those minerals. The bill requires that the Commissioner review the calculations of the multipliers used in the determination of oil and gas valuations in sufficient time to be used in the Commissioner's annual entry adopting the multipliers for tax year 2006, to ensure that oil and gas properties are uniformly assessed under the bill.

Telecommunication Personal Property Tax Study Committee

(Section 557.13.12)

The bill creates the Telecommunication Personal Property Tax Study Committee to review the equity of the various personal property tax rates applicable to different entities providing telecommunication services in Ohio. The committee is to be composed of nine members: three Senators appointed by the President of the Senate, three Representatives appointed by the Speaker of the House of Representatives, the Chairperson of the Public Utilities Commission or the Chairperson's designee, the Director of Development or the Director's designee, and the Tax Commissioner or the Commissioner's designee. Of the members selected from the Senate and the House, not more than two members from each house may be from the same political party.

Members of the committee will not receive compensation for their service on the committee nor receive reimbursement for expenses they incur related to that service. The committee is required to make a report of its study and any findings

it has to the General Assembly not later than December 31, 2005. The committee will cease to exist on the date it makes the report.

Accelerate phase-out of state reimbursement for $10,000 business property exemption

(R.C. 321.24(G))

Continuing law exempts the first $10,000 of a business's tangible personal property from property taxation (R.C. 5709.01(C)(3)). Currently, the state reimburses local taxing districts for the resulting revenue reduction, but Am. Sub. H.B. 95 of the 125th General Assembly phases-out the state's reimbursement for the exemption, over ten years. Under the phase-out, county treasurers receive a payment each year from the General Revenue Fund that is a reduced percentage of the county's fiscal year 2003 reimbursement. The payment is then apportioned among the county's taxing districts as if levied and collected as personal property taxes. No further reimbursements are to be paid after fiscal year 2012.

The bill accelerates the phase-out period so that no reimbursement payments are made after fiscal year 2009.

Equalization of real property assessments

(R.C. 5715.24)

Under continuing law, all real property in a county is reappraised every six years for purposes of establishing its taxable value. The Tax Commissioner is required to determine whether the real property in counties that have completed a sexennial reappraisal in the current year has been properly assessed. If, upon reviewing a sexennial reappraisal, the Commissioner determines that the property is not properly listed for taxation, the Commissioner is required to increase or decrease the aggregate value of the real property, or any class of real property, by a percentage or amount that will cause it to be correctly assessed at its taxable value.

The bill provides that in determining whether a class of real property has been assessed at its correct taxable value and in determining any percent or amount by which the aggregate value of the class from a prior year should be increased or decreased to be correctly assessed, the Commissioner is to consider only the aggregate values of property that existed in the prior year and that is to be taxed in the current year. The value of new construction is not to be regarded as an increase in aggregate value from the prior year. Likewise, the value of property destroyed or demolished since the prior year is to be deducted from the aggregate value of that class for the prior year.

School district property tax replacement payments when mergers occur

(R.C. 5727.85)

Under continuing law, school districts and joint vocational school districts receive property tax replacement payments to offset the loss of revenues that occurred when the assessment rates on the tangible personal property of rural electric companies, electric companies, and natural gas companies were reduced. Those replacement payments come from a portion of the kilowatt-hour and MCF tax revenues, and are based on a district's fixed-rate levy loss and fixed-sum levy loss. The bill establishes a procedure to determine how payments are to be made to those districts that merge with or transfer territory to other districts, as follows:

Type of merger or transfer of territory:	Fixed-rate levy loss:	Fixed-sum levy loss:
Complete merger of two or more districts	Successor district receives the sum of the fixed-rate levy losses for each district merged.	Successor district receives the sum of the fixed-sum levy losses for each district merged.
Transfer of part of a district's territory to an existing district	Recipient district receives the transferring district's total fixed-rate levy loss times a fraction, with the numerator being the value of electric company tangible personal property in the part of the territory transferred, and the denominator being the total value of that property in the entire district from which the territory was transferred.	The Department of Education makes an equitable division of the fixed-sum levy losses for both districts, if the recipient district takes on debt from the other district.
Transfer of part of one or more districts' territory to form a new district between January 1, 2000, and January 1, 2005	New district receives just its current fixed-rate levy loss through August 2006. From February 2007 to August 2016, the new district receives the **lesser** of (1) an amount determined using existing law's calculation of the district's state education aid and inflation-adjusted property tax loss, or (2) the amount determined for local taxing units, which is phased-out per a schedule under existing law.	The Department of Education makes an equitable division of the fixed-sum levy losses for all the districts, if the new district takes on debt from the other district(s).

Type of merger or transfer of territory:	Fixed-rate levy loss:	Fixed-sum levy loss:
Transfer of part of one or more districts' territory to form a new district on or after January 1, 2005	New district does not receive any fixed-rate levy loss. The transferring district(s) continue to receive their current fixed-rate levy loss.	New district does not receive any fixed-sum levy loss, unless it takes on debt from the other district(s), in which case the Department of Education makes an equitable division of the losses for the districts.

The bill also changes one of the dates by which the Director of Budget and Management must transfer amounts from the School District Property Tax Replacement Fund to the General Revenue Fund, from February 2017 to May 2017.

Computation used to determine amounts deposited each year in the Property Tax Administration Fund changed

(R.C. 321.24 and 5703.80)

Continuing law provides for a percentage of real property tax rollback reimbursements to local governments to be diverted to a special fund known as the Property Tax Administration Fund to be used by the Department of Taxation to defray its costs of administering property taxation and of equalizing real property. The Department oversees the equalization of real property valuation throughout the state, and administers the assessment of all public utility property and tangible personal property of businesses operating in more than one county.

The fund is funded from a portion of the state reimbursement that otherwise is payable to taxing districts for the 10% rollback for real property. Under current law, the portion diverted to the fund is the sum of the following components:

- 0.3% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes);
- 0.15% of the taxes charged against public utility personal property;
- 0.75% of taxes charged against tangible personal property of businesses owning property in more than one county (the property of such businesses is assessed by the Department);

The bill changes the computation used to determine the portion of the 10% rollback reimbursement to be diverted to the fund. Under the bill, the portion diverted to the fund is computed as follows:

- For fiscal year 2006:
  - 0.33% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes); plus
  - 0.5% of the taxes charged against public utility personal property; plus
  - 0.5% of the taxes charged against tangible personal property of businesses owning property in more than one county.
- For fiscal year 2007:
  - 0.35% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes); plus
  - 0.56% of the taxes charged against public utility personal property; plus
  - 0.56% of the taxes charged against tangible personal property of businesses owning property in more than one county.
- For fiscal year 2008 and thereafter:
  - 0.35% of the 10% real property tax rollback reimbursement (including the rollback reimbursement for manufactured and mobile homes); plus
  - 0.6% of the taxes charged against public utility personal property; plus
  - 0.6% of the taxes charged against tangible personal property of businesses owning property in more than one county.

State payment of estimated taxes for acquired property

(R.C. 319.20)

Existing law specifies that whenever the state acquires an entire parcel or a part only of a parcel of real property in fee simple, the county auditor, upon application of the grantor or the property owner or the state, must prepare an estimate of the taxes that are a lien on the property, but have not been determined, assessed, and levied for the year in which the property was acquired. The county auditor must apportion the estimated taxes proportionately between the grantor and the state for the period of the lien year that each had or would have had ownership or possession of the property, whichever is earlier. The bill requires the county treasurer to accept payment from the state for estimated taxes at the time that the real property is acquired. If the state has paid in full in the year in which the property is acquired that proportion of the estimated taxes that the Tax Commissioner determines are not subject to remission by the county auditor for such year under existing law that requires the county auditor to remit taxes that have not yet been assessed in the year the property is acquired, the bill requires that the estimated taxes paid are to be considered the tax liability on the exempted property for that year.

Interest rate reduced on personal property tax underpayments and overpayments

(R.C. 5703.47 and 5719.041)

Tangible personal property located and used in business in Ohio is subject to taxation by local taxing units. If the taxes are not paid on time, a 10% penalty is charged and interest accrues on the unpaid balance at the "rate per annum." If taxes are overpaid, interest accrues at the same rate on the overpayment until a refund is issued. Most of the interest on late payments is credited to the funds of local taxing units; interest on refunded overpayments is payable from the funds of local taxing units.

Continuing law provides that on October 15th of each year, the Tax Commissioner must determine the federal short-term rate, rounded to the nearest whole number per cent, plus 3%. That rate is the "rate per annum." The bill changes this rate for the personal property tax law. For purposes of that tax, the "federal short-term rate" is the federal short-term rate rounded to the nearest whole number per cent; thus, the bill reduces the interest rate that accrues on late personal property tax payments and on tax overpayments, by applying the "federal short-term rate," rather than the rate per annum.

V. Sales and Use Taxes

Rate change

(R.C. 5739.02, 5739.025, 5739.10, and 5741.02)

Am. Sub. H.B. 95 of the 125th General Assembly temporarily increased state sales and use taxes, from 5% to 6%. The temporary increase applies to sales occurring on and after July 1, 2003, but before July 1, 2005. Under current law, the rate is scheduled to return to 5% on July 1, 2005.

The bill establishes a permanent sales and use tax rate of 5½%, beginning July 1, 2005. This rate also applies to the vendors' excise tax for the privilege of engaging in the business of making retail sales on and after July 1, 2005. To reflect the tax rate change, the bill revises the tax rate schedules that specify how the tax is applied to fractions of dollars when sales are not in exact dollar amounts.

Maintain the 0.9% discount for vendors and sellers

(R.C. 5739.12)

For promptly filing sales and use tax returns and paying those taxes, current law gives vendors and sellers a 0.9% discount of the amount shown to be due on their returns. That discount rate is scheduled to be reduced to 0.75%, beginning July 1, 2005, when the bill reduces the state sales and use tax rate from 6% to 5½%.

The bill maintains the discount at the rate of 0.9%, beginning July 1, 2005.

Overview of the Streamlined Sales and Use Tax Agreement

Since 2002, Ohio has been required by state law to participate in multi-state discussions to develop and finalize a voluntary, streamlined system for the collection of sales and use taxes from remote sellers. Ohio was one of the implementing states to develop the system through a Streamlined Sales and Use Tax Agreement (the Agreement), which provides states with the structure for simplifying their sales and use tax collection systems by changing state statutes to establish the system. The Agreement provides that any state that becomes a member to the Agreement is authorized to collect taxes from remote sellers that have voluntarily registered with the central electronic registration system established under the Agreement. The Agreement requires that states bring their laws, rules, regulations, and policies into substantial compliance with each of its provisions in order to become a member state.

On November 12, 2002, the implementing states approved the Agreement, and subsequently amended it April 16, 2005. The bill contains many of those changes to bring Ohio's law into substantial compliance with each provision of the Agreement.

Changes made to conform to the Agreement

Sourcing multiple points of use sales; sales of direct mail

(R.C. 5739.033)

The Agreement changed the manner in which sales of digital goods, computer software, or services used in business are sourced when they are used in more than one taxing jurisdiction (multiple points of use) and the consumer does not hold a direct payment permit. The bill adopts those changes by providing that a business consumer that purchases a digital good, computer software (except software received in person by a business consumer at a vendor's place of business) or a service, and that knows those items will be concurrently available for use in more than one taxing jurisdiction must deliver to the vendor an exemption certificate claiming multiple points of use or must work with the vendor to produce a correct apportionment of the sale to the proper taxing jurisdiction. The bill designates when the vendor is responsible for collecting and remitting sales and use taxes or when the business consumer must pay the tax directly to the state.

The bill also clarifies what type of form should be used for direct mail sales when the consumer is not a holder of a direct payment permit.

The bill revises how leases or rentals of tangible personal property requiring recurring periodic payments must be sourced, to comply with the sourcing terms of the Agreement.

These changes take effect July 1, 2005.

Administering exempt sales under the Agreement

(R.C. 5739.03 and 5741.02)

The bill revises the exemption certificate law so that it conforms to the Agreement, beginning January 1, 2006. The bill relieves a vendor from liability for collecting and paying sales and use taxes if the vendor obtains a fully completed exemption certificate from a consumer, except in circumstances where the vendor:

(1) Fraudulently fails to collect the tax;

(2) Solicits consumers to participate in the unlawful claim of an exemption;

(3) Accepts an exemption certificate from a consumer that claims an exemption based on who purchases or who sells property or a service when the subject of the transaction sought to be covered by the exemption certificate is actually received by the consumer at a location operated by the vendor in Ohio, and Ohio has posted to its website an exemption certificate form that clearly and affirmatively indicates that the claimed exemption is not available;

(4) Accepts an exemption certificate from a consumer who claims a multiple points of use exemption under the sourcing law, if the item purchased is tangible personal property, other than prewritten computer software.

The bill further provides that, when claiming a sales or use tax exemption under the law that exempts building and construction materials and services sold to a construction contractor for incorporation into otherwise exempt real property, the contractor must obtain certification of a claimed exemption from a contractee, in addition to the exemption certificate provided by the contractor to the vendor. A contractee that provides a certification is deemed to be the consumer of all items purchased by the contractor under the claim of exemption, if it is subsequently determined that the exemption is not properly claimed. The certification must be in such form as the Tax Commissioner prescribes.

Change to the statute of limitations for assessing sales or use taxes

(R.C. 5739.16 and 5741.16)

Beginning January 1, 2006, the bill extends the statute of limitations for making sales or use tax assessments against consumers whose exemption certificates have been denied. Continuing law provides that no assessment can be made for state or local sales or use taxes more than four years after the return date for the period in which the sale or purchase was made, or more than four years after the return for such period was filed, whichever date is later.

The bill provides that a consumer who provides a fully completed exemption certificate may be assessed any state or local sales or use tax that results from denial of a claimed exemption within the later of the period established by continuing law, or one year after the date the certificate was provided.

Medical equipment definitions and exemptions

(R.C. 5739.01(HHH) and (III) and 5739.02(B)(18))

Continuing law defines "durable medical equipment" and "mobility enhancing equipment." The bill clarifies the definitions to conform them with the definitions in the Agreement. Although the definition of these terms are the same as in the Agreement, the bill provides that the definitions are mutually exclusive of each other, a specification that is made under the Agreement.

Current law exempts from sales and use taxation sales of drugs for a human being, dispensed pursuant to a prescription; hospital beds when purchased for use by persons with medical problems for medical purposes; and medical oxygen and oxygen-dispensing equipment when purchased for use by a person with medical problems for medical purposes. The bill limits the exemptions so that sales of drugs for a human being that may be dispensed only pursuant to a prescription are exempt, and hospital beds and medical oxygen and medical oxygen-dispensing equipment when purchased by hospitals, nursing homes, or other medical facilities are exempt.

Revisions to the definition of "price"; tax treatment of "bundled transactions"

(R.C. 5739.01(H) and 5739.012)

To conform with the April 16, 2005, amendments to the Agreement, the bill amends the definition of "price" to address the sales and use tax treatment of coupons or discounts, third party payments, and discounts offered under automobile manufacturing employee vehicle purchases.

The bill also enacts a new law regarding the tax treatment of bundled transactions that was also in the amendments to the Agreement. The bill defines "bundled transaction," which, in general, is the retail sale of two or more products where the products are otherwise distinct and identifiable products and are sold for one non-itemized price. The bill establishes how the price of a bundled transaction is determined and how the transaction is taxed when taxable and exempt products are bundled in a sale.

These changes take effect January 1, 2006.

Telecommunications definitions and sourcing requirements

(R.C. 5739.01(B)(3)(f) and (p) and (AA), 5739.034, 5739.035, and 5739.17)

The bill adopts the Agreement's definitions for numerous types of telecommunications services, including "900 service," "prepaid wireless calling service," "value-added non-voice data service," and "private communication service."

The bill exempts from sales and use taxes sales by a telecommunications service vendor of 900 service to a subscriber, and sales of value-added non-voice data service.

The bill establishes sourcing requirements for private communication service, and clarifies sourcing of prepaid wireless calling service.

Timing of the adoption of resolutions for county permissive sales tax levies

(R.C. 5739.021 and 5739.026)

The Agreement requires that member states change local tax rates only on the first day of a calendar quarter after a minimum of 60 days' notice to vendors and sellers. Ohio law requires a board of county commissioners to give the Tax Commissioner 65 days' notice before the day a rate change is to become effective, so that the Commissioner may report the change accordingly. But this notice requirement creates a problem if a resolution levying or changing the tax is adopted, without submitting it to the electors of the county. That type of resolution is subject to referendum, and the tax rate change would not go into effect unless the referendum is defeated at the next election.

The bill provides that county permissive tax levy changes that are not emergency levies and are not placed on the ballot by a board of county commissioners must be adopted by resolution at least 120 days prior to the date on which the tax or the increased rate of tax is to go into effect. This time period allows the referendum petition process to be completed without affecting the Agreement's notice requirements. This change takes effect January 1, 2006.

County license fee reimbursement

(R.C. 5739.17)

Continuing law provides that the Tax Commissioner may establish a registration system whereby a vendor may pay $25 to the Commissioner, rather

than a county, and obtain a vendor's license. The system was added to Ohio law because the Agreement requires that it be made available to remote vendors. The Tax Commissioner issues the license and forwards a copy of the application and the license fee to the county auditor of the county in which the vendor desires to engage in business.

The bill establishes the mechanism for returning the fees to the counties. License fees must be deposited into the Vendor's License Application Fund, which is created in the state treasury. The Commissioner must certify to the Director of Budget and Management within ten business days after the close of a month the license fees that will be transmitted to each county from the Fund for vendor's license applications received by the Commissioner during that month. When a license fee is transmitted to a county, but is not received by the Commissioner, for example, when an electronic transfer fails, the fee may be netted against a future distribution to that county, including distributions of sales taxes made each month to the county under existing law.

Transmission to the Treasurer of State of sales and use taxes collected by court clerks upon issuing certificates of title

(R.C. 1548.06 and 4505.06)

Under continuing law, applications for certificates of title for motor vehicles, watercraft, and watercraft outboard motors are filed with the clerks of the courts of common pleas, and the clerks are required to collect unpaid sales and use taxes from the applicants at the time the applications are filed. The clerks retain a poundage fee for collecting the taxes. Under existing law, the clerks forward the taxes collected by them to the Treasurer of State in a manner prescribed by the Tax Commissioner.

The bill establishes procedures to govern the transmission to the Treasurer of State of sales and use taxes collected by the court clerks. The bill provides that the clerks are to transmit sales and use taxes resulting from sales of motor vehicles, off-highway vehicles, all-purpose vehicles, and titled watercraft and outboard motors during the week to the Treasurer on or before the Friday following the close of that week. If, on any Friday, the offices of a court clerk or the state are closed, the tax must be forwarded to the Treasurer on or before the next day on which the offices are open. Every remittance of tax made by a clerk must be accompanied by a remittance report. Under the bill, the Tax Commissioner is to determine the form of this report. Upon receiving a tax remittance and report, the Treasurer is required to date stamp the report and forward it to the Tax Commissioner. The Treasurer may require the court clerks to transmit tax collections and remittance reports electronically.

If the tax due for any week with respect to titled watercraft and outboard motors is not remitted by a court clerk in accordance with the procedures outlined in the bill, the clerk must forfeit the poundage fees collected by the clerk for sales made during that week. If the tax due for any week with respect to motor vehicles, off-highway vehicles, and all-purpose vehicles is not remitted by a court clerk in accordance with the bill's procedures, the Tax Commissioner may, but is not required to, compel the clerk to forfeit the poundage fees collected by the clerk for sales made during that week.

Sales of investment metal bullion and coins subject to sales and use taxes

(R.C. 5739.02(B)(35))

Current law exempts sales of investment metal bullion and investment coins from sales and use taxes. The bill repeals the exemption, thus making sales of investment metal bullion and investment coins subject to sales and use taxes. "Investment metal bullion" was defined as any elementary precious metal (such as gold, silver, or platinum) that has been put through a smelting or refining process and that is in such a state that its value depends upon its content and not upon its form. (Sales of fabricated precious metal that has been processed or manufactured for specific and customary industrial, professional, or artistic uses thus was not exempted by prior law from sales and use taxes.) "Investment coins" were defined as numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium, or other metal under the law of the United States or a foreign nation that have a fair market value greater than any statutory or nominal value.

VI. The Kilowatt-hour and Natural Gas Consumption Taxes

The kWh tax

Increase in the tax

(R.C. 5727.81(A) and (C)(2); Section 557.21)

A kilowatt-hour (kWh) tax is imposed on electric distribution companies for all electricity distributed by them through meters of end users, or to unmetered locations, in this state. The bill increases the kWh tax by approximately 30%, beginning in the tax measurement period that includes July 1, 2005. The tax rate increases as follows:

Kilowatt hours distributed	Tax rate per kilowatt hour under current law	Tax rate per kilowatt hour under the bill
For the first 2,000:	$.00465	$.00605
For the next 2,001 to 15,000:	$.00419	$.00545
For 15,001 and above:	$.00363	$.00472

Under current law, commercial or industrial purchasers that are self-assessing the kWh tax (because of their high-volume consumption of electricity) are required to pay the tax at a rate of $.00075 per kWh on the first 504 million kWhs distributed to them, plus 4% of the total price of all electricity distributed to them. The bill retains the rate of $.00075 per kWh on the first 504 million kWhs, but raises the percentage to 5% of the total price of all electricity distributed to a self assessor.

Revenue limit and credit

(R.C. 5727.812)

The bill places a limit on the revenue increase that may result from the bill's increase in the kWh tax rate increase from 4% to 5% of the price of electricity (the "price component" of the self-assessor tax). The revenue increase is fixed at $10 million per year plus growth in that figure equal to the growth in the Consumer Price Index from June 2005 (termed the "allowable price-based revenue increase"). Although the actual revenue increase in any year may exceed the allowable price-based revenue increase, revenue in the following year is reduced accordingly by a credit granted against each self-assessor's kWh tax liability for the following year. The credit equals the self-assessor's pro-rata share of the amount by which actual revenue from the increase in the price component of the tax exceeds the allowable price-based revenue increase. For example, if the actual fiscal year 2008 revenue increase exceeds the limit by 5%, each self-assessor receives a credit in fiscal year 2009 equal to 5% of the amount of tax the self-assessor paid in fiscal year 2008. The credit is applied monthly in 1/12 increments.

If an electricity user is no longer registered as a self-assessor when the credit is payable, the user is entitled to a refund of any unclaimed credit.

Municipal electric utilities may not retain the tax increase

(R.C. 5727.81(C)(2) and 5727.82(A)(3))

Continuing law provides that a municipal electric utility may retain in its general fund that portion of the kilowatt-hour tax on the kilowatts distributed to end users located within its boundaries, but must pay to the Tax Commissioner the tax due on kilowatt hours distributed to end users located outside the municipality. The bill provides that, in this situation, a municipal electric utility cannot retain for its general fund any part of the tax rate **increase** imposed by the bill. Instead, the amount of the increase must be paid directly to the Tax Commissioner or Treasurer of State.

Changes to distribution of the kWh tax

(R.C. 5727.84(B)(1) to (5))

Revenues from the kWh tax are deposited in the Kilowatt-Hour Tax Receipts Fund, to the credit of five funds. The bill revises the percentages of kWh tax revenues that are credited to those funds after July 31, 2005, as follows:

	Percentage credited under current law	**Percentage credited under the bill**
General Revenue Fund	59.976%	69.213%
Local Government Fund	2.646%	2.035%
Local Government Revenue Assistance Fund	.378%	.291%
School District Property Tax Replacement Fund	25.4%	19.538%
Local Government Property Tax Replacement Fund	11.6%	8.923%

Elimination of the trigger for reducing revenues credited to GRF

(R.C. 5727.84(B)(5) and (6))

Under current law, if, in fiscal years 2002-2006, the kWh tax revenues are less than $552 million, the amount credited to the General Revenue Fund (GRF) must be reduced by the amount necessary to credit to the Local Government Fund and Local Government Revenue Assistance Fund the amount each would have received if the tax did raise that amount in the fiscal year. Beginning in fiscal year 2007, if the tax revenues are less than $552 million, current law requires that the

amount credited to GRF be reduced by the amount necessary to credit to all four of the other funds (in the chart above) the amount each one would have received if the tax did raise that amount in the fiscal year.

The bill removes this trigger so that, regardless of the amount of revenues raised by the kWh tax, no reduction in the amount credited to the GRF occurs, and the other funds are not credited for any shortfall.

The natural gas consumption tax

Elimination of the threshold for transferring GRF moneys to other funds

(R.C. 5727.84(C)(3))

Under current law, if, beginning in fiscal year 2007, the natural gas consumption tax (mcf tax) revenues are less than $90 million, an amount equal to the difference between the amount collected and $90 million must be transferred from the GRF to the School District Property Tax Replacement Fund and the Local Government Property Tax Replacement Fund in the same percentages as if that amount had been collected as mcf taxes. The Tax Commissioner is required to certify to the Director of Budget and Management the amounts to be transferred.

The bill eliminates this threshold so that no revenues are transferred from GRF to either of the other funds, regardless of the amount of mcf taxes collected.

VII. Cigarette Taxes

Sale, distribution, and taxation of cigarettes

Cigarette tax

(R.C. 5743.02 and 5743.32; Section 612.27)

Under existing law, an excise tax is levied on the sale, use, consumption, or storage in this state of cigarettes at the rate of 27.5 mills per cigarette. The bill increases the tax to 62.5 mills per cigarette. (A "mill" is equal to one-tenth of one cent. Accordingly, 10 mills equals one cent, 27.5 mills equals 2.75¢, and 62.5 mills equals 6.25¢. So, an excise tax of 62.5 mills per cigarette equates to a tax of $1.25 on a package of cigarettes containing 20 cigarettes.) The increase takes effect July 1, 2005.

"Floor tax" on cigarette inventories

(Section 557.06)

The bill requires wholesale dealers to pay the "net additional tax" resulting from the bill's increase in the cigarette tax, less the dealer discount, on stamped cigarettes and unaffixed Ohio tax stamps in their possession on July 1, 2005, the date on which the tax increase takes effect. For retail dealers, the "net additional tax" is the net additional tax resulting from the bill's increase in the cigarette tax due on all packages of Ohio stamped cigarettes and on all unaffixed Ohio cigarette tax stamps that a retail dealer has on hand as of the beginning of business on July 1, 2005.

In addition to filing the cigarette tax return, each wholesale dealer and retail dealer must file a return on forms prescribed by the Tax Commissioner showing net additional tax due and any other information the Commissioner needs to administer the tax. On or before September 30, 2005, each wholesale dealer and retail dealer must deliver the return to the Treasurer of State, together with payment of the net additional tax due. A wholesale or retail dealer may claim a credit of 5% of the net additional tax if the dealer delivers the return on or before August 15, 2005, together with the net additional tax minus the dealer credit. The Treasurer of State must stamp or otherwise mark on the return the date on which the return and payment were received, and show on the return by stamp or otherwise the amount of the tax payment remitted with the return. Upon receipt, the Treasurer of State must immediately transmit all returns filed to the Tax Commissioner.

A dealer who fails to file a return or pay the net additional tax must pay a late charge of $50 or 10% of the net additional tax due, whichever is greater. Interest accrues on additional tax that is not timely paid. Unpaid or unreported net additional taxes, late charges, and interest may be collected by assessment.

Unstamped cigarettes prohibitions: quantity basis rather than value basis

(R.C. 5743.10, 5743.111, and 5743.112; Section 612.21)

Current law prohibits the possession of or trading in cigarettes above a certain threshold value without the cigarette packages bearing tax stamps or other proper indications that the tax has been paid. The prohibitions are expressed in terms of the wholesale value of cigarettes. Any person is prohibited from possessing unstamped cigarettes with a wholesale value of $60 or more. Any person is prohibited from shipping, transporting, delivering, distributing, or otherwise trading in unstamped cigarettes with a wholesale value of $60 or more.

The bill expresses the same prohibitions in terms of the number of unstamped cigarettes instead of the wholesale value of unstamped cigarettes. Instead of $60 wholesale value, the threshold number of cigarettes is established at 1,200.

The bill also broadens an existing prohibition against a retail dealer possessing any quantity or value of unstamped cigarettes by applying the prohibition to any person.

Persons subject to Ohio laws governing sale, distribution, and taxation of cigarettes

(R.C. 5743.01)

The bill exempts certain persons from the laws governing the sale, distribution, and taxation of cigarettes in Ohio. Specifically, the bill provides that the "wholesale dealers" to which such laws apply do not include any cigarette manufacturer, export warehouse proprietor, or cigarette importer possessing a valid federal license to conduct such business if the person sells cigarettes in Ohio only to:

(1) Wholesale dealers holding a valid Ohio license to traffic in cigarettes; or

(2) An export warehouse proprietor or another manufacturer.

The bill specifies that the class of retail dealers subject to Ohio's cigarette laws includes every person, other than a wholesale dealer, engaged in the business of selling cigarettes in this state, regardless of whether the person is located in Ohio or elsewhere. Accordingly, the bill provides, further, that, for purposes of Ohio's cigarette laws, a "sale" of cigarettes includes transactions in interstate or foreign commerce.

Tax stamps

(R.C. 5743.031)

The bill specifies that a wholesale dealer may affix tax stamps only to packages of cigarettes that the dealer received directly from a manufacturer or importer[262] of cigarettes that possesses a valid Ohio license to traffic in cigarettes.

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[262] *The bill defines an "importer" as any person that is authorized under a valid federal permit to directly or indirectly import finished cigarettes into the United States (R.C. 5743.01(P)).*

However, a wholesale dealer may affix tax stamps to packages of cigarettes that the dealer received directly from another licensed wholesale dealer if the Tax Commissioner has authorized the sale of the cigarettes between those wholesale dealers and the wholesale dealer that sold the cigarettes received them from a manufacturer or importer that possesses a valid Ohio license.

The bill provides that only a wholesale dealer that possesses a valid Ohio license may purchase or obtain tax stamps. A wholesale dealer may not sell or provide tax stamps to any other wholesale dealer or other person.

Under the bill, any person shipping unstamped cigarettes into Ohio to a person other than a licensed wholesale dealer must, before shipping the cigarettes, file notice of the shipment with the Tax Commissioner. The person transporting the unstamped cigarettes into or within Ohio must carry in the vehicle used to transport the cigarettes invoices or other documentation of the shipment, which contains information regarding the cigarettes, their seller, and their purchaser. However, this requirement does not apply to any common or contract carrier transporting cigarettes through Ohio to another location under a proper bill of lading or freight bill that states the quantity, source, and destination of the cigarettes.

Records pertaining to cigarette sales and purchases

(R.C. 5743.071)

Under continuing law, every wholesale dealer and retail dealer must maintain complete and accurate records of purchases and sales of cigarettes, and must procure and retain all invoices, bills of lading, and other documents relating to purchases and sales of cigarettes. The bill extends these record-keeping duties to manufacturers and importers. The bill provides, further, that the invoices or documents must be maintained for each place of business and must show the name and address of the other party to the sale or purchase, and must show the quantity, by brand style, of the cigarettes sold or purchased.

With the Tax Commissioner's consent, a person with multiple places of business may keep centralized records. However, that person must transmit duplicates of the invoices or documents to each place of business within 72 hours after the Commissioner requests access to the records.

Manufacturer and importer reports

(R.C. 5743.072)

The bill requires that every manufacturer and every importer shipping cigarettes into or within Ohio file a monthly report with the Tax Commissioner in accordance with rules prescribed by the Commissioner.

Seizure and forfeiture of cigarettes

(R.C. 5743.08)

Under continuing law, when the Tax Commissioner discovers that cigarette taxes have not been paid on cigarettes, the Commissioner may seize and take possession of the cigarettes. The bill provides that this authority extends not only to cigarettes for which taxes have not been paid, but to any cigarettes that are held for sale or distribution in violation of any of Ohio's cigarette laws.

Under current law, the Commissioner may sell cigarettes seized by the Commissioner. The bill authorizes the Commissioner to either sell or destroy the cigarettes. The Commissioner's destruction of cigarettes does not render the owner of the cigarettes immune from possible fines and penalties.

Tax Commissioner's inspection powers

(R.C. 5743.14)

Current law grants the Tax Commissioner general authority to inspect any place where cigarettes are sold or stored. The bill specifies that these inspections may be conducted by the Commissioner or the Commissioner's agents and that the Commissioner's inspection authority extends to the facilities and records of manufacturers, importers, wholesale dealers, and retail dealers. The bill provides, further, that the inspection must be conducted pursuant to a properly issued search warrant if it is conducted outside normal business hours.

The bill also authorizes the Commissioner or an agent of the Commissioner to stop and inspect any vehicle that the Commissioner or the Commissioner's agent has reasonable cause to believe is illegally transporting cigarettes.

Licenses to traffic in cigarettes

(R.C. 5743.15)

Continuing law requires that wholesale and retail businesses wishing to engage in the trafficking of cigarettes in Ohio first obtain a license to do so from

the county auditor of the county in which the wholesaler or retailer wishes to conduct business. The bill extends this licensing requirement to manufacturers and importers.

To obtain a license, a manufacturer or importer must, annually, on or before May 4 file a statement with the Tax Commissioner showing the applicant's name, describing the applicant's business, and detailing any other information required by the Commissioner. A license issued by the Commissioner is valid for one year.

The bill provides that the Commissioner's issuing of a license to a manufacturer does not excuse the manufacturer from filing the annual certification that continuing law requires be filed by tobacco product manufacturers (R.C. 1346.05). A manufacturer's annual certification certifies that the manufacturer is in full compliance with the Master Settlement Agreement entered into between the state and leading manufacturers of tobacco products in settlement of litigation pertaining to the negative health effects of tobacco product use. Continuing law requires that the Attorney General maintain a directory on its web site listing manufacturers who have provided current and accurate certifications. The bill requires that the Tax Commissioner revoke any license issued to a manufacturer that is not listed in the Attorney General's directory.

The bill grants the Tax Commissioner authority to adopt rules necessary to administer the licensing of manufacturers and importers.

The bill also requires that firms, partnerships, and associations other than corporations that apply for a license state on their applications the name and address of each of their members. Likewise, corporate applicants must state the name and address of each of their officers.

Authorized sales

(R.C. 5743.20)

Current law specifies that wholesale dealers may not sell cigarettes to any person other than a licensed retail dealer. The bill adds an exception in the case of a licensed wholesale dealer who receives cigarettes directly from a licensed manufacturer or licensed importer and who, with the Tax Commissioner's permission, sells them directly to another licensed wholesale dealer. The bill requires that the Commissioner adopt rules governing such sales.

The bill also specifies that a retail dealer may not purchase cigarettes from any person other than a licensed wholesale dealer. In addition, the bill provides that a manufacturer or importer may not sell cigarettes to another person in Ohio other than to a licensed wholesale dealer. An importer is not permitted to

purchase cigarettes from any person other than a licensed manufacturer or licensed importer.

The bill prohibits a retail dealer from purchasing tobacco products other than cigarettes from any person other than a licensed distributor.

The bill prohibits a licensed distributor from selling tobacco products to anyone other than a retail dealer. However, the bill provides an exception in the case of a licensed distributor who receives tobacco products directly from a manufacturer or importer of tobacco products and who, with the Tax Commissioner's permission, sells them to another licensed distributor. The bill permits the Commissioner to adopt rules governing such sales.

The bill provides that the identities of licensed distributors are subject to public disclosure. The Tax Commissioner must maintain a list of distributors, post the list on a web site on the Internet that is accessible to the public, and periodically update the posting.

"Authorized recipients of tobacco products"

(R.C. 2927.023 (A), (B), and (D))

The bill makes it an offense punishable by a fine of up to $1,000 to transport or cause to be shipped cigarettes to any recipient in Ohio other than one of the following "authorized recipients of tobacco products":

(1) A licensed cigarette wholesale dealer;

(2) A licensed distributor of tobacco products;

(3) An export warehouse proprietor;

(4) An operator of a customs bonded warehouse;

(5) An officer, employee, or agent of the federal or state government acting in the person's official capacity;

(6) A department, agency, instrumentality, or political subdivision of the federal or state government;

(7) A person having a consent for consumer shipment issued by the Tax Commissioner (see "***Consent for consumer shipment***," below).

The prohibition against shipping cigarettes to anyone other than an authorized recipient of tobacco products applies not only to the party that initiates the shipment but extends as well to common carriers, contract carriers, or any

other person that transports such products. Any one of these entities is subject to the $1,000 fine imposed under the bill if it knowingly transports cigarettes to a person in Ohio that the carrier reasonably believes is not an authorized recipient. If cigarettes are transported to a home or residence to a person who is not an authorized recipient, it is presumed that the carrier knew that the person to whom the products were delivered was not an authorized recipient.

Shipping containers and wrappings

(R.C. 2927.023(C) and (D))

The bill requires any person shipping cigarettes to a person in Ohio in a container other than the cigarettes' original container or wrapping to plainly and visibly mark the exterior of the container or wrapping in which the cigarettes are shipped with the word "cigarettes." Whoever fails to mark containers and wrapping with this word is subject to a fine of up to $1,000 for each violation.

Consent for consumer shipment

(R.C. 5743.71)

The bill permits a person to apply to the Tax Commissioner for a "consent for consumer shipment" of cigarettes or other tobacco products into Ohio. In order to obtain a consent for consumer shipment, the applicant must demonstrate that the products sought by the applicant are not reasonably available to the applicant at a retail location in Ohio. The applicant must also provide the Commissioner with proof of age and any other information required by the Commissioner. A consent for consumer shipment must be obtained before any cigarettes or other tobacco products are purchased for shipment into Ohio.

Transportation of untaxed cigarettes

(R.C. 5743.33)

Current law prohibits transporting within the state untaxed cigarettes having a wholesale value greater than $60 without the prior consent of the Tax Commissioner. The bill prohibits transporting within Ohio more than 1,200 untaxed cigarettes without the Commissioner's prior consent.

VIII. Other Taxation Provisions

Local Government Funds

(Section 557.12)

The bill reduces the amount of state tax revenue credited to the three state-local revenue sharing funds, and thus the amount of revenue available for distribution to counties, municipal corporations, townships, public library systems, and other special-purpose subdivisions receiving revenue sharing payments. The revenue sharing funds involved are the Local Government Fund (LGF), the Local Government Revenue Assistance Fund (LGRAF), and the Library and Local Government Support Fund (LLGSF).

Current law

Under permanent law provisions that have been suspended since the beginning of fiscal year 2002, each of the funds was credited with a percentage of the state's major tax sources, including the income tax, sales and use tax, corporation franchise tax, public utility excise tax, and kilowatt-hour (kWh) tax. Under those suspended provisions, the LGF would have received 4.2% of revenue from those taxes (except the kWh tax) and the LGRAF would have received 0.6%; the LLGSF would have received 5.7% of the income tax. After the percentage of revenue was credited to those funds, the remaining revenue was credited to the state's General Revenue Fund (GRF). Beginning with fiscal year 2002, the percentages were suspended to reserve more of the revenue for the GRF. The revenue credited to the LGF, LGRAF, and LLGSF was fixed or "frozen" at their respective fiscal year 2001 levels.

Money in the LGF is distributed among counties, townships, municipal corporations (cities and villages), and some other special-purpose subdivisions (e.g., park districts) under a three-stage system. At the first stage, LGF money is divided into a municipal share (for municipal corporations levying an income tax) and a share for all subdivisions in a county participating in the county's LGF distribution. Under the "permanent" distribution formula as it operated before FY 2002, slightly less than 10% of the LGF was set aside for allocation only to municipal corporations levying an income tax, and the remaining 90% or so was allocated among all participating subdivisions in a county (including municipal corporations levying an income tax). This remaining subdivision allocation was then distributed under one of two formulas, with the formula yielding the higher payment for a county being applied to that county. Under either formula, the 90% subdivision share was divided into fourths, with three-fourths distributed in proportion to municipal taxable property value in the county and one-fourth distributed in proportion to county population. One formula added a third factor:

the county's 1983 deposits tax revenue. Until 1983, counties received revenue from a tax on deposits held in the county at the rate of 1-3/8 mills per dollar of deposits. This second LGF formula ensured that each county received 145.45% of its 1983 deposits taxes (145.45% represents what the revenue would be if the deposits tax had been levied at a rate of two mills). The total of the counties' deposit tax portion was deducted from the counties' approximately 90% share of the LGF, and an additional $6 million was deducted. The remaining amount was then divided into fourths, with three-fourths distributed in proportion to municipal taxable property value in each county and one-fourth distributed in proportion to county population, as in the first formula.

The minimum distribution under either formula (disregarding the deposits tax portion) was $225,000 per county. Each county's share of the LGF was the higher of the two formula computations. The shares of all the counties were added together, and each county's amount was divided into the total to yield the county's percentage of the total county part of the LGF. There was a hold-harmless guaranteeing each county at least the amount it received in 1983.

In addition to a county's formula amount, each county receives five mills' worth of the eight-mill state tax on dealers in intangibles originating from dealers in that county (except certain dealers that are subsidiaries of financial institutions); this five-mill portion of the distribution is not affected by the bill. The sum of the formula amount and the five mill portion is then apportioned among the county and the townships, municipal corporations, and some special-purpose districts in the county. In almost all counties, the apportionment is based on a formula negotiated under the supervision of the county budget commission. In a few counties, the apportionment follows the statutory method, which apportions on the basis of relative "need" as defined by state law. Generally, need is measured by a subdivision's expenditures less its locally generated revenue.

The approximately one-tenth of the LGF allocated for municipal corporations levying an income tax is distributed in proportion to each municipal corporation's relative municipal income tax collections compared to total municipal income tax collections.

The pre-FY 2002 LGRAF distribution method was simpler than that of the LGF, and was based entirely on relative county populations. Each county received a percentage of the LGRAF equal to the county's percentage of Ohio's population. LGRAF distributions have been more or less frozen since the beginning of FY 2002.

The pre-FY 2002 LLGSF was distributed among counties for further distribution primarily to library systems in the county under a formula that essentially replaced the repealed intangible property tax revenue (repealed in

1986) and allowed for growth from that base amount on both an overall basis and on a per-capita basis. LLGSF distributions have been more or less frozen since the beginning of FY 2002.

Proposed reductions in LGF, LGRAF, and LLGSF

LGF and LGRAF

Crediting of state revenue to LGF and LGRAF. The bill establishes for fiscal years 2006 and 2007 a new scheme for crediting state revenue to the LGF and LGRAF.

With respect to amounts credited to LGF and LGRAF from *corporate franchise tax* and *sales and use tax* revenues, the bill freezes those amounts at fiscal year 2005 levels. With respect to the *personal income tax* revenues credited to the funds, the bill's formula initially freezes those amounts also at the fiscal year 2005 levels. The bill further provides, however, that despite the putative crediting of the personal income tax revenues at fiscal year 2005 levels, the actual amount credited will be reduced by the amount that monthly distributions to local governments originating from LGF and LGRAF are below the total amount credited each month to those funds from the corporate franchise tax, sales and use tax, personal income tax, public utilities excise tax, and kilowatt hour tax.

With respect to the amounts credited to LGF and LGRAF from *public utility excise tax* revenues, the bill would credit amounts for fiscal years 2006 and 2007 as expressed in the following chart:

Fiscal years 2006 and 2007 LGF		**Fiscal years 2006 and 2007 LGRAF**	
July $0	**January** $0	**July** $0	**January** $0
August $0	**February** $454,520.77	**August** $0	**February** $64,931.53
September $0	**March** $2,357,987.57	**September** $0	**March** $336,855.37
October $2,361,127.85	**April** $0	**October** $337,303.98	**April** $0
November $313,719.33	**May** $990,215.47	**November** $44,817.05	**May** $141,459.35
December $363,012.50	**June** $2,803,350.27	**December** $51,858.94	**June** $400,478.61

The numbers in the chart, other than those specifying zero amounts, represent the product of multiplying 30% times a specified amount and rounding to the nearest cent. The bill uses the same specified amounts in the same months for the calculation of the credited amounts for the kilowatt-hour tax (below).

With respect to the amounts credited to LGF and LGRAF from the *kilowatt-hour tax* revenues, the bill would credit amounts for fiscal years 2006 and 2007 as expressed in the following chart:

Fiscal years 2006 and 2007 LGF		**Fiscal years 2006 and 2007 LGRAF**	
July $0	**January** $0	**July** $0	**January** $0
August $0	**February** $1,060,548.45	**August** $0	**February** $151,506.90
September $0	**March** $5,501,971	**September** $0	**March** $785,995.87
October $5,509,298.31	**April** $0	**October** $787,042.61	**April** $0
November $732,011.78	**May** $2,310,502.75	**November** $104,573.11	**May** $330,071.82
December $847,029.17	**June** $6,541,150.62	**December** $121,004.19	**June** $934,540.09

The numbers in the chart, other than those specifying zero amounts, represent the product of multiplying 70% times the specified amount for the month and rounding to the nearest cent.

Finally, with respect to crediting all the tax revenues described above, the bill provides that if the amounts credited exceed what existing codified law would have credited, then the amounts of those taxes that are credited to the General Revenue Fund are to be reduced by that excess. If the amounts credited are less than what existing law would have credited, then the amounts of those taxes credited to the General Revenue Fund will be increased by an amount equal to the deficiency.

Distributions from LGF and LGRAF. The bill establishes a new scheme for distribution of amounts from the LGF and LGRAF to each county's undivided local government fund and undivided local government revenue assistance fund and also to the subdivisions. The bill applies one phase of the scheme to the first five months of fiscal year 2006 (July through November 2005); the second phase is applied to the remaining seven months of fiscal year 2006 and all of fiscal year 2007 (December 2005 through June 2007).

With respect to the period of *July through November of 2005*, the bill provides for distributions to be made from the LGF and LGRAF each month on the 10th day of the immediately succeeding month as follows:

- Each county undivided local government fund will receive the same percentage of the total LGF distribution that it received for each respective month in the first five months of fiscal year 2005;

- Each county undivided local government revenue assistance fund will receive the same percentage of the total LGRAF distribution that it received for each respective month in the first five months of fiscal year 2005;

- Each municipal corporation receiving a direct distribution from the LGF will receive the same percentage of the total LGF distribution that it received for each respective month in the first five months of fiscal year 2005.

Other than for the municipal corporations receiving direct distributions from the LGF, the bill does not expressly provide for distributions to the various local governments of the amounts in the county undivided local government fund and county undivided local government revenue assistance fund for the first five months of fiscal year 2006. Because of the silence, it appears that existing codified law governing that distribution would apply.

With respect to the period of *December 2005 through June 2007*, the bill applies various calculations to determine the distributions that will be made to each county undivided local government fund and county undivided local government revenue assistance fund and ultimately to the local governments slated to receive distributions. The bill either retains the amounts distributed in calendar year 2005 or makes a reduction, depending on the local government unit that will receive the distribution.

The monthly amount of state revenue will ultimately be distributed as follows to counties, townships, villages, and other taxing units:

- *Townships and villages* will receive 100% of their calendar year 2005 LGF and LGRAF distributions;

- *Counties* will receive 90% of their calendar year 2005 LGF and LGRAF distributions;

- *Other taxing units (e.g., park districts)* will receive 80% of their calendar year 2005 LGF and LGRAF distributions;

The monthly amount of state revenue ultimately distributed to cities involves more complicated computations. The bill basically provides that any city receiving over $1 million in total county undivided local government fund

distributions (excluding dealer in intangible tax distributions) and LGF direct distributions in calendar year 2005 will receive 90% of the first $1 million it received in 2005 and 80% of any remaining amounts.

With respect to the LGRAF, the bill provides that cities will receive 80% of their calendar year 2005 LGRAF distributions.

LLGSF

Reductions also are made in the LLGSF. For the first five months of FY 2006, monthly deposits into the LLGSF are equal to the previously frozen amounts for the corresponding month in FY 2005. Then, beginning in December 2005, and extending through the end of the biennium, the monthly deposits are reduced by 5% from the previously frozen levels in FY 2005. In each month from August 2005 to July 2007, each county undivided fund will receive the same percentage of the LLGSF as it received in the corresponding month from August 2004 through July 2005. In other words, each county undivided fund will receive the same percentage of the total frozen and reduced amount credited to the LLGSF during the FY 2006-2007 biennium. Distributions are then to be made to the county library systems from each county undivided fund in accordance with current codified law (see discussion above).

Job retention tax credit

(R.C. 122.171)

Authority to enter into agreements for job retention tax credits extended

Under continuing law, Ohio's Tax Credit Authority may enter into agreements with employers whereby the employer undertakes to retain Ohio jobs through a "capital investment project" in exchange for a tax credit against the corporation franchise tax or personal income tax. Under current law, the authority to enter into such agreements expires on June 30, 2007. The bill permits the Ohio Tax Credit Authority to continue entering into the agreements after this date.

Job retention tax credit: capital investment projects

Continuing law defines a "capital investment project" for which a job retention tax credit may be granted as an investment plan for a project site for the acquisition, construction, renovation, or repair of buildings, machinery, or equipment, or for the capitalized cost of research and product development. Eligibility for a job retention tax credit depends, in part, upon how much the employer has invested as part of the capital investment project. Under current law, project costs paid after December 31, 2006, are not to be included in computing investments in a capital investment project. The bill removes this

restriction and makes project costs paid after that date part of the investments comprising a capital investment project.

Job creation tax credit

Overview of the job creation tax credit

(R.C. 122.17)

Under continuing law, Ohio's Tax Credit Authority may enter into an agreement with an employer whereby the employer agrees to increase employment in Ohio in exchange for a tax credit against the corporation franchise tax (corporations and financial institutions) or the income tax (owners of most partnerships, limited liability companies, S corporations, and sole proprietorships). The credit is equal to a percentage, determined by the Authority and detailed in the agreement, of new income tax revenue withheld from the compensation of the employer's new employees. The credit is refundable, which means that the employer is entitled to a refund if the amount of the credit exceeds the employer's tax liability. Currently, insurance companies cannot benefit from the credit.

Extension of the job creation tax credit to insurance companies

(R.C. 122.17, 5725.32, and 5729.032)

In lieu of the corporation franchise tax or income tax, domestic and foreign insurance companies pay annual franchise taxes at a rate of 1.4% of the gross amount of premiums received from policies covering risks within Ohio, except for those companies that are health insuring corporations, which are taxed at a rate of 1% of premium rate payments received. The Superintendent of Insurance administers this tax.

The bill extends the job creation tax credit to domestic and foreign insurance companies by allowing these companies to claim the credit against their annual franchise taxes. Under the bill, all of the existing administrative procedures relating to the job creation tax credit apply with respect to insurance companies. The bill adds the Superintendent of Insurance to the tax credit's administrative procedures because the Superintendent administers the franchise tax on domestic and foreign insurance companies.

Estate taxes

Overview of the additional estate tax, generation-skipping tax, and the family-owned business deduction

Ohio's estate tax consists of four distinct levies: the basic tax, the additional estate tax, the generation-skipping tax, and the nonresident tax. The bill addresses the additional estate tax and the generation-skipping tax, in light of changes made in the federal estate tax law, which affects those two state taxes. The additional estate tax (R.C. 5731.18) is equal to the maximum credit allowed by federal estate tax law for paying state death taxes, while the generation-skipping tax (R.C. 5731.181) is equal to the federal credit for state taxes paid on generation-skipping transfers (of property to a person who is two or more generations below the transferor, such as from a grandparent to a grandchild). Both taxes, known as "sponge" taxes because they allow the state to absorb as much revenue from an estate as is permitted by the federal credits, are equal to the difference between state tax liability and the estate's federal credit. In effect, both sponge taxes allow Ohio to collect more tax from an estate without increasing the estate's combined federal/state tax liability, because federal tax liability is reduced by the amount of the additional estate tax and generation-skipping tax liability.

The bill also addresses the family-owned business deduction because of revisions made to the federal estate tax law, which greatly affects this deduction. Federal law permits estates to avoid federal estate taxes on any part of the estate consisting of family-owned businesses inherited by or passed to family members. These family-owned business interests are deducted in computing the value of the estate that is subject to the federal estate tax. Ohio also has a deduction modeled closely after this federal deduction, for the value of a family-owned business (including a farm) when computing the Ohio estate tax, to the extent the business is passed on to other family members. The state deduction may be claimed **only** if the federal deduction is claimed against federal estate tax liability.

Federal changes that have affected the state estate tax law

The federal "Economic Growth and Tax Relief Reconciliation Act of 2001" (the "Act") phased out the federal credits for paying state death taxes and state generation-skipping transfer taxes. These credits no longer apply, respectively, to estates of decedents dying after December 31, 2004, or to generation-skipping transfers made after that date. Under the Act's sunset clause, the credits are scheduled to be restored to their current forms in 2011, assuming Congress does not intervene before that year and repeal or revise the credits.

The Act also suspended the federal deduction for family-owned business interests by providing that the deduction does not apply to estates of decedents

dying after December 31, 2003. But, technically, the Act's sunset clause reinstates the deduction in 2011.

Constructive elimination of the additional estate tax and generation-skipping tax; repeal of the deduction for family-owned businesses

(R.C. 5731.01(F), 5731.14, 5731.18, and 5731.181; repeal of 5731.20; Section 557.24)

The bill amends the additional estate tax and generation-skipping tax statutes by revising the references to the Internal Revenue Code (IRC) in them, thereby incorporating changes made by the Act. For purposes of the entire state estate tax law, the bill defines the "Internal Revenue Code" to be the Internal Revenue Code of 1986, 100 Stat. 2085, 26 U.S.C.A. 1, as amended. Under an Ohio Supreme Court decision, *State v. Gill*, 63 Ohio St.3d 53 (1992), updating Ohio statutory references to federal law incorporates changes in the federal law occurring since the most recent amendment of the Ohio statute. Therefore, updating references to the IRC in Ohio's two sponge tax statutes has the effect of incorporating the federal Act's phase-out of the federal credit for paying state death taxes and state generation-skipping taxes. In other words, the bill constructively repeals Ohio's additional estate sponge tax and the generation-skipping sponge tax for decedents dying on and after the bill's effective date.

The bill repeals outright the state estate tax deduction for family-owned businesses, since the Act revised federal law to suspend the federal deduction for family-owned business interests for estates of decedents dying after December 31, 2003.

These amendments and the repeal take effect immediately on the day the Governor signs the bill.

Temporary tax credit

(Section 557.03)

The bill grants a tax credit against the additional estate "sponge" tax to the estate of a decedent who dies on or after January 1, 2002, but before the effective date of the bill's changes. In effect, the credit retroactively gives those relatively few larger estates that are subject to the sponge tax the tax reduction they would have received if Ohio's law had reflected the phase-out of the federal credit for state estate taxes. Specifically, the credit equals the portion of the additional estate sponge tax that is over and above the sponge tax that would have been imposed if the tax had been equal to the maximum federal credit allowable for paying state

estate taxes under the federal law that was in effect and applicable on the date of the decedent's death.

Additional amendments made to incorporate federal tax law changes

(R.C. 5731.01(B), (D), and (F), 5731.05(C), and 5731.131; Section 612.21)

The bill also revises all other IRC references in the state estate tax law, with the effect of generally incorporating any applicable federal tax law changes made since the last time those state laws were amended. The actual effect of this incorporation is difficult to discern, but the substantive effect does not appear to be substantial.

These amendments take effect immediately on the day the Governor signs the bill.

Real estate assessment funds

(R.C. 325.31 and 5731.41)

Each county treasury has within it a real estate assessment fund, the moneys in which are used by a county to defray costs associated with administering various taxes. Continuing law sets forth the specific purposes for which a county may use moneys in the fund.

The bill specifies that in addition to the purposes set forth in continuing law, counties may use moneys in real estate assessment funds to defray costs incurred in enforcing estate taxes. More specifically, the bill permits a county to use moneys in its fund to defray costs incurred in compensating estate tax enforcement agents who, under continuing law, perform duties prescribed by the Tax Commissioner.

The bill also authorizes the Tax Commissioner to appoint agents to administer real property and manufactured and mobile homes taxes as prescribed by the Commissioner. The bill specifies that these agents, like estate tax enforcement agents, may be compensated from moneys in county real estate assessment funds.

Phase-out of the grain handling tax

(R.C. 5737.03)

Existing law levies an annual excise tax on each bushel of grain handled at one or more places in Ohio, in lieu of personal property taxes on the grain, at one-half mill per bushel for wheat and flax, and one-fourth mill per bushel for all other

grain. The revenue is distributed to local taxing jurisdictions in proportion to the property tax rates levied by each jurisdiction.

The bill phases-out the grain handling tax over two years. In 2006, the tax due is one-fourth mill per bushel for wheat and flax, and one-eighth mill per bushel for all other grain. No statement or tax is due in 2007 or subsequent years thereafter.

Tax credits under the Ohio Venture Capital Program

(R.C. 150.07, 150.10, 5707.031, 5725.19, 5727.241, 5729.08, 5733.49, and 5747.80)

Credit extended to dealers in intangibles and public utilities

Under the existing Ohio Venture Capital Program administered by the Ohio Venture Capital Authority, moneys in a "program fund" are invested in venture capital funds, which in turn invest in Ohio-based businesses that are in seed or early stages of development or established Ohio-based businesses that are developing new methods or technologies. The program fund is funded through investments from private investors. Some of the profits from the program are put into the Ohio Venture Capital Fund (OVCF), which is used to secure the private investors against losses. To the extent the moneys in the OVCF are not adequate to secure an investor against losses, the investor is eligible for a tax credit granted by the Authority. Eligibility for a tax credit is evidenced by a tax credit certificate issued by the Authority.

Currently, the Authority is authorized to approve tax credits against only the income tax, corporation franchise tax, and insurance company franchise taxes. The bill authorizes the Authority to approve credits against two additional existing taxes--the tax levied on qualifying dealers in intangibles and the public utility tax. "Qualifying dealers in intangibles" are dealers in intangibles that are owned by, or that are under common control with, a financial institution.[263] The entire tax levied under continuing law on qualifying dealers in intangibles is retained by the state whereas the tax levied under continuing law on other types of dealers in intangibles is shared between the state and local taxing jurisdictions.

The bill specifies that any credit approved by the Authority is to be claimed by a taxpayer on a return due after the Authority issues a tax credit certificate to the taxpayer.

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[263] *Common ownership or control means direct or indirect control of more than 50% of a corporation's capital stock with voting rights (R.C. 5733.052(A) (not in the bill)).*

Credit amounts

Under continuing law, a taxpayer who receives approval from the Authority for a tax credit may elect to receive either a refundable or a nonrefundable credit. The bill clarifies the amount of credit that may be claimed for any given tax reporting period with respect to each of the taxes to which the credit can potentially apply.

Current law specifies that taxpayers who elect a refundable credit and whose tax liability for any given reporting period is less than the amount of the credit receive a refund equal to 75% of the amount by which the credit exceeds the tax liability. The bill clarifies that this 75% amount is in addition to the amount of tax against which the credit is applied for that reporting period.

The bill specifies, further, that to the extent a taxpayer's tax liability for any given reporting period exceeds the amount of refundable credit that the taxpayer is entitled to claim, the amount of credit to which the taxpayer is entitled is the full amount of refundable credit authorized by the authority.

Finally, the bill provides that for purposes of determining whether the amount of a refundable venture capital credit exceeds the taxpayer's tax liability with respect to any given reporting period, the amount of the credit is to be compared against the taxpayer's tax liability after deducting all nonrefundable credit that the taxpayer is entitled to claim for that tax reporting period.

The motor fuel use tax

(R.C. 5728.01, 5728.02, 5728.03, 5728.04, 5728.06, and 5728.08)

The fuel use tax is levied on the amount of motor fuel consumed by commercial cars and commercial trucks in Ohio, when the fuel was purchased outside Ohio. Currently, the tax is equal to the same amount as the motor fuel tax, plus 2¢ per gallon. Under continuing law, on and after July 1, 2005, the 2¢ per gallon surcharge is eliminated, and the use tax equals the same amount as the motor fuel tax. Payment of the fuel use tax is made by purchasing in Ohio the same amount of motor fuel as is consumed while operating commercial cars or trucks on Ohio's highways, or by direct payment to the Treasurer of State with a fuel use tax return. Every person liable for the tax must annually file a fuel use permit or a single-trip fuel use permit with the Tax Commissioner.

The bill provides that payment of the use tax must be made by purchasing in Ohio motor fuel for which the motor fuel tax has been paid. If this occurs, no further use tax has to be paid, nor does a use tax return have to be filed. In addition, a person does not have to obtain a fuel use permit, unless it is operating a

commercial car or commercial tractor upon public highways in two or more states (including the District of Columbia and Canada). This would eliminate the requirement that commercial cars or tractors operating intrastate file a fuel use permit. The bill also provides that the prohibition of operating a commercial car or commercial tractor without a fuel use permit or single trip fuel use permit does not apply if the car or tractor is operated intrastate.

Continuing law imposes the motor fuel use tax on three-axle commercial cars, commercial cars with two axles operated as part of a commercial tandem having a weight exceeding 26,000 pounds, or commercial tractors. The bill adds "regardless of weight" to the three-axle commercial cars, and provides that the tax is on two-axle commercial cars having a weight exceeding 26,000 pounds operated alone or as part of a commercial tandem.

Under current law, farm trucks with low fuel usage may file a return and pay the tax annually. The bill eliminates this requirement. Instead, the fuel use tax must be paid quarterly the same as other commercial cars or commercial tractors.

Pass-through entity tax law: technical and conforming changes

(R.C. 5733.40; Section 557.27)

A withholding tax currently is imposed on distributive shares held by nonresident investors in pass-through entities (e.g., partnerships, limited liability companies, S corporations) that have a taxable business presence in Ohio. The tax helps ensure satisfaction of the investors' Ohio tax liabilities, especially if they lack any tax-related connection with Ohio other than their ownership of an entity doing business in Ohio. The tax is imposed on the entity on the basis of the nonresident investors' respective tax liabilities to Ohio (whether corporation franchise or personal income, depending on the status of the investor). In computing the amount of tax to be withheld, the entity's expenses and losses paid to a related entity are apportioned to Ohio under the weighted three-factor formula (sales, property, and payroll). In computing a nonresident investor's individual tax and the corresponding nonresident credit, only compensation expenses paid to a related entity are apportioned.

The bill ensures that all expenses a pass-through entity pays to a related entity are apportioned for the purposes of both the withholding tax and computing the nonresident investors' individual tax and the corresponding nonresident credit.

The bill also expressly provides that, for the purposes of the pass-through entity tax, a nonresident investor's distributive share of a pass-through entity (which is the basis for measuring the withholding tax on account of the investor)

includes income amounts from a qualified subchapter S subsidiary ("QSSS"). A QSSS is a wholly-owned subsidiary of an S corporation that is treated for federal tax purposes as not being separate from the parent S corporation. The bill's treatment of QSSS distributive shares under the pass-through entity tax is consistent with the current treatment of distributive shares of a "disregarded entity," which is a company owned by a parent company but not treated as separate from the parent for tax purposes (e.g., a limited liability company with but a single member).

Dealers in intangibles definition

(R.C. 5725.01)

The bill revises the definition of who qualifies as a dealer in intangibles for the purposes of the tax on such dealers. Under current law, a dealer in intangibles is a person that has a place of business in Ohio and that lends money, trades in bills of exchange, drafts, acceptances, notes, mortgages, or other debt instruments, or trades in bonds, stocks, or other investment securities for profit or gain, either on the person's own account or as an agent or broker for another. A tax is imposed on the shares and capital of such dealers in intangibles at the rate of eight mills (0.8%).

To qualify as a dealer in intangibles under the bill--and therefore to be subject to the eight-mill tax--a person must be engaged *primarily* in the sorts of activities described above that distinguish a person as a dealer in intangibles. Since persons subject to the eight-mill tax are exempted from the commercial activity tax, any person that does not satisfy the narrower definition of dealer in intangibles therefore would become subject to the commercial activity tax unless they were exempted from the commercial activity tax on some other basis.

Tax Commissioner authorized to require identifying information from persons filing tax documents with the Department of Taxation

(R.C. 5703.057, 5703.26 (not in the bill), and 5703.99 (not in the bill))

Overview

The bill authorizes the Tax Commissioner to require any person filing a tax document with the Department of Taxation to provide identifying information requested by the Commissioner, including the person's social security number, federal employer identification number, or other identification number requested by the Commissioner. A person who is required to provide identifying information is required to notify the Commissioner of any changes with respect to that information prior to, or at the time of, filing the next tax document requiring

identifying information. The bill states that the Tax Commissioner is being granted authority to request identifying information in order to increase the efficiency with which the Commissioner administers taxes and fees.

Confidentiality of social security numbers

The bill requires that the Commissioner maintain the confidentiality of individuals' social security numbers. Specifically, the bill provides that when transmitting or otherwise making use of a tax document that contains a person's social security number, the Commissioner is to take all reasonable measures necessary to ensure that the general public is unable to view the number. The bill directs the Commissioner to mask social security numbers when necessary to maintain their confidentiality.

Commissioner may impose penalties for failure to provide or update identifying information

The bill permits the Commissioner to impose penalties for failures to provide identifying information. If the Commissioner requests identifying information from a person and the person does not respond by providing valid identifying information within thirty days after the request is made, the Commissioner may impose a penalty upon that person of up to $100. If, after the expiration of the initial 30 day period, the Commissioner makes one or more subsequent requests for identifying information, and valid identifying information is not provided to the Commissioner within 30 days after the Commissioner makes the subsequent request, the Commissioner may impose an additional penalty of up to $200 for each subsequent request that a person fails to comply with in a timely fashion. The bill provides, further, that if a person required to provide identifying information fails to notify the Commissioner of a change with respect to that information within 30 days after filing the next tax document requiring the identifying information, the Commissioner may impose a penalty upon that person of up to $50.

Under the bill, penalties imposed by the Commissioner may be billed and assessed by the Commissioner in the same manner as the tax or fee with respect to which the Commissioner seeks the identifying information. The bill specifies that the penalties are in addition to any applicable criminal penalties and any other penalties that the Commissioner is authorized by law to impose.

Criminal penalties

Continuing law makes it a criminal offense to file a false or fraudulent document with the Department of Taxation with the intent to defraud the state or any of its political subdivisions. Violation of this criminal prohibition constitutes

a felony of the fifth degree, which is punishable by six to 12 months of confinement and a fine of up to $5,000, upon which a court may impose an additional fine of up to $7,500. The bill specifies that the criminal prohibition for filing false or fraudulent tax documents with intent to defraud applies with respect to tax documents containing false or fraudulent identifying information.

Levy of additional lodging taxes to build and equip convention centers

(R.C. 307.695 and 5739.09)

Existing law provides that within 90 days after July 15, 1985, a board of county commissioners of a county wherein a lodging tax is already in effect may adopt a resolution to levy an additional lodging tax of up to 3% to make payments of principal, interest, and premium on bonds and notes issued by or for the benefit of a convention and visitors' bureau to construct and equip a convention center in the county.

The bill provides a new date of within 180 days of July 1, 2005, for adoption of a resolution to levy an additional lodging tax, and extends the provision not only to convention and visitors' bureaus, but also to community improvement corporations that agree to construct and equip a convention center in the county. A "community improvement corporation" is a not for profit corporation organized under existing law for the sole purpose of advancing, encouraging, and promoting the industrial, economic, commercial, and civic development of a community or area.

Temporary tax amnesty program

(Section 553.01)

Program description

The bill requires that the Tax Commissioner administer a temporary tax amnesty program from November 1, 2005, to December 15, 2005, with respect to delinquent state taxes, tangible personal property taxes, county and transit authority sales taxes, and school district income taxes. The Commissioner is required to conduct the program between November 1, 2005 and December 15, 2005. The program applies only to taxes that were due and payable as of May 1, 2005, which were unreported or underreported, and which remain unpaid on the date on which the program commences. The program does not apply to any tax for which a notice of assessment or audit has been issued, for which a bill has been issued, or for which an audit has been conducted or is pending.

If, during the program, a person pays the full amount of delinquent taxes owed by the person and one-half of any interest that has accrued on the taxes, the Commissioner is required to waive all applicable penalties and the other one-half of any interest that accrued on the taxes. The bill authorizes the Commissioner to require a person participating in the program to file applicable returns or reports, including amended returns or reports. Persons owing tangible personal property taxes are required to file a return with the Commissioner listing all taxable personal property not previously listed by the person on a tangible personal property tax return.

In addition to receiving a waiver of penalties and one-half of accrued interest, a person who participates in the program is immune from criminal prosecution or any civil action with respect to the taxes paid through the program. The bill specifies, further, that no assessment may be issued against any person with respect to a tax paid through the program.

The bill requires that the Commissioner issue forms and instructions for the program, and the Commissioner is authorized to take any other actions necessary to implement the program. The bill directs the Commissioner to publicize the program so as to maximize public awareness of the program and participation in it.

Distribution of taxes collected under the program

Generally, taxes and interest collected under the program will be credited to the General Revenue Fund. However, any tax collected under the program that a taxing district would have received had the tax been timely paid is distributed to that taxing district.

State reimbursement for $10,000 business property exemption

Continuing law exempts the first $10,000 of a business' tangible personal property from property taxation (R.C. 5709.01(C)(3)). Currently, the state reimburses local taxing districts for the resulting revenue reduction.[264] The bill specifies that taxing districts will not be reimbursed for the amounts by which the exemption reduces tangible personal property taxes collected under the program.

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[264] *The reimbursement for the $10,000 exemption is being phased out over the next several years. Under the bill, the reimbursement is scheduled to be completely phased-out by 2009 (see "**Accelerate phase-out of state reimbursement for $10,000 business property exemption**" above).*

Criminal penalties under the tax code changed

(R.C. 5703.26, 5703.99, 5727.99, 5728.99, 5731.99, 5733.99, 5735.99, 5739.99, 5741.99, 5743.99, and 5747.99)

The bill changes certain existing criminal penalties under Ohio's tax code. The following table describes each tax code offense affected by the bill, the penalty under current law, and the penalty that is imposed under the bill for that violation.

Offense	Penalty Under Current Law	Penalty Under the Bill[265]
Making a false tax return, claim, or report	5th degree felony with possible additional court-imposed fine of up to $7,500	5th degree felony (6 to 12 months confinement and maximum fine of $2,500)
Failure of agents of public utility and business entities to report and testify regarding tax liabilities	Fine of up to $1,000	1st degree misdemeanor (maximum sentence of 180 days and maximum fine of $1,000)
Violation of any law administered by the Department of Taxation or failure to perform any duty required by such laws	Fine between $25 and $1,000	Fine between $150 and $1,000
Doing business after articles of incorporation or certificate of authority has been cancelled	Fine between $100 and $1,000	3rd degree misdemeanor (maximum sentence of 60 days and maximum fine of $500)
Failure of railroad official to testify	Up to $500 fine and imprisonment of 30 days	4th degree misdemeanor (maximum sentence of 30 days and maximum fine of $250)

[265] *The table sets forth maximum fines that may be imposed on individuals. Organizations may be subject to larger maximum fines: for a minor misdemeanor, up to $1,000; for a 1st degree misdemeanor, up to $5,000; for a 3rd degree misdemeanor, up to $3,000; for a 4th degree misdemeanor, up to $2,000; for a 3rd degree felony, up to $15,000; for a 4th degree felony, up to $10,000; and for a 5th degree felony, up to $7,500.*

Offense	Penalty Under Current Law	Penalty Under the Bill[265]
Failure of public utility official to testify and produce books and papers	Up to $500 fine and imprisonment of 30 days	3rd degree misdemeanor
Violation of a duty imposed under kilowatt hour tax	1st degree misdemeanor on first offense and 4th degree felony (6 to 18 months confinement and maximum fine of $5,000) on each subsequent violation	1st degree misdemeanor on first offense. If previously convicted for any other tax code violation, 4th degree felony.
Violation of a duty imposed under fuel use tax	Fine between $25 and $100	4th degree misdemeanor
Evasion of motor fuel tax and collection of fraudulent refund when tax owed or refund collected exceeds $500 but is less than $10,000	4th degree felony on first offense and 3rd degree felony (1 to 5 years confinement and maximum fine of $10,000) on each subsequent offense	4th degree felony. If previously convicted for any other tax code violation, 3rd degree felony.
Consumer's refusal to pay sales tax	Fine between $25 and $100 on first offense. On subsequent offenses, a corporation is subject to a fine between $100 and $500 and an individual is subject to a fine between $25 and $100, imprisonment for up to 60 days, or both	Minor misdemeanor on first offense (maximum fine of $100). If previously convicted for any other tax code violation, 3rd degree misdemeanor
Failure to file sales tax report or filing of false or fraudulent report	Fine between $100 and $1,000 or imprisonment up to 60 days, or both	3rd degree misdemeanor
Making sales without a vendor's license	Fine between $25 and $100 on first offense and 4th degree felony on subsequent violations	Minor misdemeanor on first offense. If previously convicted once for any other tax code violation, 1st degree misdemeanor. If previously convicted more than once, 5th degree felony.
Selling at retail as a transient vendor without a license	Fine between $100 and $500 or imprisonment for up to 10 days, or both on	Minor misdemeanor on first offense. If previously convicted once for any

Offense	Penalty Under Current Law	Penalty Under the Bill[265]
	first offense. Fine between $1,000 and $2,500 or imprisonment for up to 30 days or both on subsequent violations	other tax code violation, 1st degree misdemeanor. If previously convicted more than once, 4th degree felony.
Selling at retail after vendor's license has been suspended	4th degree felony	1st degree misdemeanor on first offense. If previously convicted for any other tax code violation, 4th degree felony
General violation of any sales tax law	Fine between $25 and $100	Minor misdemeanor on first offense. If previously convicted for any other tax code violation, 1st degree misdemeanor.
Failure to remit sales taxes	4th degree felony and loss of vendor's license	1st degree misdemeanor if amount of tax is less than $500. 4th degree felony if amount is $500 or more. Loss of vendor's license in either case.
Failure to register as a vendor in a resort area	Fine between $25 and $100 on first offense. 4th degree felony on subsequent violations.	Minor misdemeanor on first offense. If previously convicted once for any other tax code violation, 1st degree misdemeanor. If previously convicted more than once, 5th degree felony.
Consumer's refusal to pay use tax and seller's failure to collect use tax	Fine between $25 and $100 on first offense. Subsequent offense by a corporation results in a fine between $100 and $500. Subsequent offense by an individual results in a fine between $25 and $100 or imprisonment for up to 60 days, or both.	Minor misdemeanor on first offense. If previously convicted once for any other tax code violation, 1st degree misdemeanor. If previously convicted more than once, 4th degree felony.

Offense	Penalty Under Current Law	Penalty Under the Bill[265]
Failure to file use tax return	Fine up to $500	3rd degree misdemeanor
General violation of any use tax law for which no other penalty provided	Fine between $25 and $100	Minor misdemeanor on first offense. If previously convicted for any other tax code violation, 1st degree misdemeanor.
Possession of unstamped cigarettes	1st degree misdemeanor on first offense. 4th degree felony on subsequent violations.	1st degree misdemeanor on first offense. If previously convicted for any other tax code violation, 4th degree felony.
Trafficking in tobacco products with intent to avoid tax and hindrance of Tax Commissioner inspections	4th degree felony on first offense. 2nd degree felony on subsequent violations (2 to 8 years confinement and maximum fine of $15,000).	4th degree felony on first offense. If previously convicted for any other tax code violation, 2nd degree felony.
Trafficking in cigarettes without a license	No provision	4th degree misdemeanor on first offense. If previously convicted once for any other tax code violation, 1st degree misdemeanor. If previously convicted more than once, 4th degree felony.
Failure to post license to traffic in tobacco products and inclusion of foreign substance in tobacco products	4th degree misdemeanor on first offense. 3rd degree misdemeanor on subsequent violations.	4th degree misdemeanor on first offense. If previously convicted for any other tax code violation, 3rd degree misdemeanor.
Improper affixing of tax stamps	1st degree misdemeanor on first offense. 5th degree felony on subsequent violations.	1st degree misdemeanor on first offense. If previously convicted for any other tax code violation, 5th degree felony.
General violation of any cigarette tax law for which no other penalty is provided	4th degree misdemeanor	Minor misdemeanor on first offense. If previously convicted for any other tax code violation, 1st degree misdemeanor.

Offense	Penalty Under Current Law	Penalty Under the Bill[265]
Filing of incomplete, false, or fraudulent income tax return	5th degree felony	1st degree misdemeanor on first offense. If previously convicted for any other tax code violation, 4th degree felony.
Failure to remit income taxes withheld from employees	5th degree felony	1st degree misdemeanor if the amount of the tax not remitted is less than $500. 4th degree felony if the amount of the tax not remitted is $500 or more.
General violation of any income tax law for which no other penalty is provided	Fine between $100 and $500	Minor misdemeanor. If previously convicted for any other tax code violation, 1st degree misdemeanor.

Dealers in intangibles tax: penalty review procedures established

(R.C. 5711.28)

Continuing law imposes a tax on shares of, and capital employed by, dealers in intangibles at the rate of eight mills on the dollar. Dealers in intangibles are required to file annual reports describing their resources and tax liabilities. Continuing law imposes penalties upon dealers in intangibles who fail to file full and complete reports and pay tax.

The bill establishes procedures by which a dealer in intangibles may petition for, and receive, a review of penalties imposed upon the dealer in connection with the dealer's reporting and payment of the dealers in intangibles tax. The procedures created in the bill for dealers in intangibles are the same as those that are currently available to taxpayers who have been penalized for failing to make a tangible personal property tax return or to report all taxable personal property.

Under the bill, whenever the Tax Commissioner imposes a penalty upon a dealer in intangibles, the Commissioner must provide notice to the dealer by mail. The bill specifies that if the notice reflects corrections in the form of an assessment of property not listed in, or omitted, from a report, or the assessment of any item or class of taxable property listed in a report by the dealer in excess of the amount listed on the report, the dealer is to file a petition for reassessment with the Tax

Commissioner in accordance with procedures established under continuing law (R.C. 5711.31). However, if no such correction is reflected in the notice, the dealer is to file a petition for abatement of the penalty assessment as described below.

A dealer must file a petition for abatement of penalty within 60 days after receiving notice of the penalty assessment. The petition must have attached to it a copy of the notice of penalty assessment. The petition must also indicate that the dealer's only objection is to the assessed penalty and must state the reason for the objection.

Upon the filing of the petition for abatement of penalty, the Commissioner must notify the Treasurer of State, who, under continuing law, maintains an intangible property tax list. The Tax Commissioner is not to hold a hearing in connection with the Commissioner's review of a petition for abatement of penalty. If, after reviewing a petition, the Commissioner determines that the failure to file a complying report or pay tax was due to reasonable cause and not willful neglect, the Commissioner may abate the penalty in whole or in part. The Commissioner is then required to transmit a certificate of the Commissioner's determination to the taxpayer. The Commissioner must notify the Treasurer of the final determination if the taxpayer does not appeal the determination or upon the final determination of any appeal, whichever the case may be. Upon receipt of the notification, the Treasurer must make any corrections to the Treasurer's records and tax lists.

The bill provides that the Commissioner's decision is final with respect to the percentage of penalty, if any, the Commissioner determines is appropriate. However, neither the Commissioner's decision nor a final judgment on appeal finalizes the assessment of the property.

Definition of "dealer in intangibles"

(R.C. 5725.01)

Under continuing law, dealers in intangibles are subject to a tax of eight mills on each dollar of value of their shares and capital. Under current law, a "dealer in intangibles" includes every person who keeps an office or other place of business in Ohio at which the person engages in the business of lending money, or discounting, buying, or selling bills of exchange, drafts, acceptances, notes, mortgages, or other evidences of indebtedness, or of buying or selling bonds, stocks, or other investment securities. The bill modifies this definition by specifying that a dealer in intangibles is a person who engages in a business that "consists primarily" of these activities.

The bill requires the Tax Commissioner to adopt a rule defining what it means to be "primarily" engaged in the activities described above. The Commissioner is required to seek input from current dealers in intangibles before adopting the rule.

Tax Commissioner quarterly reports on tourism-related tax revenue

(R.C. 5739.36)

Beginning January 1, 2006, and on the first day of each calendar quarter thereafter, the bill requires the Tax Commissioner to prepare a report summarizing sales tax collections for the second preceding calendar quarter by vendors in the travel and tourism industry from the state sales tax, county sales taxes, and the transit authority sales tax. The purpose of the report is to track the growth and overall economic impact of the travel and tourism industry in this state.

The quarterly reports must summarize sales tax collections associated with the travel and tourism industry, including the following:

(1) Sales made by bars and restaurants;

(2) Transactions for providing lodging by a hotel, motel, or bed and breakfast;

(3) Transactions for providing campground facilities;

(4) Sales made by truck rental and leasing businesses;

(5) Sales made by passenger car rental and leasing businesses;

(6) Sales made by utility trailer or recreational vehicle rental and leasing businesses;

(7) Transactions for providing transportation services;

(8) Sales associated with sporting events;

(9) Sales associated with amusement and theme parks;

(10) Sales associated with museums, concerts, and the performing arts;

(11) Transactions for renting boats or canoes;

(12) Transactions for providing scenic and sightseeing tours;

(13) Transactions for providing travel planning services;

(14) Transactions for providing physical fitness facility services or recreation and sports club services;

(15) Sales associated with zoos and botanical gardens;

(16) Sales associated with historical sites;

(17) Sales associated with nature parks and conservatories; and

(18) Transactions providing motor vehicle parking services.

In preparing the quarterly reports, the Commissioner must place sales associated with the travel and tourism industry into categories similar to those described in (1) to (18) above, which must be based upon industry codes established under the North American Industry Classification System. Each report must itemize the amount of revenue collected during the quarter with respect to each category of sales. For each category of sales, the report must itemize the amount of revenue attributable to specified sales taxes levied by counties and transit authorities. The report must provide cumulative totals across all categories of sales and across all taxing jurisdictions and must include a narrative description of how sales tax collections during the calendar quarter covered by the report differ from sales tax collections during the immediately preceding calendar quarter.

The Commissioner must file a copy of the report with the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Legislative Service Commission. A copy of the Commissioner's most recent quarterly report also must be made available to the public through the Department of Taxation's official Internet web site.

The bill requires the Commissioner to adopt rules necessary to administer this reporting provision, including rules establishing both of the following:

(1) Types of sales, in addition to those listed in (1) to (18) above, that are sufficiently related to the travel and tourism industry to warrant inclusion in the quarterly reports; and

(2) Categories of travel and tourism sales that are based upon industry codes established under the North American Industry Classification System and used to sort the information.

Motor fuel tax refund application

(Section 553.02.01)

The motor vehicle fuel tax is composed of several components. One component is levied by R.C. 5735.29 (not in the bill). Prior to July 1, 2003 this component was 2¢ per gallon; it was increased to 4¢ per gallon on July 1, 2003, and to 6¢ on July 1, 2004. Current law permits a city, exempted village, joint vocational, or local school district, or educational service center, that purchases any motor fuel for school district or service center operations to file an application with the Tax Commissioner for a refund of those portions of this component of the fuel tax that became effective on or after July 1, 2003. The refund application must be filed with the Tax Commissioner within one year from the date of purchase.

The bill provides that notwithstanding this one year application deadline, a school district or educational service center that failed to file or failed to file in a timely manner an application for a refund of the portion of the motor vehicle fuel tax that became effective on July 1, 2003, and that the school district or educational service center paid through the purchase of motor fuel on or after that date may file a refund application with the Tax Commissioner during the 60 days following the bill's effective date. The Tax Commissioner must process any such refund application as if it had been timely filed under current law.

DEPARTMENT OF TRANSPORTATION

- Authorizes joint projects between transportation improvement districts (TIDs) and governmental agencies (including local governments) and, in connection with those joint projects, authorizes a TID to purchase securities issued by the governmental agency under certain conditions.

- Specifically includes special assessments levied by a TID in the definition of its revenues.

- Allows the State Infrastructure Bank to refund bonds issued by a Transportation Improvement District if the bonds were issued to finance a qualified project by a TID and the principal, interest and any redemption premium are payable by the Department of Transportation.

- Creates the Highway Safety Building Fund in codified law and codifies the existing provision of law that permits the temporary transfer of cash to it and the existing State Highway Safety Fund.

- Modifies the annual license and registration taxes for general aviation aircraft, and allows the tax revenue to be used for capital improvements as well as maintenance.

- Requires the Director of Transportation, after conferring with the Director of Natural Resources, to construct, repair, and maintain all roads and bridges within the state parks during fiscal years 2006 and 2007, and requires $5 million to be expended for the purpose in each fiscal year.

Transportation improvement district projects

(R.C. 133.09, 5540.01, 5540.032, and 5540.09)

The bill authorizes transportation improvement districts (TIDs) and governmental agencies (including local governments) to undertake joint projects that benefit both of them, and to jointly manage those projects. A governmental agency may issue securities to finance the project, and the TID is authorized to purchase those securities as an investment, provided that when a TID purchases securities under this authority, at least half of the property necessary for the joint project must be located within the territory of the TID. The securities represent the governmental agency's obligation to the TID to pay the agency's portion of the joint project's cost. This securities purchase arrangement is made to be an exception from a provision of current law stating that a TID is not authorized to incur debt or liability on behalf of, or payable by, the state or its political subdivisions.

If a township issues securities under the bill's authority, the securities are exempted from the statutory voted and unvoted limitations on township debt.

The bill also adds special assessments levied by a TID in the statutory definition of its "revenues."

Transportation improvement district bond refunding through the State Infrastructure Bank

(R.C. 5531.10)

Current law creates the State Infrastructure Bank (SIB) and authorizes the Director of Transportation to use the resources of the SIB for both financing state projects and providing financial assistance to local and private projects. The SIB consists of federal grants and awards or other federal assistance received by the state, payments received by the Department of Transportation in connection with providing financial assistance for qualifying projects, and the proceeds of obligations issued by the Treasurer of State. Financial assistance provided by the Director for qualified projects may be in the form of loans, loan guarantees, letters of credit, leases, lease-purchase agreements, interest rate subsidies, debt service reserves, and such other forms as the Director determines to be appropriate.

In authorizing the issuance of bonds and the deposit of the proceeds into the SIB, current law also authorizes the Treasurer to refund any obligations previously issued. The bill allows the SIB bond program to refund certain bonds ("district obligations") issued by a transportation improvement district (TID). The bill defines "district obligations" as bonds, notes, or other evidence of obligation issued to finance a qualified project by a TID, of which the principal, interest, and any redemption premium are payable by the Department of Transportation.

Highway Safety Building Fund

(R.C. 4501.07)

The bill creates in codified law the Highway Safety Building Fund in the state treasury. The fund, which already exists, consists of proceeds from the sale of highway safety obligations by the Ohio Building Authority and is used to pay costs of capital facilities to be leased to the Department of Public Safety. The bill also codifies the provision of the Transportation Appropriations Act (Am. Sub. H.B. 16) that authorizes the Director of Budget and Management, at the request of the Director of Public Safety, to transfer cash temporarily from the existing State Highway Safety Fund to the Highway Safety Building Fund. The amount transferred must be repaid to the State Highway Safety Fund from proceeds from the sale of the highway safety obligations.

General aviation license tax

(R.C. 4561.17, 4561.18, and 4561.21)

Under current law, the owner of a glider is required to pay an annual license and registration tax of $3. The owner of any other general aviation aircraft,

including a balloon, is required to pay an annual license and registration tax of $100. The bill increases the annual tax for a glider to $15, decreases the annual tax for a balloon to the same amount ($15), and changes the annual tax for all other general aviation aircraft to $15 per seat.

All such tax revenue is deposited into the County Airport Maintenance Assistance Fund, which the bill renames as the Airport Assistance Fund. Current law requires the Director of Transportation to distribute money in the fund to counties to assist them in maintaining airports they own. The bill requires the Director to distribute the money to "eligible recipients" for maintenance, and also for capital improvements, to any publicly owned airports.

Maintenance of state park roads

(Sections 401.11, 401.12, and 401.13)

Am. Sub. H.B. 68 of the 126th General Assembly earmarked $4,517,500 of highway construction appropriations to be used each fiscal year during the FY 2006-2007 biennium by the Department of Transportation for the construction, reconstruction, or maintenance of public access roads, including support features, to and within state facilities owned or operated by the Department of Natural Resources, "as requested by the Director of Natural Resources." The bill increases the earmark to $5 million. In addition, the bill removes the language directing the Department of Transportation to make such improvements "as requested by the Director of Natural Resources" and instead requires the Director of Transportation to confer with the Director of Natural Resources in fiscal years 2006 and 2007 concerning the establishment, construction, reconstruction, improvement, repair, and maintenance of all roads and bridges within the boundaries of all state parks, including all such parks and properties under the control and custody of the Department of Natural Resources. After conferring with the Director of Natural Resources, the Director of Transportation must expend $5 million in each fiscal year to establish, construct, reconstruct, improve, repair, and maintain all such roads and bridges.

OHIO TUITION TRUST AUTHORITY

- Permits the rollover or termination of an account under either the Guaranteed College Savings Program or the Variable College Savings Program for any reason by filing written notice with the Tuition Trust Authority.

- Changes the method of calculating refunds under the Guaranteed Program and the Variable Program when an account is terminated.

- Creates the Index Operating Fund and specifies that the Ohio tuition Trust Authority may deposit into and make payments from either the Index Operating Fund or the Variable Operating Fund in connection with the Variable College Savings Program.

- Permits scholarship programs to receive refunds upon filing a written request with the Authority.

- Eliminates the requirement that the Authority refund amounts when a beneficiary is awarded a scholarship, a waiver of tuition, or similar financial aid.

- Eliminates the requirement that an institution of higher education return to the Authority a share of any refund it makes when a beneficiary withdraws from school.

- Revises terms in the Tuition Trust Authority law.

Background

Under section 529 of the Internal Revenue Code, states may establish and maintain a state tuition program under which a person (1) may purchase credit toward tuition on behalf of a designated beneficiary that entitles the beneficiary to the waiver or payment of qualified higher education expenses or (2) may make contributions to an account set up for the purpose of meeting the qualified higher education expenses of the designated beneficiary of the account. These programs receive favorable federal and state tax treatment for their assets and distributions to beneficiaries.

In Ohio, under continuing law, the Ohio Tuition Trust Authority operates two college savings programs that correspond to the types permitted by federal law: (1) a guaranteed savings program and (2) a variable savings program. Each program allows beneficiaries to acquire savings toward the future payment of college tuition. A person may participate in one or both of the savings programs.

Guaranteed College Savings Program

Contributors to the Guaranteed College Savings Program purchase tuition credits on behalf of a designated beneficiary at approximately 1% of the weighted average tuition charged at public four-year universities in Ohio for the year the credits are purchased, although the actual cost may be higher if the Authority determines that a price adjustment is necessary to maintain the actuarial soundness of the program. Each credit may be redeemed upon the beneficiary's enrollment at a college, university, or other institution of higher education anywhere in the United States for 1% of the weighted average tuition charged at public four-year universities in Ohio for the year in which the credits are spent for college expenses. Tuition credits under the Guaranteed Program are backed by the full faith and credit of the State of Ohio. The program is based upon the assumption that 100 tuition credits equal one year of college tuition so that purchasers may be reasonably certain of the percentage of future college tuition costs that will be covered by the credits they acquire.

Variable College Savings Program

Under the Variable College Savings Program, rather than purchasing tuition credits, an individual contributes money to an investment account managed by the state, or its agent, for the benefit of the beneficiary. Assets of the Variable Program are invested in savings accounts, life insurance or annuity contracts, securities, bonds, or other investment products in accordance with a plan adopted by the Authority. Because the program is market-based, it generally provides a variable rate of return and contributors assume all investment risk.

Index Operating Fund

(R.C. 3334.19)

The bill creates the Index Operating Fund in connection with the Variable College Savings Program. Fees, charges, and other costs imposed or collected by the Tuition Trust Authority must be credited to either the Index Operating Fund or the Variable Operating Fund (already established under current law). The Authority may also, at its discretion, make any payments from the Index Operating Fund considered appropriate for the benefit of any college savings programs administered by the Authority.

The bill further clarifies that both the Index Operating Fund and the Variable Operating Fund are established in the state treasury, rather than as custodial funds.

Changes in Tuition Trust terminology

(R.C. 2329.66, 3334.01, 3334.02, 3334.03, 3334.07, 3334.08, 3334.09, 3334.10, 3334.11, 3334.12, 3334.15, 3334.16, 3334.17, 3334.18, 5747.01, and 5747.70)

The bill amends various terms in the Tuition Trust Authority Law. Under current law, a credit purchased under the Guaranteed Program is referred to as a "tuition credit." The bill instead refers to "tuition units" and specifies that "tuition units" include tuition credits purchased prior to July 1, 1994. The bill also refers to a "tuition payment contract" instead of a "tuition credit contract."

Account termination and refunds under the Guaranteed Program

(R.C. 3334.10(A))

Current law

Current law specifies how to calculate refunds to tuition credit purchasers upon termination of an account under the Guaranteed College Savings Program. The amount of the refund is calculated differently depending on the reason for the termination. Reasons under current law for which an account may be terminated are: (1) death or permanent disability of the beneficiary, (2) the decision of the beneficiary not to attend an institution of higher education and to request termination of the account, (3) completion of a degree by the beneficiary, (4) rollover of the account into an equivalent tuition program in another state, and (5) any other reason allowed by the Authority.

If a Guaranteed Program account is terminated because of the reason described in (1), above, the refund equals the total purchase price of tuition credits on account or, if greater, 1% of the weighted average tuition (WAT) times the number of unused tuition units on account, with no administrative fee or penalty assessed. If an account is terminated for the reasons described in (2) or (3), above, the refund equals at least 1% of current WAT times the number of unused units on account, minus "reasonable" administrative fees and minus any penalty required for the program to comply with section 529. If an account is terminated for any other allowable reason, the Authority may refund either the amount refundable for reason (1) or the amount refundable for reason (2) or (3). However, the Authority may choose to refund a lesser amount than refundable for reason (2) or (3) to the extent necessary to meet the refund penalty requirements for qualified state tuition programs under section 529 of the Internal Revenue Code.

The bill

The bill removes language specifying the allowable reasons for terminating a Guaranteed Program account and allowing the Authority to determine other

allowable reasons for account termination. Instead, unless otherwise provided for in the tuition payment contract, a tuition unit purchaser may rollover amounts to another qualified tuition program under section 529 or may terminate the account for any reason by filing written notice with the Authority.

If the account is terminated and the beneficiary is under 18 years old, the bill specifies that the Authority must use actuarially sound principles to determine the amount of the refund. The bill does not address termination of an account if the beneficiary is age 18 or older. The legal meaning of this silence is unclear.

Refund calculations when a Guaranteed Program account is terminated because of the beneficiary's death or permanent disability will continue to equal the purchase price of all unused tuition units on account, or 1% of WAT times the number of unused units on account, whichever is greater, with no administrative fee or penalty assessed (as under current law).

If all or part of the amount in a Guaranteed Program account is liquidated for a rollover to another qualified tuition program under section 529, the bill specifies that the rollover amount must be determined in an actuarially sound manner.

Account termination and refunds under the Variable Program

(R.C. 3334.10(B))

Currently, Variable Program accounts may be terminated for any reason upon filing a written "request" with the Authority, but only after a minimum period of time specified by the Authority. The amount of the refund depends on the reason for termination. If the account is terminated because of the death or permanent disability of the beneficiary or because funds in the account are rolled over into another state's section 529 plan, the refund equals the account balance minus any administrative fees. (The Authority is permitted to limit the extent to which an account may be rolled over.) If the account is terminated for any other reason, the refund equals the account balance, minus any administrative fees, and minus any penalty required for the Variable Program to qualify as a section 529 plan.

The bill provides that the contributor to a Variable Program account may rollover amounts to another qualified tuition program under section 529 as well as terminate the account for any reason. The bill also requires only that the contributor file a written notice of termination with the Authority, rather than a "request" for termination, and allows the contributor to receive an amount equal to the account balance, less any applicable administrative fees, regardless of the reason for termination or rollover.

Refunds to scholarship programs

(R.C. 3334.10(C))

Under current law, entities that establish programs to award scholarships of tuition units may receive refunds only for just cause with the approval of the Authority. The bill removes the "just cause" condition and the requirement for Authority approval and allows refunds to scholarship programs upon the filing of a written request with the Authority.

Elimination of refunds for beneficiaries receiving scholarships

(R.C. 3334.10(F))

The bill repeals a provision in current law that requires the Authority to refund an amount if a beneficiary is awarded a scholarship (other than from a scholarship program operated through the Authority), a waiver of tuition, or similar subvention. Under that provision, each academic term, the Authority must refund to the person designated in the payment contract or, in the case of a beneficiary under a scholarship program, to the beneficiary, an amount equal to the value of the tuition credits or the amounts in the Variable Program account that are not needed on account of the scholarship, waiver, or similar subvention.

Refund of tuition in case of withdrawal from school

(R.C. 3334.10(G))

Currently, if a beneficiary withdraws from an institution of higher education before the end of an academic term, the institution of higher education must return to the Authority a prorated share of any tuition refund it makes. The share returned must equal the portion of tuition paid from the beneficiary's account under the Guaranteed Program or the Variable Program. The Authority, in turn, must credit this share (less any reasonable charges imposed by the Authority) to the beneficiary's account.

The bill eliminates this procedure for dealing with the early withdrawal of a beneficiary from an institution of higher education. Presumably, the beneficiary or the contributor would keep the tuition refund from the institution, and the amount paid from a college savings program for that academic term would remain deducted from the beneficiary's account.

OHIO VETERANS' HOME

- Expands the permissible uses of the moneys in the Ohio Veterans' Homes Rental, Service, and Medicare Reimbursement Fund to include the purchase of medication services.

Ohio Veterans' Homes Rental, Service, and Medicare Reimbursement Fund

(R.C. 5907.15)

Current law specifies that the Ohio Veterans' Homes Rental, Service, and Medicare Reimbursement Fund must be used only for maintenance costs of the homes and for the purchase of medications, medical supplies, and medical equipment by the homes. The bill expands the Fund's permissible uses to include the purchase of medication services.

OHIO WATER DEVELOPMENT AUTHORITY

- Concerning Ohio Water Development Authority competitive bidding thresholds, requires the Authority to use a competitive bidding process for contracts of more than $25,000.

Competitive bidding requirements

(R.C. 6121.04 and 6123.04)

The Ohio Water Development Authority ("OWDA") provides financing for water supply, waste water, and water pollution control facilities, and also for solid waste and energy resource development facilities. Current law allows the OWDA to make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers.

Currently under its water-related statutes, when the OWDA enters into a contract or agreement, other than compensation for personal services, that costs more than $10,000, it must contract with the lowest responsive and responsible bidder. Under its solid waste and energy resource development law, the OWDA's competitive bidding threshold is $2,000. The bill changes both these amounts, and

instead requires the OWDA to use the competitive bidding process for any contracts of more than $25,000.

BUREAU OF WORKERS' COMPENSATION

Bureau of Workers' Compensation Investments

(R.C. 102.02, 102.06, 109.579, 1707.01, 1707.164, 1707.165, 1707.17, 1707.19, 1707.20, 1707.22, 1707.23, 1707.25, 1707.261, 1707.431, 1707.44, 1707.46, 3517.13, 3517.151, 4121.12, 4121.121, 4121.125, 4121.126, 4121.127, 4121.128, 4123.44, 4123.441, 4123.444, and 4123.445; Sections 401.08, 502.01, 502.02, 502.03, and 502.04)

Requirements and restrictions for investing

- Requires the Workers' Compensation Oversight Commission ("Oversight Commission") to prohibit, in the objectives, policies, and criteria it adopts for the investment program of the Bureau of Workers' Compensation ("BWC"), investing assets of funds, directly or indirectly, in vehicles that target specified assets, which includes unregulated investments that are not commonly part of an institutional portfolio, that lack liquidity, and that lack readily determinable valuation.

- Requires the Oversight Commission to specify in the investment objectives, policies, and criteria it adopts that the Administrator of Workers' Compensation ("Administrator") is permitted to invest in an investment class only if the Oversight Commission, by a majority vote, opens that class.

- Specifies that after the Oversight Commission opens a class but before the Administrator invests in that class, the Oversight Commission must adopt rules establishing due diligence standards for BWC employees to follow when investing in that class, and that the Oversight Commission must establish policies and procedures to monitor and review the performance and value of each investment class.

- Requires that the Oversight Commission submit a report annually on the performance and value of each investment class to the Governor, the President of the Senate, and the Speaker of the House of Representatives.

- Permits the Oversight Commission to vote to close any investment class, and requires the Oversight Commission to prohibit, on a prospective basis, any specific investment, as opposed to specific investment activity required in current law, that the Oversight Commission finds contrary to its objectives, policies, and criteria.

- Requires the Oversight Commission to adopt new objectives, policies, and criteria for the investment program that comply with the requirements specified above within 30 days after those provisions take effect.

- Specifies that the Oversight Commission annually must both *review* and publish, as opposed to only *publish*, as under current law, the investment objectives, policies, and criteria it adopts.

- Prohibits the Administrator from investing in investment classes prohibited by the bill and requires the Administrator to make investments in consultation with the Chief Investment Officer of the BWC.

- Specifies that the voting members of the Oversight Commission, the Administrator, and the BWC Chief Investment Officer are the trustees of the state insurance fund.

- Requires the Oversight Commission to submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a list of all classes of investments in which the Oversight Commission currently is and has been invested in the preceding 12 months, a list of all investments prohibited by the bill in which the Administrator has invested and the value thereof, and a plan to divest itself of the prohibited investments. Requires those investments be divested within six months after the provision takes effect.

Changes to Oversight Commission

- Shortens terms of office for members of the Oversight Commission from five to three years.

- Increases the membership of the Oversight Commission from 9 to 11 by adding two investment expert members.

- Specifies qualifications of and the initial terms of office for the investment expert members.

- Requires the Treasurer of State to appoint one investment expert member, and the President of the Senate and the Speaker of the House of Representatives to jointly appoint the second investment expert member, and requires both appointments to be made within 90 days after the effective date of this provision.

- Limits voting by investment expert members to only investment matters considered by the Oversight Commission.

- Removes requirement that legislative members of the Oversight Commission receive $50 per meeting, and specifies that the investment expert members receive the same annual salary as the members appointed by the Governor.

- Designates the Attorney General as the legal advisor of the Oversight Commission.

- Authorizes the Attorney General to maintain a civil action against a voting member of the Oversight Commission who breaches the member's fiduciary duty to the BWC for harm resulting from that breach.

- Allows the Oversight Commission and the state retirement boards to retain independent legal counsel if informed of an allegation that the entire Oversight Commission or board has breached its fiduciary duty to the BWC or the respective retirement systems.

- Provides that the office of a member of the Oversight Commission who is convicted of or pleads guilty to a felony, a theft offense, or an ethics law violation is deemed to be vacant, and that a member who receives a bill of indictment for any of these offenses is automatically suspended from the Oversight Commission pending resolution of the criminal matter.

- Specifies that a person who has pleaded guilty or been convicted of the crimes specified above is ineligible to be a member of the Oversight Commission.

Chief Investment Officer

- Requires the BWC, with the advice and consent of the Oversight Commission, to employ a person or designate an employee who is licensed as a bureau of workers' compensation chief investment officer (see "***Bureau of Workers' Compensation Chief Investment Officer***

License," below) and who is a chartered financial analyst to be the chief investment officer for the BWC.

- Requires the chief investment officer to reasonably supervise employees of the BWC who handle investment of assets of funds under the Workers' Compensation Law (R.C. Chapters 4121., 4123., 4127., and 4131.) with a view toward preventing specified securities and investment violations.

- Establishes criteria to evaluate whether a chief investment officer has satisfied the officer's duty of reasonable supervision.

- Requires the chief investment officer to establish and maintain a policy to monitor and evaluate the effectiveness of securities transactions executed on behalf of the BWC.

Bureau of Workers' Compensation Chief Investment Officer License

- Prohibits, effective 90 days after this provision's effective date, any person from acting as, and prohibits the BWC from employing a person as, a bureau of workers' compensation chief investment officer unless the person is so licensed by the Division of Securities in the Department of Commerce in accordance with the bill.

- Prohibits a bureau of workers' compensation chief investment officer from acting as a dealer, salesperson, investment advisor, or investment advisor representative.

- Requires the Division of Securities and the Commissioner of Securities to administer and enforce laws regulating the bureau of workers' compensation chief investment officer, including the authority to issue and revoke a bureau of workers' compensation chief investment officer license.

- Specifies that the Division of Securities shall adopt rules for the application process and requirements to be a bureau of workers' compensation chief investment officer, and allows the Division to investigate any applicant for that license.

- Establishes a license fee and an annual renewal fee of $50.

- Allows the Division to suspend a bureau of workers' compensation chief investment officer license, and requires the Division notify the BWC if that occurs.

- Permits the Director of Commerce, after consultation with the Attorney General, to ask a court of common pleas to order a bureau of workers' compensation chief investment officer that is subject to an injunction to make restitution to the BWC damaged by the officer's securities law violation, similar to investment advisors and state retirement system investment officers.

- Specifies prohibitions for a bureau of workers' compensation chief investment officer similar to those specified for state retirement system investment officers.

Audits

- Requires the Oversight Commission to have an independent auditor, at least once every ten years, conduct a fiduciary performance audit of the investment program of the BWC, including an audit of the Oversight Commission's investment policies and BWC's investment procedures, and requires the Oversight Commission to submit a copy of this audit to the Auditor of State.

- Requires the BWC, with the advice and consent of the Oversight Commission, to employ an internal auditor who reports directly to the Oversight Commission on investment matters.

Fiduciary requirements and conflict of interest

- Prohibits BWC employees and members of the Oversight Commission from having any direct or indirect interest in the gains or profits of any investment made by the Administrator or receive directly or indirectly any pay or emolument for the employee's or member's services.

- Prohibits any member or person connected with the BWC directly or indirectly, from borrowing any of its funds or in any manner using the funds or deposits except to make current and necessary payments authorized by the Administrator.

- Prohibits the Administrator from making investments through or purchases from or doing any other business with any individual who is,

or any partnership, association, or corporation that is owned or controlled by a person who within the preceding three years was employed by the BWC or was a member or officer of the Oversight Commission or was employed by or was an officer holding a fiduciary or other position in which the person was involved in decisions affecting the investment policy of BWC and from which the person would receive any monetary gain.

- Prohibits a fiduciary of the BWC from engaging in a transaction if the fiduciary knows that the transaction constitutes specified prohibited activities, and specifies exceptions to that prohibition.

- Prohibits a fiduciary from engaging in certain prohibited activities concerning the fiduciary acting with the fiduciary's own interest.

- Specifies circumstances in which a fiduciary will be liable to the BWC for a breach of fiduciary duty.

- Requires every fiduciary of the BWC to be bonded for not less than $1 million.

Criminal records checks

- Requires the Administrator, prior to awarding a contract to an investment manager, to have a criminal records check conducted on the investment manager's employees who will be investing BWC funds.

- Requires an investment manager, prior to awarding an investment contract to a business entity, to obtain a list of the business entity's employees who will be investing BWC funds and requires the Administrator to have a criminal records check conducted on those employees.

- Requires the Superintendent of the Bureau of Criminal Identification and Investigation to conduct criminal records checks on these employees upon receiving a request from the Administrator.

- Prohibits the Administrator from entering into a contract with an investment manager if any employee of that manager who will be investing assets of BWC funds has been convicted of or pleaded guilty to a financial or investment crime.

- Prohibits an investment manager from entering into a contract with a business entity if any employee of that entity who will be investing assets of BWC funds has been convicted of or pleaded guilty to a financial or investment crime.

Campaign contributions

- Prohibits the Administrator and employees of the BWC from conducting any business with or awarding any contract, other than one awarded by competitive bidding, for goods or services costing more than $500 to individuals and specified types of entities who, within the two previous calendar years, has made one or more contributions totaling in excess of $1,000 to the campaign committees of the Governor or Lieutenant Governor or candidates for those offices.

Ethics disclosures

- Requires the Administrator, the voting members of the Oversight Commission, and the Chief Investment Officer of BWC to file an annual financial disclosure statement with the Ohio Ethics Commission.

- Allows the appropriate ethics commission to share information concerning an investigation of a voting member of the Oversight Commission with the Attorney General and the Auditor of State.

Insurance fund audits

- Increases from biennially to annually the frequency of the required audits of the workers' compensation state insurance fund.

Audit of State Insurance Fund

(R.C. 4123.47)

Existing law requires the Administrator of Workers' Compensation to cause actuarial audits of the state insurance fund at least once every two years. The bill requires that the audits be done annually and that the audits cover all other workers compensation funds (e.g., public works relief compensation, marine industry compensation, and the coal workers' "black lung" compensation funds.)

To the existing law requirement that the audits be conducted by recognized insurance actuaries, the bill adds a requirement that the actuaries certify their audit. The bill also requires the Administrator to make copies of the audits available to the public at cost.

DEPARTMENT OF YOUTH SERVICES

- Modifies how a joint board of county commissioners decides to pay for the maintenance and other expenses of district detention facilities by including among the methods any other method agreed upon by unanimous vote of the joint board of county commissioners.

- Eliminates the requirement that a community corrections facility not be meeting its minimum occupancy threshold before the Department of Youth Services may refer a child to the facility.

- Authorizes a committing court to consider a referral of a child by the Department to a community corrections facility on less than 45 days' notice to the court.

Payment of maintenance and other expenses of a district detention facility

(R.C. 2152.43)

Current law permits the board of trustees of a district detention facility to apply to the Department of Youth Services for assistance in defraying the cost of operating and maintaining the facility. The current expenses of maintaining the facility not paid from funds made available from the Department or from a donation or bequest of any real or personal property, and the cost of ordinary repairs to the facility, must be paid by each county in accordance with one of the following methods as approved by the joint board of county commissioners:

(1) In proportion to the number of children from that county who are maintained in the facility during the year;

(2) By a levy submitted by the joint board of county commissioners and approved by the electors of the district;

(3) In proportion to the taxable property of each county, as shown by its tax duplicate;

(4) In any combination of methods for payment described in (1), (2), or (3) above.

The bill modifies (4) above by providing that the current expenses of maintaining the facility and the cost of ordinary repairs may be paid in any other method agreed upon by unanimous vote of the joint board of county commissioners.

Referral of children by the Department of Youth Services to community corrections facilities

(R.C. 5139.36(E)(2))

Existing law allows the Department of Youth Services to make a referral of a child in its custody to a community corrections facility if the facility is not meeting its minimum occupancy threshold as established by the Department. Existing law requires that the Department notify the committing court of its intention to place a child in a community corrections facility at least 45 days before the referral. The bill eliminates the requirement that a community corrections facility not be meeting the minimum occupancy threshold before the Department may refer a child to the facility, and it authorizes the committing court to consider a referral on less than 45 days' notice to the court.

MISCELLANEOUS

In general

- Eliminates the Ohio SchoolNet Commission and the Ohio Educational Telecommunications Network Commission and transfers the functions, assets, liabilities, and employees of both to the eTech Ohio Commission created by the bill.

- Imposes contract, record-keeping, auditing, and other requirements on persons that receive money from governmental entities for the provision of services benefiting individuals or the public.

- Provides civil remedies for the recovery of money due to a governmental entity under any contract the governmental entity enters into with a person for the provision of goods, services, or construction.

- Creates the Government Contracting Advisory Council.

- Establishes a 15% set-aside from moneys in the Legal Aid Fund for the Legal Assistance Foundation Fund.

- Clarifies the Ohio Legal Assistance Foundation's ability to utilize its 4.5% administrative set-aside for administering all filing fee surcharges and the IOTA program, in addition to already recognized IOLTA accounts.

- Removes the requirement under current law that the Ohio Legal Assistance Foundation establish rules governing the administration of the program regarding interest on IOTA accounts of an attorney, law firm, or legal professional association.

- Increases the surcharge on civil actions not in a small claims division (from $15 to $26) and on civil actions in a small claims division (from $7 to $11) that are used for the charitable purpose of providing financial assistance to legal aid societies.

- Requires the Treasurer of State to deposit 4% of the money collected through the filing fees discussed in the preceding dot point to the credit of the Civil Case Filing Fee Fund, and 96% of the money to the Legal Aid Fund, instead of 100% to the Legal Aid Fund as required under current law.

- Creates the Civil Case Filing Fee Fund to receive the 4% of collected funds from civil case filing fees for the purpose of appointing assistant state public defenders and for providing other personnel, equipment, and facilities necessary for the operation of the State Public Defender office.

- Authorizes the Ohio Community Service Council to accept donations, sponsor events, and sell promotional items.

- Requires a contract for a county building or bridge construction project that exceeds $1,000, before it may have full force and effect, to be certified by the prosecuting attorney as being in accordance with the Public Improvements Contract Law, including, when applicable, its professional design services contract provisions.

- Requires a public authority's contract for professional design services, before it may have full force and effect, to be certified by the public authority's legal counsel as being in accordance with the professional design services contract provisions of the Public Improvements Contract Law.

- Requires an independent marriage and family therapist to diagnose and treat mental and emotional disorders only under the supervision of a psychologist, psychiatrist, professional clinical counselor, or independent social worker.

- Eliminates the authority of a marriage and family therapist to diagnose and treat mental and emotional disorders under the supervision of an independent marriage and family therapist.

- Expresses the intent of the General Assembly to consolidate specified boards and commissions into the Departments of Health, Commerce, and Public Safety; requires the directors of these departments, the executive directors of the affected boards, and the Directors of Administrative Services and Budget and Management to appoint a transition team to address the details of, and submit recommendations regarding, the consolidations.

- Requires Controlling Board approval of consent agreements that require the state to perform any action requiring additional appropriations or an increase in appropriations. Prohibits a consent agreement from binding the General Assembly to appropriate funding unless the General Assembly is a party to the action and the consent agreement.

- Permits the use of appropriations to satisfy judgments, settlements, and administrative awards made against the state.

- Authorizes the conveyance of certain real estate located in Athens County to Hocking.Athens.Perry Community Action.

- Authorizes the conveyance of specified state-owned real estate in Clark County to a purchaser to be determined--but either a state entity or the Board of County Commissioners of Clark County.

- Makes a federal home loan bank eligible to be a qualified trustee for the safekeeping of investments pledged by trust companies engaging in trust business.

Law enforcement agencies--annual statistical report to BCII specifying arrests made in a calendar year based on manufacture of, or assembly of chemicals sufficient to produce, methamphetamine and number of illegal methamphetamine manufacturing laboratories

- Requires each law enforcement agency that, in any calendar year, arrests any person for an offense under the Revised Code prohibiting the manufacture of, or the assembly of chemicals sufficient to produce, methamphetamine or a methamphetamine product to prepare, and send to the Bureau of Criminal Identification and Investigation, an annual report covering the calendar year that specifies the total number of such arrests made by the agency in that calendar year and the total number of illegal methamphetamine manufacturing laboratories at which any of those arrests occurred or that were discovered in that calendar year within the territory served by the agency but at which none of those arrests occurred; specifies that the reports cannot identify, or enable the identification of, any person who was arrested and whose arrest is included in the information contained in the report; and specifies that the reports in the possession of the Bureau are public records.

- Creates the Ohio CASA/GAL Study Committee to compile and analyze data on the provision of advocacy services to abused, dependent, and neglected children by public defenders and appointed counsel and by an Ohio CASA/GAL association.

Elimination of the Ohio SchoolNet Commission and the Ohio Educational Telecommunications Network and the creation of the eTech Ohio Commission

(R.C. 3301.80 (repealed), 3353.01, 3353.02, 3353.03, 3353.04, 3353.06, and 3353.07; conforming changes in R.C. 125.05, 183.28, 3314.074, 3317.06, 3317.50, 3317.51, 3319.22, and 3319.235; Sections 315.09, 315.10, 315.11, 316.03, 401.05, 403.01, and 403.10.01)

Ohio SchoolNet Commission

The Ohio SchoolNet Commission is an independent state agency charged with providing financial assistance and technical services to school districts and community schools in the acquisition and implementation of education technology. Responsibilities of the Commission include making grants to districts and schools for the procurement of support services for their education technology and establishing model professional development programs to assist teachers in integrating technology into their classrooms. The Commission is made up of 13 members, although it employs an executive director to carry out its duties.

Ohio Educational Telecommunications Network Commission

The Ohio Educational Telecommunications Network (for purposes of this analysis, referred to as the ETN Commission) is an independent state agency authorized to own and operate transmission and interconnection facilities for an educational television, radio, or radio reading services network; develop and provide programming to noncommercial radio and television stations (for which the Commission may charge fees), and provide financial and technical assistance to educational broadcasting entities throughout Ohio to sustain their operation. The Commission is made up of the Superintendent of Public Instruction, Chancellor of the Ohio Board of Regents, Director of Administrative Services, and eight members appointed by the Governor.

Elimination of the two commissions and merging of functions under the new eTech Ohio Commission

Effective July 1, 2005, the bill eliminates both the Ohio SchoolNet Commission and the ETN Commission and transfers their duties and authorities, assets, liabilities, and employees to the eTech Ohio Commission (eTech), which the bill creates.

The new commission would be governed by an 11-member body, including four nonvoting legislative members (one from each political party in each chamber). The voting members include the Superintendent of Public Instruction, Chancellor of the Ohio Board of Regents, and the Director of Administrative Services, or their designees. In addition, four representatives of the general public, with a demonstrated "interest in public broadcasting and education" must be appointed to four-year staggered terms by the Governor, with the approval of the Senate. The Governor may remove the public members for cause. The Governor also appoints the chairperson of the Commission from among the public members. Gubernatorial appointees receive reimbursement under OBM guidelines for actual and necessary expenses, but do not receive compensation.

The bill requires the Governor to appoint the four public representatives to the eTech Commission, and an interim executive director for the Commission (who must also be approved by the Senate), by July 1, 2005. The Governor fixes the compensation of the interim director, who will have the same powers as the director appointed by the Commission. The interim director serves until the Commission can appoint a director, but for no longer than one year.

The bill requires the Commission to establish "advisory groups" for individual educational technology issues, including the technology needs of educators, learners, and the public. Each group must be comprised of representatives of individuals or organizations with an interest in the topic addressed by that group.

The bill assigns specific duties to the executive director and explicitly states that the director has "no authority other than that provided by law or delegated" by the Commission. The statutory duties include direction of employees in administering all Commission programs; providing leadership and support in extending the knowledge of Ohioans by promoting *equal* access to and use of all forms of educational technology, as directed by the Commission; and providing financial and other assistance to school districts and other educational institutions, as well as noncommercial broadcasting entities and other "telecommunications entities" for the acquisition and utilization of educational technology.

After the transfer, the eTech Commission assumes all ongoing business of the former commissions and the rules of the commissions remain in effect until changed by the eTech Commission.

The bill specifies that all eTech employees are in the unclassified service of the state (and, therefore, are not subject to collective bargaining law). Existing employees of the two abolished agencies must either be transferred to eTech or dismissed effective July 1, 2005 (presumably at the discretion of either the eTech interim executive director, or the Commission itself). The bill specifically states that any transferred existing employees of the ETN Commission would no longer be a part of any collective bargaining unit to which they belonged prior to their transfer to eTech.

Changes in powers or duties of the existing commissions when transferred to the eTech Ohio Commission

The bill makes changes in the current law powers and duties of the two abolished commissions when these powers and duties are transferred to eTech, as follows:

(1) Current law permits the ETN Commission to utilize fees received from affiliate broadcasting stations for *legal fees*. The new eTech Commission would not have that authority.

(2) The bill requires the eTech Commission to consult with participants before establishing guidelines governing purchasing and procurement by those participants and prior to allocating funding for any program administered by the Commission.

(3) In consultation with participants in eTech programs, the Commission specifically may establish a "systems support network" to facilitate timely implementation of its programs and other activities.

(4) Current law specifically grants authority for the ETN Commission to *determine* "programs" to be distributed through the network. The bill removes this authority.

(5) Current law permits the ETN Commission to own and operate transmission and interconnection facilities. The bill eliminates the authority to *own* interconnection facilities and to *own or operate* "transmission facilities" (defined as "structures, equipment, materials, and services used in the transmission of educational programs"). The bill retains the Commission's authority to *operate* "interconnection facilities" (defined as structures, equipment, materials, and services used to *link one location to another*).

(6) The bill permits the eTech Commission to consult with providers on the coordination of federal funds that may be available for *equipment* (as opposed to the "development of services," as the ETN Commission may do under current law).

(7) The bill eliminates the ETN Commission's authority to transfer equipment to educational broadcasting stations in exchange for "services." It also eliminates the ETN Commission's specific authority to enter into agreements with noncommercial providers for the simultaneous broadcasting of identical programs or to distribute the programs by transcription disc, video or audio tapes, or film. However, the eTech Commission retains the right to execute contracts and agreements "to carry out" the Commission's duties.

As is the case in current law for the Ohio SchoolNet Commission, the bill specifically exempts the eTech Commission from current competitive bidding requirements.

Financial accountability of persons that contract with the state or a political subdivision

Overview

This portion of the bill addresses financial accountability with respect to persons that contract with a state agency or any political subdivision of the state for the provision of goods, services, or construction. The bill distinguishes between two scenarios:

--With respect to persons who receive $25,000 or more in a lump sum, or $75,000 or more over the course of a year, from a governmental entity for the provision of services benefiting individuals or the public (subject to a number of exemptions), the bill imposes contract, record-keeping, auditing, and other requirements. It authorizes civil remedies for the recovery of money received by the person in excess of the contract payment earned. It provides the Attorney General and the Auditor of State with rule-making functions related to the implementation of the bill, and creates the Government Contracting Advisory Council to review those rules and make recommendations regarding their adoption, amendment, or repeal.

--With respect to persons who receive money from governmental entities for the provision of goods, construction, or any other services under contracts to which some or all of the above-described requirements do not apply, the bill authorizes civil remedies for the recovery of any money received by the person that is not earned under the terms of the contract with the governmental entity.

Contracts for the provision of services benefiting individuals or the public

(R.C. 9.23 to 9.239)

Definitions (R.C. 9.23). The bill introduces a number of definitions that are instrumental to its application and implementation. These definitions are as follows:

(1) "**Recipient**" means a person that enters into a contract with a governmental entity under the bill.

(2) "**Governmental entity**" means a state agency or a political subdivision of the state. "**State agency**" means any organized body, office, agency, institution, or other entity established by Ohio law for the exercise of any function of state government. "**Political subdivision**" means a county, township, municipal corporation, or any other body corporate and politic that is responsible for government activities in a geographic area smaller than that of the state.

(3) "**Contract payment earned**" means payment pursuant to a contract entered into under the bill for direct costs actually incurred in performing the contract, up to the minimum percentage of money that is to be expended on the recipient's direct costs, as specified in the contract, plus allocable nondirect costs associated with those direct costs.

(4) "**Direct costs**" means the costs of providing services that directly benefit a patient, client, or the public and that are set forth in the contract entered into under the bill. The costs of any financial review or audit required under the bill are *not* considered "direct costs."

(5) "**Minimum percentage of money that is to be expended on the recipient's direct costs**" means the percentage of the total amount of the contract entered into under the bill that, at a minimum, has to be expended on the recipient's direct costs in performing the contract in order for the recipient to earn the total amount of the contract.

(6) "**Allocable nondirect costs**" means the amount of nondirect costs allocated as a result of actual expenditures on direct costs. "Allocable nondirect costs" are calculated as follows: direct costs actually incurred for the provision of services pursuant to a contract entered into under the bill, divided by the minimum percentage of money that is to be expended on the recipient's direct costs, as specified in the contract, minus the direct costs actually incurred.

(7) "**Contracting authority**" of a governmental entity means the director or chief executive officer, in the case of a state agency, or the legislative authority, in the case of a political subdivision.

(8) A **judgment** is "**uncollectible**" if, at least 90 days after the judgment is obtained, the full amount of the judgment has not been collected and either a settlement agreement between the governmental entity and the recipient has not been entered into or a settlement agreement has been entered into but has not been materially complied with.

Contract requirement: general application (R.C. 9.231(A)(1) and (2)). Generally, the bill prohibits a governmental entity from disbursing money totaling **$25,000 or more** in a lump sum to any person for the provision of services for the primary benefit of individuals or the public--and *not* for the primary benefit of a governmental entity or the employees of a governmental entity--unless the contracting authority of the governmental entity first enters into a written contract with the person.[266] The contract must be signed by the person or by an officer or

[266] *The bill specifies that, with respect to a nonprofit association, corporation, or organization established for the purpose of providing educational, technical, consulting,*

agent of the person authorized to legally bind the person and must embody *all* of the requirements and conditions set forth in the bill. (See "***Limited application of the bill to certain contracts***," below.)

If the disbursement of money occurs over the course of a governmental entity's fiscal year, rather than in a lump sum, the contracting authority of the governmental entity is required to enter into the written contract with the person at the point during the governmental entity's fiscal year that at least **$75,000** has been disbursed by the governmental entity to the person. Thereafter, the contracting authority must enter into the written contract with the person at the beginning of the governmental entity's fiscal year, if, during the immediately preceding fiscal year, the governmental entity disbursed to that person an aggregate amount totaling at least $75,000.

Also, if the money was disbursed by or through more than one state agency to the person for the provision of services to the same population, the contracting authorities of those agencies are to determine which one of them will enter into the written contract with the person.

Exemptions (R.C. 9.231(B)). This contract requirement does *not* apply if the money is disbursed to a person pursuant to a contract with the United States or a governmental entity under any of the following circumstances:

(1) The person receives the money directly or indirectly from the United States, and no governmental entity exercises any oversight or control over the use of the money.

(2) The person receives the money solely in return for the performance of services intended to help preserve public health or safety under circumstances requiring immediate action as a result of a natural or man-made emergency.

(3) The person receives the money *solely* in return for the performance of one or more of the following types of services:

(a) Medical, therapeutic, or other health-related services provided by a person *if* the amount received is a set fee for each time the person provides the services, is determined in accordance with a fixed rate per unit of time, or is a capitated rate, *and* the fee or rate is reasonable and customary in the person's trade or profession;

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training, financial, or other services to its members in exchange for membership dues and other fees, any of the services provided to a member that is a governmental entity is to be considered, for purposes of this provision, a service "for the primary benefit of a governmental entity or the employees of a governmental entity" (R.C. 9.231(C)).

(b) Medicaid-funded services provided by a nursing home, hospital, or intermediate care facility for the mentally retarded for which payment is calculated on the basis of the person's cost of providing the services.[267]

(c) Services, other than administrative or management services or any of the services described in (a) or (b), above, that are commonly purchased by the public at an hourly rate or at a set fee for each time the services are provided, *unless* the services are performed for the benefit of children, persons who are eligible for the services by reason of advanced age, medical condition, or financial need, or persons who are confined in a detention facility (as defined in R.C. 2921.01), *and* the services are intended to help promote the health, safety, or welfare of those parties;

(d) Educational services provided by a school to children eligible to attend that school. (For purposes of this provision, "school" means any school operated by a school district board of education, any community school established under state law, or any nonpublic school for which the State Board of Education prescribes minimum education standards.)

(e) Services provided by a foster home (as defined in R.C. 5103.02);

(f) "Routine business services other than administrative or management services," as that term is defined by the Attorney General by rule adopted in accordance with the Administrative Procedure Act;

(g) Services to protect the environment or promote environmental education that are provided by a nonprofit entity or services to protect the environment that are funded with federal grants or revolving loan funds and administered in accordance with federal law.

Terms of the contract (R.C. 9.232). A contract entered into under the bill must, at a minimum, set forth all of the following:

(1) The minimum percentage of money that is to be expended on the recipient's direct costs;

(2) The records that a recipient must maintain to document direct costs;

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[267] *For purposes of this provision, "Medicaid" has the same meaning as in R.C. 5111.01; "nursing home" means a nursing home or home for the aging, as those terms are defined in R.C. 3721.01, that is issued a license by the Department of Health pursuant to R.C. 3721.02; "hospital" means a facility that meets the operating standards of R.C. 3727.02; and "intermediate care facility for the mentally retarded" has the same meaning as in R.C. 5111.20.*

(3) If some of the recipient's obligations under the contract involve the performance of any of the types of services described in (3)(a), (c), or (f), above, the name and telephone number of the individual designated by the governmental entity as the contact for obtaining approval of contract amounts (see "***Inspection of records; subcontractors***," below);

(4) The financial review and audit requirements established by the bill and by rules of the Auditor of State adopted under the bill;

(5) The provisions established by rules of the Attorney General adopted under the bill;

(6) Permissible dispositions of money received by a recipient in excess of the contract payment earned, if the excess is not to be repaid to the governmental entity.

Payment under the contract (R.C. 9.233). The bill states that a recipient is entitled to the contract payment earned, but is never entitled to *more than* the contract payment earned. The following example illustrates how the "contract payment earned" amount is determined:

Suppose that the Department of Health enters into a $100,000 contract with Company X for services. The contract, as required by the bill, provides for a minimum percentage of the total amount of the contract that Company X must expend on its direct costs in performing the contract, which in this case we will designate as 90%, or $90,000. Say that Company X actually does spend $90,000 on the direct costs that are set forth in the contract. So its "contract payment earned" is the sum of Company X's direct costs ($90,000) plus its allocable nondirect costs associated with those direct costs. Recall that "allocable nondirect costs" is a defined term, calculated by dividing the direct costs actually incurred by the contract's minimum percentage of money that is to be expended on the direct costs, and then subtracting the direct costs incurred. In this case, the allocable nondirect costs equal ($90,000/0.90)-$90,000, which works out to $100,000-$90,000, or $10,000. So the contract payment earned is the $90,000 in direct costs plus $10,000 in allocable nondirect costs, or $100,000. But if Company X spent less than $90,000 on direct costs, the total "contract payment earned" that it could receive would be less than the full $100,000 amount of the contract. And if it spent more than $90,000 on direct costs, it would not receive more than $100,000 under the contract, because the bill caps the amount of direct costs that can be counted toward the "contract payment earned" at the contract's minimum percentage of the total amount of the contract that is to be expended on direct costs.

In order to determine the contract payment earned, all financial books and records open to inspection pursuant to the bill are to be held to standards consistent with generally accepted accounting principles. Recipients are required to repay any money received in excess of the contract payment earned to the governmental entity or, if a different disposition is provided for in the recipient's contract with the governmental entity, dispose of that money in accordance with the terms of the contract.

Record-keeping requirements (R.C. 9.234(A)(1) and (2)). Generally, the bill requires recipients--with respect to any money received *prior* to the performance of the recipient's obligations under the contract with the governmental entity *and* any money received in excess of the contract payment earned--to keep current and accurate records of the receipt and use of the money in a manner consistent with the contract. With respect to any money received *after* the recipient has performed its obligations under the contract, current and accurate records of the recipient's expenditures on direct costs must be kept.

Audit and financial review requirements (R.C. 9.234(A)(3), (B), (C), and (D)). Under the bill, recipients must annually provide the contracting authority of the governmental entity with an audit report or financial review, if a financial audit or review is required by the applicable state or federal grant program; an audit report or financial review, if required under the bill; *or* financial statements, major categories of expenditure of the money, and a summary of the activities for which the recipient used the money.

If a financial audit or review is not otherwise required with respect to a contract, the bill's audit and financial review requirements apply. As indicated by the following chart, the type of financial reporting required by the bill is dependent upon the amount of money a recipient receives in a fiscal year pursuant to *one or more* contracts entered into under the bill.[268]

[268] *The references in this part of the bill to fiscal year mean the recipient's fiscal year (R.C. 9.234(C)(2)).*

AMOUNT OF MONEY RECEIVED IN A FISCAL YEAR	TYPE OF FINANCIAL REPORTING REQUIRED	CAN THE REQUIREMENT BE WAIVED?
At least $100,000 but less than $300,000	Financial review	Yes, if the contracting authority of each governmental entity from which the recipient received money agrees to the waiver.
At least $300,000 but less than $500,000	Financial review	No
$500,000 or more	Financial audit	No

The bill requires that the financial reviews be performed by an independent public accounting firm and in accordance with the financial review standards of the American Institute of Certified Public Accountants. The financial review contract between the recipient and the firm must provide that the state is an intended third-party beneficiary of the contract.

Financial audits are to be performed according to generally accepted auditing standards by an independent public accounting firm. The audit also must comply with any rules adopted by the Auditor of State under the bill. The audit contract between the recipient and the firm must provide that the state is an intended third-party beneficiary of the contract. The bill states that an audit performed pursuant to the federal "Single Audit Act of 1984" is sufficient if the state is an intended third-party beneficiary of the audit contract.

In addition, the bill provides that an audit conducted by the Auditor of State pursuant to any other provision of the Revised Code is sufficient for purposes of the bill. And it states that the bill does not in any way limit the authority of the Auditor of State to conduct audits pursuant to those provisions.

Inspection of records; subcontractors (R.C. 9.235). The bill generally provides that the financial books and records of a recipient, and the financial books and records of any person with which the recipient contracts for the performance of the recipient's obligations under the recipient's contract with the governmental entity (a "subcontractor"), are open to inspection by the governmental entity and by the state from the time the recipient first applies for payment under the contract. If the recipient is paid before the performance of its obligations under the contract, the financial books and records of the recipient and of any subcontractor are open to inspection from the first anniversary of the payment or from any earlier date that the contract may provide.

These provisions do not apply, however, to any person that contracts with the recipient solely for the performance of *some* of the recipient's obligations under the recipient's contract with the governmental entity that directly benefit the recipient's patients or clients, *if* either of the following applies:

(1) The services provided by the person are (a) medical, therapeutic, or other health-related services, (b) services commonly purchased by the public at an hourly rate or set fee, or (c) routine business services other than administrative or management services, that are exempt from the bill's contract requirement (see "***Exemptions***," above) **and** the full amount of the person's contract constitutes direct costs for the recipient and is reasonable and customary in the person's trade or profession. The amount of the person's contract with the recipient is considered "**reasonable and customary in the person's trade or profession**" if (i) the amount is equal to or less than the maximum amount for those services specified in the recipient's contract with the governmental entity, (ii) the amount was approved by the governmental entity after the recipient entered into the contract with the governmental entity, or (iii) a maximum amount for those services was specified in the recipient's contract with the governmental entity, the recipient's original contract with a person for the performance of those services was subsequently canceled or otherwise unfulfilled, the recipient entered into a replacement contract with another person, and the amount of that contract is not more than 25% above the maximum amount for the services specified in the recipient's contract with the governmental entity.

(2) The services provided by the person are (a) Medicaid-funded services provided by a nursing home, hospital, or intermediate care facility for the mentally retarded, (b) educational services, or (c) services provided by a foster home, that are exempt from the bill's contract requirement (see "***Exemptions***," above).

Generally, if a recipient contracts with another person for the performance of some or all of the recipient's obligations under the recipient's contract with the governmental entity, the recipient is entitled to claim spending by the subcontractor as direct costs *only* to the extent the subcontractor has spent money on direct costs in the performance of the recipient's obligations and *only* if the subcontractor complies with all of the terms and conditions relating to the performance that the recipient is required to comply with under the contract with the governmental entity. These conditions do not apply, however, with respect to any person described in (1) or (2), above.

The bill states that these provisions cannot be construed as making any record of the receipt or expenditure of nonpublic money a public record. And that the authority of the Auditor of State to conduct audits or other investigations when public money is commingled with nonpublic money is in no way limited.

Recovery (R.C. 9.236(A)). The bill states that a recipient is liable to repay to the governmental entity any money received in excess of the contract payment earned. To recover this excess, it authorizes civil actions and permits the governmental entity to void certain contracts.

Civil actions (R.C. 9.236(B) and (C)). Under the bill, a governmental entity may bring a civil action for the recovery of money due to the governmental entity from a recipient. In such an action, any person with which the recipient has contracted for the performance of the recipient's material obligations to a group of beneficiaries under the recipient's contract with the governmental entity may be made a party defendant *if* the person is unable to demonstrate to the satisfaction of the governmental entity that the person has materially complied with the terms of the contract with the recipient. In such a case, the person may be made a party defendant and the governmental entity may obtain a judgment against the person.

If a governmental entity obtains a judgment against a recipient in a civil action and the judgment is uncollectible, the governmental entity may recover from the person with which the recipient contracted an amount not exceeding the lesser of (1) the unsatisfied amount of the judgment or (2) the total amount received by the person from the recipient minus the total amount spent by the person on direct costs for services actually performed and retained by the person as allocable nondirect costs associated with those direct costs. Additionally, if a governmental entity obtains a judgment against a recipient or against a person with which the recipient contracted and that judgment debtor does not voluntarily pay the amount of the judgment, that judgment debtor is precluded from contracting with a governmental entity to the extent provided in current law for a debtor against whom a finding of recovery has been issued (R.C. 9.24(A) and (B)).

Voided contracts (R.C. 9.236(D) and (E)). In addition to the remedies mentioned above, a governmental entity may void the following contracts:

--*Contracts between a recipient and a subcontractor*. A contract between a recipient and another person for the performance by the other person of the recipient's obligations under the recipient's contract with the governmental entity may be voided by the governmental entity to the extent that the other person has not yet performed its obligations under the contract or cannot demonstrate that the money it received was expended on direct costs or retained as allocable nondirect costs.

--*Contracts between a recipient and an "insider" or other person*. If a recipient is liable to repay money to a governmental entity and the judgment obtained by the governmental entity against the recipient is uncollectible, then in addition to other remedies described above, and after the governmental entity has

obtained a judgment against any necessary third party, the governmental entity may void any of the following contracts:

(1) A contract made not more than 180 days before the judgment against the recipient became uncollectible between the recipient and a director, trustee, or officer of the recipient or a business in which a director, trustee, or officer of the recipient has a material financial interest, if either of the following applies:

(a) The recipient has paid substantial value for property received and the property can be returned to the other person. If the property has experienced only normal wear and tear, the person is liable to the governmental entity for the full amount the recipient paid for the property; otherwise, the person is liable to the governmental entity only for the market value of the property.

(b) The person with which the recipient contracted has received money that the recipient obtained pursuant to the contract with the governmental entity and the money was not expended on direct costs or retained as allocable nondirect costs. In such a case, the governmental entity may void the contract to the extent the money was not expended on direct costs or retained as allocable nondirect costs, and the person is liable to the governmental entity for that amount.

(2) A contract made not more than 180 days before the judgment against the recipient became uncollectible between the recipient and an employee of the recipient or a business in which an employee of the recipient has a material financial interest, *if* the employee has direct knowledge of the use of the money that the recipient obtained pursuant to the contract with the governmental entity and either (a) or (b), above, applies.

(3) A contract between the recipient and another person pursuant to which the recipient has paid or agreed to pay money to the other person, to the extent that the other person has not yet performed its obligations under the contract;

(4) A contract made not more than one year before the judgment against the recipient became uncollectible between the recipient and a person other than the governmental entity if the other person has not given or agreed to give consideration of reasonable and substantial value for the consideration given by the recipient.

Limited application of the bill to certain contracts (R.C. 9.231(A)(3)). Some contracts between a governmental entity and a recipient that are entered into under the bill are not subject to *all* of the bill's requirements. More specifically, requirements and conditions of the bill relating to "direct costs" or "contract payment earned," including the record-keeping, payment, and recovery provisions described above, do *not* apply with respect to the following:

(1) Contracts to which all of the following apply:

(a) The amount received for the services is a set fee for each time the services are provided, is determined in accordance with a fixed rate per unit of time or per service, or is a capitated rate, and the fee or rate is established by competitive bidding or by a market rate survey of similar services provided in a defined market area. The survey may be one conducted by or on behalf of the governmental entity or an independent survey accepted by the governmental entity as statistically valid and reliable.

(b) The services are provided in accordance with standards established by state or federal law for their delivery, which standards are enforced by the federal government, a governmental entity, or an accrediting organization recognized by the federal government or a governmental entity.

(c) Payment for the services is made after the services are delivered and upon submission to the governmental entity of an invoice or other claim for payment as required by any applicable local, state, or federal law or, if no such law applies, by the terms of the contract.

(2) Contracts under which the services are reimbursed through or in a manner consistent with a federal program that meets all of the following requirements:

(a) The program calculates the reimbursement rate on the basis of the previous year's experience or in accordance with an alternative method set forth in rules adopted by the Department of Job and Family Services.

(b) The reimbursement rate is derived from a breakdown of direct and indirect costs.

(c) The program's guidelines describe types of expenditures that are allowable and not allowable under the program and delineate which costs are acceptable as direct costs for purposes of calculating the reimbursement rate.

(d) The program includes a uniform cost reporting system with specific audit requirements.

(3) Contracts under which the services are reimbursed through or in a manner consistent with a federal program that calculates the reimbursement rate on a fee for service basis in compliance with the U.S. Office of Management and Budget Circular A-87, as revised May 10, 2004.

(4) Contracts for Medicaid-funded services, other than those described under "***Exemptions***," above, that are authorized by rules adopted by the Department of Job and Family Services.

(5) Contracts for services that are paid pursuant to the earmarking of an appropriation made by the General Assembly for that purpose.

Rule-making requirements: Attorney General (R.C. 9.237). The Attorney General is required to adopt rules in accordance with the Administrative Procedure Act governing the terms of any contract entered into under the bill. The rules must set forth all of the following:

(1) A definition of permissible components of direct costs, including a list of expenditures that may never be included in direct costs and a nonexclusive list of expenditures that may be included in direct costs pursuant to agreement of the parties;

(2) Permissible methods by which a recipient may keep records documenting direct costs and how long those records must be retained;

(3) Remedies not inconsistent with those provided under the bill (see "***Recovery***," above) in the event of a breach of the contract;

(4) Terms to be included in contracts between recipients and persons other than the governmental entity, including notice of the remedies available to the governmental entity if the money under the contract with the governmental entity is not expended on direct costs or retained as allocable nondirect costs;

(5) Any other provisions the Attorney General considers necessary to carry out the purposes of the bill.

Rule-making requirements: Auditor of State (R.C. 9.238). Under the bill, the Auditor of State is required to prescribe a single form of the financial reviews to be used for all governmental entities. The Auditor of State is permitted to adopt rules in accordance with the Administrative Procedure Act governing the form and content of the audit reports and to prescribe a single form of the report to be used for all governmental entities. Upon request made by a recipient, the Auditor of State must, to the extent possible, require all governmental entities that have entered into a contract with that recipient to accept a particular audit report.

Government Contracting Advisory Council (R.C. 9.239). The bill creates the Government Contracting Advisory Council.[269] It requires the Attorney

[269] *The bill states that the Council is not subject to the Sunset Review Committee Law (R.C. 101.82 to 101.87).*

General and Auditor of State to consult with the Council on the performance of their rule-making functions under the bill and to consider any recommendations of the Council. It also requires the Director of Job and Family Services to annually report to the Council the cost methodology of the Medicaid-funded services provided by contracts that are not subject to all of the bill's requirements (see "***Limited application of the bill to certain contracts***," above).

The Council consists of the following members or their designees:

(1) The Attorney General;

(2) The Auditor of State;

(3) The Director of Administrative Services;

(4) The Director of Aging;

(5) The Director of Alcohol and Drug Addiction Services;

(6) The Director of Budget and Management;

(7) The Director of Development;

(8) The Director of Job and Family Services;

(9) The Director of Mental Health;

(10) The Director of Mental Retardation and Developmental Disabilities;

(11) The Director of Rehabilitation and Correction;

(12) The Administrator of Workers' Compensation;

(13) The executive director of the County Commissioners' Association of Ohio;

(14) The president of the Ohio Grantmakers Forum;

(15) The president of the Ohio Chamber of Commerce;

(16) The president of the Ohio State Bar Association;

(17) The president of the Ohio Society of Certified Public Accountants;

(18) The executive director of the Ohio Association of Nonprofit Organizations;

(19) The president of the Ohio United Way;

(20) One additional member appointed by the Attorney General; and

(21) One additional member appointed by the Auditor of State.[270]

The Attorney General or the Attorney General's designee is to be the chairperson of the Council. The Council is required to meet at least once every two years to review the rules adopted under the bill and to make recommendations to the Attorney General and Auditor of State regarding the adoption, amendment, or repeal of those rules. The Council must also meet at the request of the Attorney General or Auditor of State.

The bill specifies that (1) the two appointed members are to serve three-year terms, (2) original appointments are to be made not later than 60 days after the bill's effective date, and (3) any vacancies are to be filled in the same manner as the original appointment. The Office of the Attorney General is required by the bill to provide necessary staff, facilities, supplies, and services to the Council. Council members are to serve without compensation or reimbursement.

Contracts for the provision of goods, construction, and all other services

(R.C. 9.241)

Application. This portion of the analysis deals with the bill's recovery provisions that do *not* apply with respect to any contract that (1) is entered into by a governmental entity pursuant to the bill's contract requirements described above (R.C. 9.231) *and* (2) is subject to the recovery provisions included in those requirements (R.C. 9.236).

Definitions. For this portion of the bill, "**recipient**" means a person that enters into or is awarded a contract with a governmental entity for the provision of goods, services, or construction. "**Governmental entity**" and "**a judgment is uncollectible**" have the same meanings as set forth above.

Recovery. The bill states that a recipient is liable to repay to a governmental entity any money received but not earned under the terms of a

[270] *If an agency or organization represented on the Council ceases to exist in the form it has on the effective date of the bill, the successor entity is to be represented in its place. If there is no successor entity, or if it is not clear what entity is the successor, the Attorney General is required to designate an agency or organization to be represented in place of the agency or organization originally represented on the Council.*

contract with the governmental entity. It authorizes civil actions and permits the governmental entity to void certain contracts.

Civil actions. Under the bill, a governmental entity may bring a civil action for the recovery of money due to the governmental entity from a recipient. In such an action, any person with which the recipient has contracted for the performance of the recipient's material obligations under the recipient's contract with the governmental entity may be made a party defendant *if* the person is unable to demonstrate to the satisfaction of the governmental entity that the person has materially complied with the terms of the contract with the recipient. In such a case, the person may be made a party defendant and the governmental entity may obtain a judgment against the person.

If a governmental entity obtains a judgment against a recipient in a civil action and the judgment is uncollectible, the governmental entity may recover from the person with which the recipient contracted an amount not exceeding the lesser of (1) the unsatisfied amount of the judgment or (2) the total amount received by the person from the recipient minus the total amount earned by the person under the terms of the recipient's contract with the governmental entity. Additionally, if a governmental entity obtains a judgment against a recipient or against a person with which the recipient contracted and that judgment debtor does not voluntarily pay the amount of the judgment, that judgment debtor is precluded from contracting with a governmental entity to the extent provided in current law for a debtor against whom a finding of recovery has been issued (R.C. 9.24(A) and (B)).

Voided contracts. In addition to the remedies mentioned above, a governmental entity may void the following contracts:

--*Contracts between a recipient and subcontractor.* A contract between a recipient and another person for the performance by the other person of the recipient's obligations under the recipient's contract with the governmental entity may be voided by the governmental entity to the extent that the other person has not yet performed its obligations under the contract.

--*Contracts between a recipient and an "insider" or other person.* If a recipient is liable to repay money to a governmental entity under this portion of the bill and the judgment obtained by the governmental entity against the recipient is uncollectible, then in addition to the other remedies previously mentioned, and after the governmental entity has obtained a judgment against any necessary third party, the governmental entity may void any of the following contracts:

(1) A contract made not more than 180 days before the judgment against the recipient became uncollectible between the recipient and a director, trustee, or

officer of the recipient or a business in which a director, trustee, or officer of the recipient has a material financial interest, if either of the following applies:

(a) The recipient has paid substantial value for property received and the property can be returned to the other person. If the property has experienced only normal wear and tear, the person is liable to the governmental entity for the full amount the recipient paid for the property; otherwise, the person is liable to the governmental entity only for the market value of the property.

(b) The person with which the recipient contracted has received money that the recipient obtained pursuant to the contract with the governmental entity and has used the money other than for the performance of the contract. In such a case, the governmental entity may void the contract to the extent that the person has used the money other than for the performance of the contract, and the person is liable to the governmental entity for that amount.

(2) A contract made not more than 180 days before the judgment against the recipient became uncollectible between the recipient and an employee of the recipient or a business in which an employee of the recipient has a material financial interest, if the employee has direct knowledge of the use of the money that the recipient obtained pursuant to the contract with the governmental entity and either (a) or (b) , above, applies.

(3) A contract between the recipient and another person pursuant to which the recipient has paid or agreed to pay money to the other person, to the extent that the other person has not yet performed its obligations under the contract;

(4) A contract made not more than one year before the judgment against the recipient became uncollectible between the recipient and a person other than the governmental entity if the other person has not given or agreed to give consideration of reasonable and substantial value for the consideration given by the recipient.

Application

(Section 559.03)

The bill's requirements with respect to contracts for the provision of services benefiting individuals or the public apply only to disbursements of money that occur on or after January 1, 2006. The recovery mechanisms provided by the bill with respect to contracts for the provision of goods, construction, and all other services apply only to contracts that are entered into or awarded on or after the effective date of this portion of the bill (90 days).

Legal Aid Fund

(R.C. 120.52)

Current law provides that the Legal Aid Fund is for the charitable public purpose of providing financial legal assistance to legal aid societies that provide civil legal services to indigents. The Legal Aid Fund is required to contain all funds credited to it by the Treasurer of State from municipal courts, county courts, courts of common pleas, interest earned on funds deposited in an interest-bearing trust account (IOLTA), or a depository institution. The bill provides that the Legal Aid Fund is also required to include funds from interest on trust accounts (IOTA).

Current law requires the State Public Defender, through the Ohio Legal Assistance Foundation, to administer the payment of moneys out of the Legal Aid Fund. Four and one-half per cent of the moneys in the Fund must be reserved for the actual, reasonable costs of administering laws governing legal aid society funding. The bill requires that this four and one-half per cent also be reserved for the actual, reasonable costs of administering certain provisions of law dealing with municipal court costs, county court costs, court of common pleas costs, and IOTA accounts. (R.C. 1901.26, 1907.24, and 2303.201 provide for certain court costs to be collected for the Legal Aid Fund but also include other special court costs.)

Current law also requires the Ohio Legal Assistance Foundation to establish rules governing the administration of the Legal Aid Fund, including the programs regarding interest on IOLTA accounts. The bill requires the rules governing the administration of the Legal Aid Fund to be established in accordance with the Administrative Procedure Act. The bill also eliminates the requirement that the rules governing the Legal Aid Fund include the programs regarding interest on IOTA accounts.

Ohio Legal Assistance Foundation

(R.C. 120.53)

Current law allows a legal aid society that operates within the state to apply to the Ohio Legal Assistance Foundation for financial assistance from the Legal Aid Fund to be used for the funding of the society during the calendar year following the calendar year in which the application is made. The Ohio Legal Assistance Foundation is required to allocate moneys contained in the Legal Aid Fund twice each year for distribution to applicants that filed their applications in the previous calendar year and were deemed to be eligible applicants. All moneys contained in the Fund on January 1 of a calendar year must be allocated, after deduction of the costs of administering the provisions governing legal aid society funding and the programs regarding IOLTA accounts. The bill includes in this

deduction the costs of administering the programs established in the law regarding certain municipal court costs, county court costs, and court of common pleas costs and IOTA accounts. Current law also requires that, in making the allocations, the moneys in the Fund that were generated from the municipal court, county court, court of common pleas, and IOLTA accounts and all income generated from the investment of such moneys must be apportioned, in part, after deduction of the amount authorized and used for actual, reasonable administrative costs:

(a) Five per cent of the moneys remaining in the Fund, plus any moneys reserved for administrative costs that are not used for actual, reasonable administrative costs, must be reserved for distribution of legal aid societies that provide assistance to special population groups of their eligible clients, engage in special projects that have a substantial impact on their local service area or on significant segments of the state's poverty population, or provide legal training or support to other legal aid societies in the state;

(b) After deduction of the amount described above, one and three-quarters per cent of the moneys remaining in the Fund must be apportioned among entities that received financial assistance from the Legal Aid Fund prior to June 30, 1995, but that, on and after that date, no longer qualify as a legal aid society that is eligible for financial assistance.

The bill modifies this provision by including IOTA accounts among the list of programs that generated money in the Legal Aid Fund. The bill removes the requirement that any moneys reserved for administrative costs that are not used for actual, reasonable administrative costs be reserved and instead provides that the 5% of the moneys remaining in the Fund be reserved for use in the manner described in the law governing the Legal Assistance Foundation Fund. The bill also includes a requirement that after deduction of the amounts described above, 15% of the moneys remaining in the Fund be placed in the Legal Assistance Foundation Fund for use in the manner described in the law governing the Legal Assistance Foundation Fund.

Filing fees

(R.C. 120.07, 1901.26, 1907.24, and 2303.201)

Current law requires municipal courts and county courts to collect in all its divisions except the small claims divisions, and requires courts of common pleas to collect, the sum of $15 as additional filing fees in each new civil action or proceeding for the charitable public purpose of providing financial assistance to legal aid societies that operate within the state. The bill increases this amount to $26. Under current law, municipal courts and county courts, in their small claims

divisions, are required to collect $7 as an additional filing fee for this same purpose. The bill increases this amount to $11.

Under current law, all such moneys from the municipal court must be transmitted on the first business day of each month by the clerk of the court to the Treasurer of State. The bill modifies this requirement by stating that the moneys *collected during a month* must be transmitted *on or before* the *20th* day of *the following* month by the clerk of the court to the Treasurer of State *in a manner prescribed by the Treasurer of State or by the Ohio Legal Assistance Foundation.* The bill also requires that the moneys collected by county courts and courts of common pleas be transmitted by the clerk of the court to the Treasurer of State in a manner prescribed by the Treasurer of State or by the Ohio Legal Assistance Foundation. The additional filing fees collected by the court of common pleas do not apply to a probate division of a court of common pleas, except that the additional filing fees apply to name change, guardianship, and adoption proceedings. The bill includes decedents' estate proceedings in this requirement.

Under current law, all money collected from these filing fees is deposited by the Treasurer of State to the credit of the Legal Aid Fund, established under R.C. 120.52. The bill modifies this distribution to instead require the Treasurer of State to deposit 4% of the money collected from these filing fees to the credit of the Civil Case Filing Fee Fund, created by the bill, and 96% of the money to the credit of the Legal Aid Fund. The bill specifies that all money credited to the Civil Case Filing Fee Fund must be used by the State Public Defender for the purpose of appointing assistant state public defenders and for providing other personnel, equipment, and facilities necessary for the operation of the State Public Defender office.

Ohio Community Service Council Gifts and Donations Fund

(R.C. 121.403)

Among its other statutory duties, the Ohio Community Service Council is to assist various state boards and departments, school districts, and institutions of higher education in coordinating community service programs through cooperative efforts between institutions and organizations in the public and private sectors. The bill authorizes the Council to accept monetary gifts or donations, sponsor events that further its purpose and charge fees for participation in or attendance at those events, and sell promotional items. All moneys received as a result of the activities authorized by the bill must be deposited into the Ohio Community Service Council Gifts and Donations Fund created by the bill. The Fund is in the state treasury, and moneys in the fund may be used only as follows: (1) to pay operating expenses of the Council, including payroll, personal services, maintenance, equipment, and subsidy payments, (2) to support Council programs

promoting volunteerism and community service in Ohio, and (3) as matching funds for federal grants.

Independent marriage and family therapists

(R.C. 4757.30)

Current Ohio law requires both marriage and family therapists and independent marriage and family therapists to meet certain requirements prior to licensure. However, in order to be distinguished as an independent marriage and family therapist, an applicant must further complete two calendar years of work experience in marriage and family therapy.

A licensed marriage and family therapist may diagnose and treat mental and emotional disorders only under the supervision of a psychologist, psychiatrist, professional clinical counselor, independent social worker, or independent marriage and family therapist. A licensed independent marriage and family therapist may diagnose and treat mental and emotional disorders without supervision.

The bill requires that an independent marriage and family therapist who diagnoses and treats mental and emotional disorders do so only under the supervision of a psychologist, psychiatrist, professional clinical counselor, or independent social worker. A marriage and family therapist may no longer diagnose and treat mental and emotional disorders under the supervision of an independent marriage and family therapist.

Consolidation of certain boards and commissions

(Section 315.03)

The bill contains an expression of the intent of the General Assembly to consolidate specified boards and commissions into the Departments of Health, Commerce, and Public Safety not later than July 1, 2006.

Department of Health

The bill states that it is the intent of the General Assembly to consolidate the following health-related regulatory boards within the Department of Health:

(1) The Chemical Dependency Professionals Board;

(2) The Board of Chiropractic Examiners;

(3) The Counselor, Social Worker, and Marriage and Family Therapist Board;

(4) The Ohio Board of Dietetics;

(5) The Ohio Occupational Therapy, Physical Therapy, and Athletic Trainers Board;

(6) The Ohio Optical Dispensers Board;

(7) The State Board of Optometry;

(8) The State Board of Orthotics, Prosthetics, and Pedorthics;

(9) The State Board of Psychology;

(10) The Ohio Respiratory Care Board;

(11) The Board of Speech-Language Pathology and Audiology;

(12) The State Veterinary Medical Licensing Board.

Department of Commerce

The bill states that it is the intent of the General Assembly to consolidate the following regulatory boards and commissions within the Department of Commerce:

(1) The Ohio Athletic Commission;

(2) The Barber Board;

(3) The State Board of Cosmetology;

(4) The Board of Embalmers and Funeral Directors;

(5) The Manufactured Homes Commission;

(6) The Board of Motor Vehicle Collision Repair Registration;

(7) The State Board of Sanitarian Registration.

Department of Public Safety

The bill states that it is the intent of the General Assembly to consolidate the Ohio Medical Transportation Board within the Department of Public Safety.

Transition team and recommendations

Under the bill the Director of Budget and Management, the Directors of Administrative Services, Commerce, Health, and Public Safety, and the executive directors of the affected boards must appoint representatives to a transition team. The transition team must include at least three members representing the affected regulatory boards who are appointed by the executive directors.

The transition team is to develop a plan to ensure the smooth and timely consolidation of the boards into the respective departments. It is required to address the details of the consolidations, identifying necessary statutory changes and working with the Office of Budget and Management to develop budgets for the respective departments and the consolidated boards and commissions. It may recommend additional regulatory boards or commissions to be consolidated and may recommend modifications to the planned consolidations.

The bill requires the transition team to submit a report containing recommendations and the details for the consolidations not later than December 31, 2005, to the Governor, the Speaker of the House of Representatives, and the President of the Senate. The report and recommendations must address the following issues, and may address additional issues:

(1) The necessary levels of funding;

(2) The savings projected as a result of the consolidations;

(3) The consolidation of activities between each board or commission and the department providing centralized services, including the role of the members of the board or commission and the role of the department;

(4) The staffing levels needed, whether employees must be retained, and whether any employees retained have civil service status;

(5) The continuation of the standards and procedures of the board or commission;

(6) The continuation of rules and whether any rules need to be amended as a result of the consolidations;

(7) The transfer of assets, liabilities, and contractual obligations;

(8) The transfer of records and other materials pertaining to the board or commission.

Implementing legislation

The bill expresses the intent of the General Assembly to introduce a bill in fiscal year 2006 that will include the necessary statutory changes to effect the consolidations and that will include revised appropriations for the departments and the consolidated boards and commissions for fiscal year 2007.

Consent agreements in civil actions involving the state

(R.C. 131.51)

The bill requires the state official who represents the state as a party in a civil action brought before a court of competent jurisdiction and in which the state is a party, prior to entering into a consent agreement in which the state must perform any action requiring additional appropriations or an increase in appropriations, to obtain the approval of the consent agreement by the Controlling Board. In no case may a consent agreement bind the General Assembly to appropriate funding unless the General Assembly is a party to the action and the consent agreement. The bill defines "state," by reference to R.C. 2743.01, as the state of Ohio, including, but not limited to, the General Assembly, the Supreme Court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state of Ohio, but not including political subdivisions.

Satisfaction of judgments and settlements against the state

(Section 303.12)

The bill provides that an appropriation made in it or in any other bill may be used to satisfy judgments, settlements, or administrative awards ordered or approved by the Court of Claims or by any other court of competent jurisdiction in connection with civil actions against the state. This authorization, however, does not apply to appropriations to be applied to or used for payment of guarantees by or on behalf of the state, or for payments under lease agreements relating to, or debt service on, bonds, notes, or other obligations of the state. In addition, the authorization includes appropriations from funds into which proceeds or direct obligations of the state are deposited only to the extent that the judgment, settlement, or administrative award is for, or represents, capital costs for which the appropriation may otherwise be used and is consistent with the purpose for which any related obligations were issued or entered into. This provision of the bill is not intended to subject the state to suit in any forum in which it is not otherwise subject to suit, and it is not intended to waive or compromise any defense or right available to the state in any suit against it.

Conveyance of real estate in Athens County

(Section 506.03)

The bill authorizes the Governor to execute a deed in the name of state conveying to Hocking.Athens.Perry Community Action, and its successors and assigns, all of the state's right, title, and interest in specified real estate in the Village of Glouster, Trimble Township, Athens County. The consideration for the conveyance is the purchase price of $1.

The bill specifies the procedures for the preparation, execution, and recording of the deed to the real estate upon the payment of that purchase price. Hocking.Athens.Perry Community Action must pay the costs of the conveyance.

This conveyance authority expires one year after Section 506.03's effective date.

Conveyance of real estate in Clark County

(Section 506.06)

The bill authorizes the Governor to execute a deed in the name of the state conveying to a purchaser, and the purchaser's heirs and assigns or successors and assigns, all of the state's right, title, and interest in specified state-owned real estate in Clark County. The bill requires the Department of Mental Retardation and Developmental Disabilities (DMRDD) to appraise the real estate or have it appraised by one or more disinterested persons for a fee to be determined by DMRDD. The Director of Administrative Services must offer the real estate for sale as follows:

- The Director must review the appraisal, establish an appraised value for the real estate, and provide notice to DMRDD of any interest expressed by any *state entity* in acquiring the real estate at the appraised value. The Director must first offer the real estate at the appraised value to any state entity that has expressed an interest in acquiring it.

- If no state entity expresses an interest in acquiring the real estate at the appraised value, or if a state entity accepts the offer to purchase the real estate at the appraised value but fails to timely complete the purchase, the Director must offer the real estate to the *Board of County Commissioners of Clark County* at a purchase price agreed upon by the Director and the Board of County Commissioners.

The real estate must be sold as an entire parcel and not subdivided. And, the advertising costs, appraisal fees, and other costs of the sale must be paid by DMRDD.

The bill specifies the procedures for the preparation, execution, and recording of a deed to the real estate upon notification from the Director of Administrative Services that the real estate has been sold. The net proceeds of the sale must be deposited in the state treasury to the credit of the Mental Health Facilities Improvement Fund (R.C. 154.20) and used to offset bond indebtedness for Springview Developmental Center capital projects.

This conveyance authority expires two years after Section 506.06's effective date.

Safekeeping of pledges of investments by trust companies

(R.C. 1111.04)

Under continuing law, prior to doing business in Ohio, a trust company must pledge described securities having a par value of $100,000 either by delivering the securities to the Treasurer of State or by placing the securities with a qualified trustee for safekeeping in an account on behalf of specified persons, including the Treasurer of State. Currently, a federal reserve bank located in Ohio and, under specified circumstances, a trust company may be a qualified trustee for this account. The bill adds a federal home loan bank as eligible to be a qualified trustee of such an account regardless of where the federal home loan bank is located.

Law enforcement agencies--annual statistical report to BCII specifying arrests made in a calendar year based on manufacture of, or assembly of chemicals sufficient to produce, methamphetamine and number of illegal methamphetamine manufacturing laboratories

(R.C. 109.60)

Existing law

Existing law provides for reports to the Bureau of Criminal Identification and Investigation (BCII) by law enforcement and corrections officials regarding arrests made and persons in custody for felonies or other specified offenses or conduct, and by court officials regarding convictions for felonies or other specified offenses. The reports provide specified information regarding each such arrest, custody, or conviction, but do not provide cumulative totals for the reporting official's agency or court. (R.C. 109.57, 109.60, and 109.61.)

Operation of the bill

The bill requires each law enforcement agency that, in any calendar year, "arrests any person" (see below) for the offense of "illegal manufacture of drugs" (R.C. 2925.04) when based on the manufacture of "methamphetamine or a methamphetamine product" (see below), the offense of "illegal assembly or possession of chemicals for the manufacture of drugs" (R.C. 2925.041) when based on the possession of chemicals sufficient to produce methamphetamine or a methamphetamine product, or a violation of any other provision of R.C. Chapter 2925. or 3719. that is based on the possession of chemicals sufficient to produce methamphetamine or a methamphetamine product to prepare an annual report covering the calendar year that contains specified information (see below) relative to all such arrests during that calendar year and to send the annual report, not later than the March 1 in the calendar year following the calendar year covered by the report, to BCII. The annual report must be on standard forms furnished by BCII's Superintendent pursuant to the bill (see below). The bill specifies that the annual report must be a statistical report, that nothing in the report or in the information it contains can identify, or enable the identification of, any person who was arrested and whose arrest is included in the information in the report, and that the report in the possession of BCII and the information it contains are public records under the Public Records Law. The bill also specifies that the annual report is separate from, and in addition to, any report, materials, or information required under R.C. 109.60(A) or under any other provision of R.C. 109.57 to 109.62.

The annual report prepared and filed by a law enforcement agency under the provisions described in the preceding paragraph must contain all of the following information for the calendar year it covers: (1) the total number of arrests made by the agency in that calendar year for the offense of "illegal manufacture of drugs" when based on the manufacture of methamphetamine or a methamphetamine product, the offense of "illegal assembly or possession of chemicals for the manufacture of drugs" when based on the possession of chemicals sufficient to produce methamphetamine or a methamphetamine product, or a violation of any other provision of R.C. Chapter 2925. or 3719. that is based on the possession of chemicals sufficient to produce methamphetamine or a methamphetamine product, and (2) the total number of "illegal methamphetamine manufacturing laboratories" (see below) at which one or more of the arrests reported under clause (1) of this paragraph occurred, or that were discovered in that calendar year within the territory served by the agency but at which none of those arrests occurred.

The bill requires BCII's Superintendent to prepare and furnish to each Ohio law enforcement agency standard forms for making the annual reports required under the reporting provisions described above. The standard forms may be in a

tangible format, in an electronic format, or in both a tangible format and an electronic format.

The bill specifies that, for purposes of the reporting provisions described above, a law enforcement agency is considered to have arrested a person if any law enforcement officer employed by, appointed by, or serving that agency arrests the person. It specifies that, as used in those provisions: (1) "illegal methamphetamine manufacturing laboratory" has the same meaning as in existing R.C. 3745.13 (not in the bill), and (2) "methamphetamine or a methamphetamine product" means methamphetamine, any salt, isomer, or salt of an isomer of methamphetamine, or any compound, mixture, preparation, or substance containing methamphetamine or any salt, isomer, or salt of an isomer of methamphetamine.

Ohio CASA/GAL Study Committee

(R.C. 2151.282)

The bill creates the Ohio Court Appointed Special Advocate/Guardian Ad Litem (CASA/GAL) Study Committee. The Study Committee will consist of five members: a representative of the Ohio CASA/GAL association appointed by the Governor; a member of the Ohio Juvenile Judges Association appointed by the President of the Senate; a member of the Ohio State Bar Association appointed by the Speaker of the House of Representatives; a representative of the Office of the State Public Defender appointed by the Minority Leader of the Senate; and a representative of the Ohio County Commissioner's Association appointed by the Minority Leader of the House of Representatives. The CASA/GAL representative will be the chairperson of the Study Committee. The members of the Study Committee must be appointed within 60 days after the effective date of the act.

The Study Committee is required to do all of the following:

(1) Compile available public data associated with state and local costs of advocating on behalf of abused, neglected, and dependent children;

(2) Examine the costs in counties that have established and operated an Ohio CASA/GAL association program, and the costs in counties that utilize the county public defender, joint county public defender, or count-appointed counsel, to advocate on behalf of abused, neglected, and dependent children;

(3) Analyze the total cost of advocating on behalf of abused, neglected, and dependent children on a per county basis and a per child served basis;

(4) Analyze the cost benefit of having an Ohio CASA/GAL association versus utilizing the county public defender, joint county public defender, or court-

appointed counsel to advocate on behalf of abused, neglected, and dependent children;

(5) Analyze the advocacy services provided to abused, neglected, or dependent children by Ohio CASA/GAL association programs versus the advocacy services provided to abused, neglected, or dependent children by county public defenders, joint county public defenders, or court-appointed counsel.

The bill requires the Ohio CASA/GAL association to provide staff for the Ohio CASA/GAL Study Committee and to pay for any expenses incurred by the Study Committee. The Study Committee must meet within 30 days after the appointment of the members to the Study Committee.

The Study Committee is required to prepare a report containing all relevant data and information that the Study Committee is required to compile, examine, and analyze. The Study Committee must deliver a final copy of the report to the Governor, the Speaker of the House of Representatives, and the President of the Senate on or before July 1, 2007.

NOTE ON EFFECTIVE DATES

(Sections 609.03 to 615.90)

Section 1d of Article II of the Ohio Constitution states that "laws providing for tax levies [and] appropriations for the current expenses of the state government and state institutions *** shall go into immediate effect," and "shall not be subject to the referendum." R.C. 1.471 implements this provision with respect to appropriations, providing that a codified or uncodified section of law contained in an act that contains an appropriation for current expenses is not subject to the referendum and goes into immediate effect if (1) it is an appropriation for current expenses, (2) it is an earmarking of the whole or part of an appropriation for current expenses, or (3) its implementation depends upon an appropriation for current expenses that is contained in the act. The statute states that the General Assembly is to determine which sections go into immediate effect.

The bill includes a default provision stating that, except as otherwise specifically provided, the amendment, enactment, or repeal of a *codified* section in the bill is subject to the referendum and takes effect on the 91st day after the act is filed with the Secretary of State (barring the filing of a referendum petition). The bill also includes many exceptions to the default provision which provide that specified codified provisions are not subject to the referendum and go into immediate effect. For example, many of the bill's provisions that provide for or are essential to the implementation of a tax levy go into immediate effect.

The bill provides that its *uncodified* sections are not subject to the referendum and take effect immediately, except as otherwise specifically provided. The uncodified sections that are subject to the referendum are identified with an asterisk in the bill, and take 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 specifies that an item that composes the whole or part of an uncodified section contained in the bill (other than an amending, enacting, or repealing clause) has no effect after June 30, 2007, unless its context clearly indicates otherwise.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	02-15-05	pp. 207-210
Reported, H. Finance & Appropriations	04-12-05	pp. 387-388
Passed House (54-45)	04-12-05	pp. 388-667
Reported, S. Finance & Financial Institutions	06-01-05	pp. 560-561
Passed Senate (19-13)	06-01-05	pp. 561-777

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